

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

NEPR

Received:

Sep 28, 2020

5:41 PM

IN RE:

**REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN**

CASE NO.: CEPR-AP-2018-0001

SUBJECT:

Final Resolution and Order on Puerto Rico
Electric Power Authority's Integrated
Resource Plan

**MOTION TO STRIKE MOTION FOR RECONSIDERATION OF
V-FINANCIAL LLC AND EIF PR RESOURCE RECOVERY LLC**

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:

On September 11, 2020, V-Financial LLC (“VF”) and EIF PR Resource Recovery LLC (“EIF PR”) (hereinafter referred to collectively as “VF”), filed a *Motion for Reconsideration* in the case of caption requesting the Energy Bureau to reconsider its *Final Resolution and Order on the Puerto Rico Electric Power Authorities Integrated Resource Plan* (“IRP Resolution”).

The Energy Bureau should deny and strike from the record the Request for Reconsideration because, as will be discussed below, under applicable laws and regulations, there is no provision for a reconsideration of a final order by a person or entity which is not a “party”.

I. PROCEDURAL BACKGROUND

On March 15, 2018, the Energy Bureau of Puerto Rico of the Public Service Regulatory Board (the “Energy Bureau”) issued a *Resolution and Order* commencing this proceeding and authorizing the Puerto Rico Electric Power Authority (PREPA) to file an updated integrated resource plan (IRP) prior to the mandatory review established in Act 57-2014, in order to determine the impacts of hurricanes Irma and María that devastated the Island. (Case No. CEPR-AP-2018-

0001). This is the second PREPA IRP proceeding and follows the previously approved IRP of 2015. PREPA's IRP was filed on February 13, 2019, along with supporting work papers and other documentation in these proceedings. On July 3, 2019, the Energy Bureau issued an Order setting forth the procedural schedule in accordance with Regulation 9021.

PREPA's 2018-2019 IRP filing had an extensive process that included several months of information requests from the Energy Bureau, technical conferences, a completeness determination, a presentation of a proposed IRP, a second completeness determination, filings to complete the proposed IRP, a final completeness determination on the proposed IRP, a discovery period, technical hearings, evidentiary hearings, public hearings, the final evaluation and the issuance of a Final Resolution and Order by the Puerto Rico Energy Bureau.

It is important to emphasize that from July 12, 2019 to August 9, 2019 the Energy Bureau granted intervention status to eighteen (18) intervenors: the Environmental Defense Fund; Sunrun, Inc.; Local Environmental Organizations (Comité de Dialogo Ambiental, Inc. El Puente Williamsburg, Inc. - Enlace Latino de Acción Climática, Comite Yabucoefio Pro-Calidad de Vida, Inc., Alianza, Comunitaria Ambientalista del Sureste, Inc., Sierra Club and its Puerto Rico Chapter, Mayagüezanos por la Salud y el Ambiente, Inc., Coalición de Organizaciones AntiIncineracion, Inc. Amigos del Rio Guaynabo, Inc. Campamento Contra las Cenizas de Peñuelas, Inc. and CAMBIO Puerto Rico); EcoEléctrica, L.P.; Grupo WindMar; Independent Office (OIPC); Empire Gas Company, Inc.; AES Puerto Rico, LP; National Public Finance Guarantee Corp.; Progression Energy; Shell NA LNG LLC; Wärtsilä North America; NFPs (Centro Unido de Detallistas (CUD); Cámara de Mercadeo, Industria y Distribución de Alimentos (MIDA); Puerto Rico Manufactures Association (PRMA); Cooperativa de Seguros Múltiples de Puerto Rico (CSMPR), Unidos Por Utuado (UPA), and el Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE-PR)); Caribe GE International Energy Services,

Corp.; Solar and Energy Storage Association of Puerto Rico; League of Cooperatives of Puerto Rico and AMANESER 2025, Inc; and Arctas Capital Group, LP. The Energy Bureau also granted Amicus Curiae status to three entities: Rocky Mountain Institute; la Asociación de Consultores y Contratistas de Energía Renovable de Puerto Rico, Inc. (ACONER); and el Colegio de Ingenieros de Puerto Rico (CIAPR).

After the technical, evidentiary and public hearings held from August 13, 2019 through February 25, 2020, all intervenors were given the opportunity to file legal briefs, which were submitted by March 6, 2020. During the process, Energy Bureau ensured ample public participation and insight in the process and heard comments from the public regarding an ample list of concerns on numerous issues.

Finally, after a careful analysis and investigation into the proposed IRP and PREPA application, the Energy Bureau issued its Final Resolution and Order approving in part and rejecting in part the proposed IRP on August 24, 2020. As the record shows, VF did not file a request for intervention, nor did they participate in the administrative process. As a consequence, they are not a “party adversely affected by” the final Resolution and Order issued by the Energy Bureau. Thus, they have no right to file a motion for reconsideration pursuant to Regulation 8543 and applicable provisions of Act 38-2017, known as a Uniform Administrative Procedure Act of the Government of Puerto Rico.

II. LEGAL ANALYSIS

In an adjudicatory proceeding, the administrative “agency determines the **rights**, obligations or privileges that correspond **to a party**”.¹ Chapter III of Act 38-2017 regulates adjudicative proceedings. Specifically, Section 3.5 provides that “any person having a legitimate

¹ 3 L.P.R.A. § 9603 (b) (emphasis provided).

interest in an adjudicatory proceeding before an agency may file a written, duly grounded application **in order to be allowed to intervene** or participate in said procedure.”²

As stated above, even though the Energy Bureau granted intervention status to eighteen (18) intervenors, and also granted *amicus curiae* status to three (3) entities, VF did not file a written, duly grounded application requesting to be allowed to intervene or participate in this procedure. Thus, under applicable law and regulations they cannot be considered a party to the procedure.

Act 38-2017 clearly states that:

The 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. The agency shall consider the motion within fifteen (15) days from its filing. Should it deny it outright or fail to act on it within fifteen (15) days, the term to request review shall begin to elapse again from the date of notice of such denial or from the expiration of the fifteen (15)-day term, as the case may be. If a determination is made upon consideration, the term to petition for review shall begin to elapse from the filing date of a copy of the notice of the agency's final judgment regarding the motion for reconsideration in the case record. Such judgment shall be issued and filed in the case record within ninety (90) days after the motion for reconsideration has been filed. If the agency accepts the motion for reconsideration but fails to act on it within ninety (90) days from its filing, it shall lose jurisdiction over the motion and the term to request judicial review shall begin to elapse once said ninety (90)-day term elapses, unless the agency, for just cause and within those ninety (90) days, extends the term to issue a judgment for a term that shall not exceed thirty (30) additional days.

If the filing date of the copy of the notice of entry of judgment or order differ from the date of mailing of said notice, the term shall be calculated from the mailing date. (Emphasis provided.)

On the other hand, said statute defines a party as follows: “Party. Means any **legally authorized person** or agency towards whom the action of an agency is **specifically addressed** or a **party to said action** or who is allowed to **intervene or participate therein** or who has filed a

² *Id.*

petition for the review or compliance with an order or who is **designated as a party** in said procedure.”

As stated before, Chapter III of the Uniform Administrative Procedures Act regulates adjudicative administrative proceedings and said chapter provides who and at what stage a reconsideration can be filed. Pursuant to Section 3.15 of said chapter, only “**the party** adversely affected by an order or a partial or final judgment may file a motion for reconsideration of such order or judgment.” At the time the Energy Bureau entered its final Resolution and Order, only the parties and entities authorized as intervenors and *amicus curiae* could file a motion for reconsideration. Simply put, VF’s failure to request an intervention in the case at an earlier stage has the consequence that they cannot be considered party for the purpose of the right provided by Act 38-2017 to request reconsideration from the final Resolution and Order of the Puerto Rico Energy Bureau. In consequence, VF’s motion for reconsideration does not proceed as a matter of law and should be stricken from the record since there is no remedies available to non-parties.

WHEREFORE, PREPA requests the Energy Bureau to deny VF’s request for reconsideration and strike such motion from the record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of September 2020.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo
kbolanos@diazvaz.law
TSPR 18,888

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.
290 Jesús T. Piñero Ave.
Oriental Tower, Suite 1105
San Juan, PR 00918
Tel.: (787) 395-7133
Fax. (787) 497-9664

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: sierra@arctas.com; tonytorres2366@gmail.com; cfl@mcvpr.com; gnr@mcvpr.com; info@liga.coop; amaneser2020@gmail.com; hrivera@oipc.pr.gov; jrivera@cnslpr.com; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com; manuelgabrielfernandez@gmail.com; acarbo@edf.org; pedrosaade5@gmail.com; rmurthy@earthjustice.org; rsto2@gmail.com; larroyo@earthjustice.org; jluebkemann@earthjustice.org; acasellas@amgprlaw.com; loliver@amgprlaw.com; epo@amgprlaw.com; robert.berezin@weil.com; marcia.goldstein@weil.com; jonathan.polkes@weil.com; gregory.silbert@weil.com; agraitfe@agraitlawpr.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; castrodiappalaw@gmail.com; voxpopulix@gmail.com; paul.demoudt@shell.com; javier.ruajovet@sunrun.com; escott@ferraiuoli.com; SProctor@huntonak.com; GiaCribbs@huntonak.com; mgrpcorp@gmail.com; aconer.pr@gmail.com; axel.colon@aes.com; rtorbert@rmi.org; apagan@mpmlawpr.com; sboxerman@sidley.com; bmundel@sidley.com.

In San Juan, Puerto Rico, this 28th day of September 2020.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo