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

IN RE: **REVIEW OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN**	CASE NO.: CEPR-AP-2018-0001 SUBJECT: Final Resolution and Order

OPPOSITION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY TO REQUESTS FOR RECONSIDERATION OF CERTAIN DETERMINATIONS MADE IN THE FINAL IRP RESOLUTION

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TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

The Puerto Rico Electric Power Authority ("PREPA") respectfully submits this response to various motions for reconsideration of portions of the *Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan* (the "Final IRP Resolution") entered in the captioned proceeding on August 24, 2020.

I. INTRODUCTION

On September 10, 11, 13 and 14, 2020, several intervenors and non-intervenors in this proceeding submitted pleadings styled as motions for reconsideration of aspects of the Final IRP Resolution.[1] While PREPA does not view it as necessary to respond to each of these motions,[2] or to every argument presented, it nevertheless believes that a number of the specific requests for relief that have been advanced are unwarranted, unsupported, based on incorrect factual premises or suggest that the Energy Bureau of the Puerto Rico Public Service Regulatory Board (the "Energy Bureau") take action that would be inconsistent with applicable law. Accordingly, PREPA submits for the Energy Bureau's consideration the following responses to motions for reconsideration filed by Windmar, SESA and LEO.

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[1] These include the *Motion for Partial Reconsideration* filed by PV Properties, Inc., Coto Laurel Solar Farm, Inc. and Windmar Renewable Energy, Inc. (collectively, "Windmar"), Case No. CEPR-AP-2018-0001 (filed Sept. 10, 2020) ("Windmar Motion"); the *Motion for Partial Reconsideration of Final Resolution & Order on Integrated Resource Plan* filed by the Puerto Rico Solar Energy Industries Association Corp. d/b/a Solar & Energy Storage Association of Puerto Rico ("SESA"), Case No. CEPR-AP-2018-0001 (filed Sept. 14, 2020) ("SESA Motion"), the Local Environmental Organizations ("LEO")' *Motion for Reconsideration of the Final Resolution and Order*, Case No. CEPR-AP-2018-0001 (filed Sept. 14, 2020) ("LEO Motion"), the *Motion Requesting Partial Reconsideration of Final Resolution of Empire Gas Company, Inc.,* Case No. CEPR-AP-2018-0001 (filed Sept. 13, 2020) ("Empire Motion") and the *Motion for Reconsideration of V-Financial LLC and EIF PR Resource Recovery LLC,* Case No. CEPR-AP-2018-0001 (filed Sept. 11, 2020) ("VF Motion").

[2] PREPA will not address the Empire Motion since the Energy Bureau's Final IRP Resolution, as well as PREPA's IRP submissions, more than adequately address the reasons why liquified petroleum gas or synthetic natural gas would not be superior to natural gas as a fuel for baseload or peaking generation applications in Puerto Rico. Additionally, Empire did not set forth any argument that it hadn't made before, and therefore, has already been presented for consideration by the Energy Bureau and disregarded.

II. ARGUMENTS

A. PV Properties, Inc., Coto Laurel Solar Farm, Inc. and Windmar Renewable Energy, Inc.

1. The Energy Bureau Should Not Eliminate from the Final IRP Resolution the Condition Making Pursuit of Modified Action Plan Contingent on Market Sounding Confirming Renewable and Storage Pricing

Windmar asks the Energy Bureau to reconsider its determination that the quantities of solar PV and battery resources called for by Scenario S3S2 should be pursued only if procurement processes yield costs of solar PV and BESS that are consistent with those assumed in this Scenario and, therefore, the Energy Bureau should eliminate this condition.[3] According to Windmar, "[t]his condition cannot be correct for it excludes the possibility of contracting PV installations if the market price does not meet the cost assumptions of the Proposed IRP. This clearly is not Puerto Rico's Public Policy nor is it rational to declare the RPS should not be met if market price falls short of the Proposed IRP assumption of price."[4] In a similar vein, Windmar asks the Energy Bureau to reconsider the suggestion that the utility-scale solar PV and battery costs presented in the Proposed IRP which the Energy Bureau has deemed to be reasonable are reflective of market prices.[5]

Windmar's request should be rejected. Windmar asks the Energy Bureau to determine that the results of the IRP-mandated generating resource procurement processes should be disregarded, and no resource plan changes made, if the market responds with renewable and battery energy storage costs that are greater than those assumed under Scenario S3S2 and adopted in the Modified

[3] Windmar Motion at 2-3. The specific finding Windmar finds objectionable is that "increased deployment of solar PV and battery resources should be pursued if the results of procurement processes produce costs that reflect the parameters associated with Scenario S3S2 (for all loading levels under that scenario) and if those resources are available for faster installation than was assumed for PREPA's ESM Plan." Final IRP Resolution at ¶ 833 (emphasis added); *see also id.* at ¶ 73.

[4] Windmar Motion at 3.

[5] *Id*. at 5, citing Final IRP Resolution at ¶¶ 43, 44 and 47.

Action Plan. Given that the renewable resource costs assumed in Scenario S3S2 are the lowest of those PREPA examined in any Scenario – and the lowest identified by the National Renewable Energy Laboratory – it is entirely possible that the market sounding the Energy Bureau has directed[6] will show that renewable resources and battery storage cannot in fact be procured at the low costs the Modified Action Plan assumes.[7] The Energy Bureau should deny Windmar's demand that it and PREPA must disregard what the market has to say about resource pricing and must in effect treat market-tested generation resource pricing as irrelevant to the path forward under the approved IRP. While it might serve the interests of Windmar, as an owner and developer of renewable generation resources, for the Energy Bureau to disclaim any concern regarding actual renewable resources costs, this decision would not be in the interest of Puerto Rico electricity consumers, nor would it be consistent with Puerto Rico energy public policy.

The Puerto Rico Energy Public Policy Act directs the Energy Bureau to guarantee that the cost of electric power service in Puerto Rico is "affordable, just, reasonable, and nondiscriminatory for all consumers in Puerto Rico" and that it is offered at "the lowest reasonable cost."[8] While that Act embraces renewable generation resources (as well as distributed generation and energy

[6] The Energy Bureau has ordered PREPA "to test the actual market-delivered price for energy storage, both as stand-alone installations and coupled with solar PV, through competitive procurement processes prior to determining the specific investments to make or contracts to sign." Final IRP Resolution at ¶ 467.

[7] There are several reasons why the market may not respond with costs and development schedules consistent with those that have led the Energy Bureau to find that resource procurement along the lines described in Scenario S3S2 would be successful in yielding the least cost result. First, PREPA has not yet emerged from protection under Title III of PROMESA, and is unlikely to do so for some time. It is therefore not the creditworthy counterparty for generation project proponents the Proposed IRP assumed it would be in all scenarios and strategies that were evaluated. As the Energy Bureau has acknowledged, "[w]hile PREPA remains in Title III Bankruptcy, it has limited and/or expensive access to capital markets, and it is unlikely to be regarded as a low-risk counterparty." *Id.* at ¶ 467. Second, recent events, including in particular the Financial Oversight and Management Board's August 17, 2020 rejection of the pricing reflected in proposed amendments to renegotiated non-operational PPOAs, could result in a chilling effect on the market. The Oversight Board's rejection of the 16 renegotiated renewable PPOAs has adversely affected solar PV developers that have been active in Puerto Rico and would be logical proponents of the next wave of renewable project proposals. They, and prospective market participants observing recent events, may be less likely to offer pricing consistent with the assumptions underlying Scenario S3S2 than they might otherwise have been.

[8] Puerto Rico Energy Public Policy Act, 19 LPR 17 (April 11, 2019) ("Act 17-2019"), at § 1.5(1)(a).

efficiency) and encourages the integration of these resources into Puerto Rico's electric grid,[9] it does not compel the adoption of resource plans that would add these resources regardless of their cost. Yet this is in effect what Windmar asserts the Energy Bureau has no choice but to do.

The Energy Bureau should reaffirm its finding that the market may provide guidance as to real-world pricing of renewable and battery energy storage systems that is not as low as the pricing assumed in Scenario S3S2. It must recognize that the net present value analyses on which it has relied are extremely sensitive to the assumed cost of solar PV and battery energy storage resources. There is a risk that the market will respond to resource solicitations with pricing and delivery terms that are not consistent with these assumptions. Thus, rather than retract the condition of which Windmar complains, the Energy Bureau should reaffirm that the pursuit of the renewable and storage resource mix reflected in the Modified Action Plan must await confirmation from the market that renewable and storage resources can be made available at costs consistent with those Scenario S3S2 assumes within the required timeframes. The Energy Bureau should make it clear in rejecting Windmar's motion on this score that it will be open to reconsidering its selection of Scenario S3S2 and the basis for the Modified Action Plan if the market does not provide this confirmation.

2. There is No Basis for Windmar's Concern that the Final IRP Resolution Improperly Limits the Amount of Distributed Generation Which May be Installed in Puerto Rico

Windmar challenges what it sees as the Energy Bureau's imposition of a limit on the amount of distributed generation ("DG") to be installed to the level modeled in all of PREPA's resource scenarios.[10] Specifically, Windmar asks the Energy Bureau to clarify that the amount of

[9] *See, e.g., id.* at § 1.6(1).

[10] Windmar Motion at 3-4, citing Final IRP Resolution at ¶17.

DG modeled as a direct input in all IRP scenarios is not a limitation on the amount of DG that prosumers may deploy, and that it declare that renewable energy goals may be met by a combination of direct procurement of solar PV, existing renewable PPOAs and customer DG options, arguing that prosumers should not be limited in their contribution to the achievement of these goals.

Windmar's concern is baseless. It is not clear that the Final IRP Resolution in fact limits the amount of DG that can be offered to PREPA in response to solicitations yet to be conducted. The fact that PREPA and Siemens modeled specific levels of DG for purposes of evaluating various IRP Scenarios doesn´t mean that this is all the DG that may be supplied. PREPA welcomes additional DG resources that can be connected economically and without violating transmission and distribution system safety and security limits and in compliance with Act 114-2007[11] even if the quantity of these resources ends up being greater than those treated as an input in IRP modeling. The Energy Bureau need not make the change Windmar proposes.

3. Windmar's Arguments Regarding the Final IRP Resolution's Treatment of Renewable Energy Certificates Must be Rejected

Windmar also takes issue with the Final IRP Resolution's discussion of the treatment of Renewable Energy Certificates ("RECs").[12] In its motion, Windmar urges the Energy Bureau to acknowledge that Act 82-2010, Act 83-2010 and Act 17-2019 established a mechanism – the cancellation of RECs acquired in respect of utility-scale renewables and prosumer-supplied DG – to assure compliance with the renewable percentage goals specified in the law.[13] Windmar argues that, as a consequence, prices for operating PPOAs should continue to reflect separately the price

[11] Net Metering Act, 2007 LPR 114 (August 16, 2007), as amended.

[12] Windmar Motion at 4-5.

[13] *Id.*; referencing Act 17-2019, Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico, 2010 LPR 82 (July 19, 2010), as amended ("Act 82-2010") and the Green Energy Incentives Act, 2010 LPR 83 (July 19, 2010), as amended ("Act 83-2010").

for energy and the price for RECs and that the pricing for any new PPOA should have distinct pricing for energy and for RECs,[14] insisting that this should be made clear in a revised final resolution and order to ensure compliance with the applicable legal framework.[15] It goes further, however, to argue that the Energy Bureau should reconsider its treatment of PREPA's obligations to cancel RECs bought under operating PPOAs and in respect of prosumer DG up to the annual percentage required by the RPS, and contests what it characterizes as the Energy Bureau's apparent acceptance of PREPA's failure to fulfill this obligation.[16] Windmar concludes that the Energy Bureau should reconsider the Modified Action Plan to the extent that it precludes RECs obtained from prosumers from counting toward achievement of the RPS and endorses RFPs for renewable resources that bundle the energy price and the RECs price.[17]

Windmar's arguments regarding the treatment of RECs in the IRP and Modified Action Plan should be dismissed. Windmar asks the Energy Bureau to reconsider determinations it did not make, and asks it to take action that is beyond the scope of this IRP proceeding and must be addressed elsewhere. Moreover, Windmar's arguments concerning the required treatment of RECs find no support in the law, and rely on factual assertions that are not accurate.

The Final IRP Resolution does not mandate any particular treatment of RECs. In the excerpts Windmar cites, the Energy Bureau merely describes the manner in which RECs have been established as a matter of Puerto Rico law[18] and observes that the proposed IRP assumes that the contract price for renewable resources includes RECs and does not incorporate escalation.[19] Thus

[14] Windmar Motion at 5.
[15] *Id.*
[16] *Id.* at 6-7.
[17] *Id.* at 9-10.
[18] *See* Final IRP Resolution at ¶¶ 124 and 125 (citing and describing Act 82-2010 and Act 83-2010).
[19] *See id.* at ¶ 281.

the Final IRP Resolution does not include any decision addressing RECs which the Energy Bureau should or even could now reconsider. On this ground alone, the Energy Bureau may outright deny Windmar's petition insofar as it concerns RECs.

Windmar's assertions regarding the cancellation of RECs and the requirements of Act 82-2010 take the Energy Bureau and PREPA to task for failing, respectively, to mandate and take action for which the Energy Bureau has not yet established formal procedures. Windmar suggests that PREPA has violated Act 82-2010 by not presenting RECs to the Energy Bureau for retirement. But PREPA has not presented RECs to the Energy Bureau and has not retired RECs since the Energy Burau has not yet promulgated RECs market regulations that would govern the manner in which RECs are to be surrendered and cancelled. This is a matter for another proceeding, not this one.

Windmar offers no legal basis for its argument that renewable resource power purchase and operating agreements must separately specify a price for energy and a price for RECs. There is none. Nowhere in Act 82-2010 or Act 17-2019 is there a requirement that RECs pricing and the purchase of RECs must be separated as a contractual matter from energy pricing and the purchase of energy. While it is true that these laws establish that RECs have their own identity separate from energy (representing the social and environmental attributes of the corresponding renewable energy),[20] that RECs are distinct from the energy to which they relate does not mean that their cost cannot be bundled together with the cost of energy under a unified energy price. This is a matter which the applicable laws leave for negotiation to the parties to renewable energy power purchase agreements and subsequent review and approval of the Energy Bureau.

[20] *See* Act 82-2010 at § 1.4(8); *see also* Act 17-2019 at § 4.1.

Many of PREPA's legacy power purchase and operating agreements ("PPOAs") provide for separate energy and REC pricing. This is not, however, the result of any legal requirement. PREPA's early PPOAs were executed before Act 82-2010 became law; there was at the time no requirement that PREPA purchase RECs and no provision made for such purchases. These PPOAs included language essentially permitting the project company to retain ownership of any RECs relating to project operation, and providing that in the event that REC purchases were later required by law, the project company and PREPA would negotiate arrangements governing the purchase of these RECs. When Act 82-2010 was passed, these early PPOAs were amended to provide for the purchase of RECs, generally by way of a separate charge (a fixed, non-escalating price in all but the PPOA with Pattern Santa Isabel, LLC). Later PPOAs used these early PPOAs as guides, and accordingly included this separate energy and RECs pricing structure. But more recent negotiations between PREPA and developers of the non-operating renewable projects contemplate an all-in energy and REC pricing structure. This is consistent with the assumptions regarding RECs reflected in the IRP and applicable law. In arguing to the contrary, Windmar may be seeking the Energy Bureau's assistance in its negotiations with PREPA relating to certain renewable projects as to which Windmar and PREPA have been unable to come to terms. Windmar apparently believes that it would to be to its advantage for the Energy Bureau to declare that the pricing of RECs and of energy produced by renewable generators must be separately stated. The Energy Bureau should refuse this request as lacking a legal basis and for being a clear example of forum shopping.

The Energy Bureau should also decline Windmar's request that it reconsider the Modified Action Plan to the extent that it allegedly precludes RECs obtained from prosumers from counting toward achievement of the RPS. The Modified Action Plan does no such thing. Beyond this,

Windmar has no legitimate basis for criticizing the Energy Bureau or PREPA for failing to provide in the IRP or in the Final IRP Resolution for the purchase of RECs from prosumers or other entities that do not have renewable PPOAs in place. PREPA's position has been and continues to be that the Energy Bureau must establish a REC market before PREPA commits to the purchase of RECs from non-PPOA sources. The Energy Bureau has yet to do this, although it has been considering the subject for some time in Case No. NEPR-MI-2019-0010.[21] That proceeding, not this one, is the appropriate place for the Energy Bureau to consider issues relating to the purchase of RECs from prosumers and other entities that do not have PPOAs with PREPA.

B. Solar & Energy Storage Association of Puerto Rico

1. The Energy Bureau Should Decline to Impose Additional Deadlines on PREPA

SESA asserts that the Energy Bureau should reconsider the directive that the Modified Action Plan support the objective that energy efficiency ("EE") programs capture all available cost-effective EE and require organization and coordination of resources necessary for timely compliance with the EE regulation.[22] Further, SESA sets forth that the Energy Bureau should establish a specific timeframe for PREPA to comply with and facilitate the successful implementation of the EE Regulation, and that without such a requirement, "it will be impossible to advance and effectively measure progress on EE measures."[23] Similarly, SESA asks the Energy Bureau to reconsider the manner in which the Modified Action Plan addresses DR, distributed storage and virtual power plants ("VPPs") to establish a specific timeframe.[24]

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[21] *See generally* Case No. NEPR-MI-2019-0010, *In re: Reglamento Sobre el Mercado de Certificados de Energía Renovable, Resolución y Orden* issued May 20, 2019 (establishing process for adoption of regulations establishing a market for RECs). Workshops in this proceeding were held on June 14 and June 28, 2019. No regulations have yet been issued.

[22] SESA Motion at 7 (citing Final IRP Resolution at ¶113).

[23] *Id.*

[24] *Id.* (citing Final IRP Resolution at ¶114).

It is unquestionable that PREPA will have to comply with the EE regulation. The question is how quickly PREPA can do what is required, given the many other demands on its resources coming out of the Final IRP Resolution. PREPA submits that establishing yet more deadlines by which it must complete various actions is not likely to enhance the efficiency with which PREPA can complete all the tasks it faces, and could well have the opposite result, since adding deadlines reduces the flexibility PREPA has to allocate its limited internal and external resources to responsibly complete these tasks.

PREPA acknowledges that the amount of EE response actually achieved over time could have a significant impact on generating resource requirements in future years. This being true, knowing how the EE regulation is going to be addressed and what results it will yield will be important to PREPA's resource planning going forward. A similar point may be made regarding demand response, distributed storage and the establishment of VPPs. It would, therefore, be in PREPA's interest to have a firm basis for planning for EE contributions, the impacts of demand response and the degree to which VPPs will succeed sooner rather than later. PREPA is consequently motivated to work as quickly as it can, given its resource constraints, to comply with the EE regulation. Adding artificial deadlines for achieving this compliance is unnecessary and likely counterproductive.

C. Local Environmental Organizations

1. The Energy Bureau Should Decline to Reconsider the Legally-Imposed Deadline for filing Motions for Reconsideration

Local Environmental Organizations ("LEO") ask the Energy Bureau to grant an extension of time for parties to file a motion for reconsideration "to at least twenty days after publication of the Spanish version of the Final Resolution and Order."[25] They assert that "[m]any or most of the

[25] LEO Motion at 1-2.

island's citizens will be far more comfortable reading and understanding the Spanish version and only at that point will they know whether there are issues they wish to ask for the Energy Bureau to reconsider or clarify," and that "[t]his extension would not delay implementation of the Integrated Resource Plan because, … the filing and consideration of Motions For Reconsideration '… does not change the fact that there is an Integrated Resource Plan ("IRP") approved by the Commission through the Final Resolution.'"[26]

The Energy Bureau must deny this request. The request assumes that individuals and organizations not parties to this proceeding would have the right to seek reconsideration of elements of the Final IRP Resolution. But this is not the law: under both Regulation 8543 and Act 38-2017, only a "party" may file a motion for reconsideration of an Energy Bureau decision.[27] There is, accordingly, no legitimate basis for the extension of time LEO request.

2. The Energy Bureau Should Not Require PREPA to Compile Lists of Stakeholders

LEO's request that the Energy Bureau require PREPA "to compile a list of stakeholders that would receive advance notice of Action Plan filings and proceedings, with the opportunity to comment"[28] should be denied for the same reasons SESA's similar request should be denied. The additional burden to PREPA of compiling a list of stakeholders seems unreasonable, and unduly burdensome given the many other tasks PREPA must handle in implementing the Modified Action

[26] *Id.* at 2 (quoting *Resolution for Extension of Time for Just Cause*, Case No. CEPR-AP-2015-0002 (Dec. 15, 2016) at 2).

[27] Energy Bureau, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, No. 8543 (Jan. 16, 2015) at § 11.01 ("Any *party* dissatisfied with the [Energy Bureau]'s final decision may file a motion for reconsideration before the [Energy Bureau], which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the [Energy Bureau] should have granted.") (emphasis added); *Commonwealth of Puerto Rico Uniform Administrative Procedures Act*, as amended, 3 L.P.R.A. §§ 9601, *et seq* (2017) ("Act 38-2017") at § 3.15 (a "*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.") (emphasis added).

[28] LEO Motion at 1.

Plan, relative to the alternative of simply making required filings in the IRP docket and other public dockets to be made public.

3. There is No Basis for the Argument that the Energy Bureau Should Reconsider Its Conclusion that PREPA's Environmental Impact Assessment Satisfies the Requirements of Act 17-2019

The Energy Bureau should deny LEO's motion seeking reconsideration of its conclusion that the Environmental Impact Assessment submitted in support of the Proposed IRP satisfied the requirements of Act 17-2019.[29] LEO assert that PREPA should be required to "include a climate change analysis, including a lifecycle GHG emissions estimate and a carbon pricing estimate, for any resource proposal, governed by the current Integrated Resource Plan or the next."[30]

The Environmental Impact Assessment PREPA prepared in support of its Proposed IRP complied fully with the requirements that applied at the time it was prepared.[31] No purpose would be served by requiring PREPA at this late date to revise it to address the additional subjects LEO fault PREPA for not having covered to their satisfaction. Nor would any purpose be served by revising the Final IRP Resolution to include a requirement that PREPA include in its next IRP a climate change analysis, a lifecycle GHG emissions estimate and a carbon pricing estimate "for any resource proposal." PREPA will be obligated to follow then-applicable law, Energy Bureau regulations and directives included in the Final IRP Resolution in preparing its next IRP; the additional admonitions LEO advocate are unnecessary. Moreover, PREPA notes that a blanket requirement for a climate change analysis for *any* resource proposal is overbroad, burdensome and

[29] *Id.* at 3 (citing Final IRP Resolution at ¶¶ 63, 131, 625, 626, 953, 982).

[30] *Id.*

[31] PREPA notes that it completed the preparation of its Environmental Impact Assessment and submitted it to the Energy Bureau on February 12, 2019 (see Final IRP Resolution, Appendix A, ¶ 974 at p. A-1). This was two months before of the passage of Act 17-2019 on April 11, 2019.

impractical, since some resources (*e.g.*, solar PV generators, wind generators and battery energy storage systems) will not be sources of GHG emissions.

LEO also urge the Energy Bureau to require PREPA to "include analysis of extreme weather resiliency in all resource proposals, especially proposals at Palo Seco."[32] While PREPA submits that LEO have offered no basis for reconsidering the Final IRP Resolution as to this point, it acknowledges that an analysis of resource resiliency in the face of extreme weather events may be appropriate *at the point at which resources are being evaluated for potential selection for development*. Accordingly, PREPA anticipates preparing a resiliency analysis of any proposed resource addition at Palo Seco once the details of such a resource addition are sufficiently understood.

4. PREPA Should Not be Precluded from Evaluating the Addition of Generating Resources Employing Fossil Fuels

LEO overreach most egregiously in demanding that the Energy Bureau reconsider those aspects of the Final IRP Resolution that allow PREPA to consider a fossil fuel resource as part of a scoping and feasibility analysis for a new supply-side resource at Palo Seco.[33] Among other things, they insist that the Energy Bureau should require PREPA "to submit, with its quarterly report, a report of solar, storage, and gas prices along with the projected cost of Palo Seco gas-fired resources" and should "reserve the right to cut off the PREPA planning of fossil fuel resources at Palo Seco, if it finds that renewable and storage prices are falling steadily as predicted" or "if the predicted cost of the Palo Seco fossil resource, including a carbon price estimate, becomes higher than PREPA's projection of the costs."[34]

[32] LEO Motion at 3.

[33] *Id.* at 5-9.

[34] *Id.* at 9.

The Energy Bureau should reject these demands. The applicable law does not preclude development of new, efficient, clean natural gas-fired generating facilities in Puerto Rico; indeed it specifically contemplates some such development.[35] Thus the LEO are asking the Energy Bureau in effect to act in a way not required or even contemplated by Puerto Rico's legislatively-enacted energy public policy. There is simply no legal basis for precluding at the threshold consideration of the addition of new fossil-fueled resources, such as a new gas-fired combined cycle combustion turbine at Palo Seco, that would comply with the requirements of Act 17-2019. The merits of a proposed fossil-fueled generating facility at Palo Seco (or any other location, for that matter) can be considered when PREPA presents such a proposal to the Energy Bureau. Moreover, it would be particularly counterproductive to the goals of increasing resource adequacy and the resiliency of the Puerto Rico grid if the Energy Bureau were to preclude evaluation of a new fossil fuel resource at Palo Seco or other locations, since there is likely to be federal funding available to support development and construction of a gas-fired combined cycle gas turbine ("CCGT") at Palo Seco that would make the pursuit of such a project a low cost and environmentally acceptable approach.

5. The Energy Bureau Need Not Reconsider its Statement that It Would be Open to Considering Conversion of the AES Plant to Natural Gas

For reasons similar to those that counsel against precluding consideration of a new fossil-fueled resource at Palo Seco, the Energy Bureau should decline LEO's request that it reconsider

[35] *See generally* Act 17 §§ 1.5(5)(b) (providing that the public policy of the Government of Puerto Rico relating to energy generation, among other things, requires that "existing and future units that generate power from fossil fuels to be capable of operating with at least two (2) types of fossil fuels, one of which shall be natural gas, to reduce greenhouse gas emissions and to increase the capacity of the electric power grid to integrate distributed generation and renewable energy" and 1.11(a) (requiring "[e]very new or existing electric power plant, as of the date of approval of [Act 17], other than those operating exclusively on renewable energy sources shall have the capacity to generate power from two (2) or more fuels, one of which shall be natural gas, * * * [and that] [a]t least sixty percent (60%) of the electric power generated from fossil fuels (gas or oil byproducts) shall be high efficiency, pursuant to Section 6.29 of Act No. 57-2014."

its statement that it would be open to the evaluation of the conversion of the AES units to natural gas in the next IRP.[36] The Energy Bureau should not foreclose consideration of any resource alternative in the next IRP. Indeed, if it were to do this, the Energy Bureau would be improperly predetermining the results of a planning exercise that should take into account all legally permissible alternative ways of satisfying the identified needs. Conversion of the AES plant so that it uses natural gas rather than coal, if proposed, will have to stand or fall on its own cost, environmental and operational merits.

6. There is No Basis for LEO's Demand that the Energy Bureau Reconsider the Authorization of Spending on Transmission and Instead Prioritize Spending on Alternatives

LEO take the Energy Bureau to task for the manner in which it has generally endorsed spending on transmission system maintenance, enhancements, reinforcements and hardening.[37] They suggest that the Energy Bureau should instead direct PREPA to prioritize spending on alternatives that minimize burdens on the transmission system, such as EE, DR and rooftop solar + storage.[38] They state that the Energy Bureau should "discourage spending on transmission infrastructure that is most vulnerable to intensifying storms: for example, the vulnerable South-to-North transmission lines" and state that "[t]ransmission investments… should be driven by the necessity to maximize distributed generation."[39]

The Energy Bureau should decline to accept these suggestions. Taking seriously LEO's suggestion that PREPA should minimize spending on "vulnerable" transmission would be counterproductive to the goal of enhancing grid reliability and resiliency for as long as major

[36] LEO Motion at 10-13 (citing Final IRP Resolution at ¶ 875).
[37] *Id.* at 13-15 (citing Final IRP Resolution at ¶ 746).
[38] *Id.* at 14.
[39] *Id.*

sources of generation are located in the south and major load centers are located in the north. This will be true beyond the period covered by the Modified Action Plan. The other suggestions are premature or ask the Energy Bureau to direct PREPA to take steps that are unnecessary. The Final IRP Resolution emphasizes the importance of accommodating DG and supporting microgrid development, and transmission and distribution investment will need to be planned and carried out with these objectives in mind.

7. The Energy Bureau Need Not Impose Additional Requirements on the Required Renewables Procurement Plan to Maximize Distributed Solar + Storage

The Energy Bureau should reject LEO's suggestion that it reconsider aspects of its directives relating to preparation and submission of a Renewables Procurement Plan and impose additional requirements to maximize the addition of distributed solar + storage.[40] In particular, the Energy Bureau should reject as both unnecessary and impractical the suggestion that it should prescribe minimum levels of spending on a hydroelectric feasibility study and renewables feasibility studies "to aid PREPA in allocating resources properly and creating its Fiscal Plan"[41] and that it should require PREPA "to choose distributed generation over utility-scale generation, when the former is more cost-effective."[42] There is no need to prescribe minimum levels of spending, and LEO have offered no basis on which such minimum levels should be established. PREPA would expect to seek competitive proposals from consultants to perform the necessary studies, and the market will provide a much more useful indication as to what the required studies will cost than could the LEO or the Energy Bureau. The suggestion that PREPA should be compelled to choose distributed generation over utility-scale alternatives is too simplistic to be

[40] *Id.* at 15-18 (citing Final IRP Resolution ¶¶ 80, 81, 177).
[41] *Id.* at 16.
[42] *Id.*

imposed as an absolute requirement. Whether DG is "more cost-effective" than utility-scale generation cannot be determined in isolation, but instead requires analysis of specific DG proposals and the impacts of integrating them on the distribution and transmission systems, as does an evaluation of the cost of utility-scale generation. The Modified Action Plan directs PREPA to increase the amount of DG the system can support, so to some extent this request is duplicative of a mandate to which PREPA is already subject.

Nor should the Energy Bureau require PREPA to initiate a procurement process to install rooftop solar + storage systems, and then set PREPA employees to the task of installing and interconnecting them.[43] This suggestion seems to assume that PREPA is to be in the business of acquiring, installing and presumably owning rooftop solar + storage systems. This is not consistent with the direction in which Puerto Rico law has PREPA heading – *i.e.*, out of the business of developing, installing and operating generating resources. If this is not what this proposal is intended to suggest, then who would finance and own the rooftop solar + storage systems?

8. The Request that the Energy Bureau Strengthen Demand Response Requirements Addresses the Subject of Another Energy Bureau Proceeding, and So Should be Denied

Finally, the Energy Bureau should reject LEO's suggestion that it impose additional requirements relating to DR, including a requirement that PREPA submit by December of this year "a Status Update with a final estimate of Programmatic Demand Response costs for 250 MW of demand response from large customers" and "a tariff that allows PREPA to pay distributed storage resource owners for Demand Response services, either through a Virtual Power Plant or other means."[44] These suggestions address matters that are beyond the scope of the Proposed IRP, the

[43] *Id.* at 18.

[44] *Id.* at 20.

Modified Action Plan and this proceeding. They, and the general subject of DR programs, are properly addressed in the DR proceeding currently being advanced in Case No. NEPR-MI-2019-0015, not in this IRP proceeding.[45]

III. CONCLUSION

WHEREFORE, the Puerto Rico Electric Power Authority requests the Energy Bureau to reject PV Properties, Inc., Coto Laurel Solar Farm, Inc. and Windmar Renewable Energy, Inc., Solar & Energy Storage Association of Puerto Rico and the Local Environmental Organizations requests for reconsideration and to sustain the Final IRP Resolution as entered on August 24, 2020.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 4th day of October 2020.

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[45] *See generally Resolution on Commencement of Rulemaking Procedure on the Proposed Demand Response Regulation, In re: Regulation for Energy Efficiency and Demand Response*, Case No. NEPR-MI-2019-0015 (issued Sept. 21, 2020).

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; rstgo2@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; castrodieppalaw@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 4th day of October 2020.

s/ Katiuska Bolaños
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