

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

SECRETARIA
NEGOCIADO DE ENERGIA
DE PUERTO RICO

2020 JUL -6 PM 4: 17

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 120-2018; Request for Confidential Treatment in Accordance with Act 29-2009; Act 57-2014 and Act 120-2018
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PETITION FOR ADJUDICATORY PROCESS

TO THE BOARD:

Now come Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE); Centro Unido de Detallistas (CUD) and Unidos por Utuado, represented by appearing counsel and respectfully allege and pray:

1. On June 19, 2020 the Puerto Rico Energy Board (PREB) notified the Resolution and Order on Emergency Compliance Certificate for the Preliminary Contract for Operating and Management of PREPA's Transmission and Distribution Systems.

Under the Preliminary Contract the T&D System Operation "shall be responsible for:

" All electric transmission, distribution, load serving and related activities for the safe and reliable operation and maintenance of the T&D System, subject to the terms and conditions of the main body of the Agreement, including (1) expansions and replacements to meet the Contract Standards, including fleet, asset management, asset acquisition/procurement, IT infrastructure, as further provided in this document and preparation and implementation of required components of the Integrated Resource Plan, while prioritizing expansion and replacement projects that improve the safe, reliable and economic dispatch of the T&D System's connected generating units; (2) management and performance of construction of improvements thereto, including compliance with approved FEMA scope of work for projects that are eligible for Federal Funding and required

maintenance; (3) delivery of electricity to customers, including the implementation of the activities set forth in Sections II.A and II.B of this Annex I (Scope of Services); (4) billing and collections implementation and optimization; (5) maintenance and improvement of public lighting system; (6) maintenance of fiber optic cable structure infrastructure, as set forth in lease agreement between Owner and PREPA Networks, LLC, a wholly-owned subsidiary of Owner incorporated in April 2004 to execute the Optical Telecommunications Infrastructure Lease Agreement for dedicated provision of local wholesale telecommunication services (for the avoidance of doubt, the Parties acknowledge and agree that, except as specified in this item (6), Operator shall have no other responsibility relating to PREPA Networks, LLC); (7) compliance with interconnection of renewables in accordance with Applicable Law; (8) management of the System Operation Principles to meet safe and reliable system operations in accordance with Prudent Utility Practices and the System Operation Principles; and (9) recordkeeping and reporting in accordance with Applicable Law or Prudent Utility Practices.”

The ICSE has been respectful of PREB’s interpretation that the emission of a “Certificate of Energy Compliance” is a “private” process between the regulated entity, here PREPA, and the regulator, here PREB. Although we differ from PREB’s interpretation, we have held our request for an adjudicatory process until after the certificate had been issued. We are acting also in respectful compliance with Puerto Rico Supreme Court case, Puerto Rico Telephone Company v. Junta Reglamentadora de Telecomunicaciones, 2010 TSPR 089.

2. ICSE’s and Not for Profit Standing:

ICSE and Not for Profit have been active in PREB and PREC Proceedings, including the FY 2017 Rate Case, the 2016 Petition for Transition Order, the two PREB’s IRP procedures among other proceedings. ICSE and Not for Profit has also been active in the PROMESA PREPA Bankruptcy proceedings. Appearing parties represent the widest group of electric power consumers residential, commercial, and industrial. ICSE is the only of entity that represents all electric power consumers and not any particular group

or interest. The Not for Profit represent thousands of commercial and residential consumers who represent thousands of employees. PREB's decision directly impacts the interests represented by appearing parties.

Due to PREPA, both management and Board of Directors, and PREB's decision to handle this matter behind to back of the consumers, as it if were a private matter, the appearing party has no other forum or legal proceeding to present its position and protect its interests.

There are no other parties in the current case which represent the same interests as those of appearing parties.

PREPA and Luma are not opposing parties. They are representing a same interest which is to have the new contracts approved.

If intervention is not permitted the record will not be complete for PREPA/Luma limited the record to what fits its predetermined interest. This is certainly not what transparency and participation is all about.

Appearing parties are represented by counsel who has extensively litigated in the PREB, the PREC and the PROMESA Court Case. As such, ICSE, will appear and litigate in a professional, independent, competent manner, bringing a fresh different perspective. Currently no party represents the same interests of ICSE.

Appearing parties, claim to represent a broad public interest, were a fundamental part in the conceptualization, drafting and approval of the Law 17 of 2019, and as such duly represent significantly the public interest.

Petitioners have been activatively involved in energy field for the last 5 years.

The collective knowledge and experience is unique, bringing specialized, practical, commercial, industrial, economic knowledge, currently not present in the proceedings, as well as knowledge on modern governance of government entities.

3. The Legal Framework

The basis of PREB's action in this case is, on PREB's own expression, Law 120 of 2018 and Law 29 of 2009. We respectfully differ from PREB's legal framework definition. The reason is simple. Puerto Rico determined, through its legislative process, that PREPA's renovation, transformation, privatization, and operation is not the result of a law or two laws as PREB states.

PREPA's transformation, or the transformation of an entity which has hold Puerto Rico "hostage" is a process. Such process includes, of course PREPA's own law 83.

On the legislature own words:

"The Legislative Assembly took on the task of revising the existing legislation on Puerto Rico's current regulatory framework and energy public policy including, but not limited to, the following: (1) Act No. 83 of May 2, 1941, as amended, known as the "Puerto Rico Electric Power Authority Act"; (2) Act No. 114-2007, as amended, known as the "Electric Power Authority Net Metering Program"; (3) Act No. 83-2010, as amended, known as the "Green Energy Incentives Act of Puerto Rico"; (4) Act No. 82-2010, as amended, known as the "Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act"; (5) Act No. 57-2014, as amended, known as the "Puerto Rico Energy Transformation and RELIEF Act"; and (6) Act No. 120-2018, known as the "Puerto Rico Electric Power System Transformation Act." In turn, it incorporated the input and recommendations from various sectors with specialized knowledge in this field, the population in general, the market, and the Government of Puerto Rico to set the parameters that shall guide Puerto Rico towards a future where the energy system is resilient, reliable, and robust, and allows for consumers to be active agents, the modernization of the transmission and distribution network, the transition from fossil fuels to renewable energy sources, the integration of distributed generation, microgrids, and state of art technology that benefits consumers

and results in rates below twenty cents (\$0.20) per kilowatt-hour. Among the reports considered were: the Development of the Regulatory Framework and Public Policy for the Puerto Rico Energy Transformation by the Senate of Puerto Rico Advisory Committee on Energy Transformation, October 2018; the Public Collaborative for Puerto Rico's Energy Transformation by the Rocky Mountain Institute and the Institute for Competitiveness and Sustainable Economy, October 2018; the Energy Resilience Solutions for the Puerto Rico Grid by the United States Department of Energy, June 2018; Reimagina Puerto Rico Energy Sector Report, June 2018; and Build Back Better: Reimagining and Strengthening the Power Grid of Puerto Rico, December 2017. (Statement of Motives Law 17)

It is from the joint operation and joint analysis of all such laws that the PREB obtain its powers and the Puerto Rican Electric Power consumer, industrial, commercial and residential obtain its protection, guarantees and obtain the values, principles and mandates that define all electric energy developments in Puerto Rico.

The zenith of such process is of course, without doubt, Law 17 of 2019. This law is the last law on the PREPA transformation process. It has not been amended and been the last one, prevails over prior laws in everything that law 17 might contradict or modify.

The legislature is presumed to know the prior laws in a field when it is legislating in such field. Law 17 expressively says so. It states:

“STATEMENT OF MOTIVES The electric power system should be reliable and accessible, promote industrial, commercial, and community development, improve the quality of life at just and reasonable cost, and promote the economic development of the Island.

Electric power services in Puerto Rico are inefficient, unreliable, and provided at an unreasonable cost to residential, commercial, and industrial customers despite the existence of a vertically integrated monopolistic structure. This is mainly due to a lack of infrastructure maintenance, the inadequate distribution of generation vis-à-vis demand, the absence of the necessary modernization of the electrical system to adjust it to new technologies, energy theft, and the reduction of the Electric Power Authority's personnel. Likewise, the electrical system of the Island is highly polluting as a result of poor energy diversification, the hindering of the

integration of distributed generation and renewable energy sources, and high fossil fuel dependency. Consequently, the power plants of the Electric Power Authority have become the main polluters of our environment given their high greenhouse gas emissions.

The Electric Power Authority (PREPA or the Authority) holds hostage approximately 1.5 million customers which represent close to \$3.45 billion in total revenue. The electric power generation system is approximately thirty (30) years older than the electric power industry average in the United States. Our electric power system includes two thousand seven hundred and forty-eight (2,748) miles of transmission lines, thirty-one thousand four hundred and eighty-five (31,485) miles of distribution lines, and three hundred and thirty-four (334) substations. The transmission lines include 230 kV, 115 kV, and 38 kV circuits that transmit energy from the power plants to the distribution substations to be delivered to consumers through lower voltage distribution lines. The Authority generates two-thirds of the Island's power and purchases the rest. Energy demand has decreased from a peak of three thousand six hundred and eighty-five megawatts (3,685 MW) in Fiscal Year 2006 to three thousand one hundred and fifty-nine megawatts (3,159 MW) in Fiscal Year 2014, and three thousand sixty megawatts (3,060 MW) by August 2017, which shows a clear tendency towards lower energy demand. Despite the foregoing, the Authority has a generation capacity of five thousand eight hundred and thirty-nine megawatts (5,839 MW) which includes the nine hundred and sixty-one megawatts (961 MW) provided by the EcoEléctrica Power Plant and AES through twenty (20) year power purchase agreements. In addition, the main generating units are located

in the south area of the Island while the highest energy demand is in the north. See, Build Back Better: Reimagining and Strengthening the Power Grid of Puerto Rico, December 2017. Even though the Authority controls the Island's energy supply, its financial statements as of June 30, 2014, show debts totaling over \$11.7 billion. The Authority's bankruptcy conditions have been known for years and have transformed this public corporation into an unsustainable burden for the people of Puerto Rico. Its fragile fiscal situation forced the Authority to undergo a bankruptcy process under Title III of the 2016 Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). (Statement of Motives)

During the legislative process of Act No. 120-2018, numerous sectors voiced their concerns with regards to the need for a complete, viable, and reliable regulatory framework that guides the transformation of our Island's electric power system and takes into consideration our vulnerability in the aftermath of hurricanes Irma and Maria. Likewise, such process revealed the need to maintain a regulatory entity to oversee the attainment of the objectives established by this public policy, and the importance of having an updated Integrated Resource Plan to regulate the market and a Public

Policy that continues until 2050. For such reason, the enacted legislation recognized the need to approve a new regulatory framework and a cutting-edge public policy on energy that encourages the use of new technology, alternative energy methods, distributed generation and renewable energy sources, the integration of microgrids, and the flexibility of a competitive market. To achieve this, the Legislative Assembly was granted a term of one hundred eighty (180) days to develop the regulatory framework and the energy public policy. (Statement of Motives)

The legislature also approved in 2019 the climate change law.

"To attain these objectives, this Act provides the means to establish an effective programming that allows for the setting of clear parameters and goals for energy efficiency, the Renewable Portfolio Standard, the interconnection of distributed generators and microgrids, wheeling, and the management of electricity demand. In doing so, it imposes, among other measures, responsibility for lack of diligence in or noncompliance with the implementation of the energy public policy of Puerto Rico, and it adopts incentive mechanisms that make the enforcement thereof feasible. Furthermore, pertaining to the Puerto Rico Energy Bureau, its powers and duties are broadened and its budget is increased. It is also provided for the implementation of alternative mechanisms that aid in the enforcement of the public policy and for the inclusion of the Bureau, with greater powers, in the Partnership Contracts and Sales Contracts processes established in Act No. 120-2018.

A new and better Puerto Rico is built with the will of those who are not discouraged in the face of adversity. We rise up with the capacity to innovate and make the necessary changes to benefit our People. The transformation herein initiated shall exchange inefficiency for operational excellence. With this step, Puerto Rico shall make progress and move towards the future. (Statement of Motives)"

Sec. 1.5

"...2) Electric Power Service Model (a) To promote the necessary changes in order to transform the Electric Power System into one that satisfies the energy needs of the 21st century Puerto Rico;

(b) To oversee the implementation of strategies geared toward achieving efficiency in the generation, transmission, and distribution of electric power so as to guarantee the availability and supply thereof at an affordable, just, and reasonable cost; (c) To properly use all electric power service contributions, subsidies, or direct or indirect payments in accordance with the objectives for which they were created; (d) To establish criminal penalties, both at the personal and corporate levels, for the noncompliance with legal mandates by electric power service companies or by any natural

or juridical person that directly or indirectly intervenes in the rendering of electric power services; (e) To establish an Electrical System model that maximizes the use of the energy resources available and that empowers the consumer to be part of the energy resources portfolio through the adoption of energy efficiency strategies, demand response, the installation of distributed generators, among others; (f) To design an electric power grid that takes into account the development and integration of community solar, wheeling, the creation of microgrids, and electric cooperatives or energy cooperatives as alternatives and tools to improve the access to renewable energy and the electric power grid's resilience to natural disasters; (g) To ensure that the establishment and implementation of the public policy on energy is an ongoing planning, consultation, execution, evaluation, and improvement process in all energy-related matters;..."

This is the clear, last mandate and interpretation of the Puerto Rico Legislature.

Law 17 was as mentioned, approved after Law 120 and 29. In case of conflict, the later law prevails.

This is important for as demonstrated by the cited sections of Law 17 it establishes a new paradigm in the relation between the consumer and the utility, PREPA. The new paradigm is one of openness, participation, and transparency. The participation, transparency and openness were not the law when Law 120 was approved.

But even when Law 17 was not still approved, Law 120 and Law 29 stated:

"However, as the people of Puerto Rico know first-hand, the Electric Power Authority is no longer synonymous with efficient and cost-effective service for the consumer. The Electric Power Authority has turned into a heavy burden for our People, who are now a hostage to its deficient and high-cost service. What we know today as the Electric Power Authority does not work and cannot continue operating in that manner." (Act. 120 Statement of Motives)

...

"To finalize the transaction process, the approval of this regulatory framework is required to provide a competitive model among several participants in the energy sector. In this manner, not only do you prevent the monopoly of service providers but also the monopoly of some source of energy production, while at the same time promoting diversification. With

that, we avoid the errors of the past that keep us held hostage to the use of petroleum.” (Act 120 Statement of Motives)

“This transformation will allow us to survive the challenges that energy generation is having on a world scale. This is the first step to channel the development and eventual implementation of a model centered around the consumer, where the citizen can have options. By means of this Act, we will begin the process of adopting an innovative sustainable model with advanced technology that is resistant to the onslaughts of nature. This will be the leap towards the modernization of Puerto Rico. These changes will benefit all of the people and they will be sensitive to everyone with an interest in the Authority: to the consumer, to the entrepreneur or small businessman and to the citizenry, who require better service at a lower cost. This change will be aimed at benefitting the most vulnerable sectors, such as women who are heads of household, our retirees and the elderly.”

...

“An efficient mechanism for reinforcing and contributing to our economy consists of forming alliances on behalf of the Government with the private sector, cooperatives, corporations of workers and non-profit organizations. These Public Private Alliances have prospered in many countries, alleviating the public sector as far as the investment that providing goods and services requires. A Public Private Alliance is an entity that joins resources and efforts from the public sector with private sector resources, by means of a joint investment that turns out to be beneficial for both. Such Alliances are urged for the purpose of providing a service to the men and women of the citizenry, as well as to build or operate a facility or project that is a high priority for the Government, either due to its urgency, necessity or convenience for the citizenry. That Alliance should be marked by a high public interest, so that the Government does not renege on its responsibility to protect said interest, or the right to receive an efficient service, or the ownership of public stock included in the Alliance Contract.

The establishment of Public Private Alliances requires a legal and administrative framework that includes processes promoting clarity and transparency in the development of the projects. That process should encourage transparency on behalf of the Government in negotiations and decisions for the signing of contracts, without failing to protect the confidentiality of the so-called “trade secrets” of private companies from potential damage by competitors. In turn, said process should promote competition in the request for proposals and provide access to the information available to attract the best proponents to ensure the supremacy of the free market and competition. (Act 29 Statement of Motives.)

So a correct interpretation of the electric power reform process is much more open than the restricted interpretation that PREB has taken. It is PREB self-censorship of its power and responsibilities.

4. The Puerto Rico Telephone Co. v. Junta Reglamentadora 2010 TSPR 089 case.

The Puerto Rico Telephone Co. v. Junta Reglamentadora, supra, case is the leading case on participation in administrative processes in Puerto Rico. It specifically opens up the public participation model even in such cases where the direct participants in an administrative proceeding might interpret that the proceeding is closed to the regulator (PREB here) and the regulated (PREPA here). The Supreme Court states:

“According to the L.P.A.U. [Uniform Administrative Procedures Act], the procedure for issuing a franchise should be, by nature, “quick and efficient.” [64] For that reason, the Regulatory Board provided that the decision to award or deny it should be made in a term of 180 days, from the filing of the franchise application. [65] The need to resolve these applications quickly is another reason why no adjudicative procedure was provided for their consideration. The purpose of the adjudicative procedure is to determine “the rights, obligations or privileges that belong to a given party.” [66] Its nature is complex, extensive and is only mandatory when: (1) the franchise application is denied without an administrative hearing having been held, (2) the Regulatory Board issues an order to show cause so that the party can state why it should not be sanctioned, or (3) a request for reconsideration of a finding by the Regulatory Board awarding or denying the Cable TV franchise. With respect to the first scenario the franchise regulation provides:

Whenever the denial has not been preceded by a full administrative hearing, the applicant will be entitled to be heard within 30 days following the total or partial denial of an application by the Board.

In this case, the applicant must request a hearing in writing. The request for a hearing must contain a detailed statement of the material facts and legal grounds on which the applicant bases his petition.

If the Board decides that a genuine dispute has been raised with respect to a relevant fact in the application, the Board will hold an adjudicative hearing that is consistent with its Rules of Practice and Procedure and with the [LPAU].

If the Board concludes, based on its review of the record, that there is a dispute of a relevant fact raised in the applicant's petition, **the Board will hold an adjudicative hearing pursuant to its Rules of Practice and Procedure.** [67]

For its part, the second circumstance may be the result of an investigation by the Board or of a complaint filed by a third party. [68] **Also, it may culminate in the setting of a hearing if the Regulatory Board finds that there is a material dispute of fact or law.** [69] And even if it is found that the party to whom the order is issued violated any administrative rule governed by the Regulatory Board, it may impose one or several of the following sanctions: (a) issue a notice of orientation; (b) affirm the fine proposed; (c) modify the fine proposed; (d) initiate a proceeding to modify, suspend or revoke the franchise. [70]

Finally, the third consideration can be activated if a party affected by the Regulatory Board's decision chooses to file a motion for reconsideration. As to this scenario, the franchise regulation is clear in pointing out that the proceeding that is activated is adjudicative in nature. For that reason, it specifically alludes to the fact that **the decisions of the Regulatory Board are subject to the proceeding established in Section 8.23 of the Rules of Practice and General Procedure and Section 3.15 of the L.P.A.U. [71]** Both sections are included in the chapters dealing with the subject of adjudicative proceedings.

As far as access to an adjudicative proceeding, once the license has been issued (here the certificate of compliance as public policy) the Court points out:

"We concentrate the dispute of this case on whether the PRCC was entitled to intervene in the adjudicative procedure of the order to show cause why the temporarily issued permit should not be revoked, as awarded by the JCA to San Antonio Maritime, and in the process of challenging the awarding of the permanent permits for the building and use of the silo, awarded by ARPE [Administration of Regulations and Permits] and affirmed by the JACL [Building and Lots Appeals Board]. In analyzing the controversy, we conclude that there is a close relationship between the adjudicative process and the awarding of a license or permit, once the agency in charge awards or denies this authorization. In view of that fact and the fact that the purpose of the process for awarding a license, permit

or franchise is to protect the public interest, we extend the right to intervene in the process of challenging the agency decision to any person affected by it. Within those parameters we stated the following:

In addition, it is incontrovertible that **the requirement for showing cause why the permits should not have been revoked, after having been awarded, with the cautioned possibility of ordering the revocation of said permits, is really an initiative that gives rise to an adjudicative process, either having the agency or the PRCC as petitioner or moving party.** It is a process in which it should be decided whether San Antonio is entitled or not to retain the effectiveness of the permits awarded by the Environmental Quality Board for the construction and operation of an emissions source. **Clearly, we are facing an adjudicative proceeding.** Therefore, it is proper to apply to said proceeding the rules relating to the request for intervention contained in the L.P.A.U. and in the administrative regulations on adjudicative procedures of the agencies involved in the matter. [79]

...

Furthermore, and as regards the request for intervention by the PRCC before the ARPE and JACL, **in appealing the decision by ARPE to award the permanent building and use permits requested by SAM,** we believe that based on the reasoning stated above, **it clearly erred by not awarding them.** [80]

More recently, in Ranger American of PR v. Loomis Fargo we clearly stated that the adjudicative proceeding that arises after the agency decides to award or deny a license, permit or franchise, is available both for the applicants who had said authorization denied and for any third parties with an interest in challenging what was awarded by the agency. [81]

By activating this adjudicative procedure, a person who was not originally considered a party by the Regulatory Board can file a request for intervention, up until 15 days before the hearing is held. [82] This request must be made in writing, must be duly supported and show the capacity, and legitimate and substantial interest that the person has in the proceeding. [83] In addition, in order to consider a motion for intervention, it must include evidence of the criteria established in Section 3.5 of the L.P.A.U. In that regard, the Rules of Practice and Procedure provide that evidence should be produced that:

(a) The petitioner's interests may be adversely affected by the adjudicative proceeding;

(b) (i) the petitioner has no other legal means for adequately protecting his interest;

(ii) the petitioner's interests are not adequately represented by other parties in the proceeding;

(iii) the petitioner's participation can help to develop a more complete record;

(iv) the petitioner represents or is a spokesperson for other groups or entities in the community;

(v) the petitioner can contribute information, expertise, specialized knowledge or technical advice that would not otherwise be available in the proceeding; and

(c) The petitioner's participation will not prolong or delay the proceeding unnecessarily. [84]

The decision to award or deny a petition for intervention depends on the discretion of the Regulatory Board in weighing each one of the criteria established by the L.P.A.U. [85] If the intervention is awarded, the petitioner becomes a party in the proceeding, while, if it is denied he will be given notice by an order with the reasons that justify the finding by the Regulatory Board. [86]

As is evident, the right to intervention may only exist within an adjudicative proceeding. If this type of procedure does not exist, this right is non-existent. This Court has only made a statement for the purpose of establishing that in fact there is an adjudicative proceeding when the regulatory entity, in this case the Regulatory Board, decides to award or deny the franchise, license or permit and that decision is disputed or challenged. We have never before made a statement as to whether the nature of the adjudicative proceeding, and therefore, the right to intervention, is also present at the initial time when there is a decision made as to whether or not to award the license or franchise requested. In order to analyze this controversy, it is necessary to examine the legislative intent.

We have constantly validated any interpretation that is aimed at identifying the purposes sought by a law, so that it is consistent with the public policy that inspires it. [87] In order to conduct that exercise of statutory interpretation, we must, in the first instance, examine the text of the law because "it is the statement *par excellence* of all legislative intent," provided that the legislator has set it forth in "clear and unequivocal language." [88] In this process of searching for the legislative intent, it is also proper to examine and analyze the legislative history of the measure that includes the reports submitted by the House and Senate commissions

and the daily records. [89] Also, as a part of that process, we have stated, emphatically, that “laws have to be interpreted and applied with an understanding of the social purpose that inspires them, without separating them from the reality and the human problem that they are attempting to resolve.” [90] Furthermore, as Ihering explains, “the purpose is what creates all law” and “there is no legal rule that does now owe its origin to an end, a purpose, that is, to a practical reason.” [91]

We have made an integral analysis of our telecommunications law, its legislative history, the applicable regulation of the Regulatory Board and the federal telecommunications legislation, and the L.P.A.U. and its legislative history. Both the public policy of our legislation on telecommunications and that of federal law have the purpose of protecting the consumer, making competition possible so as to establish the best cable TV services viable at the lowest cost. Linked to this is the Legislative Assembly’s interest that the process of awarding franchises or permits will be quick and efficient. For that reason, the decision was to structure each one of the services offered by the agencies separately, among them a chapter was defined for the adjudicative proceedings and another one for the awarding of a franchise, license or permit. In that sense, the integration of both processes was only allowed by Section 5.4 of the L.P.A.U., that is, to challenge the agency’s decision.

In view of these circumstances, we have to conclude that the initial process of awarding a license or franchise is not adjudicative and, therefore, at that stage the right of intervention is not applicable. This decision is not altered by the fact that there are special laws regulated by the agencies, including specific and defined laws, that allow for greater participation of persons who oppose the application for a franchise or permit. Although such consideration could make it seem that this process is adjudicative, it is not, because the decision of an agency is not being questioned, nor is a right being put in juxtaposition with another. The participation of these people is only a mechanism for obtaining information that can be useful to the agency in making a finding as to whether to award or deny a license, permit or franchise. To reach any other conclusion would defeat our public policy on telecommunication and the purposes of Chapter V of the L.P.A.U.”

PREB itself presented the following timeline of proceedings:

Puerto Rico Energy Bureau -Timeline and Proceedings

SUBJECT MATTER	3rd Quarter 2019	4th Quarter 2019	1st Quarter 2020	2nd Quarter 2020
TRANSMISSION & DISTRIBUTION		Structure of TDP/SO	Intervention and Comments	

PROVIDER and SYSTEM OPERATOR			PREPA revisions	
Continuation of TDP & SO			Order for Filing - Concessionaire?	Technical Conference Hearing and Briefs Discussion and Feedback Final Order
			Application Review	

There was no intervention and comments nor any hearings and briefs. So PREB announced that there would be an open proceedings and then acted in noncompliance with its own announcement.

5. The substantive issues were not analyzed, nor incorporated in the analysis by PREB.

A. How are the interests of consumers, industrial, commercial and residential protected in this contract?

B. How do we know that the T&D operation and PREPA's interests are aligned with the consumer interest and with competitors to PREPA's interests?

C. How does this contract protect the public interest of maximum distributed energy, mini and micro grids?

It is obvious that for a T&D operator it is better to have the least number of energy producers connected to the grid, while the public policy is for prosumer, mini and microgrids in other words opening up the grid to private producers -specially renewable energy- in particular individual prosumers, which is a much larger number of persons accessing the grid.

How this clash will be resolved, how it is managed in the Contract?

D. How this contract promotes competition and helps end monopolies like PREPA. Such is specific mandate of Law 17.

E. How and why the T&D operator will promote “wheeling” when PREPA has been dragging its feet for 11 years? How is wheeling protected in the contract?

F. Why the T&D operator is going to promote -as the law state- renewable production which puts a higher burden on the grid?

G. The contract is a delegation of public authority to a private business which is incompatible with Puerto Ricans Constitutional scheme.

H. Finally, Commissioner Angel Rivera raises an issue of who is going to carry the risks of higher costs, and who will benefit from reduction in costs. This issue is not taken care on PREB’s determination.

6. PREPA is currently is bankruptcy if federal court under Title III of PROMESA with severe insolvency parameters. PREB need to ask itself would Luma or PREPA would be able to operate under such insolvency parameters?

7. The procedure under which Luma was selected did not included the broad public participation required in Act 17.

8. The approval of the T&D contracts must be analyzed in the context of PREPA’s bankruptcy under Title III of PROMESA and the insolvency of PREPA even considering the proposed RSA.

The level of insolvency of PREPA produces that even considering the proposed, although suspended, RSA, which proposes reduction between 32.5% and 22.5% of the Bond Debt, it would not bring PREPA out of insolvency, which would guaranty a down the road refiling for bankruptcy.

The T&D contract should not be approved, much less implemented without having before a reasonable judgment of how PREPA’s reorganization will look like.

There is another serious gap on the T&D approval. The impact on rates is not clear. The additional costs of the contract (\$125,000,000.00) close to one cent per Kwh how, does not come with any certainty that the reduction in operating costs will occur. The pressures to raise rates is inevitable.

9. The issue of President Edison Aviles participation in the "Alianza" committee and voting on the Bureau Resolution determining that the T&D contract complies with the Energy Public Policy of Puerto Rico.

Appearing parties consider this matter to be an important issue. The existence of an independent, non-political, professional, regulatory entity, which PREB (before PREC) is supposed to be, is one of the most important achievements of Law 57 of 2014.

The creation of PREB/PREC shattered the monopolistic, self-regulating, absolute centered power in PREPA. This is possible the most important development on the process of energy policy reform in Puerto Rico.

For this reason, President Aviles participation both on the "Alianza" committee and voting as a PREC member creates, at least, a serious issue of appearance. We do not believe that the issue is of such nature as requiring President Aviles resigning from the PREC. We trust President Aviles judgment and serious purpose, although many times we differ.

The main differences are precisely on this issue of process, the limited vision of public participation, openness and transparency which we consider the key reform that must be fully implemented with a mentality go for more, not less participation, more transparency, not less.

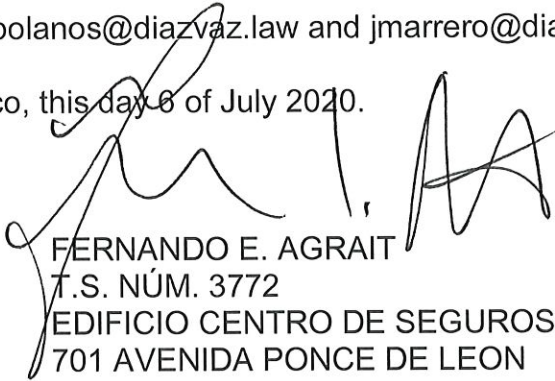
In this same line we consider that even if it were legally correct- which it isn't- President Aviles should have abstained from voting in the legal evaluation of the contract he had already endorsed and promoted by this participation in the "Alianza" committee.

"The wife of Caesar must be honest and appear honest".

WHEREFORE, the appearing party respectfully requests an adjudicatory process be commenced.

CERTIFY: I hereby certify a copy of this motion was notified by electronic mail to:
fermin.fontanes@p3.pr.gov; kbolanos@diazvaz.law and jmarrero@diazvaz.law.

In San Juan, Puerto Rico, this day 6 of July 2020.



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