

COMMONWEALTH OF PUERTO RICO 2020 OCT -7 PM 3: 56
PUBLIC SERVICE REGULATORY BOARD
ENERGY BUREAU

IN RE: REVIEW OF THE PUERTO RICO ELECTRIC POWER AUTHORITY'S INTEGRATED RESOURCES PLAN	CASE NUMBER: CEPR-AP-2018-0001 SUBJECT: FINAL RESOLUTION AND ORDER ON THE PUERTO RICO ELECTRIC POWER AUTHORITY'S INTEGRATED RESOURCE PLAN
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WINDMAR, PV PROPERTIES, COTO LAUREL SOLAR FARM REPLY TO PREPA'S
OPPOSITION TO REQUESTS FOR A RECONSIDERATION OF CERTAIN
DETERMINATIONS MADE IN THE IRP RESOLUTION

TO THE BUREAU:

NOW COME, WINDMAR RENEWABLE ENERGY, COTO LAUREL
SOLAR FARM AND PV PROPERTIES (collectively Windmar) represented by appearing
counsel and respectfully alleges and prays:

1. On September 10, 2020 Windmar filed a request for Partial Reconsideration.
2. PREPA filed its Opposition on October 4, 2020.
3. Specifically referring to Windmar's first request for reconsideration (pages

2-3 of Windmar's filing) PREPA states:

"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.¹ According to Windmar, "[t]his condition cannot be correct for it excludes the possibility of contracting PV installation if the market price does not meet the cost assumptions of the Proposed IRP.

...

¹ 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.

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 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 directed² will show that renewable resources and battery storage cannot in fact be procured at the low costs the Modified Action Plan assumes.³ 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, the decision would not be in the interest of Puerto Rico electricity consumers, nor would it be consistent with Puerto Rico energy public policy."

PREPA totally misconstrues Windmar's request for reconsideration. Windmar states the total opposite to PREPA's interpretation.

Windmar's contestation is very clear and totally consistent with PREB's mandates. The only reasonable manner to establish renewable energy prices is a market

² 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.

³ 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 assumption underlying Scenario S3S2 than they might otherwise have been.

mechanism, just as PREB has instructed. It is PREPA who has intended to predetermine the prices for renewable energy instead of going to the open market.

Windmar's position is that if a market determined price is above the assumed price in the IRP, PREPA and PREB should follow the market reality and not the assumed prices, which the market has determined not to be real. This position is far from being self-serving to "the interests of Windmar" as stated by PREPA and rather pursues the benefit of market competition to determine the price of renewables.

The PREB should recognize that it is perfectly reasonable and legal for Windmar to pursue its own interests. Are we going to pretend that PREPA is not protecting its own interests?

The creation of the now PREB as an independent regulatory agency where the different parties present and defend their interests was the recognition that PREPA, for years, looked to its own interests, not necessarily Puerto Rico's interests while ignoring any other legitimate interests.

It is the market which determines the price in the market, not any prior assumption or "Board determined market price" as the PREPA Board has stated.

Contrary to PREPA's statement the mandate for distributed energy and for renewable energy eventually providing 100% of Puerto Rico's energy is a legislated mandate not subject to PREPA's prior price or "Board Determined" price.

PREPA's argument would entail the absurd pretention that if renewable energy is more expensive, as determined by the market, than coal, then they would dismiss the renewable mandate and use the "less cost" coal or other fossil fuel. That decision has

already been taken by the Legislature. It is not for PREPA to reject the Renewable Energy mandated portfolio and the REC's.

4- PREPA also requests Windmar's Arguments Regarding the Final IRP Resolution's Treatment of Renewable Energy Certificates ("RECs") to be rejected by arguing in part:

"

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 and observes that the proposed IRP assumes that the contract price for renewable resources includes RECs and does not incorporate escalation. Thus 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....."

Concerning the RECs- PREPA once again throws black ink to confuse the issues.

Precisely Windmar's concern for requesting the PREB to partially reconsider the Final IRP Resolution is the same reason PREPA intends to use as basis for disregarding Windmar's position – "...the *Final IRP Resolution does not mandate any particular treatment of RECs*". Windmar's concern is that it would be incorrect for the *Final IRP Resolution* to ignore the fundamental incentive created by legislation to promote the 100% Renewables Portfolio Standard of Act 17-2019 – RECs – while elaborating a plan of Puerto Rico's future energy resources. Simply put, it would be disrespectful to our

legislature to ignore the incentive they built to steer our future energy resources towards renewables while making a resource plan. The Bureau should not condone, much less reward, PREPA's non compliance with the Renewable Portfolio and with the specific mechanism design by the legislature, the REC's.

The RECs are a legislatively created asset, independent from production cost of energy. The cost of producing energy is the result of the investment cost and the operating costs. These costs are not part of the REC, which were legislatively created because the Legislature recognized other values in the renewable energy production, separate from the energy itself.

PREPA cannot comingle or bundle energy prices and RECs for they are separate items, that represent different values, and as recognized by the Legislature, independent one from the other.

The "just and reasonable" return on investment, which is a constitutional requirement of regulated price markets, is the result of actual costs and fair return in each particular market.

The REC is, as mentioned, a Legislatively created asset that can not be disposed of at PREPA's whim.

Also, PREPA once again, and against specific legal mandate state that they don't comply with the RECs mandate because there is no PREB applicable regulation. The only problem with this argument, and PREPA knows of should know, is that the law specifically mandates that REC compliance be not dependent on the approval of Regulations.

The Legislature established a two-year life for the RECs. The second-year worth only 50% of the first-year value. PREPA's refusal to buy them claiming there is no Regulation takes away the Puerto Rico RPS compliance value of the RECs. That was not the intention of the Law.

This in itself is reason enough to deny PREPA's request to stay the action. PREPA's inactions directly impact and nullifies the REC's, just with the passage of time.

WHEREFORE Windmar respectfully reiterates its position as filed on September 10, 2020 in our Motion for Partial Reconsideration and prays the Honorable Commission to disregard PREPA's Opposition to Windmar's Motion and to modify these issues within the Final Resolution and Order.

Respectfully submitted in San Juan, Puerto Rico, on October 7, 2020.

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CERTIFICATE OF SERVICE

We hereby certify to have notified copy of this document to the following people:

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We also certify that on this date we sent a copy of this document to: rtorbert@rmi.org; corey.brady@weil.com; presidente@ciapr.org; secretaria@energia.pr.gov; csanchez@energia.pr.gov; ireyes@energia.pr.gov; asanz@energia.pr.gov; bmulero@energia.pr.gov; nnunez@energia.pr.gov; gmalDONADO@energia.pr.gov; sierra@arctas.com; tonytorres2366@gmail.com; cfl@mcvpr.com; gnr@mcv.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; jluebkmann@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; voxpoplux@gmail.com; paul.demoudt@shell.com; sproctor@huntonak.com; giacribbs@huntonak.com; javier.ruajovet@sunrun.com; escott@ferraiuoli.com; mgrpcorp@gmail.com, and aconer.pr@gmail.com.

In San Juan, Puerto Rico, on October 7, 2020.