



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

IN RE: CERTIFICATE OF ENERGY COMPLIANCE

CASE NO.: NEPR-AP-2020-0002

SUBJECT: Request for Issuance of Certificate of Energy Compliance in Accordance with Act 120; Request for Confidential Treatment in Accordance with Acts 29, 57 and 120.

RESOLUTION

I. Relevant Procedural Background

On May 18, 2020, the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”), filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) a document titled *Puerto Rico Public-Private Partnerships Authority's Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment of Documents Submitted to PREB* (“Petition”). The Petition included several exhibits. The P3 Authority requested the Energy Bureau to treat and designate the attached exhibits as confidential documents.¹ On June 1, 2020, the Energy Bureau issued a Resolution (“June 1 Resolution”) through which it granted the P3 Authority’s request for confidential designation and treatment with regard to the attached documents.

Through the Petition, the P3 Authority requests the Energy Bureau to issue a Certificate of Energy Compliance² for a Preliminary Contract, related to a PREPA Transaction, in accordance with the provisions of Act 120-2018³, Act 29-2009⁴ and Act 57-2014⁵.

¹ See Petition at pp. 6-15.

² Except as otherwise provided, capitalized terms used but not otherwise defined in this Resolution have the meaning ascribed to them in, as applicable, Act 120-2018, Act 29-2009, Act 57-2014, and Act 17-2019.

³ Known as the “Puerto Rico Electric Power System Transformation Act”, as amended (“Act 120-2018”).

⁴ Known as “Public-Private Partnership Act”, as amended (“Act 29-2009”).

⁵ Known as the “Puerto Rico Energy Transformation and RELIEF Act”, as amended (“Act 57-2014”).

On June 15, 2020, the *Unión de Trabajadores de la Industria Eléctrica y Riego* (“UTIER”, by its Spanish acronym) filed a document titled *Petition for Intervention and for Public Access to Information*. UTIER seeks (a) to be recognized as an intervenor in the captioned case, (b) the disclosure of the documents already designated as confidential through the June 1 Resolution and, (c) the suspension of the thirty (30) days term of provided in Act 120-2018 for the evaluation of the Preliminary Contract. UTIER contends that the captioned case is an adjudicative procedure and that pursuant to the provisions of Act 38-2017⁶ it should be recognized as an intervenor.

On June 17, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority’s Opposition To UTIER’s “Petition For Intervention And For Public Access To Information”*. P3 Authority contends that Act 38-2017 is excluded from the procedures conducted pursuant to Act 29-2009 and Act 120-2018. It contends, in the alternative, that this is not an adjudicative procedure pursuant to Act 38-2017 and thus intervention is not warranted.

II. Analysis

An Energy Compliance Certificate is defined as a *certificate* issued by the Energy Bureau in any PREPA Transaction, certifying that the Preliminary Contract complies with the Puerto Rico Energy Public Policy Act and its regulatory framework.⁷ A Preliminary Contract, in turn, refers to all the clauses and specific conditions of a Partnership Contract or Sales Contract that are agreed upon by the Partnership Committee and the Selected Proponent.⁸

For a PREPA Transaction, the Preliminary Contract shall include an Energy Compliance Certificate upon the submittal thereof for consideration of the Board of the P3 Authority and PREPA. It shall have the same format and content as the Partnership or Sales Contract to be signed by the parties. Once the transaction has been ratified by the Legislative Assembly, the clauses and conditions therein may not be amended without the approval of the Legislative Assembly.

Section 5(g) of Act 120-2018 provides the procedural requirements for the procurement of an Energy Compliance Certificate. In the pertinent part Section 5(g) provides that:

[a]ny contract related to a PREPA Transaction shall require an Energy Compliance Certificate, as defined in this Act. The Partnership Committee shall submit to the Bureau the Report drafted pursuant to Section 9(g) of Act No. 29-

⁶ Known as the *Puerto Rico’s Administrative Procedures Act*.

⁷ See Section 2(d) of Act 120-2018.

⁸ See Section 2 (h) of Act 120-2018.



2009 before submitting it to the Boards of Directors of the Authority and PREPA. The Bureau shall evaluate the Report, the information furnished, and the Preliminary Contract and issue an Energy Compliance Certificate if they comply with the energy public policy and the regulatory framework. The Energy Compliance Certificate or the resolution denying the issuance thereof shall state the basis for such determination. The Bureau shall have thirty (30) days from the date on which the Preliminary Contract was submitted to issue a Certificate of Compliance or a resolution to deny the issuance thereof. ... Once the Energy Compliance Certificate has been issued, any amendments made to the Preliminary Contract shall require the issuance of a new Energy Compliance Certificate. ... Reviews in connection with the Energy Compliance Certificate issued by the Bureau shall be filed with the Court of Appeals within a term of fifteen (15) days from the notice thereof.

In accordance with the above discussed legal framework, before the consideration of the Energy Bureau is a Preliminary Contract for a PREPA Transaction, negotiated by the P3 Authority in accordance with Act 29-2009 and Act 120-2018. The Energy Bureau shall determine whether it complies with the Puerto Rico Energy Public Policy and the regulatory framework. Thus, such procedure is an *ex parte* administrative process petitioned by the P3 Authority, which does not encompass the type of adjudicative proceeding sanctioned by Chapter III of Act 38-2017.

Section 3.5 of Act 38-2017 clearly states that “any person who has a legitimate interest in an **adjudicative proceeding** before an agency may submit a request in writing to be allowed to intervene or participate in said procedure”. That is, interventions are granted in the context of adjudicative proceedings. As stated above, the instant proceeding is not an adjudicative process. Therefore, the Energy Bureau **DENIES** UTIER’s request for intervention.⁹


Be it notified and published.



Edison Avilés Deliz
Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner


⁹ Given the determination concerning UTIER’s request for intervention, UTIER’s request for disclosure of confidential documents in this case is moot.



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 18, 2020. I also certify that on June 18, 2020 a copy of this Resolution was notified by electronic mail to the following: fermin.fontanes@p3.pr.gov, rolando@bufete-emmanuelli.com and jessica@bufete-emmanuelli.com. I also certify that today, June 18, 2020, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today June 18, 2020.



Wanda I. Cordero Morales
Clerk

