

**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU**

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| <b>NEPR</b><br><br><b>Received:</b><br><br><b>May 11, 2020</b><br><br><b>8:22 PM</b> |
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**IN RE:  
REQUEST FOR APPROVAL OF  
AMMENDED AND RESTATED POWER  
PURCHASE AND OPERATING  
AGREEMENT WITH ECOELECTRICA  
AND NATURAL GAS SALE AND  
PURCHASE AGREEMENT WITH  
NATURGY**

CASE NO.:  
NEPR-AP-2019-0001  
  
SUBJECT:  
Motion to Strike Arctas Motion for  
Reconsideration

**MOTION TO STRIKE ARCTAS CAPITAL GROUP, LP  
MOTION FOR RECONSIDERATION**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority through the undersigned legal representation and respectfully sets forth and prays as follows:

1. Actas Capital Group, LP requests the Energy Bureau<sup>1</sup> to reconsider its determination approving the EcoEléctrica and Naturgy agreements. More specifically, Arctas requests the Energy Bureau to reopen the approval process. However, pursuant to the applicable laws and regulations, Arctas doesn't have standing to move the Energy Bureau to make such a determination given that it is not a party to the proceeding. As will be more fully developed below, the Energy Bureau should strike Arctas petition requesting reconsideration of the Final Resolution and Order entered in this case for lack of standing.

2. On November 5, 2019, the Puerto Rico Electric Power Authority ("PREPA") filed a *Request for Approval of Amended and Restated Power Purchase Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy* (the "Request for Approval of

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<sup>1</sup> Capitalized terms not defined herein shall be ascribed the same meaning provided to them in the subsequent sections.

Agreements”) pursuant to Section 7.1 of Regulation 8815<sup>2</sup>. PREPA requested the Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) to approve certain agreements with EcoEléctrica L.P.(“EcoEléctrica”) and Naturgy Aprovevisionamientos S.A. (“Naturgy”). Specifically, PREPA moved the Energy Bureau to approve the *Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica and PREPA* (“Eco- PPOA”) and the proposed *Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy and PREPA* (“Naturgy-GSPA”) (the “Proposed Agreements”). After various procedural milestones which included submittal of supporting documents and a technical hearing, on March 11, 2020, the Energy Bureau issued a final *Resolution and Order* approving the Proposed Agreements.<sup>3</sup>

3. On April 27, 2020, Arctas Capital Group, LP (“Arctas”) filed *Motion for Reconsideration of the Approval of the Agreements* (the “Request for Reconsideration”). Arctas requests the Energy Bureau to reconsider the Final Resolution and Order approving the Proposed Agreements because “the approvals were based on incomplete disclosures by the parties to those contracts.”<sup>4</sup>

4. Act 38 of 2017, the Puerto Rico Administrative Procedures Act, as amended, applies to all the administrative procedures conducted before all the agencies.<sup>5</sup> This law also provided that only a “**party** adversely affected by an order or a partial or final judgment may file a motion for reconsideration of such order or judgment within twenty (20) days from the filing date of the order or judgment.”<sup>6</sup> Arctas is not a party or intervenor to the case of caption.

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<sup>2</sup> *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet* dated September 1, 2016 (the “Regulation 8815”).

<sup>3</sup> See *Resolution and Order* entered on March 11, 2020 (the “Final Resolution and Order”).

<sup>4</sup> Request for Reconsideration at ¶ 8.

<sup>5</sup> 3 L.P.R.A. § 9604.

<sup>6</sup> *Id.* at § 9655 (Emphasis provided).

5. Moreover, Arctas cannot be a party to the case of caption because the present proceedings do not provide for the intervention of a party other than PREPA. The Proposed Agreements were submitted for the consideration of the Energy Bureau pursuant to Article 6.32 of Act 57-2014. Article 6.32 of Act 57-2014 regulates certain procurement processes submitted by PREPA to the Energy Bureau and is thus more akin to a process regulating *ex-parte* procedures of PREPA than the adjudication of rights which would allow a petitioner to request intervention. The Energy Bureau has already had the opportunity to resolve a request for intervention in the current proceeding and has determined that this process does not provide for an third party to intervene because such designation is not consistent with the non-adjudicative nature of the proceedings.<sup>7</sup>

6. Lastly, *arguendo* that Petitioners have a right to intervene or for limited participation in this case, there is no right to a reconsideration of an order on a motion for reconsideration and the only available vehicle as a matter of law is for the party affected by the order, PREPA, to seek judicial review from such determination.

Therefore, pursuant to the applicable law, Arctas does not have standing to request reconsideration.

WHEREFORE, PREPA requests the Energy Bureau to DENY and STRIKE Arctas' Request for Reconsideration from the record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 11<sup>th</sup> day of May 2020.

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<sup>7</sup> See *Resolution and Order* entered on January 28, 2020, ruling on EcoEléctrica's Petition to Intervene.

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## CERTIFICATE OF SERVICE

It is hereby certified that, on this same date I have filed the above motion using the Energy Bureau's Electronic Filing System, at the following address: <http://radicacion.energia.pr.gov> and that a courtesy copy of the filing was sent via e-mail to participants [ccf@tcm.law](mailto:ccf@tcm.law); and also organizations that have requested to intervene: [rstgo2@gmail.com](mailto:rstgo2@gmail.com); [rolando@bufete-emmanuelli.com](mailto:rolando@bufete-emmanuelli.com); [jessica@bufete-emmanuelli.com](mailto:jessica@bufete-emmanuelli.com); [notificaciones@bufete-emmanuelli.com](mailto:notificaciones@bufete-emmanuelli.com); [valvarados@gmail.com](mailto:valvarados@gmail.com); [fcintronmoscoso@elpuente.us](mailto:fcintronmoscoso@elpuente.us); [ausubopr88@gmail.com](mailto:ausubopr88@gmail.com); [acasepr@gmail.com](mailto:acasepr@gmail.com); [jmenen6666@gmail.com](mailto:jmenen6666@gmail.com); [Julia.mignuccisanchez@gmail.com](mailto:Julia.mignuccisanchez@gmail.com); [gmchg24@gmail.com](mailto:gmchg24@gmail.com); [noloseus@gmail.com](mailto:noloseus@gmail.com); [cambiopr@gmail.com](mailto:cambiopr@gmail.com); [jaramillo@utier.org](mailto:jaramillo@utier.org); [brendasantiago@utier.org](mailto:brendasantiago@utier.org)<sup>8</sup>, [tonytorres2366@gmail.com](mailto:tonytorres2366@gmail.com) and [sierra@arctas.com](mailto:sierra@arctas.com).

In San Juan, Puerto Rico, this 11<sup>th</sup> day of May 2020.

*s/ Katuska Bolaños*  
Katuska Bolaños

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<sup>8</sup> PREPA provides notice directly to all the appearing parties because the appearing counsels have failed to present a notice of appearance, nor have they identified which of the appearing parties is their client.