

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

<b>NEPR</b>  Received:  Sep 30, 2020  8:33 AM
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**IN RE: REQUEST FOR APPROVAL OF  
AMENDED AND RESTATED POWER  
PURCHASE AND OPERATION  
AGREEMENT WITH ECOELÉCTRICA  
AND GAS SALE AND PURCHASE  
AGREEMENT WITH NATURGY  
APROVISIONAMIENTOS, SA**

**CASE NO.: NEPR-AP-2019-0001**

**SUBJECT: MOTION FOR ENTRY OF  
ORDER AND RELIEF**

**MOTION FOR ENTRY OF ORDER AND RELIEF**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

COME NOW Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc. - Enlace Latino de Acción Climática, Comité Yabucoño 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 Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., Campamento Contra las Cenizas en Peñuelas, Inc., CAMBIO Puerto Rico, and Unión de Trabajadores de la Industria Eléctrica y Riego (“UTIER”), (collectively, “Petitioners”), and respectfully request that the Energy Bureau take action in the captioned case by entering an order regarding the four petitions for intervention, as well as, for the adjacent petitions for reconsideration.

**I. INTRODUCTION**

Petitioners hereby respectfully request that the Puerto Rico Energy Bureau (“Energy Bureau”) enter judgment on its Motion for Reconsideration and Petition for Intervention which was filed on April 27, 2020 and has yet to be resolved. The Energy Bureau’s inaction in this case is unconscionable, given the importance and public interests involved. Furthermore, Petitioners and *three* other individual and collective parties have appeared to oppose the approval of the contracts with EcoEléctrica L.P. (“EcoEléctrica”) and Gas Natural Aprovevisionamientos SDG

(“Naturgy”) with a myriad of arguments and issues that require this Bureau’s attention. Petitioners had originally attributed the delay in this case to the pandemic-related deadline suspensions, these suspensions can longer justify the Energy Bureau’s inaction. Thus, Petitioners request action. In the alternative, Petitioners will be forced to appear before the courts and seek relief.

## **II. PROCEDURAL BACKGROUND**

1. On November 5, 2019, the Puerto Rico Electric Power Authority (“PREPA”) submitted to the Energy Bureau its initial request for approval of the Amended Restated Agreements (“ARA”) with EcoEléctrica and Naturgy, invoking Section 7.1 of Regulation 8815. Via a Resolution and Order dated November 27, 2019, the Energy Bureau denied approval of the ARAs without prejudice. Afterward, PREPA submitted a request for reconsideration, on December 9, 2019. On December 18, 2019, the Energy Bureau agreed to consider PREPA’s request for reconsideration pursuant to Section 3.15 of the *Uniform Administrative Procedure Act*, Act No. 38-2017, P.R. Laws ann. tit. 3 §§ 2101 et seq. (“LPAU” for its Spanish acronym), on adjudicatory proceedings. On March 9, 2020, the Energy Bureau extended the 90-day period to address PREPA’s request for reconsideration. On March 11, 2020, the Energy Bureau reversed its previous decision and approved the ARAs.
2. On April 27, 2020, Petitioners filed a Motion for Reconsideration and Petition for Intervention. On May 5, 2020, Arctas Capital Group, L.P. (“Arctas”) also submitted a Motion for Reconsideration of the Approval of the Agreements. On May 11, 2020, PREPA submitted its oppositions to both of these filings. On May 19, 2020, Petitioners replied.
3. On May 22, 2020, Windmar Renewable Energy filed a Petition for Intervention and Motion for Reconsideration. On the same date, Instituto de Competividad y Sostenibilidad

Econonómica de Puerto Rico (ICSE-PR); Centro Unido de Detallistas (CUD); Cámara de Mercadeo, Industria y Distribución de Alimentos (MIDA); Puerto Rico Manufactures Association (PRMA) and Unidos Por Utuado (UPU), (collectively the “Not for Profit Entities”), filed a Petition for Intervention and Motion for Reconsideration. On June 15, 2020, PREPA filed an opposition to these two filings. On June 23, 2020, replies were filed.

4. To this date, these four filings requesting the Energy Bureau to grant leave to intervene and reconsider its approval of the ARAs have not been ruled on.<sup>1</sup> In fact, the Energy Bureau has not issued any statements, orders, or resolutions in this docket. Once the parties concluded their filings for and against intervention and reconsideration, the docket has not seen any activity.

### **III. LEGAL ARGUMENTS**

#### **A. According to LPAU, the Energy Bureau has a duty to enter an order in this case.**

Under Section 3.5 of LPAU, any interested party may request leave to intervene in a case before an agency through a written and substantiated motion. P.R. Laws ann. tit. 3 § 9645. Although there is no specific timeframe for it, Section 3.6 requires that, if the agency decides to deny leave to intervene, it *must notify* that decision to the interested party. Id. § 9646. This denial must be notified *in writing*, and it must include the legal conclusions that are grounds for that denial, as well as notice of the available judicial review mechanisms. Id. See, also, JP Plaza Santa Isabel v. Cordero Badillo, 177 P.R. Dec. 177, 190 (2009). If the notice is not provided according to the legal requirements, it does not have legal effect nor can it affect the party. San Antonio Maritime v. P.R. Cement Co., 153 DPR 374, 385 (2001).

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<sup>1</sup> It should be noted that, although the Title III Court approved the assumption of the ARAs, this is not an excuse for the Energy Bureau to shirk its duty, nor is it an obstacle to fulfill that duty. The Title III Court explicitly stated: “Nothing in this Order shall interfere with or override PREB’s process with respect to the approval of the Contracts; and the amended Contracts shall be subject to PREB resolving any pending motions seeking reconsideration of its entry of the Resolution and Order.” *In re: Financial Oversight and Management Board for Puerto Rico*, Case No: 17-03283-LTS, Docket No. 13470 at 2.

As previously mentioned, Petitioners requested leave to intervene on April 27, 2020. Having met the appropriate requirements for a motion of this nature, Petitioners have patiently waited for the Energy Bureau to enter an order regarding this matter. Yet, to this date, the Energy Bureau has not responded to Petitioners' request. The same is true of three other petitions. While it is true that the Energy Bureau periodically ordered the suspension of deadlines due to the pandemic, the last order was issued on June 30, 2020, and it stated that deadlines would begin to accrue once more on July 6, 2020.<sup>2</sup> Thus, there is no reason for the Energy Bureau to withhold its decision any longer.

#### IV. CONCLUSION

For the foregoing reasons, Petitioners urgently request that the Energy Bureau enter an order resolving the question of its request for leave to intervene and petition for reconsideration. Otherwise, Petitioners will take their case to state court and request the issuance of a *mandamus* because the Energy Bureau's duty in this case is evident and imperative. See AMPR v. Srio. Educación, 178 P.R. Dec. 253, 263-64 (2010).

**RESPECTFULLY SUBMITTED** this 30th day of September, 2020, in San Juan, Puerto Rico.

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<sup>2</sup> See Order, NEPR-MI-2020-005 (available at <https://energia.pr.gov/wp-content/uploads/sites/8/2020/06/Orden-NEPR-MI-2020-0005-Extensi%C3%B3n-hasta-el-6-de-julio-de-2020-copy.pdf>).

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## CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2020, we have filed this Motion via the Energy Bureau's online filing system, and sent to the Puerto Rico Energy Bureau Clerk and legal counsel to: [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov), [astrid.rodriguez@prepa.com](mailto:astrid.rodriguez@prepa.com), [jorge.ruiz@prepa.com](mailto:jorge.ruiz@prepa.com), [nvazquez@aepr.com](mailto:nvazquez@aepr.com), [c-aquino@prepa.com](mailto:c-aquino@prepa.com), [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), [adiaz@diazvaz.law](mailto:adiaz@diazvaz.law), [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law) and [ccf@tcm.law](mailto:ccf@tcm.law).

Respectfully submitted on this day September 30, 2020.

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