

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

NEPR

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**IN RE:** PUERTO RICO ELECTRIC POWER  
AUTHORITY INTEGRATED RESOURCE  
PLAN

**CASE NO.** CEPR-AP-2018-0001

**SUBJECT:** MOTION IN  
OPPOSITION TO VF/EIF'S  
MOTION TO INTERVENE

**LOCAL ENVIRONMENTAL ORGANIZATIONS' OPPOSITION TO  
VF/EIF'S MOTION TO INTERVENE**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc. -Enlace Latino de Acción Climática, Comité Yabucoeño 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., and CAMBIO Puerto Rico, Inc., ("Local Environmental Organizations"), to respectfully request that the Puerto Rico Energy Bureau reject the Motion to Intervene filed by V-Financial LLC and EIF PR Resource Recovery LLC.

## I. Background

On August 24, 2020, the Puerto Rico Energy Bureau issued a *Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan*.<sup>1</sup> This Resolution was the result of a long administrative process that started on March 15, 2018 when the Energy Bureau initiated it by publishing a *Resolution and Order* ordering the Puerto Rico Electric Power Authority (PREPA) to file an updated Integrated Resource Plan (IRP) for the Bureau's review.<sup>2</sup>

After the *Completeness Determination of PREPA's IRP Filing* on July 3, 2019, the Energy Bureau opened the process and set a period to receive petitions for intervention.<sup>3</sup> The detailed Procedural Calendar for the IRP review and approval process established that any interested person could file a petition to intervene or *Amicus Curiae* from July 3 to on or before **August 2, 2019**, and that those requests had to comply with the provisions of Section 5.05 and 7.01 of Regulation No. 8543,<sup>4</sup> as applicable. Eighteen (18) Petitions to Intervene from

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<sup>1</sup> Puerto Rico Energy Bureau, *Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan*, PREB Dkt. No. CEPR-AP-2018-0001 (Aug.24, 2020). <https://energia.pr.gov/wp-content/uploads/sites/7/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>.

<sup>2</sup> Puerto Rico Energy Bureau, *Resolution and Order*, PREB Dkt. No. CEPR-AP-2018-0001 (March 15, 2018). <https://energia.pr.gov/wp-content/uploads/sites/7/2018/03/Resolution-and-Order-IRP-CEPR-AP-2018-0001.pdf>.

<sup>3</sup> Puerto Rico Energy Bureau, *Completeness Determination of PREPA's IRP Filing*, PREB Dkt. No. CEPR-AP-2018-0001 (July 3, 2019). <https://energia.pr.gov/wp-content/uploads/sites/7/2019/07/Resolution-and-Order-DETERMINATION-CEPR-AP-2018-0001.pdf>

<sup>4</sup> *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, Regulation No. 8543, December 18, 2014.

thirty-five (35) organizations and entities, and three (3) *Amicus Curiae* requests were filed during that period and the Energy Bureau granted all of them.

Petitions to Intervene granted by the Energy Bureau:

1. Environmental Defense Fund
2. Sunrun
3. Local Environmental Organizations (10 different organizations)
4. EcoElectrica
5. NonProfit Intervenors (6 different organizations)<sup>5</sup>
6. Arctas Capital Group, LP
7. Windmar Group (3 different entities)
8. Oficina Independiente de Protección al Consumidor
9. Empire Gas Company
10. AES-PR
11. League of Cooperatives of Puerto Rico and AMANESER 2025
12. National Public Finance Guarantee Corporation
13. Progression Energy
14. Renew Puerto Rico
15. Shell NA LNG
16. Caribe GE International Energy Services
17. SESA-PR
18. Wärtsilä North America

*Amicus Curiae* requests granted by the Energy Bureau:

1. Rocky Mountain Institute
2. Colegio de Ingenieros de Puerto Rico
3. Asociación de Consultores y Contratistas de energía Renovable en Puerto Rico

The discovery period began on July 3, 2019 and ended on January 29, 2020, in which PREPA, the Bureau, and the intervenors engaged in the discovery process performing multiple Requests of Information and analysis of the

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<sup>5</sup> One of the 6 organizations (Cooperativa de Seguros Múltiples) requested authorization to withdraw its intervention afterwards. *See* Not for Profit Intervenors, *Moción Solicitando se Retire a la Cooperativa de Seguros Múltiples de la Comparecencia de ICSE y los Intervenores “Not for Profit”*, PREB Dkt. No. CEPR-AP-2018-0001 (Sept. 4, 2019). <https://energia.pr.gov/wp-content/uploads/sites/7/2019/09/20190904-Mocion-solicitando-se-retire-Cooperativa-de-Seguros-Multiples.pdf>.

documents provided. All of these parties participated in Initial Technical Hearings on August 13, September 4 and 5, 2019 that were recorded and available online. Written pre-filed testimonies were provided from the experts retained by the intervenors and PREPA which was followed by another discovery period that ended on December 20, 2019. After all these procedural steps, the intervenors, PREPA, and the Energy Bureau attended and actively participated in the 5-day long Evidentiary Hearing, which was open to the public and was transmitted online from February 3<sup>rd</sup> to the 7<sup>th</sup>, 2020. On top of that, after public announcement in a newspaper of general circulation and in their website, the Energy Bureau held five (5) public hearings in different dates in February 2020 and at various municipalities, including Arecibo where Energy Answers was proposed, to receive more input from the public, stakeholders, and organizations interested in the IRP. Dozens of citizens spoke at these hearings, and hundreds watched them online.<sup>6</sup> Simultaneously, the Energy Bureau notified a period for public comments to be submitted on or before March 2, 2020. The case was submitted for Energy Bureau's evaluation after the intervenors and PREPA filed their respective briefs by March 9, 2020.

Notwithstanding, on October 5, 2020, V-Financial LLC and EIF PR Resource Recovery LLC filed a motion to intervene after more than a year from

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<sup>6</sup> See Negociado de Energía en vivo, *Public Hearing / CEPR-AP-2018-0001* YouTube (Feb. 11, 2020) <https://www.youtube.com/watch?v=pfYfdxwuJ7U&t=2325s>.

the deadline for filing petitions of intervention in this proceeding and without participating in any of the instances where there was opportunity to do so.<sup>7</sup>

II. **V-Financial LLC and EIF PR Resource Recovery LLC fail to meet the requirements to file a Motion to Intervene.**

The motion for intervention filed by V-Financial LLC (V-Financial) and EIF PR Resource Recovery LLC (EIF) in the reconsideration phase of the Final Resolution of the IRP reflects reckless behavior and even bordering on unethical, when we see that in other procedures V-Financial and EIF admit that since last year they have been communicating with the Energy Bureau. The way V-Financial and EIF described the interactions with the Energy Bureau could be considered as *ex parte* communications with a regulatory agency executing a quasi-judicial proceeding, since in the public IRP docket there is not a single appearance from V-Financial, EIF or from Energy Answers. These entities delivered a letter to the Fiscal Oversight Management Board (FOMB) on July 15, 2020, in which they state the following:

**“...We have been in conversation with PREB since late last year, have met with executive management and engineering, and expect a favorable determination. Our last face to face meeting was in**

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<sup>7</sup> Before filing a petition to intervene, V-Financial LLC and EIF PR Resource Recovery LLC filed a Motion for Reconsideration on September 11, 2020, which Local Environmental Organizations opposed as well on September 23, 2020. See, Local Environmental Organizations, Response to Motion for Reconsideration by V-Financial LLC and EIF PR Resource Recovery LLC, Dkt. No. CEPR-AP-2018-0001 (Sept. 23, 2020). [https://energia.pr.gov/wp-content/uploads/sites/7/2020/09/20200923-Response-to-Mtn-for-Reconsideration-with-exhibits\\_final.pdf](https://energia.pr.gov/wp-content/uploads/sites/7/2020/09/20200923-Response-to-Mtn-for-Reconsideration-with-exhibits_final.pdf)

**February 2020. Unfortunately, the current pandemic has almost certainly delayed matters...**<sup>8</sup> (Emphasis added). See Attachment 1.

Insinuating having communications with Energy Bureau's representatives since 2019 about the inclusion of Energy Answers incinerator plant in the final IRP resolution, in the middle of an extensive, complicated, time-consuming, costly discovery process, and insinuating favoritism expecting a "favorable determination" for them, is extremely inappropriate, disrespectful, and in total disregard of the formal process all intervenors went through. Not only this letter demonstrates V-Financial and EIF completely knew about the IRP proceeding, but also implicates they were expecting a miracle inclusion of the incinerator project in the final IRP resolution without a timely and supported motion to intervene on or before August 2, 2019, without participating in the public hearings, without filing written public comments, without presenting any evidence and opportunity for rebuttal, and most importantly, without going through the arduous, extensive and expensive process that involved being an intervenor in the IRP docket, all to say, through the formal and adequate channels. Now, V-Financial and EIF are demanding a right to intervene.

Section 1.05 of Regulation No. 8543 specifies that "[t]his Regulation shall be interpreted in a manner that promotes the best public interest and the protection of the interests of the residents of Puerto Rico. Moreover, it shall be

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<sup>8</sup> Letter from EIF PR RESOURCE RECOVERY, LLC to Natalie Jaresko from FOMB, July 15, 2020. Also filed as *Exhibit A* to the *Informative Motion and Request for Withholding Approval of the Rejection of Certain PREPA PPOA in Exhibit A of ECF No. 2055-1 Until Opportunity to Confer and Meet with FOMB*, Case No. 17-04780-LTS, Doc. No. 2076-1.

construed to secure a just, speedy and inexpensive determination of all proceedings.” Section 5.05 of said Regulation states that “[a]ny person with a legitimate interest in a case before the [Bureau] may present a duly grounded to intervene or participate in said case. The [Bureau] shall evaluate and attend to the petition according to the criteria established in Act No. [38-2017], as amended, known as the Uniform Administrative Procedure Act, and its interpretive case law.” In those lines, Section 3.5 of Law 38-2017, provides that:

Any person who has a legitimate interest in an adjudicative procedure before an agency may submit a request in writing and duly substantiated to be allowed to intervene or participate in said procedure. The agency may grant or deny the request, at its discretion, taking into consideration, among others, the following factors:

(a) That the interest of the petitioner may be adversely affected by the proceeding adjudicative.

(b) That there are no other legal means for the petitioner to adequately protect your interest.

(c) That the interest of the petitioner is already adequately represented by the parties in the process.

(d) That the petitioner's participation can reasonably help to prepare a file more complete of the proceeding.

(e) That the petitioner's participation may excessively extend or delay the procedure.

(f) That the petitioner represents or is a spokesperson for other groups or entities of the community.

(g) That the petitioner can provide information, expertise, specialized knowledge or technical advice that would not otherwise be available in the procedure.

The agency shall apply the foregoing criteria liberally and may require to submit additional evidence to be able to issue the corresponding determination regarding the request for intervention.

Local Environmental Organizations recognize the importance of the liberal consideration of petitions to intervene, especially from not for profit organizations

and communities whose mission is to protect the public interest that are impacted by decisions made by the agencies, and very often face obstacles such as lack to access to information, have a hard time finding out on time proposed actions or do not have enough resources to engage. However, V-Financial and EIF, lending and investing companies, are trying to incorporate themselves into an almost finalized proceeding with prior knowledge of opportunities to be part of it, with resources and access when all their other informal approaches did not work for them. Therefore, it is necessary to emphasize that the liberality with which the aforementioned factors must be interpreted when considering a motion to intervene in no way obliges the agency to grant the request for intervention if it has not been duly justified.<sup>9</sup>

The unjustified untimeliness, the undue burden to the actual parties in the IRP process, the unjustified alleged interest from these entities, the excessive delay it will cause, leads the scale to expeditiously deny the motion to intervene.

As was said at the beginning, the Energy Bureau was clear about the timeline for intervention requests: on or before August 2, 2019. All the discovery is done, all the hearings were held, all the comments were received, the parties submitted the case for the Bureau to issue its determination, and the Bureau exercised its evaluation of the evidence presented and, in effect, made its determination. As a result of the procedural recount, the written request to intervene before the Energy Bureau was presented more than one year after the

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<sup>9</sup> Municipio de Caguas v. AT&T, 154 D.P.R. 401 at p. 412 (2001).



established deadline without any justification why it was not filed on time. Granting the intervention would cause the opening of the procedure to carry out all the steps of discovery of evidence, expert testimonies, technical hearings, evidentiary hearings, public hearings, in short, carry out the process again in clear violation of the principles that administrative procedures are carried out quickly, fairly and economically. The foregoing is impermissible, considering not only the arguments outlined, but also the urgency of acting in the face of the onslaught of the climate crisis that we are going through and the need to deploy the largest amount of distributed renewable energy, especially rooftop solar + battery storage.

Additionally, the petition to intervene is unnecessary and a waste of energy from all the parties in the IRP proceeding. V-Financial LLC and EIF PR Resource Recovery LLC have not provided adequate factual or legal backing for their claim to file a motion to intervene. EIF PR Resource Recovery LLC claims to be the lender for a “waste to energy” project, also known as Energy Answers, but provides no documents to support that claim. In fact, EIF PR Resource Recovery LLC is not even registered to do business in Puerto Rico, according to the Puerto Rico Registry of Corporations and Entities website. Article 13.03 (a) of the Corporations Act provides that a foreign corporation that has conducted business in the Commonwealth without authorization may not initiate any proceeding in any court of the Commonwealth until said corporation has been authorized to do business in this jurisdiction and has paid to the Commonwealth all the duties, penalties, and franchise taxes for the years or fractions thereof during which the

corporation did business in this jurisdiction without authorization. 14 L.P.R.A. § 3803. This is compatible with Section 3.02 of Regulation No. 8543 which requires legal entities to provide in their legal actions the name and registry number as it appears in the Department of State. Therefore, EIF is prevented from initiating or maintaining any judicial and/or administrative procedure in Puerto Rico.

On the other hand, V-Financial LLC claims to be the collateral agent for the lender, but asks the Energy Bureau to take that claim at face value, without evidence. Both entities make a bald assertion that a lender and the lender's collateral agent are authorized to submit a Motion to Intervene, without any argument or supporting evidence that either party was "adversely affected by the Final Resolution and Order". Energy Answers Arecibo LLC, who conveniently is not mentioned in their motions, is the debtor of their investment venture who signed a Power Purchase and Operating Agreement with PREPA more than 10 years ago, that FOMB rejected.<sup>10</sup> If V-Financial or EIF wanted to have the incinerator project considered in this IRP, they should have timely intervened or offered testimony or comments to the record. Many private companies intervened or submitted testimony on resources they were interested in.

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<sup>10</sup> On September 17, 2020, Judge Laura Taylor Swain issued a Memorandum Opinion in the PROMESA case granting PREPA's Motion to reject certain Power Purchase and Operating Agreements, including Energy Answers project. *In Re* The Financial Oversight and Management Board of Puerto Rico, Case No. 17-BK-3283 (LTS) at ECF No. 14335. "The Court has subject matter jurisdiction of this contested matter pursuant to 48 U.S.C. § 2166(a). The Court heard oral argument on the Motion on September 16, 2020. Having considered carefully all of the submissions and arguments made in connection with the Motion, the Court grants the Motion." The entities submitted a motion for reconsideration of that opinion, which is being evaluated by Judge Swain.

For all the reasons outlined above, Local Environmental Organizations request the Puerto Rico Energy Bureau to deny V-Financial and EIF petition to intervene and reject the evaluation of their motion for reconsideration as well. Finally, Local Environmental Organizations respectfully reaffirm their request that Commissioner Lilian Mateo recuse herself from the Energy Bureau's consideration and determination of the V-Financial and EIF's Motion to Intervene and Motion For Reconsideration.

Respectfully submitted,

*s/ Pedro Saadé*

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*s/Raghu Murthy*

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## CERTIFICATE OF SERVICE

We hereby certify that, on October 30, 2020, we have filed this Motion in Opposition to VF/EIF's Motion to Intervene 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@aeep.com](mailto:nvazquez@aeep.com); [c-aquino@prepa.com](mailto:c-aquino@prepa.com) and to the following persons:

- PREPA ([mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law); [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law))
- Sunrun ([javier.ruajovet@sunrun.com](mailto:javier.ruajovet@sunrun.com));
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- League of Cooperatives of Puerto Rico and AMANESER 2025 ([info@liga.coop](mailto:info@liga.coop), [amaneser2020@gmail.com](mailto:amaneser2020@gmail.com))
- AES-PR ([apagan@mpmlawpr.com](mailto:apagan@mpmlawpr.com), [sboxerman@sidley.com](mailto:sboxerman@sidley.com), [bmundel@sidley.com](mailto:bmundel@sidley.com))

Respectfully submitted on this day October 30, 2020

*s/Pedro Saadé*

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*s/Raghu Murthy*

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# **Attachment 1**

***EIF PR RESOURCE RECOVERY, LLC.***

*c/o V-Financial, LLC/Eco-Renovable LLC  
P.O. Box 575  
Gouldsboro, PA 18424*

July 15, 2020

*Via Electronic Mail*

Natalie Jaresko  
Executive Director & Interim Revitalization Coordinator  
The Financial Oversight and Management Board for Puerto Rico  
PO Box 192018  
San Juan, PR 00919-2018;

*RE: Arecibo Resource Recovery Project –Power Purchase and Operating Agreement*

Dear Ms. Jaresko:

On July 7, 2020, the Federal Oversight and Management Board (FOMB) filed Omnibus Motion (ECF No. 2050) with the Title III United States District Court. This letter is a request to not proceed with the component of the motion to authorize the rejection of the Power Purchase and Operating Agreement (“PPOA”) between Energy Answers Arecibo, LLC and PREPA, dated December 4, 2009. (Listed as item number 27 in Exhibit B of the Omnibus Motion).

The rejection of this particular PPOA is clearly not in the public interest. This PPOA has been the basis for the substantial development efforts to date for the much needed Arecibo Resource Recovery facility. We are therefore requesting that you not proceed with the stated action for item number 27, at least, until the Puerto Rico Energy Bureau (“PREB”) considers our request that the Arecibo Resource Recovery facility, or the equivalent, be reinstated in the PREPA Integrated Resource Plan (IRP). We have been in conversation with PREB since late last year, have met with executive management and engineering, and expect a favorable determination. Our last face to face meeting was in February 2020. Unfortunately, the current pandemic has almost certainly delayed matters.

The following are some facts which may assist in your determination:

1. This project is important for the health and well-being of the residents of Puerto Rico. It provides a viable option to manage over 3,000 tons per day of solid waste generated in the northern side of the Island. Many of the Sanitary Landfill Systems (“SRS”) in Puerto Rico are currently in breach of environmental regulations and are under Unilateral Closing Orders from the Federal EPA. The noncompliant landfills pollute surface and ground water daily and threaten drinking water supplies. In addition, they are emitting a significant amount of green gases in clear violation to federal and state environmental regulations. Some 67% of Puerto Rico’s 27 SRS’s actually have limited useful lives that do not exceed 5 years, even before including the impacts of hurricane Maria. In fact by 2021-22, the northern corridor of the island will need a system with the capable of handling 3000 tons per day. (See Attachment # 1 that includes a presentation by Ing. Daniel Pagan PE, to the Puerto Rico Legislation in July of 2019 re the need to support the development of waste to energy in Puerto Rico.)

***EIF PR RESOURCE RECOVERY, LLC.***

*c/o V-Financial, LLC/Eco-Renovable LLC  
P.O. Box 575  
Gouldsboro, PA 18424*

2. This project can be revitalized in the shortest time frame. Prior to hurricane Maria, the project was practically fully permitted, with all relevant contracts, including the selection and negotiations with the EPC contractors completed.
3. This will be a State-of-the-Art facility that incorporates and utilizes the Best Available Control Technology as defined by the Environmental Protection Agency (EPA).
4. The project will provide well over \$800 million in private capital, and over 7,000 direct and induced jobs during the construction period, among many other benefits. The revised business plan will also provide for the participating municipalities a carried interest in the project.
5. This project was clearly in line to be designated a critical project by the FOMB. (See Attachment #2, the Critical Project Application to FOMB, which was submitted in 2017 pre-hurricane Maria.) It provides a summary of reasons why this project should be designated a critical project and includes the Final Environmental Impact Statement and the status of the permit process.
6. EIF PR Resource Recovery, LLC ("EIF PR") is the Project Lender and has lent \$20,122,500 for the project's development. Pursuant to the executed loan pledge and security agreements, it owns the project assets including the PPOA. Article 20.2 sub-paragraph (f) of the PPOA indicates that if the project is terminated or rejected prior to the expiration of the Term, including pursuant to any bankruptcy law, then PREPA will enter into a new PPOA with the project lender (EIF PR). (See Attachment 3.)

We can expedite this much needed project and its benefits to the Puerto Rico community. It is entirely consistent with Puerto Rico's renewable energy objectives. More importantly, it will also help with the health and wellbeing of the residents of Puerto Rico through the implementation of a project that integrates the best available pollutant control technology. But, we need your help with this matter. We are available to discuss any of this and would very appreciate the removal of the PPOA from the list submitted to the Court to authorize its rejection.

Sincerely,

EIF PR RESOURCE RECOVERY, LLC.

*(As Project Lender)*

*Frank Vasquez*

Frank Vasquez

Chief Executive Officer

(570) 407-0226

Cc: Jaime El Koury, FOMB Legal Counsel  
Omar J. Marrero, PR AAFAP Executive Director  
Ralph Kreil Rivera, PREPA Board President  
Jose Ortiz, PREPA Executive Director  
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