

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

NEPR

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IN RE: REVIEW OF THE PUERTO
RICO ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN

CASE NO. CEPR-AP-2018-0001

SUBJECT: REPLY TO FINAL BRIEF

MOTION TO SUBMIT REPLY TO FINAL BRIEFS

TO THE HONORABLE ENERGY BUREAU:

NOW COME, EL INSTITUTO DE COMPETITIVIDAD Y SOSTENIBILIDAD ECONÓMICA DE PUERTO RICO (ICSE-PR) and, CENTRO UNIDO DE DETALLISTAS (CUD); CAMARA DE MERCADEO, INDUSTRIA Y DISTRIBUCION DE ALIMENTOS (MIDA); PUERTO RICO MANUFACTURES ASSOCIATION (PRMA); UNIDOS POR UTUADO (UPU), known as the Not For Profit Intervenors, represented by appearing counsel and respectfully allege and pray:

1. On April 15, 2020 PREB issued a Resolution and Order concerning submittals of Replies to Final Briefs. Terms at the PREB have been postpone until May 25, 2020, which being a holiday, Memorial Day, runs to Tuesday May 26, 2020.

2. Appearing parties submit the following reply.

3. The legal framework is precise and clear and requires an IRP final determination before PREB take other actions concerning PREPA and PREPA contracts:

As originally stated in the ICSE and the not for profit, closing arguments and brief:

"The IRP is a planning instrument. As such it is essential, for it be a useful planning tool, that the IRP be based on the reality, of the legal, fiscal, economic, commercial, environmental, governmental framework in which it exists and will be implemented.

First: We must look to the legal framework, Law 57 of 2014, Law 17 of 2019 among others and the Regulation on IRP for PREPA, as approved by the PREB on 2018.

4. Law 17 of 2019, Law on Puerto Rico's Public Policy on Energy state in Section 1.9:

"Section 1.9.- Long-term Electrical System Planning.

(1) General. Long-term Electrical System planning is critical for implementing the Energy Public Policy set forth in this Act and furthering the sustainable development of the people of Puerto Rico through the Electrical System. Such planning shall consist of an Integrated Resource Plan consistent with the provisions of this Act, Act No. 57-2014, and Act No. 83. The Integrated Resource Plan shall be devised by the electric power company responsible for the operations of the Electrical System and shall be approved by the Bureau. The IRP must be drafted with the input of the companies that operate the power plants. Any amendment or modification to the Integrated Resource Plan shall be approved by the Bureau prior to its implementation. The Bureau shall evaluate and approve the Integrated Resource Plan and any amendments or modifications thereto in conformity with the legislative intent and the declaration of public policy adopted by the Legislative Assembly in Section 3 of Act No. 120-2018, Section 13 of Act No. 29-2009 with regards to the protections and considerations applicable to Partnership Contracts, and the public policy declared herein. The Bureau may grant dispensations to or waivers for the Integrated Resource Plan for just cause.

5. At Section 1.9 (2) Law 17 state:

The Integrated Resource Plan shall be consistent with all the mandates of this Act and with the Energy Public Policy and shall follow the best practices in electric power industry integrated resource planning.

(3) Integrated Resource Plan Content. Every integrated resource plan shall include, but not be limited to:

(A) A range of future demand forecasts established by using methods that examine the effect of economic factors on electricity consumption as well as the effect of the use of lands under the Land Use Plan for Puerto Rico in effect, and the changes in the direction, type, and efficiency of electricity, and its end-use.

(C) An evaluation of the range of conventional and non-conventional generation technologies available in the market.

(D) An evaluation of the system's transmission capacity and reliability.

(E) A comparative evaluation of the energy supply resources, including transmission and distribution.

(F) An evaluation of the combination of resources designated to promote diversification of energy sources; stabilize energy costs; and improve the reliability and stability of the electric power grid.

(G) An evaluation of the existing electric power plants or facilities of the Authority and those in private hands or granted through concessions, that takes into account the improvements in the infrastructure and operational efficiency of the power plants, their useful life, and the retirement date and decommissioning costs thereof, if applicable.

(H) PREPA and electric power service companies' environmental impact assessments related to air emissions and water consumption, solid waste, and other factors such as climate change.

(I) An evaluation of the interconnection of distributed generation and renewable energy projects and other independent power producers to the electric power grid, to comply with Act No. 82-2010, as amended.

(J) Projections with regards to the integration of distributed generation into the electric power grid.

6. The PREB Regulation 9021, concerning the IRP-although approved prior to Law 17, states:

" 1) PREPA shall describe, at a minimum, the following factors: federal, state, or municipal standards and rules that impact the requirement for, or availability of, energy efficiency, renewable energy, fuel alternatives, or other resource requirements; and environmental standards and regulations that impact existing utility resources or resource choices at the present time and throughout the planning period". (Underline ours)

The IRP is an open process based on a model of legitimate competition, access to information, presentation of alternative views, and facts, where society transparently benefits from the clash of different voices, and the clash of diverse interests – an opportunity to correct the utter lack of credibility consumers and responsible investors have about our electrical system decision making process and management - by itself a great cost of rebuilding it per Law 17 mandates and PROMESA Act of Congress. For PREB to take actions in IRP impacted issues, without the IRP being ready and finally

approved, and taking those actions without open participation of interested parties, contradict everything laws 57 and 17 stand for.

The PREB must very publicly and strongly promote and implement the values and mandate of Laws 57 of 2014 and 17 of 2019, as the eyes of the US Congress, federal agencies, our legislature leaders, actual and future investors and consumers wait for coherent and lawful IRP approval. This IRP is a fundamental first step in the approvals that will direct the design, the contracting processes of many billions of dollars of public and private investment over more than 10 years, including appropriate spaces for market creation and innovation in consumer and prosumer efficiency, demand response and distributed generation programs. It should be a coherent, independent and transparently approved IRP for the first time in Puerto Rico, and not the typical piecemeal PREPA led "confidential" contract initiatives that lead Puerto Rico's only opportunity to transform our electrical system the last thirty years from its vicious cycle of economic pain to actor of sustained social, environmental and economic renewal.

How is it possible to approve the IRP and take IRP impacting determinations when as of today formally submitted documents and testimonies demonstrate all that we do not know or PREPA does not want us to know?

First: PREPA admitted it does not know how much money it will receive from the insurance companies for damages caused by Maria, over two years after the hurricanes.

Second: PREPA admitted it does not know how much money it will receive from FEMA for damages caused by Maria, much less for the 2020 earthquake damages.

Third: PREPA admitted it does not know if EPA will approve its proposed options to deal with the outage of Costa Sur.

Fourth: PREPA admitted it does not know when it will be out of bankruptcy, much less what its financial condition will be.

Fifth: PREPA has not factored the impact of the debt restructuring deal (RSA) on consumers.

Sixth: PREPA has once again requested the PROMESA Court to postpone the consideration of the RSA. PREPA filed the status report of the Government parties on May 15, 2020, docket no. 1992, case 17-04780 and stated:

“On May 1, 2020, the Oversight Board filed its Status Report of the Financial Oversight and Management Board for Puerto Rico Regarding the Covid-19 Pandemic and the Proposed Disclosure Statement Schedule [Case No. 17-BK-3283-LTS, ECF No. 13018], in which the Oversight Board noted that “before the [Commonwealth’s] plan and disclosure statement process can continue, the Oversight Board must assess this new and changing landscape....” Commonwealth Status Report ¶ 5. Subsequently on May 1, 2020, the Court entered its Order Setting Deadline for Status Report Regarding the Covid-19 Pandemic and the Proposed Disclosure Statement Schedule [Case No. 17-BK-3283-LTS, ECF No. 13023], in which the Court directed the Oversight Board to file an updated status report regarding the timeline for the plan of adjustment and disclosure statement process for the Commonwealth, ERS, and PBA on or before July 15, 2020.

Nonetheless, the situation remains fluid, and the impact of the pandemic and the measures taken to counteract it will continue to be felt by PREPA, PREPA’s customer base, and the economy more broadly in the ensuing weeks and months. The Government Parties will continue to monitor the situation and provide updates to the Court relating to the impact of the pandemic on PREPA’s financial condition.

The world is continuing to make “real time” adjustments to inhibit the spread of COVID-19 and address the consequences of both the disease and countermeasures. During this unprecedented time, the Government Parties’ focus remains on ensuring the health and well-being of the people of Puerto Rico, and assessing the short- and medium-term impact of the pandemic on Puerto Rico’s economy. A great deal will depend on when, how, and on what schedule Puerto Rico’s economy will reopen, and the complicated nature of what a post-COVID-19 Puerto Rico and world economy will look like. Indeed, the mainland United States is facing the same issues and uncertainties. Thus, the Oversight Board still lacks sufficient visibility into PREPA’s prospects to determine the feasibility of the restructuring contemplated by the RSA.”

PREB does not have more information and insight on PREPA's future than FOMB.

At this time there is no IRP approval but PREB is in the process of approving, outside the IRP process of coherent long term planning, the Ecoelectrica/Naturgy contracts, when not only we don't have essential facts, we don't have a determination of fuel mix, renewable energy interconnection, use of virtual power plants, impact of roof top solar, use of hydroelectric, implementation of energy efficiency, implementation of distributed energy and the use of real micro and mini grids.

Officially neither PREB, nor PREPA know the answer to these IRP magnitude questions and issues. How can then, without an IRP, PREPA with PREB approval, and no third-party participation can adjudicate a 12-year, fossil fuel generation contract, which predetermines significant portions of the yet to be approved IRP?

It is like we say in Spanish "poner la carreta delante de los bueyes", in this instance again intending to approve IRP scale fossil fuel generation, as San Juan 5&6 2019, but this time much more IRP capacity of 12 years.

Under IRP regulations:

"PREPA shall consider the following factors in the uncertainty analysis:

- A. forward-looking economic conditions; (underlining added)
- B. environmental regulations;
- C. changes in customer electricity demand and consumption;
- D. customer generation;
- E. fuel prices;
- F. environmental costs or restrictions;
- G. construction costs; and,
- H. combinations thereof as reasonable".

These issues, that must be considered by PREPA and PREB cannot be limited by forcing and imposing the Ecoelectrica/Naturgy contracts which predetermine significant portions of the not yet approved IRP.

The PREB decision on the Ecoelectrica/Naturgy contracts recognizes the interaction between such contracts and the IRP, while attempting to impose the contracts independent of a final IRP determination.

The PREB state at page 7 of the March 11- Ecoelectrica/Naturgy contracts resolution:

“In order to ensure that such agreements have an appropriate and reasonable price, the parameters established by the Energy Bureau shall be consistent with the ones normally used by the industry for such purposes, as well as any other parameter or method used to regulate revenues attributable to power purchase agreements. In addition, Power Purchase Agreements shall be awarded taking into account the goals and mandates established in the Renewable Portfolio Standards, which compel the transition from energy generation from fossil fuels to an aggressive integration of renewable energy as provided in Act 82-2014.”

How can PREB comply with its own statement and approve the contracts outside the IRP approval process.

Specifically, since the Resolution states at page 9:”

“The terms of the Proposed Agreements were not part of the analysis of PREPA’s Approved IRP. As such, the EcoElectrica Facility was modeled under the terms of the Current Eco-PPOA. On the other hand, as part of PREPA’s Proposed IRP, PREPA included potential revisions to capacity payments to EcoElectrica as some scenario assumptions, but other portions of the specific terms of the Proposed Agreements were not included in the analysis of PREPA’s Proposed IRP.”

Then the PREB proceeds to approve the contracts, because ROI #10, not an IRP complaint open process, PREPA convinced the PREB that the new contract was better

that the old contracts, but not including any discussion of alternatives to that new contract that could be even better.

The standard can not only be better than status quo- if it was proven, which has not- but the best scenario considering other alternatives.

In summary PREB should approve:


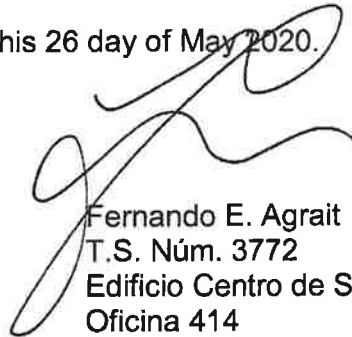
1. Minimum energy resources supply mix
2. Perform Bottoms-up planning
3. Advance Grid Planning Process
4. PREB should not act on Ecoelectrica/Naturgy contracts absent a final approved IRP.

WHEREFORE it is requested from PREB to receive this reply.

CERTIFICATION: I hereby certify a copy of this motion was notified by electronic mail to: astrid.rodriguez@prepa.com; jorge.ruiz@prepa.com; n-vazquez@aeep.com; c-aquino@prepa.com; mvazquez@diazvaz.law; kbolanos@diazvaz.law; Agustin Carbo, <acarbo@edf.org>; Javier Rúa-Jovet, <javier.ruajovet@sunrun.com>; pedrosaade5@gmail.com; rmurthy@earthjustice.org; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com; victorluisgonzalez@yahoo.com; Marc Roumain, <mgrpcorp@gmail.com>; Hannia Rivera Diaz, <hrivera@oipc.pr.gov>; jrivera@cnslpr.com; Manuel Fernandez, <manuelgabrielfernandez@gmail.com>; acasellas@amgprlaw.com; corey.brady@weil.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; paul.demoudt@shell.com; escott@ferraiuoli.com; castrodieppalaw@gmail.com; voxpopulix@gmail.com; Carlos Fernandez Lugo <cfl@mcvpr.com>; sierra@arctas.com; tonytorres2366@gmail.com; info@liga.coop; amaneser2020@gmail.com; mpietrantoni@mpmlawpr.com; Alana Pagan,

<apagan@mpmlawpr.com>; sproctor@huntonak.com; Vanessa I. Acarón Toro,
<viacaron@energia.pr.gov>; Cecilia Sánchez Negrón, <csanchez@energia.pr.gov>;
Sylvia Ugarte, <sugarte@energia.pr.gov>; Gladys A. Maldonado Rodriguez,
<gmaldonado@energia.pr.gov>; Ileana Reyes, <ireyes@energia.pr.gov>; Brenda Liz
Mulero, <bmulero@energia.pr.gov>; Alexandra Sanz <asanz@energia.pr.gov>; Nuri
Nuñez, <nnunez@energia.pr.gov>; Wanda Cordero, <wcordero@energia.pr.gov>

In San Juan, Puerto Rico, this 26 day of May 2020.



Fernando E. Agrait
T.S. Núm. 3772
Edificio Centro de Seguros
Oficina 414
701 Avenida Ponce León
San Juan, Puerto Rico 00907
Tels. 787-725-3390/3391
Email: agraitfe@agraitlawpr.com