



**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:** Resolution on Local Environmental Organizations' Motion Requesting Public Participation in the Integrated Resource Plan Implementation Process; Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico's Motion in Support of Local Environmental Organizations' Motion Requesting Public Participation in the IRP Implementation Process; and Environmental Defense Fund's Motion In Support of Local Environmental Organizations Request of Public Participation in the Integrated Resource Plan Implementation Process.

**RESOLUTION**

**I. Introduction**

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued its Final Resolution and Orden on the Puerto Rico Electric Power Authority Integrated Resource Plan ("IRP Final Resolution and Order") in the instant proceeding. Through the IRP Final Resolution and Order the Energy Bureau approved in part and rejected in part the Puerto Rico Electric Power Authority's ("PREPA") proposed Integrated Resource Plan ("IRP"). The Energy Bureau also modified PREPA's proposed Action Plan and ordered the implementation of a Modified Action Plan, as set forth in the IRP Final Resolution and Order.

On October 6, 2020, the Energy Bureau issued a Resolution and Order in Docket No. NEPR-MI-2020-0012 ("October 6 Order").<sup>1</sup> Through the October 6 Order, the Energy Bureau determined that it was appropriate to separate the implementation phase of the Approved IRP and the Modified Action Plan from this case.<sup>2</sup> Therefore, the Energy Bureau ordered

<sup>1</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>2</sup> *Id.*, p. 1.

*[Handwritten signatures and initials in blue ink]*

PREPA to submit all future filings regarding the implementation of the Approved IRP and Modified Action Plan under Docket No. NEPR-MI-2020-0012.<sup>3</sup>

On November 17, 2020, the Local Environmental Organizations (“LEO”) filed before the Energy Bureau a document titled *Local Environmental Organizations’ Motion Requesting Public Participation in the Integrated Resource Plan Implementation Process* (“LEO’s Request”). The LEO argue that Docket No. NEPR-MI-2020-0012 “has caused uncertainty and confusion on how the IRP will be implemented.”<sup>4</sup> According to the LEO, the IRP is being implemented without participation or awareness of intervenors and the public due to the creation of the new docket.<sup>5</sup> The LEO requests the Energy Bureau to order PREPA to file all subsequent IRP implementation filings in the instant docket instead of Docket No. NEPR-MI-2020-0012.<sup>6</sup>

On the same day, the Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (“ICSE-PR”) filed a document titled *Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE) Motion in Support of Local Environmental Organizations’ Motion Requesting Public Participation in the IRP Implementation Process* (“ICSE’s Motion”). ICSE-PR argued that “a new docket brings about the formalities and the need to file new appearances, justifying again the interest of the parties, issue of standing, which have already been taken care in the IRP proceeding.”<sup>7</sup> Based on this, ICSE-PR expressed that it supports LEO’s Request and asked the Energy Bureau to continue the implementation phase of the IRP as part of the instant docket.<sup>8</sup>

On November 20, 2020, the Environmental Defense Fund (“EDF”) filed a document titled *Motion in Support of Local Environmental Organizations Request of Public Participation in the Integrated Resource Plan Implementation Process* (“EDF’s Motion”). EDF argued that splitting elements of the implementation process into a different docket may interfere with the IRP Final Resolution and Order if amendments in the ordered directives to PREPA are allowed.<sup>9</sup> According to EDF, the evaluation of IRP implementation matters on a new docket has deprived intervenors from notifications, motions filed and technical hearings conducted for those purposes, affecting intervenor’s due process right to challenge PREPA’s

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<sup>3</sup> *Id.*

<sup>4</sup> LEO’s Request, p. 4.

<sup>5</sup> *Id.*, pp. 4 – 5.

<sup>6</sup> *Id.*, p. 5.

<sup>7</sup> ICSE Motion, p. 1, ¶ 2.

<sup>8</sup> *Id.*, pp. 1 - 2.

<sup>9</sup> EDF’s Motion, p. 2, ¶ 4. EDF further argues that changes in the renewable energy penetration targets in a separate docket will deprive the public and intervenors from the interests protected in the overall IRP proceeding. *Id.*



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implementation proposals.<sup>10</sup> EDF argued that this is in direct conflict with the transparency and participation requirements expressly stated in Act 17-2019<sup>11,12</sup>

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EDF expressed that, it is in the interest of the Energy Bureau to make it as easy as possible for stakeholders to participate and share perspectives and expertise.<sup>13</sup> Therefore, EDF requests the Energy Bureau to continue all IRP related matters in the instant case.<sup>14</sup> In the alternative, EDF requests that all intervenors be notified of all motions filed in Docket No. NEPR-MI-2020-0012 without having to petition to intervene through a separate motion in every collateral docket.<sup>15</sup>

## II. Discussion and Analysis

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The instant docket was opened to evaluate PREPA's Proposed IRP. Its purpose is adjudicative in nature and the procedural vehicle the Energy Bureau used to approve the proposed IRP. On December 2, 2020, the Energy Bureau issued the Final Resolution on Reconsiderations through which it addressed several requests for reconsideration filed by some intervenors in the instant case ("Final Resolution on Reconsiderations").<sup>16</sup> The adjudicative phase of the proposed IRP concluded with the Final Resolution on Reconsiderations. As such, the purpose of this docket has been fulfilled.

The implementation of the Approved IRP and Modified Action Plan is a complex endeavor that will require a myriad of processes over a range of five years, most of which will run concurrently. Maintaining the filings pertaining to the implementation of the Approved IRP and the Modified Action Plan in the instant docket is not only impractical, but it could also lead to confusion and a convoluted administrative record. As stated in the October 6 Order, the implementation of the Approved IRP and Modified Action Plan will require different types of proceedings tailored to the different aspects of the Modified Action

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<sup>10</sup> *Id.*, ¶ 5.

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

<sup>12</sup> EDF Motion, p. 2, ¶ 5.

<sup>13</sup> *Id.*, p. 3, ¶ 8.

<sup>14</sup> *Id.*, ¶ 9.

<sup>15</sup> *Id.*

<sup>16</sup> Final Resolution on Reconsiderations, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Docket No. CEPR-AP-2018-0001, December 2, 2020.



Plan.<sup>17</sup> As such, the Energy Bureau may open additional dockets related to said implementation.<sup>18</sup>

The LEO argue that “Law 17-2019 made it clear that the Bureau would use this docket to ‘evaluate the IRP **as well as PREPA’s performance thereafter...**”<sup>19</sup> However, Act 17-2019 does not contain such provision. Moreover, in footnote 14 of the LEO’s Request it is stated that the quoted reference was Section 1.03 of Regulation 9021<sup>20</sup>, instead of Act 17-2019.<sup>21</sup> Contrary to the LEO’s assertion, Section 1.03 of Regulation 9021 doesn’t state that the Energy Bureau will use the instant docket to evaluate PREPA’s performance after the approval of the IRP.

We are confounded on how the LEO truncates and misquotes the provisions of the referenced Section 1.03. Such section clearly states:

This Regulation, moreover, defines the terms related to the information required in the IRP, the procedures before the [Energy Bureau], and the performance metrics guideline and inducements that PREPA will follow after the [Energy Bureau] has evaluated and review the IRP. The [Energy Bureau] will evaluate the IRP as well as PREPA’s performance thereafter **in accordance with the provisions set forth in this Regulation.**

Nowhere in Regulation 9021 is it required that the implementation of the Approved IRP and the Modified Action Plan should occur in the instant docket. On the other hand, Section 1.05 of Regulation 9021 establishes that such regulation “shall be interpreted in a way that promotes the highest public good and the protection of the interests of the residents of Puerto Rico, and in such a way that the proceedings are carried out rapidly, justly and economically.” Furthermore, Section 1.07 of Regulation 9021 states that “[w]hen a specific proceeding has not been planned for in this or any other [Energy Bureau] regulation, the [Energy Bureau] may conduct them in a way that is consistent with Act 57-2014, as amended.”

As established in Act 17-2019, and as quoted by the LEO,<sup>22</sup> it is public policy to ensure that “[t]he establishment and implementation of the public policy on energy is an ongoing

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<sup>17</sup> October 6 Order, p. 1.

<sup>18</sup> *Id.*

<sup>19</sup> LEO’s Request, p. 7. Emphasis in the original, citation omitted.

<sup>20</sup> Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority, Regulation 9021, April 24, 2018.

<sup>21</sup> LEO’s Request, p. 7.

<sup>22</sup> *Id.*, p. 5.



planning, consultation, execution, evaluation, and improvement process in all energy-related matters”.<sup>23</sup> Moreover, paragraph (d) of Section 6.23 of Act 57-2014<sup>24</sup> states that “[u]pon the approval of the Integrated Resource Plan, the [Energy Bureau] shall supervise and oversee compliance therewith.” However, Act 57-2014 doesn’t specify the procedure the Energy Bureau must follow to “supervise and oversee compliance” with the Approved IRP.

Paragraph (rr) of Section 6.3 of Act 57-2014 establishes in part that the Energy Bureau will have all those additional, implicit and incidental powers that are pertinent and necessary to enforce and carry out and exercise all its delegated powers and to attain the purposes of Act 57-2014. Since neither Act 57-2014 nor Act 17-2019 prescribe the process through which the Energy Bureau should supervise and oversee the implementation of the Approved IRP and Modified Action Plan, the Energy Bureau should conduct it as it deems appropriate and in a way that is consistent with Act 57-2014 and Act 17-2019.

As stated before, maintaining all IRP implementation filings in the instant docket is impractical and could lead to confusion and a convoluted administrative record. In contrast, managing the implementation of the Approved IRP and Modified Action Plan through Docket No. NEPR-MI-2020-0012, and any other dockets that the Energy Bureau may open for these purposes, ensures that the implementation is carried out rapidly, justly and economically.

Furthermore, contrary to the LEO’s assertion that Docket No. NEPR-MI-2020-0012 is hidden amongst the Energy Bureau’s dockets,<sup>25</sup> the Energy Bureau has published all documents pertaining to said docket in the same transparent manner as it publishes documents in all of its dockets. The documents in Docket No. NEPR-MI-2020-0012 are easily accessible to the general public, free of charge and without the need to register or open an account, as required Act 57-2014.<sup>26</sup> Moreover, in the Final Resolution on Reconsiderations, the Energy Bureau expressed that it would further determine the manner in which the general public may participate in the proceedings related to the IRP implementation.<sup>27</sup> Therefore, the LEO’s argument that the IRP is being implemented without participation or awareness of intervenors and the general public is baseless.

The Energy Bureau clarifies that the manner in which the general public and interested parties may participate in the aforementioned proceedings will depend on the nature of each proceeding. As an example, the Energy Bureau will soon initiate the minigrid optimization proceeding mandated by the IRP Final Resolution and Order.<sup>28</sup> The Energy

<sup>23</sup> Article 1.5(2)(g), Act 17-2019.

<sup>24</sup> Known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>25</sup> LEO’s Request, p. 4.

<sup>26</sup> See Article 1.4(a)(6), Act 57-2014.

<sup>27</sup> Final Resolution on Reconsiderations, p. 17, ¶ 100.

<sup>28</sup> IRP Final Resolution and Order, pp. 279 – 280, ¶¶ 899 – 902.



Bureau expects ample participation from the general public and interested parties in order to achieve the goals of determining the optimal configuration and investments related to the minigrid construct. For such proceeding, the Energy Bureau will issue an order in which it will provide explicit details of the process, including how the general public and interested parties may contribute, which may include workshops, public hearings, and filing of information, among other.

Article 1.2 of Act 57-2014 and Article 1.4(10)(c) of Act 17-2019 clearly establish that it is public policy to promote transparency and citizen participation in the processes related to the electric service. The structure and purpose of Docket No. NEPR-MI-2020-0012, is consistent with the public policy on transparency and citizen participation. Likewise, opening additional dockets in the future that stem from the need to implement certain aspects of the Approved IRP and the Modified Action Plan, is also consistent with such transparency and public participation mandates.

Moreover, the Energy Bureau agrees with EDF that it is in its interest to make it as easy as possible for stakeholders to participate and share perspectives and expertise. Docket No. NEPR-MI-2020-0012 and the dockets the Energy Bureau may open in the future to implement the Approved IRP and the Modified Action Plan are designed to do exactly that.

Finally, as expressed before, EDF argued that splitting elements of the implementation process into a different docket may interfere with the IRP Final Resolution and Order if amendments in the ordered directives to PREPA are allowed. Article 1.9 of Act 17-2019 establishes that any amendment to the Approved IRP must be filed with the Energy Bureau for its approval. The referenced Article 1.9 also states that the Energy Bureau will approve any modification or amendment in a manner that is consistent with, among other things, the energy public policy. Such public policy establishes that the IRP will be modified every three (3) years, or earlier if certain conditions are met.<sup>29</sup>

Similarly, Article 1.9(4) of Act 17-2019 states that the IRP may not be eliminated or altered under any circumstances until a plan review process is carried out before the Energy Bureau and evidence is furnished thereof. Therefore, any modification or amendment to the Approved IRP must be done with ample participation from the general public and interested parties, following the established statutory and regulatory procedures, as required by the energy public policy, Article 6.23 of Act 57-2014, Articles 1.4(10)(c) and 1.9 of Act 17-2019, and Regulation 9021. As such, EDF arguments lack merit.

### III. Conclusion

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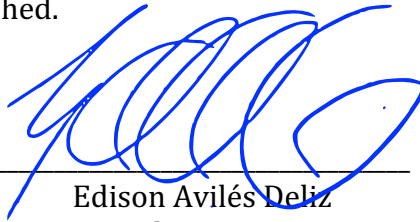
<sup>29</sup> See Article 1.9, Act 17-2019. The IRP revision can be carried out before the three (3) year term if there is a substantial change in the energy demand or group of resources. Although the Energy Bureau may grant dispensations to or waivers for the Integrated Resource Plan for just cause, such dispensations or waivers should be the exception and should only be granted in extreme circumstances. As of today, the Energy Bureau doesn't see the need to grant such dispensations or waivers.





For all of the above, the Energy Bureau **DENIES** LEO's Request, ICSE's Motion and EDF's Motion.

Be it notified and published.



Edison Avilés Deliz  
Chairman



Ángel R. Rivera de la Cruz  
Associate Commissioner



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Sylva 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 15, 2020. I also certify that on December 15, 2020 a copy of this Resolution and Order was notified by electronic mail to the following: astrid.rodriguez@prepa.com; jorge.ruiz@prepa.com; n-vazquez@aeep.com; c-aquino@prepa.com; mvazquez@diazvaz.law; axel.colon@aes.com; kbolanos@diazvaz.law; acarbo@edf.org; javier.ruajovet@sunrun.com; mgrpcorp@gmail.com; pedrosaade5@gmail.com; rmurthy@earthjustice.org; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com; victorluisgonzalez@yahoo.com; hrivera@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; tonytorres2366@gmail.com; apagan@mpmlawpr.com; info@liga.coop; amanecer2020@gmail.com; sboxerman@sidley.com; bmundel@sidley.com; gnr@mcvpr.com; rstgo2@gmail.com; larroyo@earthjustice.org; jluebkmann@earthjustice.org; loliver@amgprlaw.com; epo@amgprlaw.com; robert.berezin@weil.com; marcia.goldstein@weil.com; jonathan.polkes@weil.com; gregory.silbert@weil.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; castrodiappalaw@gmail.com; voxpopulix@gmail.com; paul.demoudt@shell.com; GiaCribbs@huntonak.com; aconer.pr@gmail.com; rtorbert@rmi.org; apagan@mpmlawpr.com; sboxerman@sidley.com; bmundel@sidley.com. I also certify that today, December 15, 2020, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.



For the record, I sign this in San Juan, Puerto Rico, today December 15, 2020.

  
Wanda I. Cordero Morales  
Clerk

