

**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:** Ruling on Motions for  
Reconsideration of the Final Resolution and  
Order on the Puerto Rico Electric Power  
Authority's Integrated Resource Plan.

**FINAL RESOLUTION ON RECONSIDERATIONS**



# CONTENTS

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. SUMMARY OF THE ENERGY BUREAU’S RESOLUTION ON RECONSIDERATIONS .....</b>	<b>3</b>
<b>III. VF’S PETITION FOR INTERVENTION AND VF’S MOTION FOR RECONSIDERATION.....</b>	<b>7</b>
<b>IV. PARTIES’ MOTIONS FOR RECONSIDERATION .....</b>	<b>16</b>
<b>A. Public Participation and Transparency .....</b>	<b>16</b>
1. Procurement plan .....	16
2. Stakeholder list.....	17
3. Public process for the next IRP .....	18
<b>B. New Generation or Conversion at Palo Seco, Mayagüez, Yabucoa, AES, and peaking generators.....</b>	<b>19</b>
1. Palo Seco.....	19
2. Mayagüez and Yabucoa peakers .....	20
3. AES.....	22
<b>C. Procurement of Renewable Generators and Storage .....</b>	<b>23</b>
1. Preferred Resource Plan procurement amounts and costs.....	23
2. Resource prices.....	26
3. Distributed generation amounts.....	26
4. Utility-scale and distributed generation .....	27
5. Utility-installed distributed generation .....	28
6. Renewable portfolio standard requirements.....	28
7. Interconnection .....	30
8. Studies .....	30
<b>D. Energy Efficiency .....</b>	<b>31</b>
<b>E. Demand Response .....</b>	<b>33</b>
<b>F. Transmission.....</b>	<b>34</b>
<b>G. Environmental Impact Assessment .....</b>	<b>36</b>
<b>H. Applicability of the Final Order to PREPA’s successor .....</b>	<b>38</b>



V. CONCLUSION .....	39
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# I. INTRODUCTION

1. On June 7, 2019, the Puerto Rico Electric Power Authority (“PREPA”) submitted to the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) its proposed Integrated Resource Plan (“IRP”). The Energy Bureau deemed the filing complete on July 3, 2019. On August 24, 2020, the Energy Bureau issued its Final Resolution and Order (“Final Order”), in which it approved in part and rejected in part the filed IRP. The Energy Bureau modified the Action Plan in the proposed IRP submitted by PREPA and ordered the adoption and implementation of the Modified Action Plan in the Final Order.
2. On September 10, 2020, PV Properties, Inc., Coto Laurel Solar Farm, Inc. and Windmar Renewable Energy, Inc. (collectively, “Windmar”) filed a document titled *Motion for Partial Reconsideration*, through which it requested the Energy Bureau to partially reconsider its determination on the Final Order.
3. On September 11, 2020, V-Financial, LLC and EIF PR Resource Recovery, LLC (collectively, “VF”) filed a document titled *Motion for Reconsideration*, requesting the Energy Bureau to reconsider certain aspects of the Final Order (“VF’s Motion for Reconsideration”).
4. On September 13, 2020, Empire Gas Company, Inc. (“Empire Gas”) filed a document titled *Motion Requesting Partial Reconsideration of Final Resolution*.
5. On September 14, 2020, the Local Environmental Organizations (“LEOs”) filed a document titled *Local Environmental Organizations Motion for Reconsideration of the Final Resolution and Order*. On the same date, the Solar and Energy Storage Association of Puerto Rico (“SESA-PR”) filed a document titled *Motion for Partial Reconsideration of Final Resolution and Order in Integrated Resource Plan*.
6. On September 17, 2020, AES Puerto Rico (“AES-PR”) filed a document titled *AES-Puerto Rico’s Opposition to LEOs’ Motion for Reconsideration*.
7. On September 23, 2020, the LEOs filed a document titled *Local Environmental Organizations’ Response to Motion for Reconsideration by V-Financial LLC and EIF PR Resource Recovery LLC*.
8. On September 25, 2020, the Energy Bureau issued a Resolution taking notice of the requests for reconsideration filed by Windmar, VF, Empire Gas, SESA-PR and the LEOs. The Energy Bureau stated that it would evaluate said requests in accordance with the



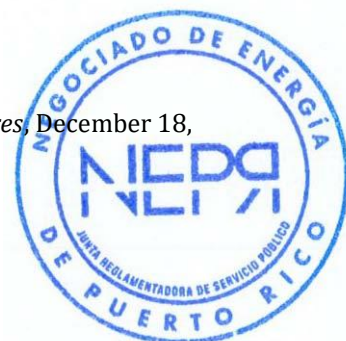
provisions of Section 3.15 of Act 38-2017<sup>1</sup> and Section 11.01 of Regulation 8543.<sup>2</sup>

9. On September 28, 2020, PREPA filed a document titled *Motion to Strike Motion for Reconsideration of V-Financial, LLC and EIF PR Resource Recovery, LLC*.
10. In response to the requests for reconsideration made by Windmar, SESA-PR, and the LEOs, on October 4, 2020, PREPA filed a document titled *Opposition of the Puerto Rico Electric Power Authority to Requests for Reconsideration of Certain Determinations made in the Final IRP Resolution*.
11. On October 5, 2020, VF filed a document titled *Petition for Intervention* (“VF’s Motion to Intervene”).
12. On October 7, 2020, Windmar filed a document titled *Windmar, PV Properties, Coto Laurel Solar Farm Reply to PREPA’s Opposition to Request for a Reconsideration of Certain Determinations made in the IRP Resolution*.
13. On October 26, 2020, PREPA filed a document titled *Opposition to Belated Petition for Intervention of V-Financial LLC and EIF PR Resource Recovery LLC*.
14. On October 30, 2020, the LEOs filed a document titled *Local Environmental Organizations’ Opposition to VF/EIF’s Motion to Intervene*.
15. On November 11, 2020, VF filed a document titled *Reply to Local Environmental Organizations’ Opposition to VF/EIF’s Petition to Intervene*.
16. In this Final Resolution on Reconsiderations, the Energy Bureau addresses the concerns raised in the aforementioned motions for reconsideration filed in this proceeding (“Motions for Reconsideration”), with the exception of VF’s Motion for Reconsideration, as determined in Part III below. The Energy Bureau **ACCEPTS** some and **DENIES** some of the requests for reconsideration, as further discussed below. The Energy Bureau also addresses in this Final Resolution on Reconsiderations, VF’s Motion to Intervene.
17. To the extent that any issue or argument raised in the Motions for Reconsideration is not discussed in this Final Resolution on Reconsideration it is expressly **DENIED**. In reaching its decision, the Energy Bureau has carefully considered and deliberated upon all the arguments raised by Windmar, Empire Gas, the LEOs, SESA-PR, AES-PR, and PREPA. The Energy Bureau also considered the record evidence.
18. This **Part I** sets for the procedural history and the organizational structure of this Final Resolution on Reconsiderations.

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<sup>1</sup> Uniform Administrative Procedures Act of the Government of Puerto Rico, as amended.

<sup>2</sup> Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, December 18, 2014.



19. **Part II** summarizes the Energy Bureau's decisions on the grounds set forth in the various Motions for Reconsideration.
20. **Part III** discusses the Energy Bureau's determination regarding VF's Motion to Intervene. **PART III** also discusses the Energy Bureau's decision regarding the VF's Motion for Reconsideration.
21. **Part IV** discusses the Energy Bureau's decision with respect to each of the grounds addressed in the Motions for Reconsideration filed by Windmar, Empire Gas, SESA-PR and the LEOs.
22. **Part V** summaries the Energy Bureau's conclusions.

## II. SUMMARY OF THE ENERGY BUREAU'S RESOLUTION ON RECONSIDERATIONS

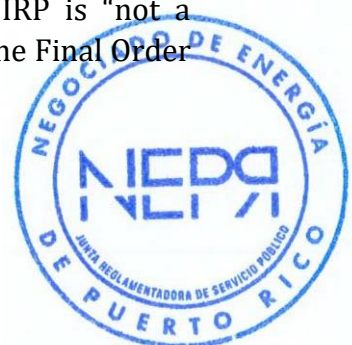
23. The Energy Bureau **CONFIRMS** that the status report and Procurement Plans are to be filed in Case No. NEPR-MI-2020-0012. To the extent that PREPA believes that any portions of the Procurement Plan require confidential treatment, the Energy Bureau **ORDERS** PREPA to structure the document so that confidential aspects can be separated and contained in an appendix, while the general plan and approach should be public.
24. The Energy Bureau **DENIES** the LEOs' request to order PREPA to develop a stakeholder list, provide the entities on that list advance notice of Action Plan filings, and to offer an opportunity to comment on each filing.
25. The Energy Bureau **DENIES** the LEOs' request to establish a particular structure for public hearings on the next IRP or to hold hearings in particular types of locations. However, the Energy Bureau **ORDERS** PREPA to include in its detailed report on improving the IRP process required by Paragraph 921 of the Final Order, a detailed discussion and plan for how it will engage with stakeholders and the public early and throughout the IRP development process, including engagements in Spanish and suitable for non-technical audiences.
26. The Energy Bureau **DENIES** the LEOs' request to rescind its approval of preliminary work regarding Palo Seco on the basis of Liquefied Natural Gas ("LNG") infrastructure.
27. The Energy Bureau **AGREES** with the LEOs that the Energy Bureau has the right to further limit or stop development activities toward fossil fueled resources at Palo Seco and need not amend its Final Order to state this.



28. The Energy Bureau **DENIES** Empire Gas' request to reconsider the Final Order by approving any new generation infrastructure at Mayagüez or Yabucoa, fueled by Synthetic Natural Gas ("SNG"), Liquefied Petroleum Gas ("LPG") or any other fossil fuel.
29. The Energy Bureau **FINDS** that Empire Gas' request that the IRP should be modified to include a specific statement of LPG/SNG's viability and practicality is moot.
30. The Energy Bureau **DENIES** Empire Gas' request regarding the conversion of PREPA's existing generation at Mayagüez, as well as its retained peaking generation, to run on SNG/LPG. However, the Energy Bureau **ORDERS** PREPA to evaluate LPG/SNG options for each of its peaking resources as part of the evaluation required by the Final Order, and as part of its ongoing obligation for least-cost service, and to file the results along with any request for approval of investment in (or power purchase agreements with) new thermal peaking resources.
31. The Energy Bureau **DENIES** the LEOs' request to rescind the finding that PREPA may consider AES conversion in the next IRP.
32. As part of the Phase I process in next IRP, the Energy Bureau **ORDERS** PREPA to describe in detail why (or why not) fuel conversion at AES is among the resource options to be considered in the IRP analysis.
33. The Energy Bureau **CLARIFIES** that the RPS requirements, including for near-term dates (20% for 2022) will be met whether or not market prices arising from procurement processes are equal to, greater than, or less than the solar PV pricing assumptions used in the IRP for planning.
34. The Energy Bureau **CLARIFIES** that Paragraph 15 of the Final Order **does not** condition deployment of solar PV and battery resources on market prices equal to (or less than) the cost assumptions in PREPA's filed IRP for Scenario S3S2B.
35. The IRP pricing benchmarks for solar PV, battery energy storage, and potentially new gas-fired combined cycle technologies assumed PREPA was a creditworthy counterparty. However, the Energy Bureau **DETERMINES** that final market pricing will emerge from the competitive bidding process the Energy Bureau designed and PREPA is required to follow.
36. The Energy Bureau **DENIES** Windmar's request to amend the Final Order to include a statement that market prices for resources, established through a competitive procurement process, are more relevant than cost assumptions in the IRP analysis.
37. The Energy Bureau **DENIES** Windmar's request that the Energy Bureau "clarify and emphasize" that the level of distributed generation modeled in the IRP is "not a limitation on the amount that prosumers may deploy."<sup>3</sup> To that effect, the Final Order

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<sup>3</sup> Windmar Motion for Reconsideration, p. 4.





states explicitly that consumer provision of distributed generation is an option for the development of the preferred portfolio of renewable resources.<sup>4</sup>

38. The Energy Bureau **DENIES** the LEOs' request that the Energy Bureau amend the Final Order to require PREPA to "choose distributed generation over utility-scale generation, when the former is more cost-effective."<sup>5</sup>
39. The Energy Bureau **DENIES** the LEOs' request to include a requirement that PREPA "initiate a procurement process to obtain [rooftop solar and storage] systems, and then set [trained] workers to the task of installing and interconnecting utility-owned rooftop solar + storage systems."<sup>6</sup>
40. The Energy Bureau **DENIES** Windmar's request to require that contracts have distinct prices for energy and RECs.
41. The Energy Bureau **DENIES** Windmar's request to require changes to PREPA's assumptions or statements regarding existing or contracted resources in the IRP.
42. The Energy Bureau **DENIES** the LEOs' request that the Energy Bureau add to the Final Order a requirement for PREPA to submit a timeline for implementation of Comunicado Técnico 19-02 as part of the Procurement Plan.<sup>7</sup>
43. The Energy Bureau **DENIES** the LEOs' request that the Energy Bureau reconsider its Final Order to include a requirement for a minimum amount of spending on the hydroelectric and renewable energy feasibility studies required by the Final Order.<sup>8</sup>
44. The Energy Bureau **DENIES** SESA-PR's request to establish specific timeframes for PREPA to comply with the energy efficiency ("EE") program implementation in this IRP proceeding, because those timeframes are properly established in the EE Rulemaking process, under Case No. NEPR-MI-2019-0015.
45. The Energy Bureau **DENIES** the LEOs' request to require PREPA in this IRP proceeding to set aside a budget for EE in its next Fiscal Plan.
46. The Energy Bureau **DENIES** the LEOs' request to require in this IRP proceeding that PREPA develop and submit a solar water heater program to the Energy Bureau, or design and implement EE awareness programs, because program design and approval will be governed by the EE Regulation.

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<sup>4</sup> Final Order, p. 4, ¶ 17.

<sup>5</sup> LEOs Motion for Reconsideration, pp. 16-17

<sup>6</sup> *Id.*, p. 18.

<sup>7</sup> *Id.*, p. 17.

<sup>8</sup> *Id.*, p. 16.





47. The Energy Bureau **DENIES** SESA-PR's request that the Final Order establish specific timeframes for PREPA to develop internal and external systems and offerings to engage demand response ("DR") resources across all customer classes.<sup>9</sup>
48. The Energy Bureau **DENIES** the LEO's request to require that PREPA submit a tariff for DR services from distributed energy storage resources by December 2020. The Energy Bureau nonetheless **REITERATES** that PREPA must quickly pursue plans (using RFPs, tariffs, rates and/or direct utility programs) to harness the cost-effective distributed storage resource through procurement of a virtual power plant resource with distributed storage resources as required by Paragraph 496 of the Final Order.<sup>10</sup>
49. The Energy Bureau **REITERATES** the importance of both the potential DR resource represented by large commercial and industrial customers and the importance of PREPA reporting, in detail, regarding its efforts to develop this resource in its status reports.
50. The Energy Bureau **GRANTS** the LEO's request to reconsider the Final Order regarding a DR status report. As such, the Energy Bureau **ORDERS** PREPA to file, on or before December 30, 2020, a comprehensive status report on its efforts to undertake an aggressive and expeditious negotiation, coordination, and scheduling process with high demand industrial and commercial clients regarding demand response during the peak demand season of 2020. The status report must also include lessons learned and PREPA's plans for how to best engage with these customers and develop the potential demand response resource for the summer of 2021 and other future periods of high load.
51. The Energy Bureau **CLARIFIES** that requests for approval on transmission system spending required to upgrade the existing transmission system for compliance with Codes and Standards will be made by PREPA in a separate docket or dockets with the opportunity for comment in accordance with the Energy Bureau's regulations.
52. The Energy Bureau **DENIES** the LEOs' request to reconsider its finding that PREPA has met the requirements of Section 1.9(3)(H) of Act 17-2019,<sup>11</sup> which requires that the IRP contain "environmental impact assessments related to air emissions and water consumption, solid waste, and other factors such as climate change,"<sup>12</sup> sufficiently for the purposes of this IRP.
53. The Energy Bureau also **DENIES** the LEOs' request to revise the Final Order to require climate change assessments or extreme weather analyses in each resource proposal.

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<sup>9</sup> SESA-PR, Motion for Reconsideration, p. 7.

<sup>10</sup> Final Order, p. 141, ¶ 496.

<sup>11</sup> *Puerto Rico Energy Public Policy Act*.

<sup>12</sup> Act 17-2019, Section 1.9(3)(H).



Where such assessments are critical, as they may be in the case of potential fossil fueled generation at Palo Seco, PREPA is expected to conduct such assessments.<sup>13</sup>

### III. VF'S PETITION FOR INTERVENTION AND VF'S MOTION FOR RECONSIDERATION

54. As part of its motion for reconsideration, VF states that V-Financial, LLC is the collateral agent for EIF PR Resource Recovery, LLC, which is the lender of a waste-to-energy project proposed for Puerto Rico in the municipality of Arecibo ("WTE Project"). Further, VF states that the WTE Project was developed with a power purchase agreement with PREPA. VF argues that the WTE Project was not included as part of the Final Order and requests the Energy Bureau to include said project in PREPA's IRP and Modified Action Plan. VF argues that the WTE Project is consistent with Puerto Rico's renewable and diversification energy objectives, environmental protection goals, base load energy needs and should be included in the PREPA's IRP to protect the environment, the health and well-being of the residents of Puerto Rico.<sup>14</sup>
55. VF alleges that it has a proprietary and legitimate interest, which will be negatively affected if the WTE Project is not included in the PREPA's IRP. VF states there will be concrete, discernible, tangible and particular injury to a legally protected interest.<sup>15</sup>
56. On September 23, 2020, the LEOs filed a document titled *Local Environmental Organizations' Response to Motion for Reconsideration by V-Financial LLC and EIF PR Resource Recovery LLC* ("LEOs Response to VF's Intervention"). The LEOs argue that VF provided no evidence to support that EIF PR Resource Recovery, LLC is the lender of the WTE Project, that V-Financial, LLC is the collateral agent for the lender, or that either party was adversely affected by the Final Order. The LEOs also state that PREPA decided not to include the WTE Project as part of the IRP and no party challenged said decision. Therefore, the LEOs argue there is no evidence in record to justify a reversal to PREPA's decision to include the WTE Project in the IRP. For VF's arguments to be considered, the LEOs state that VF should have requested intervention in the proceeding and offered testimony or comments to the record, as many other private companies did during this case.
57. The LEOs argue that VF incorrectly states that the WTE Project contributes to Puerto Rico Renewable Portfolio Standards requirements. The LEOs state that under the

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<sup>13</sup> PREPA Opposition, p. 16.

<sup>14</sup> VF Motion for Reconsideration, ¶ 6, p. 2.

<sup>15</sup> *Id.*, ¶ 7, pp. 2-3.



amendment introduced by Act 17-2019 to Act 82-2010,<sup>16</sup> the use of waste incineration for the production of energy is excluded from the definitions of “Alternative Renewable Energy” and “Sustainable Renewable Energy”. Therefore, the WTE Project would not contribute to the Renewable Portfolio Standard.

58. On September 28, 2020, PREPA filed a document titled *Motion to Strike Motion for Reconsideration of V-Financial, LLC and EIF PR Resource Recovery, LLC* (“Motion to Strike”). Through its Motion to Strike, PREPA argues that VF did not file a written, duly grounded application requesting intervention to participate in this proceeding. Therefore, VF cannot be considered a party.
59. PREPA states that pursuant Section 3.15 of Act 38-2017, only “the party adversely affected by an order or a partial final judgement may file a motion for reconsideration of such order or judgement.” PREPA argues that when the Energy Bureau issued its Final Order, only the parties authorized as intervenors or *amicus curiae* could move for reconsideration. Therefore, PREPA alleges that VF’s Motion for Reconsideration does not proceed as a matter of law and should be stricken from the record.
60. On October 5, 2020, VF filed a document titled *Petition for Intervention*, through which it requested the Energy Bureau to grant intervenor status to VF in the instant case.
61. On October 26, 2020, PREPA filed a document titled *Opposition to Belated Petition for Intervention of V-Financial LLC and EIF PR Resource Recovery LLC* (“PREPA’s Opposition”). Through its Opposition, PREPA states that VF’s Petition for Intervention is untimely. PREPA alleges that since VF did not file a request for intervention, nor did they participate in the administrative process as established by the Energy Bureau, they are not a party adversely affected by the Final Order. PREPA states that this case has been evaluated and decided, therefore VF’s intervention when the case is almost completed is unwarranted. PREPA requested the Energy Bureau to deny VF’s Motion to Intervene.
62. On October 30, 2020, the LEOs filed a document titled *Local Environmental Organizations’ Opposition to VF/EIF’s Motion to Intervene* (“LEOs Opposition”). Through its Opposition, the LEOs argue that VF has not duly justified its request for intervention at the late stage of this proceeding. The LEOs state that factors such as the unjustified untimeliness, the undue burden in the actual parties in the IRP process, the unjustified alleged interest from VF and the excessive delay it will cause are grounds to deny VF’s Motion to Intervene.
63. On November 11, 2020, VF filed a document titled *Reply to Local Environmental Organizations’ Opposition to VF/EIF’s Petition for Intervention* (“VF’s Reply”). Through

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<sup>16</sup> Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act, as amended.



its Reply, VF insists in its right to intervene in this proceeding. VF also restates the arguments included in VF's Motion for Reconsideration.

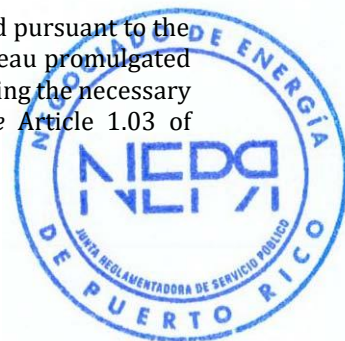
64. Intervention in this proceeding is governed by Section 3.5 of Act 38-2017, Section 5.05 of Regulation 8543 and Section 3.03 of Regulation 9021.<sup>17</sup>
65. Section 3.5 of Act 38-2017 provides that any person who has a legitimate interest in an adjudicative proceeding before an agency may submit a request in writing and duly substantiated, to be allowed to intervene or participate in said proceeding. 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 adjudicative proceeding; (b) that there are no other legal means for the petitioner to adequately protect its interest; (c) that the interest of the petitioner is already adequately represented by the parties in the proceeding; (d) that the petitioner's participation can reasonably help to prepare a more complete proceeding file; **(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; and (g) that the petitioner can provide information, expertise, specialized knowledge or technical advice that would not otherwise be available in the proceeding. The agency shall apply the foregoing factors liberally and may require the petitioner to submit additional evidence to be able to issue the corresponding determination regarding the request for intervention.
66. Consistent with Act-38-2017, Section 5.05 of Regulation 8543 provides: (a) that any person with a legitimate interest in a case before the Energy Bureau may present a duly grounded petition to intervene or participate in said case; and (b) that the Energy Bureau shall evaluate such petition for intervention according to the criteria established in [Act 38-2017]<sup>18</sup> and its interpretative case law.
67. Section 3.03 of Regulation 9021 provides specific rules that apply to the intervention in an IRP proceeding.<sup>19</sup> It states that: (a) any person may file a petition to intervene in an IRP proceeding within thirty (30) days after the Energy Bureau's determination that the proposed IRP is complete; (b) the Energy Bureau shall retain discretion to grant petitions to intervene filed after the expiration of the thirty (30) day time period; and

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<sup>17</sup> *Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority*, April 20, 2018.

<sup>18</sup> Act No. 170 of 12 of August of 1988, as amended, known as the Uniform Administrative Procedure Act was repealed and substituted by Act 38-2017, known as *The Uniform Administrative Procedure for the Government of Puerto Rico*, as amended ("Act 38-2017"). However, the provisions governing the intervention are almost identical in both laws.

<sup>19</sup> Act 57-2014 provides that every integrated resource plan shall be developed and approved pursuant to the rules established by the Energy Bureau. See Article 1.3 (II) of Act 57-2014. The Energy Bureau promulgated Regulation 9021, among others, to fulfill the agency's obligations under Act 57-2014, prescribing the necessary rules for the elaboration, presentation, evaluation, an approval of the PREPA's IRP. See Article 1.03 of Regulation 9021.



(c) the Energy Bureau will address petitions to intervene in accordance with Section 5.05 of Regulation 8543 and Section 3.5 and 3.6 of Act 38-2017.

68. In addition to the requirements of Section 3.5 of Act 38-2017, Section 3.03 of Regulation 9021 establishes a term for an interested party to file a petition for intervention in an IRP proceeding. However, the term is not fatal since the Energy Bureau, at its discretion, may consider a petition for intervention filed after the expiration of the provided term. As discussed below, the limitation in the term provided to file a petition for intervention in an IRP proceeding is aligned and consistent with Act 38-2017, Act 57-2014 and the detailed procedures prescribed by Regulation 9021 for the evaluation and approval of an IRP.
69. Section 3.05 of Regulation 9021 specifically provides that within thirty (30) days from the date in which PREPA files its proposed IRP, the Energy Bureau shall review the IRP filing to determine whether it fully complies with the requirements of Regulation 9021. If the Energy Bureau finds that the IRP filing complies with the requirements of Regulation 9021, the Energy Bureau will issue a resolution indicating that the IRP is complete and that the adjudicative process may begin.<sup>20</sup> In order to ensure that the IRP proceeding is carried out in a structured, orderly and efficient way, Article 3.05 of Regulation 9021 requires that within fifteen (15) days from the date the IRP filing is determined to be complete, the Energy Bureau issue an Order detailing the procedural calendar and any rules governing the proceeding, including, but not limited to, discovery, hearings, filings and other pleadings. Section 3.04 of Regulation 9021 also provides that within forty-five (45) days from the date PREPA's IRP filing is determined to be complete, the Energy Bureau will hold an initial hearing (open to the public) in which PREPA will have the opportunity to present its IRP filing and answer initial questions regarding the content of the IRP filing from the [Commissioners], the Energy Bureau's staff, its consultants and intervenors.<sup>21</sup> Section 3.06 of Regulation 9021 provides a detailed procedure for the filing of written testimony of the parties' proposed witnesses, as well as the related supporting information and documents. It is worth noting that, the prefiled written testimony and accompanying work-papers must contain all analyses, facts, and calculations necessary for the Energy Bureau to perform a comprehensive analysis and assign it the appropriate probative value.
70. Act 38-2017 does not expressly establish when a motion to intervene must be filed. Nevertheless, in the evaluation of a request for intervention, the agency shall consider, among others, whether petitioner's participation may excessively extend or delay the

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<sup>20</sup> See Article 3.02 of Regulation 9021.

<sup>21</sup> See Article 3.04 of Regulation 9021.





procedure.<sup>22</sup> Therefore, even assuming that a request for intervention can be filed at any time, the agency, at its discretion, may impose limits as to when it might be filed. Section 3.03 of Regulation 9021 specifically considers this situation and establishes a time limit for filing a petition for intervention in an IRP proceeding. The Energy Bureau, mindful of the complex nature of the IRP proceeding, as well as the need to evaluate a proposed IRP in a timely manner, determined that, *prima facie*, the filing of a request for intervention after thirty (30) days of the Energy Bureau's determination that the proposed IRP is complete, could excessively extend or delay the IRP proceeding. However, as expressed before, the Energy Bureau retains its discretion to grant petitions to intervene after the thirty (30) day period established in Section 3.03 of Regulation 9021.

71. A detailed timeline of this proceeding is included in the Final Order and is incorporated herein by reference.<sup>23</sup> However for purposes of addressing VF's Petition for Intervention, we summarize certain relevant procedural steps.
72. This proceeding commenced on March 15, 2018. After a series of procedural steps, on June 7, 2019, PREPA filed its Proposed IRP.<sup>24</sup> On July 3, 2019, the Energy Bureau issued an Order determining that the Proposed IRP was complete and set forth the procedural calendar ("Procedural Calendar") in accordance with Regulation 9021.<sup>25</sup> The Procedural Calendar established the schedule for the Evidentiary Hearing, public hearings, and filing of final briefs and comments. The Energy Bureau also established the deadline to submit petitions to intervene, in accordance with Section 3.03 of Regulation 9021. The Energy Bureau provided additional procedural details regarding the evidentiary hearing in a resolution issued on July 26, 2019.<sup>26</sup>
73. Between July and August of 2019, the Energy Bureau granted intervention status to eighteen (18) private and public entities and granted *Amicus Curiae* status to three (3)

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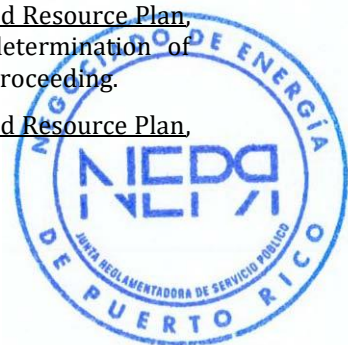
<sup>22</sup> Section 1.2 of Act 38-2017 provides that its provisions shall be interpreted liberally, in such a way as to guarantee that administrative procedures are carried out quickly, fairly and economically and that ensure an equitable solution in the cases under the agency's consideration.

<sup>23</sup> See Final Order at pp. A1-A5.

<sup>24</sup> PREPA's Cover Filing for Accompanying Compliance IRP Filing Due June 7, 2019, Case No. CEPR-AP-2018-0001, June 7, 2019.

<sup>25</sup> Resolution and Order, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001, July 3, 2019. Although the Energy Bureau issued a determination of completeness, it ordered PREPA file additional information as part of the Phase 2 of the IRP proceeding.

<sup>26</sup> Resolution and Order, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001, July 26, 2019.

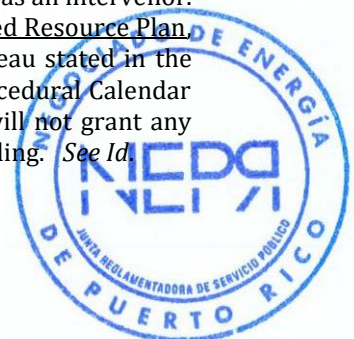


entities. All those entities followed the procedures described above, to be recognized as intervenors or *Amicus Curiae*.<sup>27</sup>

74. On August 13, 2019 and September 4 - 5, 2019, the Energy Bureau held technical hearings to provide an opportunity for PREPA to share information on initial methodologies and assumptions regarding the IRP process and analysis.
75. Thereafter, PREPA and intervenors submitted prefiled witnesses' testimony. Moreover, the Energy Bureau Staff, PREPA and intervenors engaged in an extensive discovery process regarding a diverse range of subjects related to the Proposed IRP, as well as PREPA and intervenors witnesses' testimony.
76. After completing the discovery process, on February 3 - 7, 2020, the Energy Bureau held an Evidentiary Hearing to consider PREPA's Proposed IRP, and the parties' testimony regarding the same. More than thirteen (13) witnesses (experts and non-experts) were cross examined during the Evidentiary Hearing. Thereafter, on February 11, 13, 19, 22, and 25, 2020, the Energy Bureau held public hearings to ensure ample public participation regarding the evaluation of the Proposed IRP. A total of eighty-nine (89) participants provided comments before the Energy Bureau during the public hearings.
77. Between March and April 2020, intervenors and PREPA submitted final legal briefs as well as replies to final legal briefs. On August 24, 2020, the Energy Bureau issued the Final Order.
78. VF appeared in this proceeding for the first time on September 11, 2020, when they requested the Energy Bureau to reconsider the Final Order. VF filed this request without petitioning to be recognized as an intervenor in this proceeding. Shortly thereafter, on October 5, 2020, VF filed a petition to intervene in this proceeding.
79. Not only VF's Motion to Intervene was filed more than a year after the expiration of the term established in Section 3.03 and the Procedural Calendar, but such petition was filed after the discovery process, the technical hearings and the public hearings were completed and, more important, after the intervenors had filed their final briefs and replies, and after the Energy Bureau issued the Final Order. Essentially, VF filed its Motion to Intervene after the adjudicative phase of this process was concluded. As discussed below, granting VF's Motion to Intervene at this stage of the proceeding will unduly delay the implementation of the Approved IRP, thus, will substantially affect the

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<sup>27</sup> Initially, AES Puerto Rico, LP ("AES-PR") was admitted in this proceeding as *Amicus Curiae*. However, after filing a duly substantiated motion, the Energy Bureau changed its status, recognizing AES-PR as an intervenor. See Resolution and Order, *In re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, September 23, 2019 ("September 23 Resolution"). It is worth noting, that the Energy Bureau stated in the September 23 Resolution that it will not consider any requests to modify or extend the Procedural Calendar due to AES-PR change of status. See *Id.* Similarly, the Energy Bureau pointed out that it will not grant any remedies associated with AES-PR's intervention that will unduly extend or delay this proceeding. See *Id.*





public interest of approving and implementing an IRP in a timely manner, in order to ensure the energy sector transformation mandated by Act 120-2018<sup>28</sup> and Act 17-2019.

80. VF requested the Energy Bureau to evaluate VF's Motion to Intervene, pursuant to the criteria established in Section 5.05 of Regulation 8543 and Section 3.5 of Act 38-2017. In general terms, VF alleges that: (a) VF and EIF PR's interests can be adversely affected by this procedure; (b) VF and EIF PR have no other means to protect their interest; (c) VF and EIF PR's interest is not adequately represented by other parties; (d) VF and EIF PR's participation can reasonably help to prepare a more complete record of the procedure; (e) **VF and EIF PR's participation will not excessively delay the procedure**; and (f) VF can provide expert information pertinent to the process.
81. In support of its claim that VF has an interest that could be affected by the outcome of this proceeding, VF and EIF alleged that: (a) EIF PR is the lender of a Waste to Energy ("WTE") project proposed for Puerto Rico in the municipality of Arecibo, which was developed with a power purchase agreement with PREPA; (b) VF is it's collateral agent of EIF; (c) as lender, VF and EIF have a proprietary and legitimate interest in the WTE Project's assets that will be negatively affected if the WTE Project is not included in the Integrated Resource Plan and the Modified Work Plan, as this will negate the value of their assets without due process of law; and (d) there will be discernible, tangible and particular injury, not a conjectural or a hypothetical protected interest.
82. VF further alleged that its participation in the proceeding will be useful and insightful and will thereby assist the Energy Bureau in the development of a thorough record, particularly regarding significant environmental and energy benefits that must be taken into consideration by PREPA and the Energy Bureau. VF's Petition for Intervention also discussed other requirements for the intervention prescribed by Section 3.5 of Act 38-2017.
83. The term set forth in Section 3.03 of Regulation 9021, as well as the Procedural Calendar for filing a petition for intervention in this proceeding, expired on August 2, 2019. VF's Petition for Intervention was filed on October 5, 2020; that is, more than one (1) year after the applicable deadline. In accordance with Section 3.03 of Regulation 9021, VF's Petition for Intervention is untimely and, if granted, *prima facie*, will excessively extend and delay this IRP proceeding.
84. As discussed below, despite VF's untimely filing of its petition for intervention, the Energy Bureau, exercising its discretion pursuant to Article 3.03 (A) of Regulation 9021, evaluated the same and determined that its concession at this stage will excessively extend and delay the instant proceeding, preventing the implementation of

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<sup>28</sup> Known as the *Puerto Rico Electric Power System Transformation Act*.



the Approved IRP in a timely manner. Therefore, the Energy Bureau **DENIES** VF's Motion to Intervene.

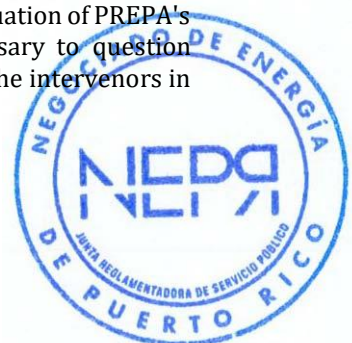
85. The Energy Bureau conducted a structured and orderly proceeding to ensure a fair balance between: (i) the Energy Bureau's duty to comprehensively evaluate PREPA's Proposed IRP and, (ii) the effective and meaningful participation of PREPA, the intervenors, and the public in this proceeding. Such proceeding allowed the parties, as well as the Energy Bureau, to exchange documents and information, conduct discovery, present written testimony of expert and non-expert witnesses, cross examine such witnesses, and present legal memoranda in support of their respective positions. All of this in a proceeding that commenced on March 2018 and extended until August 2020.
86. PREPA and its consultants conducted extensive time-consuming modeling and calculations required for the elaboration, optimization, and evaluation of the Proposed IRP. Likewise, at the request of the Energy Bureau and several intervenors, PREPA conducted additional modeling and analysis, using relevant parameters necessary to fully evaluate the Proposed IRP, as well as developing the Modified Action Plan.
87. Notably, PREPA decided not to include the Energy Answers 79 MW waste to energy project ("WTE Project") in Arecibo as part of the Proposed IRP.<sup>29</sup> Specifically, PREPA considered that, since there are a number of permitting and local opposition challenges for the project, among others, the Governor of Puerto Rico retired the administration endorsement to the project. Therefore, no modeling, consideration, or evaluation of any nature whatsoever regarding the WTE Project was included as part of the elaboration of the Proposed IRP, the Approved IRP or the Modified Action Plan.<sup>30</sup>
88. VF alleges that allowing its intervention may possibly have the consequence of having the WTE Project included in the IRP and the Action Plan.<sup>31</sup> It further alleges that the WTE Project has significant environmental and energy benefits that must be taken into consideration in the elaboration of the Proposed IRP and, consequently in its evaluation by the Energy Bureau, all in accordance Article 2.0[3](H)(2)(d)(ii) of Regulation 9021. Specifically, VF argues that: (i) pursuant Article 2.0[3](H)(2)(d)(ii) of Regulation 9021, the selection criteria of the preferred plan includes environmental impacts and specifies that if associated with quantifiable costs, these shall be included in the

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<sup>29</sup> See Proposed IRP, page 4-16.

<sup>30</sup> PREPA is the *proponent* of the IRP and as such is granted flexibility in the proposal of the resource options, provided, however, that such options are compliant with the public policy and Regulation 9021, while matching or exceeding industry standards. As part of the comprehensive and thorough review and evaluation of PREPA's Proposed IRP, neither the Energy Bureau nor its expert consultants considered it necessary to question PREPA's decision not to include the WTE Project as part of PREPA's Proposed IRP. None of the intervenors in this proceeding questioned such decision either.

<sup>31</sup> VF's Motion to Intervene, p. 2.

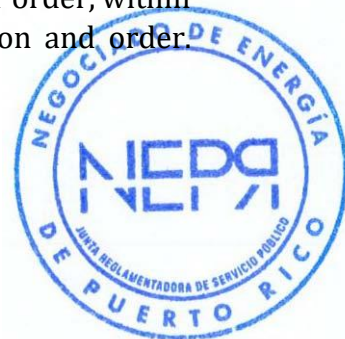


calculation of the present value of revenue calculation;<sup>32</sup> (ii) PREPA is to select a Preferred Resource Plan from among the Resource Plans developed and evaluated in the optimization and sensitivity analysis; and (iii) in selecting the Preferred Resource Plan, PREPA is to use the minimization of the present value of revenue requirements as the primary selection criteria.

89. VF argues that allowing its intervention in this proceeding will help provide more information related to the above-mentioned matters and thereby help to prepare a more complete record of the procedure and the final decision in this matter. VF also proffers its alleged ability to provide expert information and data pertinent to the evaluation of these matters, which can help expedite and provide for timely decisions addressed to protecting the health and well-being of the residents of Puerto Rico.
90. VF implicitly proposes to start again the adjudicative phase of this proceeding. That proposition is untenable. Allowing VF's intervention and petition to evaluate the WTE Project would result in going back to the discovery phase of this process. Moreover, it would require filing additional written testimony, additional cross examination of witnesses in an evidentiary hearing, additional public hearings, additional final arguments and redo the Final Order. Moreover, it may require PREPA to conduct additional time-consuming modeling and calculations required for the elaboration, optimization, and evaluation of a new Proposed IRP, as well as developing a new Proposed Action Plan.
91. VF's intervention not only will excessively extend and delay this proceeding, depriving the people of Puerto Rico of an Approved IRP, but it will also impose severe inconvenience, unnecessary hardship, and a heavy economic burden on all the intervenors, as well as on the Energy Bureau. As the administrative record of this case shows, the parties have invested substantial time and resources to attain a meaningful and effective participation in this proceeding. The Energy Bureau also has devoted substantial resources, time, and effort to fully discharge its duty to conduct this proceeding, and to thoroughly evaluate PREPA's Proposed IRP. Moreover, VF had the same opportunity to timely intervene in this proceeding, as the eighteen (18) intervenors and three (3) *amici* did. VF failed to do so.
92. In summary, granting VF's Motion to Intervene will essentially restart the adjudicative phase of this proceeding. Therefore, the Energy Bureau **DETERMINES** that allowing VF's intervention would excessively extend and delay this case. As such, the Energy Bureau **DENIES** VF's Motion to Intervene.
93. Section 3.15 of Act 38-2017 provides that any party adversely affected by a partial or final resolution or order may file a motion to reconsider the resolution or order, within a term of twenty (20) days from the notification date of the resolution and order.

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<sup>32</sup> *Id.*, p. 3.



Likewise, Section 11.01 of Regulation 8543 provides that any party that is dissatisfied with the final resolution issued by the Energy Bureau may submit a request for reconsideration, in which it will express in detail the grounds in support of his request, and the remedy that, in his opinion, the Energy Bureau should have granted. Given that the Energy Bureau denied VF's Motion to Intervene, VF is not a party in this proceeding. Therefore, VF is not entitled to request the reconsideration of the Final Order.<sup>33</sup> As such, the Energy Bureau **DENIES** VF's Motion for Reconsideration.

94. VF's Motion for Reconsideration shall be stricken from the record.

## IV. PARTIES' MOTIONS FOR RECONSIDERATION

### A. Public Participation and Transparency

#### 1. Procurement plan

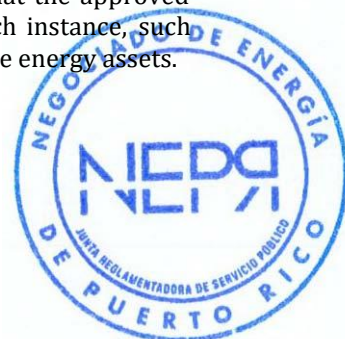
95. SESA-PR argues that the Energy Bureau should specify and clarify that the Procurement Plan, which the Energy Bureau's Final Order on the IRP requires to be filed within sixty (60) days, and the required status report, should be considered public and that copies should be notified to all parties in this proceeding.<sup>34</sup>
96. The LEOs request that the Energy Bureau clarify that the status report and Procurement Plan are to be submitted to this docket, with public notice, and an opportunity for the public to comment.<sup>35</sup>
97. On September 23, 2020, PREPA filed a document titled *Presentation of Status Report on the Development of PREPA's Draft Procurement Plan* ("Status Report on Procurement Plan") in this docket, with service to the Parties. PREPA did not request confidential treatment of any aspect of the status report.

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<sup>33</sup> In its motion for reconsideration, VF argues that the WTE Project is consistent with the Puerto Rico's renewable and diversification energy objective, suggesting that the WTE Project could contribute to Puerto Rico's Renewable Portfolio Standard requirements. *See* VF's Motion for Reconsideration, p. 2. We should point out that Act 17-2019, amended Section 1.4 of Act 82-2010, to specifically exclude the *conversion of municipal solid waste* from the definitions of *Alternative Renewable Energy*. Therefore, currently the Energy Bureau has no evidence that the WTE Project is compliant with Act 17-2019 or that it can contribute to the Renewable Portfolio Standard. Note, however, that if a project qualifies as a renewable energy project under applicable laws, there would be no need for it to be specifically included in the IRP, given the fact that the approved renewable capacity detailed in the Modified Action Plan, is agnostic of technology. In such instance, such project could participate in the competitive bidding process for the procurement of renewable energy assets.

<sup>34</sup> SESA-PR, Motion for Reconsideration, p. 7.

<sup>35</sup> LEOs Motion for Reconsideration, pp. 15-16.



98. On October 6, 2020, the Energy Bureau issued a Resolution and Order in Case No. NEPR-MI-2020-0012<sup>36</sup> (“October 6 Order”), through which it determined appropriate to separate the implementation phase of the Approved IRP and Modified Action Plan from the adjudicative phase related to the evaluation of PREPA’s IRP. Therefore, the Energy Bureau opened Case No. NEPR-MI-2020-0012 to manage the implementation phase of the Approved IRP and Modified Action Plan.
99. The Energy Bureau **CONFIRMS** that the status report and Procurement Plans are to be filed in Case No. NEPR-MI-2020-0012. To the extent that PREPA believes that any portions of the Procurement Plan require confidential treatment, the Energy Bureau **ORDERS** PREPA to structure the document so that confidential aspects can be separated and contained in an appendix, while the general plan and approach should be public.
100. As determined in the October 6 Order, the Energy Bureau may establish several proceedings to ensure the full and timely implementation of the Approved IRP and the Approved Action Plan. The Energy Bureau will make further determinations with respect to such proceedings and the manner in which the general public may participate.

## 2. Stakeholder list

101. The LEOs argue PREPA should be required to compile a list of stakeholders that would receive advance notice of Action Plan filings and proceedings, and these stakeholders should be provided an opportunity to comment.<sup>37</sup> The LEOs support this argument by stating that the Energy Bureau has recognized the meaningful contribution of the intervenor witnesses in this proceeding.
102. PREPA opposes the LEOs’ motion, arguing that the burden to create such a list is unreasonable and burdensome, relative to making the required filings which are made public.<sup>38</sup>
103. The LEOs have not provided details regarding how PREPA would develop a list of stakeholders or what they mean by “advance notice.” The LEOs also were not clear on whether the opportunity to comment they request relates to commenting *to PREPA* on PREPA’s filings in advance of their filing to the Energy Bureau or commenting *to the Energy Bureau* on PREPA’s filings after they are made.

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<sup>36</sup> Resolution and Order, In Re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan, Case No. NEPR-MI-2020-0012, October 6, 2020.

<sup>37</sup> LEOs Motion for Reconsideration, p. 1.

<sup>38</sup> PREPA Opposition, p. 14-15.





104. The Energy Bureau continues to believe that robust stakeholder engagement provides value to its proceedings and that both Puerto Rico and PREPA will benefit if PREPA engages substantively with stakeholders and its customers both inside and outside of Energy Bureau proceedings. Nonetheless, the Energy Bureau **DENIES** the LEOs' request to order PREPA to develop a stakeholder list, provide the entities on that list advance notice of Action Plan filings, and to offer an opportunity to comment on each filing.
105. The Energy Bureau's established processes for notice, including posting filings on the Energy Bureau's website and the distribution of filings to the service list for each proceeding, ensures that the public and parties receive formal notice of filings at the appropriate times. Requiring that some entities receive notice before others would not be equitable.
106. As the LEOs' Motion for Reconsideration points out,<sup>39</sup> the Final Order on the IRP establishes several future filings and proceedings. When filings are made in this IRP proceeding, notice will be provided to the service list and, where appropriate, the Energy Bureau will offer opportunities for comments. Where new proceedings are instituted, the Energy Bureau retains its discretion regarding the manner in which it provides opportunities for engagement for stakeholders and the general public.
107. The Energy Bureau encourages collaboration and consultation between PREPA and stakeholders. Nothing in this Final Resolution on Reconsiderations should be construed as a restriction or discouragement of such engagement.

### 3. Public process for the next IRP

108. The LEOs make several requests regarding the public process for the development and consideration of PREPA's next IRP. In particular, the LEOs argue that the Energy Bureau should guarantee that it will hold at least five (5) public hearings for the next IRP proceeding, especially in locations where citizens will be directly affected.<sup>40</sup> The LEOs further argue that PREPA should have to provide documents in non-technical Spanish, and hold public and stakeholder meetings at the beginning stages of development.<sup>41</sup>
109. In the Final Order, the Energy Bureau values the input provided by both formal parties to this proceeding and through the public hearing process. Nonetheless, the Energy Bureau **DENIES** the LEOs' request to guarantee a particular structure for public hearings on the next IRP proceeding or to hold public hearings in particular types of locations. The Energy Bureau does expect to hold public hearings across the island for

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<sup>39</sup> LEOs Motion for Reconsideration, p. 1.

<sup>40</sup> *Id.*, p. 2.

<sup>41</sup> *Id.*, p. 3.



the next IRP proceeding. This IRP process has illustrated how the transformation of the Puerto Rico energy system will impact communities across Puerto Rico. Therefore, the Energy Bureau does not believe it is possible, at this moment, to rigorously determine that some areas of the island are more or less impacted by the IRP than other areas.

110. The Energy Bureau appreciates the LEOs pointing out ways to further improve PREPA's public process in advance of the next IRP proceeding. While the Energy Bureau **DENIES** the LEOs' request to order that PREPA use particular approaches for public engagement, nonetheless the Energy Bureau **ORDERS** PREPA to include in its detailed report on improving the IRP process required by Paragraph 921 of the Final Order, a detailed discussion and plan for how it will engage with stakeholders and the public early and throughout the IRP development process, including engagement in Spanish and suitable for non-technical audiences.

## **B. New Generation or Conversion at Palo Seco, Mayagüez, Yabucoa, AES, and peaking generators**

### **1. Palo Seco**

111. The LEOs argue that the Energy Bureau should rescind its finding that PREPA may consider new fossil generation at Palo Seco. In support of this request, the LEOs argue that it is not reasonable to assume that the New Fortress LNG terminal would provide support for a natural gas generator at Palo Seco,<sup>42</sup> and that PREPA provided no quantitative analysis of climate change impacts of this generation option.<sup>43</sup>
112. PREPA opposes the LEOs' motion for reconsideration on this point. PREPA argues that "[t]here 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."<sup>44</sup>
113. The Energy Bureau considered the risks associated with development of new fossil-fueled resources at Palo Seco as presented in the record, including risks associated with LNG pipeline infrastructure development. The Final Order explicitly identifies that PREPA's approved preliminary work must "include a siting and permitting feasibility analysis for fueling infrastructure, including any necessary pipelines and terminals."<sup>45</sup>

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<sup>42</sup> *Id.*, pp. 5-8.

<sup>43</sup> *Id.*, pp. 8-9.

<sup>44</sup> PREPA Opposition, pp. 16-17.

<sup>45</sup> Final Order, ¶ 880, p. 273.





If the LEOs are correct that existing LNG infrastructure does not provide value to the Palo Seco site, then PREPA's preliminary work will illuminate this result. The Energy Bureau therefore **DENIES** the LEO's request to rescind its approval of preliminary work regarding Palo Seco based on LNG infrastructure. Part IV, Section G, of this Final Resolution on Reconsiderations addresses the question of climate change impact analysis.

114. The LEOs further argue that the Energy Bureau should reserve the right to stop PREPA's planning for fossil-fuel fired resources at Palo Seco if the predicted cost of that resource exceeds PREPA's projection of the costs, or if renewable and storage prices are falling steadily as predicted.<sup>46</sup>
115. The Energy Bureau **AGREES** it may further limit or stop development activities toward fossil fueled resources at Palo Seco and need not amend its Final Order to state this. The Final Order establishes a process with regular status reports and opportunities for evaluation of the Palo Seco option, which will provide the Energy Bureau with the information and opportunities it may need to provide appropriate oversight over decisions regarding the Palo Seco site.

## 2. Mayagüez and Yabucoa peakers

116. Empire Gas argues that the Energy Bureau should reconsider its Final Order and approve construction of synthetic natural gas ("SNG"; a propane and air mixture) or liquified petroleum gas ("LPG" or "propane") infrastructure at Mayagüez and Yabucoa.<sup>47</sup>
117. Empire Gas further argues that the Energy Bureau should encourage the immediate conversion of PREPA's existing generation at Mayagüez, and its retained peaking generation, to run on SNG/LPG.<sup>48</sup>
118. In support of these requests, Empire Gas states that propane prices have declined and would therefore compete favorably with diesel, and further that the construction cost and time of LPG/SNG infrastructure is substantially less than for natural gas.<sup>49</sup> Empire Gas further argues that peaking generation is particularly well suited to SNG/LPG because of the island's limited natural gas infrastructure and the existing state of LPG infrastructure and delivery in Puerto Rico.<sup>50</sup>

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<sup>46</sup> LEOs Motion for Reconsideration, p. 9.

<sup>47</sup> Empire Gas Motion for Reconsideration, ¶ 2, p. 2.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, p. 3.

<sup>50</sup> *Id.*



119. Empire Gas also requests that the Energy Bureau require that the IRP be modified to state that LPG/SNG is a “viable and practical fuel for PREPA’s need for a clean, affordable fuel.”<sup>51</sup>
120. The Final Order did not approve construction of new generation or fuel handling facilities at Mayagüez or Yabucoa, using LNG or any other fuel. Optimization modeling showed these sites were not selected as part of least cost plans, even when fueled by natural gas.<sup>52</sup> Empire Gas has not claimed that SNG/LPG would be less expensive than natural gas. The Energy Bureau therefore **DENIES** Empire Gas’s request to reconsider its Final Order by approving any new generation infrastructure at Mayagüez or Yabucoa, fueled by SNG/LPG or any other fossil fuel.
121. PREPA considered LPG fuel in the IRP, including a particular potential resource in Bayamón,<sup>53</sup> but did not select any resources that would be fueled with LPG or SNG, primarily due to the expected cost of the fuel relative to natural gas.<sup>54</sup> As such, the Energy Bureau determines that the IRP has included LPG as a viable and practical fuel. The Energy Bureau therefore **FINDS** that Empire Gas’s request that the IRP should be modified to include a specific statement of LPG/SNG’s viability and practicality is moot.
122. The Final Order requires PREPA to evaluate its peaking resources and establish a retirement schedule for limited replacement.<sup>55</sup> Given the finding that LPG/SNG are viable fuels for peaking facilities, and potentially could be cost-effective, PREPA’s ongoing obligation to pursue least-cost power supply for Puerto Rico requires that PREPA should consider SNG and LPG options when evaluating its existing and future peakers (including the distributed peakers and the Mayagüez facility). The Energy Bureau does not have the evidence on the record in this proceeding to order PREPA to convert its peakers. Therefore, the Energy Bureau **DENIES** Empire Gas’s specific request. However, the Energy Bureau **ORDERS** PREPA to evaluate LPG/SNG options for each of its peaking resources as part of the evaluation required by the Final Order, and as part of its ongoing obligation for least-cost service, and to file the results of this evaluation along with any request for approval of investment in (or power purchase agreements with) new thermal peaking resources.

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<sup>51</sup> Id., p. 3-4.

<sup>52</sup> Final Order, ¶ 878, p. 272.

<sup>53</sup> Proposed IRP, p. 7-14 to 7-15.

<sup>54</sup> Proposed IRP, p. 7-15.

<sup>55</sup> Final Order, ¶ 873, p. 271.



### 3. AES

123. The LEOs argue that the Energy Bureau should rescind its finding that PREPA may consider conversion of the AES plant to natural gas in the next IRP. The LEOs support this argument by:

- a. citing the results of scenario analysis conducted by PREPA that included the AES conversion;
- b. stating that the falling cost of renewables and storage, combined with consideration of climate impacts and environmental compliance costs, will make a future conversion less cost-effective;
- c. arguing that the difficulty of LNG imports to southeastern Puerto Rico has not been fully accounted for; and
- d. stating that the conversion would be hampered by clean up and community relations challenges.

124. AES-PR argues that the Energy Bureau should reject the LEOs' Motion for Reconsideration on this point because:

- a. it is premature to conclude that converting the AES facility to natural gas is not part of the least cost plan, because the potential analysis in the next IRP would test that idea;
- b. the evidence in the proceeding indicated that conversion could be part of a least cost plan; and
- c. corrective measures regarding coal residuals at the AES site will proceed with or without conversion to natural gas.<sup>56</sup>

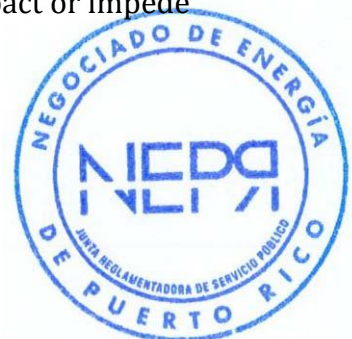
125. PREPA also opposes the LEOs' Motion for Reconsideration on this point. PREPA argues that foreclosing consideration of any resource in the next IRP would be "improperly determining the results of a planning exercise that should take into account all legally permissible alternative ways of satisfying 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."<sup>57</sup>

126. The Energy Bureau values the analysis and perspectives presented in the IRP proceedings. It was unnecessary to evaluate gas conversion of the AES facility in the filed IRP in this docket, because critical decisions regarding such conversion after 2027 are not yet timely. Analysis of conversion of the AES plant in the next IRP would recognize the issues that the LEOs identify, to the extent they would impact or impede

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<sup>56</sup> AES-PR Opposition, pp. 2-4.

<sup>57</sup> PREPA Opposition, pp. 17-18.



the potential for a converted AES facility to be part of a preferred resource plan. The IRP process is intended to include analysis of all reasonable potential options for providing reliable service under Puerto Rico's energy policy and laws. Such consideration could include the AES conversion. The Energy Bureau therefore **DENIES** the LEOs' request to rescind the finding that PREPA may consider AES' conversion in the next IRP.

127. Phase I of the IRP process, as established in Regulation 9021, includes a step in which the Energy Bureau evaluates the reasonableness of the scenarios and resources that PREPA will evaluate in the IRP. As part of the Phase I process in its next IRP, the Energy Bureau **ORDERS** PREPA to describe in detail why (or why not) fuel conversion at AES is among the resource options to be considered in the IRP analysis. If PREPA will consider the conversion as a potential resource, PREPA must describe in detail in its Phase I filing how it intends to acquire the information regarding cost and performance (including emissions and related climate impacts) of a converted plant that would be necessary to accurately model the conversion.

## C. Procurement of Renewable Generators and Storage

### 1. Preferred Resource Plan procurement amounts and costs

128. Windmar argues that the Energy Bureau should remove the finding 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."<sup>58</sup> Windmar states that the condition that costs reflect Scenario S3S2 "cannot be correct" because "it excludes the possibility of contracting PV installation if the market price does not meet the cost assumptions of the proposed IRP."<sup>59</sup> Windmar further argues that it would be contrary to Puerto Rico public policy to fail to meet the RPS requirements if the pricing fails to meet the pricing assumed in the IRP.<sup>60</sup>
129. Windmar states that the Preferred Resource Plan in the Final Order requires planning for the quantities in S3S2B, without conditioning on the price.<sup>61</sup>
130. Windmar claims that the conditionality related to price "cast doubt on"<sup>62</sup> the Energy Bureau's order to "to develop solar PV and battery storage resources at the S3S2B level

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<sup>58</sup> Final Order, ¶ 15, p. 4.

<sup>59</sup> Windmar Motion for Reconsideration, p. 3.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*, p. 6.



in accordance with the competitive procurement protocol as specified in the Modified Action Plan.”<sup>63</sup>

131. In PREPA’s filing opposing Windmar’s request for reconsideration, PREPA states that “[i]t is entirely possible that the market sounding... will show that renewable resources and battery storage cannot in fact be procured at the low costs the modified Action Plan assumes.”<sup>64</sup>
132. PREPA describes two reasons pricing and development schedules might fail to meet the levels of S3S2.<sup>65</sup> The first is that PRPEA remains under Title III of PROMESA and is thus not the creditworthy counterparty assumed in the IRP. The second is that the Financial Oversight and Management Board’s August 17, 2020 rejection of the full set of re-negotiated PPOAs could result in a chilling effect on the market because it is adverse to solar developers who have been active in Puerto Rico.
133. PREPA argues that the Energy Bureau should deny Windmar’s request for reconsideration because requiring S3S2 levels of procurement regardless of price would be counter to the interests of consumers and counter to Puerto Rico energy policy.<sup>66</sup> PREPA argues that Act 17-2019 “does not compel the adoption of resource plans that would add these [renewable] resources regardless of their cost.”<sup>67</sup>
134. The Energy Bureau **CLARIFIES** that the RPS requirements, including for near-term dates (20% for 2022) will be met whether or not market prices arising from procurement processes are equal to, greater than, or less than the solar PV pricing assumptions used in the IRP for planning, either those associated with Scenario 3 or the prices associated with Scenario 4 (and the ESM Scenario).
135. Paragraph 15 of the Final Order statement that “...increased deployment solar PV and battery resources should be pursued... if market pricing of those resources aligns with S3S2”, refers to the *difference* in total solar PV quantities and deployment schedules that would result under S3S2B versus either the ESM Scenario or S4S2B. The Energy Bureau **CLARIFIES** that Paragraph 15 **does not condition deployment of solar PV and battery resources on market prices equal to (or less than) the cost assumptions in PREPA’s filed IRP for Scenario S3S2B.** Paragraph 15 refers to the incremental quantities of solar PV in S3S2B (above that of S4S2 or ESM) which reach 1,800 MW by 2030. The early year (*i.e.*, 2021-2025) deployment schedules for solar PV

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<sup>63</sup> Final Order, ¶ 60, p. 10.

<sup>64</sup> PREPA Opposition, p. 6.

<sup>65</sup> *Id.*, footnote 7 on p. 6.

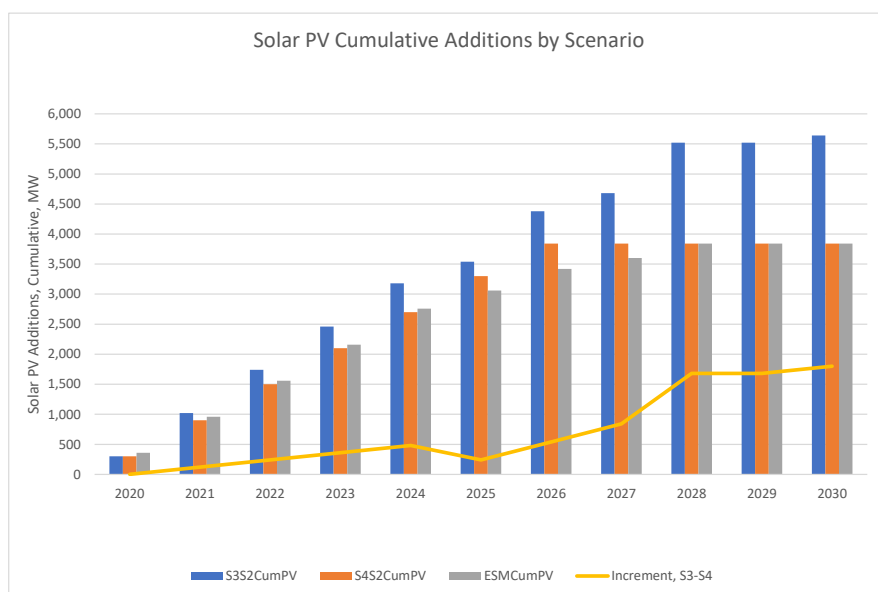
<sup>66</sup> *Id.*, p. 6.

<sup>67</sup> *Id.*, p. 7.



and battery resources differs by relatively small amounts across the scenarios,<sup>68</sup> and reaches a 240 MW difference by 2025, as seen in the chart below. The detailed manner PREPA and the Energy Bureau will evaluate the results of competitive procurement processes for solar PV, assess the effect of PREPA's creditworthiness status on the RFP pricing outcomes, and determine deployment quantities and schedules over the Action Plan period (through 2025) will be addressed in the Energy Bureau's Procurement Plan proceeding.

Figure 1. Scenario S3S2B, S4S2B, ESM (Base) – Solar PV Cumulative Additions



Source: PREPA responses to ROI 10-5 (Attachments 3 and 1) and ROI 9-1 (Attachment 7).

136. The IRP pricing benchmarks for solar PV, battery energy storage, and potentially new gas-fired combined cycle technologies assumed PREPA was a creditworthy counterparty. However, the Energy Bureau **DETERMINES** that final market pricing will emerge from the competitive bidding process the Energy Bureau designed and PREPA is required to follow. Such competitive bidding process will take into consideration current data and conditions, which includes the fact that PREPA is still subject to the Title III process. As current conditions change, including PREPA emerging from the Title III process, the Energy Bureau expects a comparable effect on the competitive bidding process. The tranche schedule established in the Final Order for the procurement of renewable resources will capture such changes.

<sup>68</sup> PREPA noted that the key differentiation between the S3S2B and S4S2B plans was the decision concerning the combined cycle plant at Palo Seco, and the amounts of PV developed after 2025. See Final Order, ¶ 612, p. 188.





## 2. Resource prices

137. Windmar argues that the Energy Bureau should amend the Final Order to include a statement that market prices for resources, established through a competitive procurement process, are more relevant than cost assumptions in the IRP analysis.<sup>69</sup>
138. There is no need to amend the Final Order to state something which is clear throughout the IRP and the Final Order: that PREPA ratepayers pay for the costs of the actual resources in PREPA's portfolio, rather than assumed costs. The Energy Bureau therefore **DENIES** Windmar's request to amend the Final Order in this way.
139. The Energy Bureau further elaborates that PREPA is required to use competitive market forces to procure resources at the lowest cost to ratepayers. It is essential to benchmark market prices against costs and prices seen elsewhere (and as collected by resources such as the NREL technology baseline) as part of an approach to establishing that procurement processes have been competitive. If market prices offered in response to a solicitation are unduly higher than expected (after accounting for PREPA's creditworthiness, local factors such as the cost of interconnection, and other appropriate factors), it could be a prudent course of action for PREPA to select fewer resources than expected, and defer capacity to a future procurement within the scheduled tranches as detailed in the Final Order. Indeed, the offered prices from solar PV and storage resources, and their relation to those expected from the IRP, will inform the Energy Bureau's assessment as to whether to approve fossil fuel resources to be developed at Palo Seco. It is in the interests of both PREPA's ratepayers and developers of solar PV and storage for PREPA to attract a vibrant and competitive set of proposals through its procurement processes.

## 3. Distributed generation amounts

140. Windmar requests that the Energy Bureau "clarify and emphasize" that the level of distributed generation modeled in the IRP is "not a limitation on the amount that prosumers may deploy."<sup>70</sup>
141. On the other hand, PREPA states that "Windmar's concern is baseless.... 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 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."<sup>71</sup>

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<sup>69</sup> Windmar Motion for Reconsideration, p. 8

<sup>70</sup> *Id.*, p. 4.

<sup>71</sup> PREPA Opposition, p. 8.





142. In establishing the Modified Action Plan and Modified Preferred Resource Plan, the Energy Bureau considered the total resources deployed in Puerto Rico, and explicitly included the DG modeled by PREPA in the total resource mix.<sup>72</sup> The Final Order further states explicitly that consumer provision of distributed generation is an option for developing the preferred portfolio of renewable resources.<sup>73</sup> It is therefore unnecessary to modify the Final Order to provide the clarification that Windmar requests. Therefore, the Energy Bureau **DENIES** Windmar's request.

#### 4. Utility-scale and distributed generation

143. The LEOs request that the Energy Bureau amend the Final Order to require PREPA to “choose distributed generation over utility-scale generation, when the former is more cost-effective.”<sup>74</sup>

144. The LEOs argue that such a requirement would be parallel to the Final Order's requirement for PREPA to utilize distributed storage resources if such resources are more cost-effective than utility-scale storage.<sup>75</sup> The LEOs further argue that choosing distributed generation would be supported by the Energy Bureau's findings that distributed generation is part of an overall resiliency solution and that distributed generation lowers line losses.<sup>76</sup>

145. PREPA opposes the LEOs' request for reconsideration. PREPA argues that a mandate to select distributed generation is “too simplistic to be imposed as an absolute requirement.” PREPA further argues that determining whether a resource is “more cost-effective” than another “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.”<sup>77</sup>

146. The principles of least-cost resource planning that underlie the IRP require a whole-system integrated view of costs and cost-effectiveness. When making resource choices, PREPA should be taking a whole-system view and selecting options that will advance Puerto Rico public policy and provide service at the lowest cost over time. This includes evaluation of distributed and utility-scale generation resources. Evidence in this proceeding showed that net metered solar generation has ratepayer costs that significantly exceed the expected costs of utility-scale PPOAs, when evaluated solely

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<sup>72</sup> Final Order, ¶17, p. 4.

<sup>73</sup> *Id.*

<sup>74</sup> LEOs Motion for Reconsideration, pp. 16-17

<sup>75</sup> *Id.*, p. 16, referencing Final Order, ¶ 46, p. 8.

<sup>76</sup> *Id.*, p. 17.

<sup>77</sup> PREPA Opposition, pp. 19-20.



based on energy and capacity. Distributed generation resources can provide benefits, such as lower line losses and (when integrated with storage), the potential to avoid transmission and/or distribution system expenditures and site-specific resilience, that utility-scale generation does not. PREPA has a continuing obligation to weigh the costs and benefits of resources and to select cost-effective options. The Final Order need not be modified to state this fact. Therefore, the Energy Bureau **DENIES** the LEOs' request.

## 5. Utility-installed distributed generation

147. The LEOs request that the Energy Bureau reconsider its Final Order to require that PREPA “initiate a procurement process to obtain [rooftop solar and storage] systems, and then set [trained] workers to the task of installing and interconnecting utility-owned rooftop solar + storage systems.”<sup>78</sup>
148. PREPA opposes this request, stating that “[t]his 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.”<sup>79</sup>
149. Puerto Rico’s legislative policy direction is for acquiring resources through market-based approaches to third-party ownership rather than growing the fleet of utility-owned resources. LEOs’ proposed approach would be counter to this policy direction. The Energy Bureau **DENIES** the LEOs’ request.

## 6. Renewable portfolio standard requirements

150. Windmar requests that the Energy Bureau amend the Final Order to require that “prices for operating PPOAs should continue to reflect the price for energy and the price for RECs and the pricing for any new PPOA whether renegotiated non-operating PPOAs or new procured (RFP) utility-scale PPOAs should have a distinct price for the energy and a distinct price for the RECs.”<sup>80</sup>
151. Windmar argues that the lack of a requirement in the Final Order for PREPA to acquire RECs from prosumer systems deprives prosumers from participating in the Modified Action Plan renewable energy goals.<sup>81</sup> Therefore, Windmar requests that the

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<sup>78</sup> LEOs Motion for Reconsideration, p. 18.

<sup>79</sup> PREPA Opposition, p. 20.

<sup>80</sup> Windmar Motion for Reconsideration, p. 5.

<sup>81</sup> *Id.*, p. 6.



Energy Bureau order that “procurement for prosumers DG RECs should be implemented in accordance with Law 17.”<sup>82</sup>

152. Windmar further argues that the Energy Bureau should clarify that the solar PV cost used in the IRP is “ONLY for energy and that the REC price... [is] not included in the assume[d] cost.”<sup>83</sup> Windmar further states that a simplifying assumption that PREPA made in the IRP analysis regarding the cost of renewable resources in operation or pre-operation is incorrect.<sup>84</sup>
153. Windmar also request that the Energy Bureau fine PREPA for failure to purchase and retire RECs from prosumers in order to achieve RPS compliance.<sup>85</sup>
154. PREPA opposes Windmar’s requests. PREPA states that Windmar is asking the Energy Bureau to reconsider determinations it did not make, and that the scope of Windmar’s requests is beyond this proceeding and this should be addressed elsewhere.<sup>86</sup> PREPA states that the Final Order does not mandate particular treatment of RECs or include any decision regarding RECs.<sup>87</sup>
155. PREPA argues that it should not face penalties regarding compliance with the RPS because the Energy Bureau has not yet promulgated REC market regulations that would govern determinations of RPS compliance, and that this is an issue for another proceeding rather than the IRP.<sup>88</sup>
156. PREPA also argues there is no legal basis for requiring that energy and RECs have separate pricing in PPOAs, and this is a matter for negotiation between the parties to a PPOA.<sup>89</sup>
157. PREPA states that the Modified Action Plan does not preclude PREPA from acquiring RECs from prosumers to use for compliance with the RPS.<sup>90</sup>
158. Least cost resource planning requires that PREPA and the Energy Bureau consider all costs borne by Puerto Rico and PREPA ratepayers as a result of electric portfolio choices. It is therefore reasonable to build the ratepayer costs of resources from the costs to develop those resources, plus a reasonable profit. Cost to develop and operate

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*, p. 8.

<sup>84</sup> *Id.*, p. 9.

<sup>85</sup> *Id.* pp. 9-10.

<sup>86</sup> PREPA Opposition, p. 9.

<sup>87</sup> *Id.*, pp. 9-10.

<sup>88</sup> *Id.*, p. 10.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*, p. 11.



a generator is not differentiated between the cost to deliver energy (and other grid services) and the cost to deliver RECs. The costs considered in the IRP are therefore, rightfully, the costs to deliver the full output of generators to PREPA, including RECs. It does not matter for the IRP whether or not the contracts separate energy and RECs. Therefore, the Energy Bureau **DENIES** Windmar's request to require that contracts have distinct prices for energy and RECs.

159. Simplifying assumptions, such as those utilized by PREPA in the IRP, regarding the pricing for existing or contracted resources without fuel costs, are acceptable because they have no impact on the future procurement of resources to execute the Modified Action Plan or on the design of that Plan. Based on the above, the Energy Bureau **DENIES** Windmar's request to require any changes to PREPA's assumptions or statements regarding these resources in the IRP.
160. Windmar raises several questions related to the retirement of RECs for RPS compliance, and regarding the appropriate mechanisms to acquire and retire RECs from prosumers for RPS compliance. These questions are best addressed in the open docket for RECs and the RPS, Case No. NEPR-MI-2019-0010.<sup>91</sup> Thus, the Energy Bureau **DENIES** Windmar's request to modify the Final Order to address the matters currently being addressed as part of the aforementioned proceeding.

## 7. Interconnection

161. The LEOs request that the Energy Bureau add to the Final Order a requirement for PREPA to submit a timeline for implementation of Comunicado Técnico 19-02 as part of the Procurement Plan.<sup>92</sup>
162. The Energy Bureau **DENIES** the LEOs' request. As a matter of process, the Procurement Plan required by the Final Order is not an appropriate venue for a timeline regarding updated interconnection processes. Establishing further specific timelines, beyond those required in the Final Order, for improving aspects of PREPA's operations is not necessary at this time and could be counterproductive by forcing PREPA to shift limited resources away from other critical matters (including those with timelines established in the Final Order).

## 8. Studies

163. The LEOs request that the Energy Bureau reconsider its Final Order to include a requirement for a minimum amount of spending on the hydroelectric and renewable

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<sup>91</sup> In Re: Regulation on Renewable Energy Certificates Market Case No. NEPR-MI-2019-0010.

<sup>92</sup> LEOs Motion for Reconsideration, p. 17.



energy feasibility studies required by the Final Order, in order to “aid PREPA in allocating resources properly and creating its Fiscal Plan.”<sup>93</sup>

164. PREPA opposes the LEOs’ request, arguing that “[t]here 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.”<sup>94</sup>

165. The Energy Bureau **DENIES** the LEOs’ request. The Energy Bureau anticipates that PREPA will develop scopes of work for the required studies that are sufficient to meet the requirements of the Final Order and provide necessary insights to the next IRP and other planning processes. Competitive RFP processes, when combined with sufficient scopes, should optimize the use of ratepayer funds for these studies.

#### **D. Energy Efficiency**

166. SESA-PR requests that the Energy Bureau establish specific timeframes for PREPA to comply with implementation of the future energy efficiency (“EE”) regulation, to advance and measure progress on EE.<sup>95</sup>

167. The LEOs argue that, to ensure that PREPA takes all necessary steps to achieve the maximum level of EE, the Energy Bureau should:

- a. require that PREPA set aside a budget for EE in its next Fiscal Plan;<sup>96</sup>
- b. carefully review the costs of PREPA’s EE programs;<sup>97</sup>
- c. require PREPA to submit a solar water heater program to the Energy Bureau for approval;<sup>98</sup> and
- d. require PREPA to design and implement programs to increase customer awareness of the cost savings potential of EE programs.<sup>99</sup>

168. PREPA opposes SESA-PR’s motion to request additional deadlines and timeframes. PREPA argues that it must comply with the EE regulation, and “the question is how

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<sup>93</sup> *Id.*, p. 16.

<sup>94</sup> PREPA Opposition, p. 19.

<sup>95</sup> SESA-PR Motion for Reconsideration, p. 7.

<sup>96</sup> LEOs Motion for Reconsideration, p. 18.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*, p. 19.

<sup>99</sup> *Id.*



quickly PREPA can do what is required, given the many other demands on its resources.”<sup>100</sup> PREPA states that adding deadlines reduces flexibility and could make it harder to complete the necessary tasks. PREPA argues that it is motivated to work as quickly as it can in this and other areas to achieve certainty for planning.<sup>101</sup>

169. As described in the Final Order,<sup>102</sup> the Energy Bureau has conducted a stakeholder process regarding energy efficiency, and the next step is the completion of the EE Regulation rulemaking procedure. The EE regulations will establish responsibilities and timeframes for responsible entities to ensure success of EE implementation in Puerto Rico. The Energy Bureau **DENIES** SESA-PR’s request to establish specific timeframes for PREPA to comply with EE program implementation in this IRP proceeding because those timeframes are properly established in the EE Rulemaking process.
170. Similarly, the Energy Bureau **DENIES** the LEOs’ request to require PREPA in this IRP proceeding to set aside a budget for EE in its next Fiscal Plan. The EE Regulation will establish the appropriate budgetary and funding structure for EE.
171. The Energy Bureau agrees that the evidence presented in this proceeding indicates that solar water heaters are likely to be a cost-effective EE resource, and that successful program implementation will include programs to increase customer awareness of EE. However, the Energy Bureau **DENIES** the LEOs’ request to require in this IRP proceeding that PREPA develop and submit a solar water heater program to the Energy Bureau, or design and implement EE awareness programs, because program design and approval will be governed by the EE Regulation.
172. The Energy Bureau intends to review the costs and benefits of EE programs carefully. Affirming this fact does not require changes to the Final Order. In the Final Order, the Energy Bureau found that the evidence in this proceeding confirms that EE is a lower cost resource than any supply-side resource considered in the IRP.<sup>103</sup> This finding would support the objective to achieve all available cost-effective EE, and this amount exceeds 2% per year.<sup>104</sup> The Energy Bureau considers the program costs and performance that PREPA presented in the IRP to be indicative, but not to reflect the final program designs and costs that would be presented to the Energy Bureau for approval. While PREPA’s assumed average cost of energy from EE was 4.8 cents per

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<sup>100</sup> PREPA Opposition, p. 13.

<sup>101</sup> *Id.*

<sup>102</sup> Final Order, p. 277, ¶ 889.

<sup>103</sup> *Id.*, pp. 67-68, ¶ 261.

<sup>104</sup> *Id.*, p. 276, ¶ 888.





kWh, the Energy Bureau noted that EE programs in Hawaii achieve savings at a cost of 2.1 cents per kWh.<sup>105</sup>

## E. Demand Response

173. SESA-PR requests that the Energy Bureau establish specific timeframes for PREPA to develop internal and external systems and offerings to engage demand response (“DR”) resources across all customer classes.<sup>106</sup>
174. The LEOs argue that PREPA should be required to submit a status update by December 2020 regarding the costs to acquire 250 MW of DR from large commercial and industrial customers, as discussed in paragraph 892 of the Final Order and in Case No. NEPR-AP-2020-0001.<sup>107</sup>
175. The LEOs further request that the Energy Bureau require PREPA to submit, by December 2020, a tariff that allows PREPA to pay distributed storage owners for DR services.<sup>108</sup>
176. PREPA opposes the LEOs’ motion, arguing that the scope of the request goes beyond the IRP proceeding and should be addressed in Case No. NEPR-MI-2019-0015.<sup>109</sup>
177. On September 21, 2020, subsequent to the Final Order and the filing of the Motions for Reconsideration, the Energy Bureau issued a draft Regulation on Demand Response.<sup>110</sup> This draft Regulation would establish a structure and timeframes for PREPA to develop demand response plans and implement programs. The appropriate venue to establish timeframes is in the DR regulation and proceedings that may spring from that regulation, and the Energy Bureau therefore **DENIES** SESA-PR’s request that the Energy Bureau reconsider its Final Order in this proceeding on this point.
178. Similarly, the Energy Bureau **DENIES** the LEO’s request to require that PREPA submit a tariff for DR services from distributed energy storage resources by December 2020. The timeline and program design for such an offering would be set by the DR Regulation. The Energy Bureau nonetheless **REITERATES** that PREPA must quickly pursue plans (using RFPs, tariffs, rates and/or direct utility programs) to harness the cost-effective distributed storage resource through procurement of a virtual power

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<sup>105</sup> *Id.*, p. 67, ¶ 201.

<sup>106</sup> SESA-PR Motion for Reconsideration, p. 7.

<sup>107</sup> LEOs Motion for Reconsideration, p. 20.

<sup>108</sup> *Id.*

<sup>109</sup> PREPA opposition, p. 20-21.

<sup>110</sup> Resolution In Re: Regulation for Energy Efficiency and Demand Response, September 21, 2020, Commencement of Rulemaking Procedure on the Proposed Demand Response Regulation, NEPR-MI-2019-0015.





plant resource with distributed storage resources as required by paragraph 496 of the Final Order.<sup>111</sup>

179. In its regular status reports filed in Case No. NEPR-AP-2020-0001, PREPA has reported no substantial progress in procuring DR resources and communications with its large commercial and industrial customers, as directed by the Energy Bureau's Order of May 22, 2020.
180. The Energy Bureau **REITERATES** the importance of both, the potential DR resource represented by large commercial and industrial customers and the importance of PREPA reporting, in detail, regarding its efforts to develop this resource in its status reports. The Energy Bureau is disappointed that PREPA's status reports of August 31, 2020 and September 15, 2020, did not address this requirement.
181. The Energy Bureau recognizes that PREPA cannot force its customers to participate in DR programs, or even to engage in conversations regarding DR, but without details on PREPA's efforts it cannot be assured that PREPA has exhausted all reasonable and cost-effective options to acquire this resource. The Energy Bureau also recognizes that the peak summer season of 2020 has passed.
182. The Energy Bureau **GRANTS** the LEOs' request to reconsider the Final Order regarding a DR status report. Therefore, the Energy Bureau **ORDERS** PREPA to file, on or before December 30, 2020, a comprehensive status report on its efforts to undertake an aggressive and expeditious negotiation, coordination, and scheduling process with high demand industrial and commercial clients regarding demand response during the peak demand season of 2020. The status report must also include lessons learned and PREPA's plans for how to best engage with these customers and develop the potential demand response resource for the summer of 2021 and other future periods of high load.

## F. Transmission

183. The LEOs argue that the Energy Bureau "Should Reconsider its Order on transmission spending and prioritize spending on alternatives that minimize burdens on the Transmission System, such as Energy Efficiency, Demand Response, and Rooftop Solar + Storage."<sup>112</sup> The LEOs request that PREPA's transmission spending be submitted in specific Energy Bureau dockets. The LEOs reference reliability concerns associated with the South-to-North transmission circuits and cite the PREPA 2020 Fiscal Plan that indicates vulnerabilities associated with those lines.<sup>113</sup>

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<sup>111</sup> Final Order, p. 141, ¶ 496.

<sup>112</sup> LEOs Motion for Reconsideration, p. 13.

<sup>113</sup> *Id.*, p. 14.



184. PREPA opposes the LEOs' motion, arguing that "[t]aking seriously LEOs' 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 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."<sup>114</sup> PREPA argues that the LEOs' other suggestions "are premature or ask the Energy Bureau to direct PREPA to take steps that are unnecessary."<sup>115</sup>
185. The transmission spending approval for existing transmission assets included in the Final Order does not require reconsideration. As noted in the Final Order,<sup>116</sup> both Act 17-2019 and FEMA require upgrades to the existing transmission system, for compliance with Codes and Standards. The transmission expenditures required will allow the existing system to be brought into this compliance. This investment to upgrade existing equipment, along with improved vegetation management practices will be required for existing transmission assets to reliably contribute towards serving Puerto Rico electric load even under the most aggressive and successful distributed generation advance over the next decade and beyond.<sup>117</sup> The best solution for meeting Puerto Rico's resiliency needs will combine use of distributed solutions, and utilization of the valuable existing transmission grid - which will not be completely supplanted by distributed solutions alone.
186. The Energy Bureau further notes that the 2020 Fiscal Plan also indicates, reasonably, that "[a]dditional work remains to strengthen the infrastructure to prevent future adverse weather events from causing a similar scale of damage [as caused by hurricanes Irma and Maria]" and that future climate risk mitigation will include "extensive grid modernization investments..."<sup>118</sup> The approval of transmission system investment for existing assets address the indications seen in the 2020 Fiscal Plan.
187. The Final Order stated that any specific transmission system spending required to upgrade the existing grid to meet Codes and Standards requirements must "timely seek the Energy Bureau's approval".<sup>119</sup> The Energy Bureau **CLARIFIES** that such requests for approval will be made by PREPA in a separate docket or dockets with the opportunity for comment in accordance with the Energy Bureau's regulations.
188. The LEOs also note a need for the Energy Bureau to emphasize compliance with its Final Regulation 9028 on Microgrid Development during the Optimization

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<sup>114</sup> PREPA Opposition, pp. 18-19.

<sup>115</sup> *Id.*, p. 19.

<sup>116</sup> Final Order, ¶ 745.

<sup>117</sup> *Id.*, ¶¶ 743 and 745.

<sup>118</sup> 2020 Fiscal Plan for the Puerto Rico Electric Power Authority, pp. 57-58.

<sup>119</sup> Final Order, ¶ 746.



Proceeding.<sup>120</sup> As noted in the Final Order, the Energy Bureau supports the use of Microgrids as a critical part of Puerto Rico's resiliency needs<sup>121</sup> and will ensure that their consideration is directly analyzed and incorporated into the Optimization Proceeding. The Energy Bureau fully expects, as PREPA noted in its filing, that microgrids will indeed be the best option in parts of Puerto Rico, and the Optimization Proceeding will forcefully examine where it might be "impractical or excessively costly"<sup>122</sup> to use a MiniGrid approach.

## G. Environmental Impact Assessment

189. Section 1.9(3)(H) of Act 17-2019 requires that the IRP contain "environmental impact assessments related to air emissions and water consumption, solid waste, and other factors such as climate change."<sup>123</sup> The LEOs request that the Energy Bureau rescind its finding that PREPA completed an adequate environmental impact assessment to meet this statutory requirement.<sup>124</sup> The LEOs request that the Energy Bureau require PREPA to address climate change in this IRP, in addition to the next IRP.<sup>125</sup> The LEOs also request that PREPA be required to complete a climate change analysis, including lifecycle GHG analysis, for any resource proposal, and that PREPA be required to include analysis of extreme weather resiliency in all resource proposals.<sup>126</sup>
190. The LEOs support their argument by citing to the damages of climate change to Puerto Rico, including the risks to the electric grid and generation resources.<sup>127</sup> The LEOs specifically state that the Palo Seco site is subject to tsunami and coastal flooding risks.<sup>128</sup> The LEOs further state that accounting for lifecycle emissions from gas plants would make these plants less likely to be selected in a resource plan.<sup>129</sup>
191. PREPA opposes the LEOs' motion and argues there is no basis for reconsidering the Energy Bureau's conclusion that the IRP meets the requirements of Section 1.9(3)(H) of Act 17-2019.<sup>130</sup> PREPA states that the environmental impact assessment in its

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<sup>120</sup> LEOs Motion for Reconsideration, p. 15.

<sup>121</sup> Final Order, ¶¶ 712-716

<sup>122</sup> Final Order, ¶ 714, p. 220, quoting from PREPA's Appendix 1 at page 2-8.

<sup>123</sup> Act 17-2019, Section 1.9(3)(H)

<sup>124</sup> LEOs Motion for Reconsideration, p. 3.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*, p. 5.

<sup>127</sup> *Id.*, pp. 3-4.

<sup>128</sup> *Id.*, pp. 4-5.

<sup>129</sup> *Id.*, p. 4.

<sup>130</sup> PREPA Opposition, p. 15.



Proposed IRP complied fully with the requirements that applied when it was prepared. PREPA states it submitted a complete environmental impact assessment to the Energy Bureau on February 12, 2019, which was before passing Act 17-2019 on April 11, 2019.

192. PREPA argues that it is unnecessary to place further requirements on climate change analysis for the next IRP, because PREPA will have to follow then-applicable law, regulations, and directives, including the directive to include a climate change assessment contained in the Final Order.<sup>131</sup>
193. PREPA further argues that requiring a climate change assessment for every proposed resource would be “overbroad, burdensome, and impractical” because some resources (such as solar PV, wind, and battery storage) do not emit GHGs during their operations.<sup>132</sup>
194. PREPA argues that evaluation of extreme weather impacts on resources are appropriate when the resources are being evaluated for potential selection for development. Therefore, PREPA anticipates that such an analysis of the Palo Seco site would be conducted if and when PREPA determines the sufficient details of the potential development at that site.<sup>133</sup>
195. The Energy Bureau’s March 14, 2019 order regarding the completeness of PREPA’s February 2019 filing of a draft IRP<sup>134</sup> predated the April 11, 2019 passage of Act 17-2019. It therefore did not direct PREPA to change its treatment or analysis of environmental impacts and risks in response to the language in Act 17-2019. There was no requirement in the law governing IRPs predating Act 17-2019 to conduct an “environmental impact assessment,” nor is there such a requirement in the Energy Bureau’s IRP Regulation 9021.
196. On the April 1, 2019 technical conference in the instant case, the Energy Bureau and PREPA discussed the expected enactment of Senate Bill 1121 that became Act 17-2019. On April 5, 2019, the Energy Bureau ordered PREPA to model scenarios consistent with achieving the modified RPS requirements in SB 1121.<sup>135</sup> The Energy Bureau did not order PREPA to incorporate other aspects of the pending legislation into its IRP.

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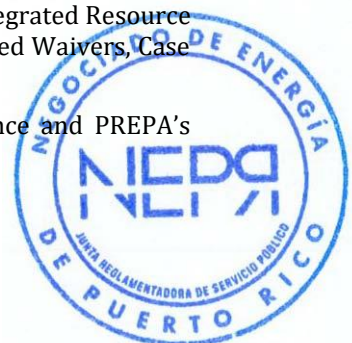
<sup>131</sup> *Id.*, p. 15.

<sup>132</sup> *Id.*, pp. 15-16.

<sup>133</sup> *Id.*, p. 16.

<sup>134</sup> See Resolution and Order, Completeness of the Puerto Rico Electric Power Authority's Integrated Resource Plan Filing, Confidential Treatment of Portions of the Integrated Resource Plan, and Requested Waivers, Case No. CEPR-AP-2018-0001, March 14, 2019.

<sup>135</sup> Resolution and Order Regarding topics discussed at April 1, 2019 Technical Conference and PREPA's Clarification Questions, Case No. CEPR-AP-2018-0001, April 5, 2019.



197. Regulation 9021 includes requirements to evaluate the impacts of environmental regulations on resource planning decisions,<sup>136</sup> and PREPA completed these assessments in Section 4.3 of the Proposed IRP. These assessments include a discussion of the potential impacts of climate change policies.<sup>137</sup>
198. The Energy Bureau required PREPA to conduct modeling runs that included the impact of a cost of carbon dioxide emissions, PREPA conducted these runs, and they are part of the record in this proceeding.<sup>138</sup> The Energy Bureau also directly considered carbon emission profile differences between PREPA's proposed Preferred Resource Plan (ESM) and the Modified Preferred Resource Plan (S3S2B) and included the mitigating effects of a lower carbon profile associated with S3S2B when determining the resource path for PREPA to pursue.<sup>139</sup>
199. The requirement for an environmental impact assessment was added to the statutes governing IRPs relatively late in the process for the development of this IRP. Notwithstanding, the Energy Bureau **DETERMINES** that the assessment of environmental impacts in the IRP is sufficient.
200. Informed by the facts in the record and the course of the IRP process, the Energy Bureau **DENIES** the LEOs' request to reconsider its finding that PREPA has met the requirements of Section 1.9(3)(H) of Act 17-2019 sufficiently for this IRP.
201. The Energy Bureau also **DENIES** the LEOs' request to revise the Final Order to require climate change assessments or extreme weather analyses in each resource proposal. Where such assessments are critical, as they may be in the case of potential fossil fueled generation at Palo Seco, PREPA already knows and expects to conduct such assessments.<sup>140</sup>

#### H. Applicability of the Final Order to PREPA's successor

202. SESA-PR requested in its motion for reconsideration "explicit clarity that the IRP order applies to any successor concessionaire."<sup>141</sup> Paragraph (15) of Article 1.6 of Act 17-2019 establishes that, as part of the energy public policy, every Electric Service Company must comply with the IRP, as approved by the Energy Bureau. Furthermore, Act 120-2018 defines the term "PREPA Transaction" as "[a]ny and all transactions

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<sup>136</sup> Regulation 9021 Sections 2.03(B)(1), 2.03(G)(1), 2.03 (G)(2), 2.03 (H)(2)(b)(ii), and 2.03(H)(2)(d).

<sup>137</sup> Proposed IRP, p. 4-17 and following.

<sup>138</sup> Energy Bureau-PREPA ROI 6, September 6, 2019; PREPA responded in parts on September 27 and October 4, 15, and 18, 2019.

<sup>139</sup> Final Order, ¶ 625.

<sup>140</sup> PREPA Opposition, p. 16.

<sup>141</sup> SESA-PR, Motion for Reconsideration, p. 7.





carried out in accordance with the provisions of Act No. 29-2009 and this Act, whereby PREPA or the Government of Puerto Rico establish **one or more Partnerships in connection with any of PREPA's functions, services, or facilities**, or a Sales Contract for PREPA Assets related to electric power generation.”<sup>142</sup> Finally, Section 8(e) of Act 120-2018 establishes that every Contractor under a Partnership or Sales Contract in connection with a PREPA Transaction shall be deemed to be a Certified Electric Service Company.

203. Since any PREPA successor concessionaire will be deemed an Electric Service Company, the Findings and Determinations the Energy Bureau established through the Final Order apply to PREPA and any successor entity to PREPA. Moreover, every Electric Service Company must comply with the provisions of the Approved IRP and the Approved Action Plan, in accordance with Article 1.6 of Act 17-2019. Thus, the Energy Bureau **DETERMINES** it is not necessary to modify the Final Order as SESA-PR requested. Therefore, the Energy Bureau **DENIES** SESA-PR's request.

## V. CONCLUSION

204. On June 7, 2019, PREPA submitted a complete IRP which was subjected to a thorough review by the Energy Bureau with input and testimony from numerous parties and the public. The Energy Bureau carefully considered and weighed all the issues that resulted in its Final Order of August 24, 2020. The issues raised by SESA-PR, Windmar, Empire Gas, and the Local Environmental Organizations in their Motions for Reconsideration were carefully analyzed in this Final Resolution on Reconsiderations and have resulted in the findings presented above.

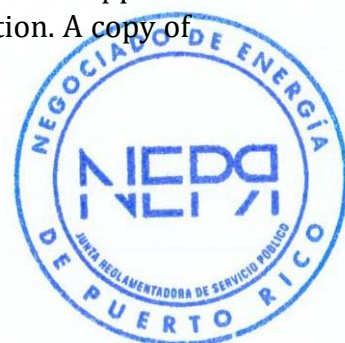
205. The Energy Bureau has attempted to issue a thorough resolution that is responsive to the major issues raised by Windmar, VF, Empire Gas, the LEOs, SESA-PR, AES-PR, PREPA, and the record evidence in their Motions for Reconsideration and responses. To the extent that there are any issues or arguments not addressed in this Final Resolution on Reconsiderations, they are **DENIED**.

206. Except as noted in this Final Resolution on Reconsiderations, the Energy Bureau's Final Order issued on August 24, 2020 is affirmed in its entirety and remains in full force and effect.

207. Any party adversely affected by the provisions of this Final Resolution on Reconsiderations may file an appeal for judicial review before the Court of Appeals within thirty (30) days as of the date of filing of the notice of the resolution. A copy of

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<sup>142</sup> Act 120-2018, Section 2(l) (emphasis added).

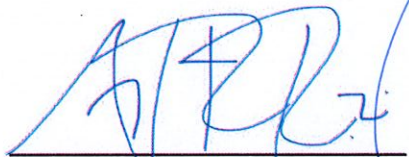


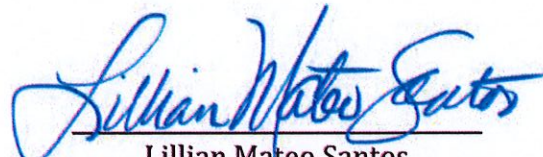


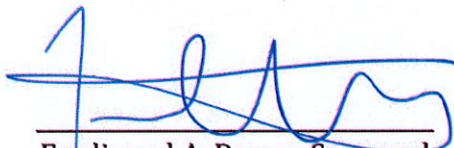
any request for judicial review shall be served on the Energy Bureau and the other parties to the instant proceeding within the term to request judicial review. The presentation of the judicial review resource will be governed by the applicable provisions of the UAPA and the Rules of the Court of Appeals.

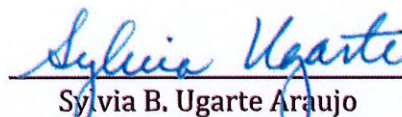
Be it notified and published.

  
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Chairman

  
Ángel R. Rivera de la Cruz  
Associate Commissioner

  
Lillian Mateo Santos  
Associate Commissioner

  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
Sylvia B. Ugarte Araujo  
Associate Commissioner

#### CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 2, 2020. Commissioner Mateo Santos did not intervene in the determinations made in Part III of this Final Resolution and Order. I also certify that on December 2, 2020 a copy of this Resolution and Order was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeepr.com, c-aquino@prepa.com, mvazquez@diazvaz.law, axel.colon@aes.com, kbolanos@diazvaz.law, acarbo@edf.org, jrj@conecta.pr, javrua@gmail.com, pedrosaade5@gmail.com, rmurthy@earthjustice.org, carlos.reyes@ecoelectrica.com, ccf@tcmrslaw.com, victorluisgonzalez@yahoo.com, mgrpcorp@gmail.com, hriviera@oipc.pr.gov, jrivera@cnspr.com, manuelgabrielfernandez@gmail.com, acasellas@amgprlaw.com, corey.brady@weil.com, paul.demoudt@shell.com, escott@ferraiuoli.com, sproctor@huntonak.com, agraitfe@agraitlawpr.com, cfl@mcvpr.com, sierra@arctas.com, info@liga.coop, amaneser2020@gmail.com, apagan@mpmlawpr.com, sboxerman@sidley.com, bmundel@sidley.com, gnr@mcvpr.com, rstgo@gmail.com, larroyo@earthjustice.org, jluebke@earthjustice.org, loliver@amgprlaw.com, epo@amgprlaw.com, Robert.berezin@weil.com; marcia.goldstein@weil.com.



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I also certify that today, December 2, 2020, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to:

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I sign this in San Juan, Puerto Rico, today December 2, 2020.



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Sonia Seda Gaztambide  
Interim Clerk

