

**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:** Noncompliance with Request for  
Submittal of the Results of Selection of  
Proposals for Phase III Evaluation and  
Imposition of Administrative Fine.

**RESOLUTION AND ORDER**

**I. Procedural Background**

*A. Renewable Energy Procurement Plan and Tranche 1 RFP*

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued the Final Resolution and Order in Case No. CEPR-AP-2018-0001 regarding the Puerto Rico Electric Power Authority's ("PREPA") Integrated Resource Plan ("Approved IRP") through which it approved in part and rejected in part PREPA's Proposed IRP.<sup>1</sup> The Approved IRP orders the development of competitive solicitation processes for the procurement of new renewable resources and battery energy storage resources in support of, among other things, meeting Act 17-2019<sup>2</sup> and Act 82-2010<sup>3</sup> targets for renewable energy and PREPA's submittal of a draft renewable resource and battery energy storage resource procurement plan ("Procurement Plan").<sup>4</sup>

On October 23, 2020, PREPA filed a document titled *Motion Submitting Draft Procurement Plan* ("October 23 Motion") which included PREPA's Draft Procurement Plan.<sup>5</sup>

On December 8, 2020, the Energy Bureau issued a Resolution and Order through which it ordered PREPA to modify the Draft Procurement Plan PREPA submitted for the implementation of the Modified Action Plan of its Approved IRP ("December 8 Resolution"). The Energy Bureau set forth specific changes for PREPA to incorporate in its Procurement Plan and ordered PREPA to file a final version of the Procurement Plan on or before December 22, 2020.<sup>6</sup> On December 22, 2021, PREPA submitted a document titled *Motion for Reconsideration of Resolution and Order on Draft Procurement Plan* in which PREPA raised certain concerns regarding technical aspects of interconnection studies.<sup>7</sup>

On January 5, 2021, the Energy Bureau issued a Resolution and Order through which, among other things, the Energy Bureau (i) reminded PREPA that the December 8 Resolution on the evaluation of the Draft Procurement Plan explicitly and extensively directed PREPA to

<sup>1</sup> *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No.: CEPR-AP-2018-0001.

<sup>2</sup> Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

<sup>3</sup> Known as the *Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act*, as amended, ("Act 82-2010").

<sup>4</sup> Approved IRP, p. 266.

<sup>5</sup> See October 23 Motion, Exhibit A.

<sup>6</sup> See December 8 Resolution, Attachment A, p. 8. The Energy Bureau ordered PREPA, among other things to develop, maintain, update and file with the Energy Bureau every six (6) months a timeline for anticipated installations of renewable energy and battery storage resources. *Id.*, p. 8.

<sup>7</sup> See, *Motion in Compliance with Order Submitting Final Procurement Plan and Associated Request for Proposal*, On December 22, 2020.



holistically and innovatively consider interconnection issues and not allow them delay the planning for and procurement of required levels of renewable resource installation; and (ii) extended the time for RFP evaluation from forty-five (45) to seventy-five (75) days.<sup>8</sup>

On January 26, 2021, the Energy Bureau ordered PREPA to issue as soon as possible the RFP for Tranche 1, which shall include the modifications approved through the January 5 Resolution ("January 26 Resolution").<sup>9</sup>

On February 22, 2021, PREPA filed a document titled *Motion Informing Issuance of Renewables RFP Tranche 1* ("February 22 Motion") informing the Energy Bureau that, on that same date, it published the Tranche 1 RFP through its website and the Power Advocate platform.<sup>10</sup> According to the Tranche 1 RFP, issued by PREPA: (i) the Proposal Submission Deadline & Commencement of Phase I Evaluation was May 3, 2021; (ii) the deadline for the Selection of Proposals for Phase II Evaluation was May 24, 2021; and (iii) the deadline for the Selection of Proposals for Phase III Evaluation was July 19, 2021.<sup>11</sup> Therefore, the RFP complied with the 75-day timeline for the evaluation of its responses between the Proposal Submission Deadline and the deadline for the Selection of Proposals for Phase III Evaluation.

Nevertheless, through its *Request of the Puerto Rico Electric Power Authority for Extension of Time to File an Updated Procurement Plan Addressing Plans for the Second Renewable Generation and Energy Storage Resource Procurement Tranche* ("April 30 Motion") PREPA "adjusted" aspects of the RFP milestone schedule.<sup>12</sup> Among other "adjustments", through Addendum No. 10 issued on April 30, 2021, PREPA: (i) rescheduled the Proposal Submission Deadline & Commencement of Phase I Evaluation to May 28, 2021; (ii) rescheduled the Selection of Proposals for Phase II Evaluation to June 24, 2021; and (iii) postponed the Selection of Proposals for Phase III Evaluation by a whole month, until August 19, 2021.<sup>13</sup> Such adjustments did not comply with the 75-day timeline, since there are eighty three (83) days between Proposal Submission Deadline and the deadline for the Selection of Proposals for Phase III Evaluation.<sup>14</sup>

#### *B. Results of Selection of Proposals for Phase III Evaluation*

Upon review of the motions submitted by PREPA and the documents filed by Solar and Energy Storage Association of Puerto Rico ("SESA"), on May 27, 2021, the Energy Bureau issued a Resolution and Order through which it granted PREPA's request to extend the bidder response submission deadline until June 18, 2021, and the Selection of Proposals for Phase II Evaluation until July 15, 2021 ("May 27 Resolution").<sup>15</sup>

On May 29, 2021, PREPA filed a document titled *Request of the Puerto Rico Electric Power Authority for Additional Time to Issue Second Renewable Generation and Energy Storage Resource Procurement Tranche and to Submit Timeline for Anticipated Installation of Battery*

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<sup>8</sup> *Id.*, p. 6.

<sup>9</sup> See *Resolution and Order, In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, January 26, 2021, pp. 2-3.

<sup>10</sup> PREPA provided public notice regarding the availability of the Tranche 1 RFP in *El Nuevo Día* newspaper. See February 22 Motion.

<sup>11</sup> See Tranche 1 RFP, Table 2-1 – Milestone Schedule.

<sup>12</sup> See April 30 Motion, p. 2.

<sup>13</sup> *Id.*, pp. 2-3.

<sup>14</sup> In its April 30 Motion, PREPA stated that it would receive an initial formal market response on or around May 28, 2021 and would be in a position to evaluate and report on that market response and the results of Phase I project evaluations by late June 2021. PREPA also held that it expected to be in a position to form tentative conclusions regarding the results achieved through the Tranche 1 RFP process by late August-early September 2021. *Id.*, p. 4.

<sup>15</sup> See May 27 Resolution, p. 3.



*Storage and Renewable Energy Resources* (“May 29 Motion”). In the May 29 Motion, PREPA stated that, since the Tranche 1 RFP was issued **later than anticipated**, it required the postponement of the target June 1, 2021 release date for the Tranche 2 RFP.<sup>16</sup> It further stated that the market to which its RFP is and will be directed remained occupied with the Tranche 1 RFP process, and that potential participants interested in the development of renewable generation and energy storage resources in Puerto Rico will likely continue to be focused on the Tranche 1 RFP and the finalization of Tranche 1 bids until June 18, 2021.<sup>17</sup>

PREPA claimed that rushing the Tranche 2 RFP out while the target market is continuing to devote its full time and attention to the Tranche 1 RFP is likely to be counterproductive and would be inconsistent with the fundamental objective of promoting broad participation in the development of the renewable generation and energy storage resources Puerto Rico urgently needs.<sup>18</sup> PREPA also requested the Energy Bureau: (i) authorization to modify its Final Procurement Plan to provide that the target date for issuing the second RFP for renewable generation and energy storage resources contemplated by PREPA’s Approved IRP and Modified Action Plan shall be August 1, 2021; and (ii) an extension of time until August 31, 2021, to prepare and submit the timeline specified in the December 8 Resolution covering the anticipated installations of renewable generation and battery energy storage resources.<sup>19</sup>

On June 3, 2021, the Energy Bureau issued a Resolution and Order (“June 3 Resolution”) through which it: (i) denied PREPA’s May 29 Motion; (ii) determined that June 30, 2021, would be the target date for issuing the Tranche 2 RFP for renewable generation and energy storage resources contemplated by the Approved IRP and Modified Action Plan; and (iii) ordered PREPA to submit the timeline specified in the December 8 Resolution covering the anticipated installations of renewable generation and battery energy storage resources on or before July 30, 2021.<sup>20</sup> The Energy Bureau also stated that the June 3 Resolution did not alter the determination contained in the May 11 Resolution.<sup>21</sup>

On August 6, 2021, the Energy Bureau issued a Resolution and Order (“August 6 Resolution”) through which it ordered PREPA to, on or before August 13, 2021, provide responses to the questions included as Attachment A to the August 6 Resolution.<sup>22</sup> The purpose of the August 6 Resolution was to obtain a more thorough understanding of the results of the Tranche 1 RFP, and the relationship with Tranche 2. On August 13, 2021, PREPA filed a document titled *Motion to Submit Responses in Compliance with Resolution and Order entered on August 6, 2021* (“August 13 Motion”) through which it submitted responses to the questions included as Attachment A to the August 6 Resolution.<sup>23</sup>

On August 26, 2021, the Energy Bureau issued a Resolution and Order through which it stated that, upon review of the Tranche 1 RFP, it ordered PREPA to provide on or before September 9, 2021, (i) **the results of Selection of Proposals for Phase III Evaluation**; and (ii) copy of the proposals selected for Phase III Evaluation (“August 26 Resolution”).<sup>24</sup> The Energy Bureau reminded PREPA that, pursuant to the public policy, the Energy Bureau is the entity ultimately responsible for determining whether the pricing of the selected proposals

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<sup>16</sup> See May 29 Motion, p. 2.

<sup>17</sup> *Id.*, p. 4.

<sup>18</sup> *Id.*, pp. 4-5.

<sup>19</sup> *Id.* p. 8.

<sup>20</sup> See June 3 Resolution, p. 2

<sup>21</sup> *Id.*

<sup>22</sup> See August 6 Resolution, p. 2.

<sup>23</sup> See August 13 Motion, Annex.

<sup>24</sup> See August 26 Resolution, p. 2.



is just and reasonable, and, thus, if it complies with the energy policy.<sup>25</sup> Since the Energy Bureau did not have **final and formal information on the results of Selection of Proposals for Phase III Evaluation**, the Energy Bureau had no alternative but to rescheduled the target date for issuance of the Tranche 2 RFP to September 20, 2021.<sup>26</sup>

On September 8, 2021, PREPA filed before the Energy Bureau a document titled *Motion for Extension of Time to Submit Information Requested on Resolution and Order Dated August 26, 2021, Including Information Related to Pricing* ("September 8 Request for Extension") in which PREPA (i) alleged that the PREPA Evaluation Committee was analyzing the pricing information submitted with the proposals to submit prices per technology group based on the proposals and was still in the process of evaluation for the selection of those proposals that will proceed to Phase III Evaluation; and (ii) requested an extension of time, until September 20, 2021, for the submittal of such information to the Energy Bureau.<sup>27</sup>

On September 17, 2021, the Energy Bureau issued a Resolution and Order through which it rescheduled the target date for the issuance of the Tranche 2 RFP to October 15, 2021, **because PREPA had not provided the requested information**.<sup>28</sup> Nevertheless, the Energy Bureau expressly warned PREPA that such determination **should not be construed as an additional extension of time to submit the pricing information required by the Energy Bureau**.<sup>29</sup>

On September 20, 2021, PREPA filed before the Energy Bureau a document titled *Motion to Submit Proposals Under Seal and Request for Confidential Designation* ("September 20 Motion"). Along with its September 20 Motion, PREPA submitted various documents included as part of the Proposals, as well as information requests that were made by proponents. PREPA limited the information provided to the Energy Bureau to the proposals that advanced to Phase III of the Tranche 1 RFP process. **PREPA did not include any information and/or comparison or pricing evaluation per technology group of the selected proposals or any other similar information**. PREPA alleged that the evaluation of the Proposals had not finished, and the evaluation, award and negotiation of contracts was still ongoing.<sup>30</sup>

On October 12, 2021, the Energy Bureau issued a Resolution and Order through which it stated that the procedural background of the present case showed a **pattern of delays** on PREPA's completion of the Tranche 1 RFP process and that, based on having not completed such process, the Energy Bureau rescheduled the target date for the issuance of the Tranche 2 RFP to October 31, 2021 ("October 12 Resolution").<sup>31</sup> Nonetheless, the Energy Bureau **clarified that the aforementioned reschedule should not be construed as an additional extension of time for PREPA to submit the required pricing information**.<sup>32</sup> It also stated that, although PREPA requested until September 20, 2021, to submit the prices of each technology group based on the proposals selected to proceed to Phase III information to the Energy Bureau, **such information was not included as part of the September 20 Motion and, therefore, the Energy Bureau determined that PREPA had not fully complied with**

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See September 8 Request for Extension, p. 3.

<sup>28</sup> See Resolution and Order, *In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, September 17, 2021, pp. 2-3.

<sup>29</sup> *Id.*, p. 3.

<sup>30</sup> See September 20 Motion.

<sup>31</sup> See October 12 Resolution, p. 3.

<sup>32</sup> *Id.*





**the August 26 Resolution.**<sup>33</sup> The Energy Bureau cautioned PREPA it is actively considering the possibility of conducting the RFP process for the remaining procurement tranches, including Tranche 2, given **the dire state** of the PREPA generation fleet and the adverse impacts such situation is causing to consumers.<sup>34</sup>

On October 15, 2021, PREPA filed before the Energy Bureau a document titled *Response to, and Motion for Clarification of, October 12, 2021 Resolution and Order Addressing the Target Date for Issuance of the Tranche 2 RFP and Other Matters* ("October 15 Motion"). In the October 15 Motion, rather than submitting the required information and comply with the orders of the Energy Bureau, PREPA stated its disagreement with the Energy Bureau's determination and listed a series of requests to modify previous orders issued by the Energy Bureau.<sup>35</sup>

The arguments presented by PREPA in the October 15 Motion are neither reasonable nor convincing. To the contrary, they expose PREPA's protracted and delayed movement towards compliance with clear public policy. Even acknowledging that RFP processes may be complex and time consuming with the proper management and resources, which PREPA could have certainly hired, and the Energy Bureau would have supported, there is no justification for PREPA's prolonged handling of Tranche 1. The record unequivocally does not show a genuine effort to comply but rather a veiled indifference towards **timely achieving public policy goals**.<sup>36</sup>

PREPA shows an unresponsiveness to the real and palpable urgency of transition into renewable energy to benefit the consumers and the environment. The substantial completion alleged by PREPA is nothing but a misleading and inaccurate characterization of the facts. The Energy Bureau could not deem it compliant with its orders.

It must be noted that, contrary to PREPA's assertion that its representatives provided pricing information to members of the Energy Bureau on September 16, 2021, its own filings requesting time extensions to submit such information demonstrate that PREPA has not provided the pricing per technology group selected for Phase III. There is no filing in the instant case's docket that reflect PREPA's alleged submittal of the aforementioned information. Therefore, it can only be concluded that PREPA, in fact, has not fully complied with the August 26 Resolution. The general and preliminary information informally provided by PREPA to the Energy Bureau, **was neither complete nor final**. The processes before the Energy Bureau, regardless of their nature (*e.g.*, adjudicative, or not adjudicative) are based on the information in the record. To be part of the record, information (*e.g.*, documents, motions, photos, video, etc.) **must** be filed with the Energy Bureau's Clerk via the mechanisms provided in the applicable regulations and resolutions. PREPA **has not filed the information required under the August 26 Resolution**.

## II. Conclusion

Upon review of the foregoing, the Energy Bureau **ORDERS** PREPA to:

- (i) **on or before November 12, 2021**, submit the results of Selection of Proposals for Phase III with the pricing evaluation per technology group required by the

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See October 15 Motion. PREPA specifically requests that the Energy Bureau: (i) conclude that PREPA has substantially complied with the Energy Bureau's directives concerning submission of pricing information per technology group; (ii) retract its determination that PREPA has not fully complied with the August 26 Resolution in that regard; (iii) clarify the October 12 Resolution to confirm that PREPA will remain responsible for the Tranche 2 RFP process; (iv) grant PREPA flexibility to anchor the 24-month timeline to achieve Commercial Operations to the Closing Date under the contracts, rather than the date of signing; and (v) agree to extensions of the project development timelines for force majeure and PREPA-caused events without requiring approval from the Energy Bureau in each case. See October 15 Motion, p. 8.

<sup>36</sup> For a more detailed summary of the delays of Tranche 1, see the Resolution and Order issued by the Energy Bureau on October 29, 2021 in the instant case.



Energy Bureau together with copies of any communications to proponents selected to proceed to Phase III; and

- (ii) **on or before December 1, 2021**, complete Phase III and submit to the Energy Bureau for its evaluation and approval the corresponding draft Power Purchase and Operation Agreements.<sup>37</sup>



The August 26 Resolution warned PREPA that "... noncompliance with the Energy Bureau's orders or applicable legal requirements may carry the imposition on administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation and/or other sanction that the Energy Bureau may deem appropriate".

The Energy Bureau expressly cautioned and notified PREPA as to its continued noncompliance with the August 26 Resolution.<sup>38</sup> Therefore, the Energy Bureau **ORDERS** PREPA to pay a fine of five thousand dollars (\$5,000) before the Energy Bureau's Clerk on or before **November 12, 2021**, for its noncompliance with the August 26 Resolution. Assessing penalties on PREPA is the least preferred corrective enforcement action since consumers would be ultimately paying those penalties. Notwithstanding the foregoing, PREPA's actions have left the Energy Bureau with no other alternative.<sup>39</sup>

The Energy Bureau **WARNS** PREPA that noncompliance with the November 12, 2021 or the December 1, 2021 deadlines, as stated in Section II of this Resolution and Order, will carry the imposition of an administrative fine of five thousand dollars (\$5,000.00) per day, per violation.

The Energy Bureau **WARNS** PREPA that noncompliance with the Energy Bureau's orders or applicable legal requirements may carry the imposition on administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation and/or other sanction that the Energy Bureau may deem appropriate.

Be it notified and published.

  
Edison Aviles Deliz  
Chairman  
  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
Lillian Mateo Santos  
Associate Commissioner  
  
Sylvia B. Ugarte Araujo  
Associate Commissioner



<sup>37</sup> Through this determination the Energy Bureau also **DENIES** PREPA's request of time extension -until December 15, 2021- to complete Phase III negotiations with the three VPP proponents which submitted proposals in Tranche 1. *See Motion for Extension of Dates for Notification of Proponents Being Selected for Phase III Negotiations, for Submission of Pricing Information Per Technology Group and for Additional Time to Issue the Tranche 2 RFP* dated September 17, 2021.

<sup>38</sup> *See the Resolutions and Orders issued by the Energy Bureau on September 17, 2021 p. 3, October 12, 2021, p. 3, October 29, 2021, p. 9.*

<sup>39</sup> As stated before, given the ongoing nature of this process, as well as the multiple issues under consideration by the Energy Bureau, in this Resolution and Order the Energy Bureau will only address PREPA's non-compliance with the Energy Bureau's directives concerning submission of pricing information per technology group regarding the Tranche 1 RFP, as well other related non-compliance instances by PREPA. Through an independent resolution, the Energy Bureau will address matters regarding the Tranche 1 RFP Draft Power Purchase Agreement, which are discussed in detail in the October 15 Motion.

## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on November 8, 2021. Associate Commissioner Ángel Rivera de la Cruz did not intervene. I also certify that on November 8, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com, kbolanos@diazvaz.law; mvazquez@diazvaz.law. I also certify that today, November 8, 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 November 8, 2021.

  
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Sonia Seda Gaztambide  
Clerk

