

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

NEPR

Received:

Oct 5, 2020

2:23 PM

IN RE

REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN

CASE NO.: CEPR-AP-2018-0001
NEPR-TEMP-1747

SUBJECT:

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

PETITION FOR INTERVENTION

TO THE HONORABLE BUREAU:

COMES NOW, V-Financial LLC ("VF") and EIF PR Resource Recovery LLC ("EIF PR") (hereinafter may be referred to collectively as "VF"), through its undersigned counsel, and very respectfully states, alleges and requests:

1. On September 11, 2020, VF filed a Motion for Reconsideration with the Puerto Rico Energy Bureau ("PREB").

2. On September 25, 2020, this Honorable PREB notified a Resolution whereby it took notice of said motion, together with other reconsideration requests, and indicated that VF had not been recognized as an intervening party.

3. VF has a legitimate interest in the instance case and therefore, files this petition to intervene or participate, pursuant to Section 5.05 of the PREB's Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings (Regulation No. 8543) and Section 3.5 of Act No. 38 of 2017, known as the Uniform Administrative Procedures Act of the Government of Puerto Rico ("LPAU" for its Spanish acronym), 3 L.P.R.A. § 9645.

4. This petition is predicated on the following criteria:

a) VF's and EIF PR's interests can be adversely affected by this procedure

As stated in the Motion for Reconsideration, EIF PR is the lender of a waste-to-energy project proposed for Puerto Rico in the municipality of Arecibo ("WTE Project"), which was developed with a power purchase agreement with PREPA. VF is its collateral agent.

As lender, VF and EIF PR have a proprietary and legitimate interest in the WTE Project's assets that will be negatively affected if the WTE project is not included in the Integrated Resource Plan ("IRP") and the Modified Work Plan, as this will negate the value of their assets without due process of law.¹ There will be discernible, tangible and particular injury ("injury in fact") not a conjectural or a hypothetical protected interest. To date, the Project Lender has directly advanced \$17.5 million to the project, which with accumulated interest totals over \$87 million through the end of September 2020.

In addition, if the WTE Project is not included in the IRP, a costly formal appeals process, a series of judicial reviews, adjudications for full project lender recoveries will be incurred. Part of the process has already commenced with the appeal before the US District Court related to the RFP. It may also include the cost of addressing other agencies, such the Federal Energy Regulatory Commission (an independent entity of the US Department of Energy) pursuant to the requirements under PURPA, given that the project is explicitly identified as a Qualified Facility and PREPA is bound under the requirements of PURPA.

Furthermore, allowing EIF PR as an intervenor allows the possibility of having the project reincluded in the IRP and eliminating or ameliorating other possible direct and consequential losses.

The removal of the WTE Project from the IRP and the Modified Work Plan followed a withdrawal of the endorsement by the then Governor Ricardo Roselló, seven (7) months after the amendment to the Power Purchase and Operating Agreement ("PPOA") for the WTE Project and about four (4) months after the passing of Hurricane Maria. See the first draft of the PREPA IRP prepared by Siemens in February of 2019. It was also issued a month after an Executive Order specifically identifying waste to energy as critical projects to be assertively pursued. It should also be noted that the draft IRP suggested that the removal is notwithstanding the benefits representing the need for new generation and

¹ Proprietary interest that is protected under Art. II, Sec. 7 of the Constitution of the Commonwealth of Puerto Rico and the 5th Amendment to the U.S Constitution.

location on the north of the transmission system and high contribution to the RPS would result in a favorable outcome from these two points of view.²

b) VF and EIF PR have no other means to protect their interest

There are no other means available under applicable law to request that the WTE Project be inserted into the IRP and the Modified Work Plan. As part of the adjudicative proceedings, VF recourse is to intervene and protect its proprietary interest from state action.

The intervention is the procedural mechanism for a person such as VF that was not part of the original procedure can defend itself from the administrative procedure. See the decision of PR's Supreme Court in the case of Asociación de Residentes Parque Montebello v. Montebello Development Corp. 95 JTS 54, 61.

c) VF's and EIF PR's interest is not adequately represented by the parties

The proprietary interest of VF and EIF PR is not represented by any other party in the instance case.

d) VF's and EIF PR's participation can reasonably help to prepare a more complete record of the procedure

Pursuant to PREB's Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority (Regulation No. 9021), which outlines that requirements for the Preferred Resource Plan in Section 2.02(H)(2)(d)(ii), the selection criteria includes environmental impacts and specifies that if associated with quantifiable costs, these shall be included in the calculation of the present value of revenue calculation. As part of said Plan, PREPA is to select a Preferred Resource Plan from among the Resource Plans developed and evaluated in the optimization and sensitivity analysis. In selecting the Preferred Resource Plan, PREPA is to use the minimization of the present value of revenue requirements as the primary selection criteria.

The WTE Project has significant environmental and energy benefits that must be taken into consideration by PREPA, and correspondingly by this Honorable PREB.³

² See references included in the Motion for Reconsideration and made an integral part hereof for all legal purposes.

³ The environmental benefits of the WTE Project were included in the Motion for Reconsideration and are made an integral part hereof for all legal purposes.

It is an undeniable reality that Puerto Rico has had a solid waste disposal crisis that has been already identified. Notwithstanding, the crisis continues, and no other initiatives have succeeded to safely dispose of solid wastes. These solid wastes, properly processed, can be used to substitute petroleum-derived fuels in the generation of energy in Puerto Rico. This not only provides base-load generation capacity for PREPA but results in a reduction of millions of tons of Greenhouse Gases (“GHG”) emissions to the atmosphere and the reduction of approximately 80% of the volume of disposal capacity.

VF’s and EIF PR’s participation will help provide more information related to these matters and thereby help to prepare a more complete record of the procedure and the final decision in this matter.

e) VF’s and EIF PR’s participation will not excessively delay the procedure

VF’s and EIF PR’s participation will not delay or extend the procedure, since there are other parties that have filed their respective motions for reconsideration, as indicated in the Resolution. The reconsideration filed by VF can be considered at the same time as the others without any delays or extension of times ascribed to VF.

in this matter.

f) VF can provide expert information pertinent to the process

VF has the resources to provide expert information pertinent to the evaluation of this Honorable PREB. The modern-day technology approved by the U.S. Environmental Protection Agency for the recovery of energy form solid wastes, under properly controlled and monitored conditions, is being used successfully in other locations under its jurisdiction. The technology has proven to be protective of the human health and the environment and it is based on proven science, to which VF can attest with data and information developed by expert resources, all of which can be submitted to this Honorable PREB, upon request. The information gathered to date (based on the substantial capital and resources committed through EIF PR) can help expedite and provide for timely decisions addressed to protecting the health and well-being of the residents of Puerto Rico.

5. Section 3.5 of LPAU establishes that the agency must apply these criteria in a liberal way. See Montebello, supra, and San Antonio Maritime v PR Cement, 2001 TSPR 16. Thus, it is requested that this Honorable PREB review the above-discussed criteria in a liberal

manner that guarantees VF's due process opportunity to intervene in order to protect its proprietary interests and rights.

WHEREFORE, the VF respectfully requests from this Honorable PREB to be accepted as an intervening party for all legal purposes.

RESPECTFULLY SUBMITTED.

In San Juan, PR this 5th day of October 2020.

CERTIFICATE OF SERVICE

We hereby state and certify that on the same date that this document was filed, a copy of it was delivered by electronic mail to provide notification to:

astrid.rodriguez@prepa.com; jorge.ruiz@prepa.com; n-vazquez@aepr.com;
c-aquino@prepa.com; mvazquez@diazvaz.law; axel.colon@aes.com; kbolanos@diazvaz.law;
acarbo@edf.org; javier.ruajovet@sunrun.com; mgrpcorp@gmail.com; pedrosaade5@gmail.com;
rmurthy@earthjustice.org; carlos.reyes@ecoelectrica.com; ccf@tcmsrlaw.com;
victorluisgonzalez@yahoo.com; hrivera@oipc.pr.gov; jrivera@cnslpr.com;
manuelgabrielfernandez@gmail.com; acasellas@amgprlaw.com; corey.brady@weil.com;
paul.demoudt@shell.com; escott@ferraiuoli.com; sproctor@huntonak.com;
agraitfe@agraitlawpr.com; cfl@mcvpr.com; sierra@arctas.com; tonytorres2366@gmail.com;
apagan@mpmlawpr.com; info@liga.coop; amaneser2020@gmail.com; sboxerman@sidley.com;
bmundel@sidley.com; gnr@mcvpr.com; rstgo2@gmail.com; larroyo@earthjustice.org;
jluebkmann@earthjustice.org; loliver@amgprlaw.com; epo@amgprlaw.com;
robert.berezin@weil.com; marcia.goldstein@weil.com; jonathan.polkes@weil.com;
gregory.silbert@weil.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com;
castrodiappalaw@gmail.com; voxpopulix@gmail.com; paul.demoudt@shell.com;
GiaCribbs@huntonak.com; aconer.pr@gmail.com; rtorbert@rmi.org; apagan@mpmlawpr.com;
sboxerman@sidley.com; bmundel@sidley.com

TORO & ARSUAGA, LLC
Attorneys for VF
PO Box 11064, San Juan, P.R. 00922-1064
Tel. (787) 299-1100 Fax (787) 793 -8593

s/Rafael A. Toro-Ramírez
RUA 9171
rtoro@toro-arsuaga.com