

GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO ENERGY BUREAU

NEPR
Received:
Jun 23, 2020
3:01 PM

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: Windmar and Not For Profit Organizations Petition for Intervention and Request for Reconsideration
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REPLY TO PREPA'S OMNIBUS OPPOSITION TO WINDMAR AND NOT FOR PROFIT
ENTITIES PETITION FOR INTERVENTION AND REQUEST FOR
RECONSIDERATION

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW WINDMAR RENEWABLE ENERGY through the undersigned legal
representation and respectfully sets forth and prays as follows:

1. Windmar filed a Motion for Intervention and Reconsideration on May 22, 2020.
2. PREPA filed an Omnibus Opposition on June 15, 2020.
3. Two issues are raised by PREPA's Motion:

First: PREPA makes statements in this Motion that directly contradict PREPA's
statements on its motion to Judge Laura Taylor Swain in the PROMESA case.

Second: PREPA admits that the PREB must verify that the "Ecoelectrica/Naturgy"
new contracts comply with applicable law, but then completely ignores, in the motion, all
the law compliance issue raised by Windmar motion. (PREPA, identified the contracts as
new contracts in its filing in PREB).

The absolute lack of PREPA's arguments on the legal substantive issues raised
by Windmar, speaks volumes. Is this Board naive enough to think that if PREPA had

substantive legal arguments, not just procedural, it would not raise those substantive arguments?

4. PREPA, on April 1st, 2020 filed in the PROMESA Court Case No. 17-04780 a motion titled “PREPA’S Urgent Motion for Entry of Any Order Authorizing PREPA to Assume Certain Contracts with Ecoelectrica L.P. and Gras Natural Aproveisionamientos SDG, S. A. (Naturgy)”. (Docket No. 1951) Windmar Renewable Energy (Windmar) filed a response in opposition, as other entities did. (See Docket No. 1973).

PREPA in its motion stated that there was a final PREB determination on the issue of the new Ecoelectrica/Naturgy contracts.

But on footnote 6, page 5 of PREPA’s Motion concerning a discovery controversy with another party (UTIER) PREPA admitted that the PREB decision was not final. (Docket 1986).

Even more, on PREPA’s Reply to Windmar’s Motion, PREPA specifically admitted that the PREB order is not final. PREPA went as far in its correction, to submit an alternative order which specifically stated that PREB order is not final. (See, Docket 1997).

But in direct opposition to PREPA’s, AAFAF and FOMB statements on the PROMESA case, we now have, before PREB, PREPA stating that yes, there is a final order on the new “Ecoelectrica/Naturgy” contract issue. See Omnibus Opposition, for example at pages 2, line 2, page 7 paragraph 2; page 16, e; page 17, second paragraph.

This clear contradiction is a direct violation of Rule 9.1 of Puerto Rico Civil Procedure Rules, and Rule 11 of the Federal Rules of Civil Procedures, concerning what an attorney for a party signature represents in terms or representations to the Court. (here

PREB) Either PREPA is misleading the Court or misleading PREB. Contradictory statements cannot stand.

PREPA reaffirmed that the PREB order is not final on Docket 1997 on the PROMESA Court.

As stated, on April 1st, 2020 PREPA and FOMB presented the two contracts to the US Federal District Court in the PROMESA cases 17-BK-3283-LTS and 17-BK-7480-LTS. As mentioned PREPA and FOMB have specifically stated, to the Hon. Judge Laura Taylor Swain, that the contracts have been approved by PREB, when they knew, that there was no final legal approval by PREB due to the fact that both reconsideration and appeals are still available as result of “Covid-19” postponement of legal terms, and as such PREB approval is not legally final, nor binding.

After the original filing in the PROMESA Court as mentioned, on a reply motion filed by PREPA on May 11 2020 case No. 17-04780 LTS, Docket No. 1986, page 5, footnote 6, PREPA has recognized that its submittal to the PROMESA Court is dependent on PREB’s order been final, which it isn’t. PREPA has recognized so, again in the Omnibus Reply filed on case 17-04780, Docket No. 1997 filed on May 18, 2020 and is now requesting that any Court approval is pending final unappealable PREB order.

5. Yesterday, June 22, 2020 Judge Swain issued an order and opinion authorizing PREPA to Assume the Ecoelectrica/Naturgy contracts, but only after PREB actions become final.

6. Among the substantive legal issue raised by Windmar, which there is nothing in the record of the PREB proceeding that were subject of consideration are:

A. What is the legal standard at PREB for reviewing the “New Contracts”, as PREPA characterized the contracts in its filing at PREB, as oppose to a mere amendment?

B. Whether the New Contracts are consistent with local and Federal Antitrust Laws?

C. Whether FERC has jurisdiction due to the new contracts providing for future interstate sales of Natural Gas, making the same subject to FERC, as oppose to the first contract, which was exclusively for foreign gas? This issue has particular importance in light of FERC’s order dated June 28, 2020 case New Fortress Energy LLC, Docket No CP20-466-000, for it raises the need for PREB to include compliance with Federal Laws in its evaluation.

D. Whether Regulation 8815 is compatible with the new transparency and participation requirements of Law 17 of 2019?

E. Whether there is evidence in the PREB record on the impact of the new contracts on renewable energy development?

F. Whether there is a substantive obligation for PREB to increase its intervention when confronted with irrefutable evidence of PREPA’s Board lack of serious, substantive analysis of the “Contracts”?

G. Are the “new contracts” valid contracts, when PREPA admitted it was shortchanged in negotiating due to “Ecoelectrica/Naturgy” monopoly? Even more, is it true that there is such “natural monopoly”, is it legal, can it be used to further monopolize?

H. Did PREPA complied with Regulation 8815 in all its requirements particularly concerning competitive processes for new contracts?

7. Finally, we must call PREB's attention to the following PREPA statement at page 20 and 21. PREPA state:

“iv. The Petitioners’ participation is not necessary to have a more complete record and the specialized knowledge and technical advice needed to review the Amended Agreements was provided to the Energy Bureau by the Authority.

Petitioners have woefully failed at pointing out what “knowledge” or “technical” advice they possess that would be useful or even necessary to evaluate the transactions. This failure is enough to deny them their Petition. The Amended Agreements are contracts that include complex transactions which require specialized technical knowledge to assess their provisions. The Authority, the only wholesale power producer in Puerto Rico, is, without a doubt, the best suited contributor of the specialized knowledge required to comprehend the technical requirements of the transaction. The Authority was able to thoroughly explain and support the details of the transaction to the Energy Bureau and, in the areas that the Authority needed additional technical and specialized support, the Authority produced experts to the Energy Bureau that were able to answer all the technical questions and explain how the Amended Agreements Complied with the applicable laws and regulations. Lastly, it is the Energy Bureau who has the technical knowledge and expertise, not only to evaluate the Amended Agreements, but also to identify and determine if they need additional information or technical input. The Energy Bureau did not seem wavering in its Final Order as it thoroughly expressed and expressed and discussed how the Amended Agreements complied with the Proposed IRP and the Puerto Rico Energy policies as manifested in Act 17- 2019 and Act 57-2014. This, in and of itself, is sufficient evidence that no further information is needed to evaluate the agreements.”

This is what is called “chutzpa”. PREPA, who ran itself into bankruptcy, while being a monopoly, which has been determined by PREB and the PREC before, to be the most inefficient, incompetent entity and which required a wholehearted intervention by the legislature of Puerto Rico, through laws 57 of 2014 and 17 of 2019, to be totally transformed because it was holding Puerto Rico “hostage”, now claims to be the “ Best Suited Contributor”. It is laughable if, it were not so serious.

WHEREFORE, it is respectfully requested from PREB to permit the intervention and reconsider the Ecoelectrica/Naturgy, March 11, 2020 order.

CERTIFICATE OF SERVICE I hereby certify that, on this same date, we have filed this motion via the Energy Bureau's online filing system, and sent to Puerto Rico Energy Bureau Clerk and legal counsel to: secretaria@energia.pr.gov; astrid.rodriquez@prepa.com; jorge.ruiz@prepa.com; n-vazquez@aepr.com; c-aquino@prepa.com; kbolanos@diazvaz.law; adiaz@diazvaz.law; mvazquez@diazvaz.law; ccf@tcm.law; rstgo2@gmail.com; rolando@bufete-emmanuelli.com; jessica@bufete-emmanuelli.com; .

RESPECTFULLY SUBMITTED this 23th, day of June, 2020, in San Juan, Puerto Rico.

s/FERNANDO E. AGRAIT
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