

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



IN RE: THE IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED RESOURCE PLAN
AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Ruling on Motion titled *Motion for Reconsideration of the Resolution and Order on the Evaluation of Puerto Rico Electric Power Authority's Draft Procurement Plan.*

RESOLUTION AND ORDER

I. INTRODUCTION

On December 8, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("December 8 Resolution") in the instant case ordering the Puerto Rico Electric Power Authority ("PREPA") to modify the Draft Procurement Plan PREPA submitted for the implementation of the Modified Action Plan of PREPA's Integrated Resource Plan ("IRP") approved by the Energy Bureau.¹ More specifically, through the December 8 Resolution, the Energy Bureau set forth specific changes PREPA must incorporate to its renewable energy resource and battery storage resource Procurement Plan and ordered PREPA to file the a final version of the Procurement Plan on or before December 22, 2020.

On December 22, 2020, as required by the December 8 Resolution, PREPA submitted a revised Renewable Resource and Battery Energy Storage Procurement Plan. PREPA also submitted a Motion for Reconsideration of the Energy Bureau's December 8, 2020 Order Resolution ("Reconsideration").

II. THE DECEMBER 22 MOTION

A. PREPA's Arguments and Requests

In the December 22 Motion, PREPA states that the December 8 Resolution "[fails] to acknowledge critically important technical considerations and the need for specific

¹ See Resolution and Order, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020.

interconnection studies”.² PREPA states it is concerned with Energy Bureau determinations “regarding the timeline for evaluation of RFP responses and its failure to take into account the time required for essential interconnection studies”.³ PREPA states that it “will require from 12 to 14 months to perform and complete interconnection studies for projects tendered in response to the RFP”.⁴

Further, through the December 22 Motion PREPA pursues certain modifications to the December 8 Resolution which the Energy Bureau addresses below. However, before reaching the merits of the December 22 Motion the Energy Bureau must clarify certain procedural matters.

PREPA identified and titled the December 22 Motion as a *motion for reconsideration* and states that pursuant Section 3.15 of Act 38-2017⁵, *the party adversely affected by an order or a partial final judgement may file a motion for reconsideration of such order or judgement*.⁶ PREPA's characterization of this proceeding is flawed. That is, PREPA considers that the Energy Bureau's December 8 Resolution is subject to the right of reconsideration provided by Section 3.15 of Act 38-2017. As discussed below, the instant case is not an adjudicative proceeding, therefore, reconsideration pursuant to Section 3.15 of Act 38-2017 is not available.

PREPA's Proposed IRP was evaluated in an adjudicative proceeding under Case No.: CEPR-AP-2018-0001. On August 24, 2020, the Energy Bureau issued the IRP Final Resolution and Order.⁷ Through the IRP Final Resolution and Order, the Energy Bureau approved in part and rejected in part PREPA's Proposed IRP.⁸ Consequently, the Energy Bureau ordered the adoption of the Modified Action Plan as set forth in the IRP Final Resolution and Order.⁹ Subsequently, on December 2, 2020, the Energy Bureau issued the Final Resolution on Reconsiderations through which it addressed several requests for

² December 22 Motion at page 4.

³ *Id.* at page 6.

⁴ *Id.* at pages 12-13.

⁵ *Uniform Administrative Procedures Act of the Government of Puerto Rico*, as amended.

⁶ December 22 Motion at pp. 4-5.

⁷ *See* Resolution and Order, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020 (“IRP Final Resolution and Order”).

⁸ *Id.*

⁹ *Id.*



reconsideration filed by some intervenors in Case No.: CEPR-AP-2018-0001.¹⁰ Thus, the adjudicative phase of the IRP proceeding concluded with the Final Resolution on Reconsiderations.

Recognizing that the implementation of the Approved IRP and Modified Action Plan is a multi-step process that will require different type of proceedings tailored to each aspect of the Modified Action Plan, the Energy Bureau separated the implementation phase of the Approved IRP and the Modified Action Plan from the then concluded adjudicative phase.¹¹ Based on that determination, the Energy Bureau opened the instant (non-adjudicative) proceeding to manage the implementation phase of the Approved IRP and the Modified Action Plan. This is not a proceeding to determine the rights, obligations or privileges that correspond to a party.¹² The nature of this proceeding is *sui generis* since it is simply aimed at the implementation of a final determination already taken in an adjudicative proceeding. More importantly, a final determination (Approved IRP and Modified Action Plan) that cannot not be modified through its implementation process.

Act 38-2017 establishes the obligation to include the request for reconsideration and judicial review process only in final decisions of administrative agencies issued in *formal* and *informal* adjudicative administrative actions.¹³ The administrative process conducted pursuant to this case, is not an adjudicative process, as established in Chapter III of Act 38-2017. As such, the request for reconsideration process provided in Section 3.15 of Act 38-2017 is not applicable to the December 8 Resolution.

Notwithstanding the foregoing, the Energy Bureau deems proper to provide some sort of relief regarding PREPA's December 22 Motion.

B. Discussion

The December 8 Resolution explicitly acknowledged underlying technical considerations associated with interconnection studies. In Appendix A to the December 8 Resolution, a series of paragraphs delineated the importance of conducting interconnection studies in parallel with procurement processes,¹⁴ the main body of the December 8

¹⁰ 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.

¹¹ Resolution and Order, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Docket No. CEPR-AP-2018-0001, October 6, 2020.

¹² See Section 1.3(b) of Act 38-2017.

¹³ See, in general, Sections 1.3 (g)-(i), 3.14, and 4.2 of Act 38-2017; Dept. Educación v. Sindicato Puertorriqueño, 168 D.P.R. 527 (2006), and J. Exam Tec.Med. v. Elias, et al, 144 D.P.R. 483 (1997).

¹⁴ *Id.*, Appendix A, Section V, ¶¶ 2- 17.



Resolution directly addressed interconnection issues,¹⁵ and Appendix B to the December 8 Resolution was specifically included in part to recognize the importance of parallel resolution of interconnection issues and procurement processes.

Appendix B of the December 8 Resolution also provided PREPA provision of information to potential respondents on the best locations for new renewable resources and battery energy storage, in large part to assist in minimizing the impact of potential interconnection constraints in Tranche 1 of the procurement process. These aspects of the December 8 Resolution were a direct acknowledgement of the interconnection issues that exist in the deployment of renewable energy resources at the quantities required by the IRP.

In PREPA's Draft Procurement Plan, PREPA states that the "evaluation process will last no more than 90 days unless circumstances require that it be extended".¹⁶ In order to efficiently move towards meeting the requirements of Act 17-2019¹⁷ and related legislative directives, PREPA must speedily proceed with renewable energy procurement, and the initial RFP evaluation is a critical first step in eventual deployment of thousands of MW of renewable energy resources across Puerto Rico. The December 8 Resolution reflects the importance of not letting the circumstances associated with the continuing need for interconnection studies dictate a delay in meeting the requirements of the IRP Order, where at all possible.¹⁸

In the December 22 Motion PREPA does not precisely distinguish between the project selection timeline and the interconnection study timelines. PREPA identifies a need to conduct interconnection studies in the December 22 Motion Reconsideration and in their draft procurement plan, but it does not describe how its current understanding of its own system, along with the information it provides on preferential locations for interconnection, can help to speed the overall process - at minimum, for this first Tranche of procurement. Nor does PREPA anywhere indicate the possibility that power purchase and operating agreement ("PPOA") contract terms can be used to help finalize any determinations made pursuant to detailed interconnection studies that occur after the initial selection process as part of Phase I and Phase II of the RFP evaluation.

Selection timeline is not the same as interconnection timeline. The Energy Bureau recognizes that interconnection issues are complicated, and accordingly ordered PREPA to consider group studies and develop innovative approaches to consider transmission needs

¹⁵ December 8 Resolution, Part IV, ¶¶ 5 (a)-(h).

¹⁶ PREPA, Draft Procurement Plan, p. 13.

¹⁷ Known as the *Puerto Rico Energy Public Policy Act*.

¹⁸ We should emphasize that PREPA did not request reconsideration or judicial review of the relevant provisions of the IRP herein implicated. As stated before, this proceeding is for the implementation of the IRP, not for its modification, therefore, any attempt to do so herein is misplaced.



in a transformed power sector, and proactively plan for a grid that can handle as much renewable energy and storage as will be needed.

The Energy Bureau also does not minimize the importance of time required to review and consider in totality the first set of responses to the RFP, which PREPA rightly notes in the procurement plan¹⁹ will likely result in more than one proponent advancing to Phase III (contract negotiation). This timeline requirement does not mean that PREPA must proceed to contract execution during this window.

The Energy Bureau **GRANTS** PREPA's December 22 Motion in part, and extends the time for RFP evaluation from 45 days to 75 days.

The Energy Bureau **CLARIFIES** that it expects PREPA to evaluate responses to the RFP and identify an initial set of respondent proposals that can proceed to the contract negotiation stage (Phase III)²⁰ within the 75 day timeline for evaluation of the responses to the RFP.

The Energy Bureau notes that PREPA has offered no concrete plans to innovate when considering how to conduct interconnection studies that recognize the likelihood, if not the inevitability, of many new renewable energy and battery storage projects interconnecting to the grid. The conventional process of conducting, in sequence, feasibility, impact, and facilities studies²¹ is not the only path PREPA can consider for accelerating the process of assessing technical interconnection issues while simultaneously meeting requirements for Puerto Rico's needs for new renewable energy resources.²²

In PREPA's responses to the questions from Part 1 of Appendix B,²³ and based on work PREPA and Sargent and Lundy have already completed as part of the shovel-ready analysis of 590 MW of non-operating projects,²⁴ and based on the work illustrated in the Renewable Energy Integration Study,²⁵ it is clear that PREPA already has at least an initial understanding of the potential best locations on its grid for interconnection of new renewable energy or battery storage resources – perhaps especially for Tranche 1. However, it is also clear, based on the response to question 7 of Appendix B of the December 8

¹⁹ Draft Procurement Plan, page 13; revised Renewable Resource and Battery Storage Procurement Plan, p. 12.

²⁰ PREPA Draft Procurement Plan, page 38, "Following completion of the Phase IIB qualitative and pricing evaluations, the Project Committee will recommend proposals to proceed with Phase III contract negotiations as described in Section 1.3.3."

²¹ Such as is laid out in PREPA's Motion, at pp. 9-11.

²² For example, but not limited to, the Energy Bureau's determinations seen in Appendix A to the Resolution and Order, at Section V "Interconnection", paragraphs 3 and 4, page 6.

²³ PREPA responses to Appendix B, questions 2 and 3.

²⁴ PREPA Motion, p. 12.

²⁵ Sargent and Lundy, *Renewable Energy Integration Study*, December 22, 2020.



Resolution, that more work is required of PREPA. PREPA has not yet given sufficient consideration to innovative means of conducting interconnection studies to more efficiently assess the ability of the transmission system to integrate several, if not many, new renewable energy projects.²⁶

There is no need to clarify PREPA's obligations regarding executing power purchase and operating agreements or energy storage services agreements until certain interconnection studies have been completed. Furthermore, the Energy Bureau reminds PREPA that the December 8 Resolution on the Evaluation of the Draft Procurement Plan explicitly and extensively²⁷ directed PREPA to holistically and innovatively consider interconnection issues and not let them delay planning for and procurement of required levels of renewable resource installation.

III. CONCLUSION

Upon its pondered evaluation of the December 22 Motion, the Energy Bureau makes the following determinations:

1. The Energy Bureau **GRANTS** PREPA's December 22 Motion in part, and extends the time for RFP evaluation from 45 days to 75 days.
2. The Energy Bureau **CLARIFIES** that it expects PREPA to evaluate responses to the RFP and identify an initial set of respondent proposals that can proceed to the contract negotiation stage (Phase III)²⁸ within the 75 day timeline for evaluation of the responses to the RFP.
3. The Energy Bureau **DENIES** PREPA's request that the Energy Bureau clarify PREPA's obligations with respect to executing power purchase and operating agreements or energy storage service agreements until certain interconnection studies have been completed.
4. The Energy Bureau **REMINDS** PREPA that the December 8 Resolution on the Evaluation of the Draft Procurement Plan explicitly and extensively²⁹ directed PREPA to holistically and innovatively consider interconnection issues and not let them

²⁶ PREPA's response (at page 6 of the responses to Appendix B questions) indicated that "each single addition to the system will be thoroughly analyzed" but PREPA's response **did not** provide any discussion of "additional insights on innovative methods" PREPA could deploy, as the question asked. PREPA stated that "The proposed timeline is already accelerated based on typical industry standards" but did not discuss any departures from typical industry standards which would reflect an innovative approach.

²⁷ December 8 Resolution, Appendix A, Section V, pp. 2- 17.

²⁸ PREPA Draft Procurement Plan, p. 38, "Following completion of the Phase IIB qualitative and pricing evaluations, the Project Committee will recommend proposals to proceed with Phase III contract negotiations as described in Section 1.3.3."

²⁹ December 8 Resolution, Appendix A, Part V, ¶¶ 2-17.




delay planning for and procurement of required levels of renewable resource installation;

5. The Energy Bureau ORDER PREPA to attend a Stakeholder Meeting to be held remotely on **Thursday, January 14, 2021 from 1:00 pm to 5:00 pm.**³⁰ The Energy Bureau **ORDERS** PREPA to ensure that the relevant personell, including those who have worked in the preparation of the RFP and the Procurement Plan attend the Stakeholder Meeting. The Stakeholder Meeting will be streamed live via the Energy Bureau's YouTube Channel. During the meeting the attendants will have the opportunity to present comments on RFP documents.

The Energy Bureau **WARNS** PREPA that, pursuant to the provisions of Act 57-2014 and applicable regulations, noncompliance with any provision of this Resolution and Order, may result in the imposition fines of up to twenty five thousand dollards (\$25,000) per day, per violatoion and/or any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.


Be it notified and published.



Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

³⁰ The Energy Bureau will timely provide to PREPA representatives the information to join the meetings.



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 5, 2021. Associate Commissioner Ángel R. Rivera de la Cruz did not intervene. I also certify that on January 5, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: fabiola.rosa@prepa.com, marisol.pomales@prepa.com, vilmarie.fontanet@prepa.com, jorge.ruiz@prepa.com and kbolanos@diazvaz.law. I also certify that today, January 7, 2021, 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 January 7, 2021.


Wanda I. Cordero Morales
Clerk

