

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

NEPR

Received:

Nov 17, 2020

6:28 PM

IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY INTEGRATED
RESOURCE PLAN

CASE NO. CEPR-AP-2018-0001

SUBJECT: INTEGRATED
RESOURCE PLAN
IMPLEMENTATION

**LOCAL ENVIRONMENTAL ORGANIZATIONS' MOTION
REQUESTING PUBLIC PARTICIPATION IN THE INTEGRATED RESOURCE
PLAN IMPLEMENTATION PROCESS**

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., and CAMBIO Puerto Rico, Inc., (“Local Environmental Organizations”), to request that the Energy Bureau allow for public participation in IRP implementation by requiring all IRP-related filings to be made in this docket, rather than the separate docket NEPR-MI-2020-0012.

Background

In March 2018, the Energy Bureau opened a new docket, CEPR-AP-2018-0001, to oversee development and implementation of a new Integrated Resource Plan, to account for the “the effects hurricanes Irma and María may have had on Puerto Rico’s resource needs.”¹ In May 2019, the Puerto Rico Legislature elevated the purpose of the Integrated Resource Plan, directing PREPA to develop a plan to unshackle the island from imported gas, oil and coal and grant true energy independence through “the use of new technology, alternative energy methods, distributed generation and renewable energy sources, [and] the integration of microgrids.”²

In July and August 2019, PREB granted more than thirty parties, covering a wide array of interests and viewpoints from across the island, the right to participate in this docket as intervenors or *amici curiae*. From September 2019 through April 2020, these parties participated in a technical hearing, exchanged extensive discovery, submitted testimony from numerous expert witnesses in to this docket, participated in an evidentiary hearing, and submitted post-hearing briefing to this docket.

In January 2020, the Energy Bureau used this docket to provide public notice of five public hearings across the island, “[i]n the interest of ensuring ample

¹ Puerto Rico Energy Bureau, Final Resolution and Order, at 3, PREB Dkt CEPR-AP-2018-0001 (March 14, 2018) [hereinafter, Final Resolution and Order]

² Law 17-2019.

public participation and insight in the process.”³ Dozens of citizens spoke at these hearings, and hundreds watched them online.⁴

The Energy Bureau’s August 2020 Order, filed in this docket, noted that the public “provided a meaningful contribution in this process.”⁵ The Order ruled that “[t]he IRP process should be transparent and provide an opportunity for stakeholders to participate fully.”⁶ The Order further stated that “[t]he participation of intervenors and amici curiae was extremely valuable as their input provided additional perspectives and information for the Energy Bureau’s consideration.”⁷ That Order also set forth a series of filings required from PREPA, that would spell out how the Integrated Resource Plan would be implemented. A listing of those filings was attached to Local Environmental Organization’s Motion For Reconsideration.

PREPA, intervenors, and the public expected that these filings would be made in the existing IRP docket. With that expectation, PREPA filed its September 23rd Procurement Plan Status Report in the current IRP docket. PREPA also submitted motions to this docket, seeking to hold a technical conference on the Procurement Plan. PREPA timely served these documents on all intervenors, giving the public notice and an opportunity to participate.

³ Final Resolution and Order para. 975.

⁴ *Id.*, See also Negociado de Energía en vivo, *Public Hearing / CEPR-AP-2018-0001*, YouTube (Feb.11, 2020) <https://www.youtube.com/watch?v=pfYfdxwuJ7U&t=2325s>.

⁵ Puerto Rico Energy Bureau, Final Order and Resolution, at paras. 2, 82, PREB Dkt. CEPR-AP-2018-0001. [Hereinafter, IRP Final Resolution and Order].

⁶ *Id.* at para. 146.

⁷ *Id.* at para. 158.

PREB should have accepted the Status Report in the IRP docket and considered PREPA's motion in this docket. Instead, on October 6, without explanation and without notice to any intervenor, PREB opened an entirely new docket "to manage the implementation phase of the Approved IRP and the Modified Action Plan."⁸ PREB scheduled the technical conference requested by PREPA, but only posted notice of it in the new docket. Local Environmental Organizations only happened to find the new docket by chance, hidden on page 33 of the 95 pages of PREB dockets.

The new docket has caused uncertainty and confusion on how the IRP will be implemented. For example, PREPA submitted its draft Procurement Plan to PREB on October 23rd, but the document was never posted to the IRP docket and was only posted to the new docket four days later. It is not clear that intervenors other than Local Environmental Organizations, or the general public, even know about this critically important document. Barely one hundred citizens watched the YouTube recording of the recent technical conference, a small fraction of the hundreds of citizens that have watched the YouTube recording of the Integrated Resource Plan technical conference and evidentiary hearings, with notice provided in this docket.⁹

In short, because of PREB's creation of the new docket, the Integrated Resource Plan is being implemented without participation or even awareness of

⁸ Puerto Rico Energy Bureau, Resolution and Order, PREB Dkt. NEPR-MI-2020-0012 (Oct. 6, 2020).

⁹ Negociado de Energía en vivo, YouTube Chanel. <https://www.youtube.com/channel/UCxZYn-qt1k0Lu9TX37-11oA/videos>.

intervenors and the public. To correct this error, Local Environmental Organizations respectfully request that PREB:

- order PREPA to refile the Procurement Plan in the IRP Docket
- order PREPA to file all subsequent IRP implementation filings in the IRP Docket
- post notices about subsequent orders and technical conferences in the IRP Docket

Argument

I. The removal of IRP implementation filings from the current docket violates the public's right to participate in the implementation process.

The Energy Bureau certainly provided for significant public participation in development of the approved Integrated Resource Plan, but must also allow public participation in the next step, which is implementation of that Plan. Puerto Rico's public policy on energy was not fulfilled simply through development of an approved IRP: rather, "[t]he implementation of the public policy on energy shall be an ongoing planning, consultation, execution, evaluation, and improvement process in all energy-related matters."¹⁰ Law 17-2019 obligates the Energy Bureau to "...keep citizens constantly informed of energy affairs..."¹¹ This certainly applies to the critical filings by PREPA implementing the IRP.

Every citizens of Puerto Rico have a constitutional right to information possessed by PREPA, including the IRP implementation filings, to ensure "the

¹⁰ 22 LPRA 1051(c).

¹¹ Law 17-2019 Section 5.10(t).

free participation of the citizen in [the] collective decisions” of PREPA.¹² To protect this constitutional right, the Puerto Rico Legislature mandates access to information and broad public participation in Integrated Resource Plan proceedings: “[t]ransparency and citizen participation in every process related to electric power service in Puerto Rico shall be promoted...”¹³. Through the process of passing Law 17-2019, the “Public Energy Policy Law of Puerto Rico,” the Legislature re-examined and then re-affirmed this commitment to transparency. To provide true public participation in the transformation of the grid, PREB must allow public access to both the development of and the implementation of the IRP.

PREB initiated this docket in accordance with Regulation 9021 Section 2.04(B) "The filing of the IRP shall initiate a proceeding at the Commission pursuant to the provisions of this Regulation, and to the provisions of Commission Regulation No. 8543." The provisions of Regulation 9021 do not just concern development of the IRP: they also concern implementation of the IRP, and especially immediate implementation of the Action Plan. Therefore, those filings

¹² Dávila v. Gen'l Supervisor of Elections, 82 D.P.R. 256, 272 (1960) (“It is not enough merely to recognize the important political justification for freedom of information. Citizens of a self-governing society must possess the legal right to examine and investigate the conduct of its affairs, subject only to those limitations imposed by the most urgent public necessity. This right must be elevated to a position of highest sanctity if it is to constitute an effective bulwark against unresponsive leadership.”)

¹³ 22 L.P.R.A. §§ 1051(o), 1051(hh). See also 22 L.P.R.A. 196, requiring that PREPA’s service be “focused on citizen participation...” The Legislature defines citizen participation as “mechanisms that allow customers of PREPA and electric power generation and/or distribution companies certified in Puerto Rico to have a forum to express their concerns, make suggestions, and be included in the decision-making process. These mechanisms shall include, but not be limited to, the request and receipt of comments, photographs, and other documents from the public, administrative meetings of PREPA where customer focus groups participate, regional meetings open to PREPA’s customers in such region, public hearings, and the establishment of vehicles that enable participation by electronic means.” 22 L.P.R.A. 192(n).

must stay in this docket, where the public and intervenors have the right to view and comment on them. Law 17-2019 made it clear that the Bureau would use this docket to "evaluate the IRP as well as PREPA's performance thereafter..."¹⁴

II. The new docket is inconsistent with the precedent set in the previous IRP case.

During the first Integrated Resource Plan process, the Energy Bureau correctly emphasized the importance of public involvement, stating that interested persons and citizen groups like Local Environmental Organizations play a critical role in “the vital task of assessing the [Integrated Resource Plan].”¹⁵ The Energy Bureau called on the broader community to assist with this task, and assured the community’s experts that they “would be afforded the necessary information, tools, and opportunities to make their active, timely, informed, and responsible contributions to the [Integrated Resource Plan] assessment process.”

Id.

PREB’s Final Order in that IRP proceeding “set forth extensive requirements with which PREPA must comply, both in the short -and long-term.”¹⁶ PREB correctly required PREPA to submit filings on implementation of the Integrated Resource Plan to the IRP docket, so that intervenors and the public had notice and opportunity to participate. That decision was a precedent which PREB should have followed in this IRP as well.

¹⁴ Regulation 9021 Section 1.03, emphasis added.

¹⁵ Puerto Rico Energy Bureau, Order on Public Participation, Intervenors, and *Amici Curiae* at 2, PREB Dkt. No. CEPR-AP-2015-0002, (July 22, 2015).

¹⁶ PREPA, Compliance Filing, at 2, PREB Dkt. CEPR-AP-2015-0002 (July 28, 2017).

Conclusion

For the reasons detailed above, Local Environmental Organizations respectfully request that PREB require all IRP implementation filings, and all Orders and technical conferences concerning IRP implementation, be filed in this docket, No. CEPR-AP-2018-0001, to allow for public notice and participation.

Respectfully submitted,

s/ Pedro Saadé

PEDRO J. SAADÉ LLORENS
Colegiado Núm. 5452
(RUA Núm. 4182)
Calle Condado 605, Oficina 611
San Juan, Puerto Rico 00907
Tel. & Fax (787) 948-4142
pedrosaade5@gmail.com

s/ Ruth Santiago

RUTH SANTIAGO
RUA Núm. 8589
Apartado 518
Salinas, Puerto Rico 00751
Tel. (787) 312-2223
rstgo@gmail.com

s/Raghu Murthy

RAGHU MURTHY
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
Tel. (212) 823-4991
rmurthy@earthjustice.org

s/Laura Arroyo

LAURA ARROYO
RUA Núm. 16653
Earthjustice
4500 Biscayne Blvd Ste 201
Miami, FL 33137
Tel. (305) 440-5436
larroyo@earthjustice.org

s/Jordan Luebke

JORDAN LUEBKEMANN
Florida Bar No. 1015603
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, FL 32301
Tel. (850) 681-0031
jluebke@earthjustice.org

CERTIFICATE OF SERVICE

We hereby certify that, on November 17, 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; and to the following:

- PREPA (astrid.rodriguez@prepa.com; jorge.ruiz@prepa.com; n-vazquez@aeep.com; c-aquino@prepa.com; mvazquez@diazvaz.law; kbolanos@diazvaz.law)
- Sunrun (javier.ruajovet@sunrun.com);
- EcoElectrica (carlos.reyes@ecoelectrica.com and ccf@tcmrslaw.com);
- Grupo Windmar (victorluisgonzalez@yahoo.com, mgrpcorp@gmail.com);
- Oficina Independiente de Protección al Consumidor (hrivera@oipc.pr.gov, jrivera@cnslpr.com);
- Empire Gas Company (manuelgabrielfernandez@gmail.com);
- National Public Finance Guarantee (acasellas@amgprlaw.com and corey.brady@weil.com);
- Progression Energy (maortiz@lvprlaw.com and rnegron@dnlawpr.com);
- Shell (paul.demoudt@shell.com, sproctor@huntonak.com);
- Wartsila North America (escott@ferraiuoli.com);
- Non Profit Intervenors (agraitfe@agraitlawpr.com);
- EDF (acarbo@edf.org);
- Arctas Capital Group (sierra@arctas.com, tonytorres2366@gmail.com);
- SESA PR & Caribe GE (cfl@mcvpr.com);
- League of Cooperatives of Puerto Rico and AMANESER 2025 (info@liga.coop, amaneser2020@gmail.com)
- AES-PR (apagan@mpmlawpr.com, sboxerman@sidley.com, bmundel@sidley.com)

Respectfully submitted on this day November 17, 2020.

s/Pedro Saadé

PEDRO J. SAADÉ LLORÉNS
Colegiado Núm. 5452
RUA Núm. 4182
Calle Condado 605, Oficina 611
San Juan, Puerto Rico 00907
Tel & Fax (787) 948-4142
pedrosaade5@gmail.com

s/Raghu Murthy

RAGHU MURTHY
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
Tel. (212) 823-4991
rmurthy@earthjustice.org