

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

IN RE: PRELIMINARY STUDIES FOR NEW
COMBINED CYCLE POWER PLANT IN PALO
SECO

CASE NO.: NEPR-MI-2021-0003

SUBJECT: Resolution and Order regarding
Motion to Submit November 2021 Status
Report in Compliance with Order Entered on
February 1, 2021, filed by the Puerto Rico
Electric Power Authority.

RESOLUTION AND ORDER

I. Introduction

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Final Resolution and Order on the Puerto Rico Electric Power Authority's ("PREPA") Integrated Resource Plan ("IRP") under Case No. CEPR-AP-2018-0001 ("August 24 Resolution"). Through the August 24 Resolution the Energy Bureau approved in part and rejected in part PREPA's proposed IRP, modified the Action Plan in the IRP submitted by PREPA, and ordered the adoption and implementation of the Modified Action Plan as set forth in the August 24 Resolution.

As part of its determination, the Energy Bureau concluded that PREPA did not fully support the inclusion of a new gas-fired combined cycle ("CC") unit at Palo Seco by 2025 as part of a least-cost plan. Notwithstanding the foregoing, to protect against the uncertainty of near-future solar PV and battery energy storage price outcomes, or other potential reliability concerns, out of an abundance of caution and coupled with strict oversight, the Energy Bureau found that PREPA may begin preliminary work on a new fossil fuel-powered unit and/or energy storage at Palo Seco, subject to the constraints set forth in the Modified Action Plan, which includes a limitation for PREPA to spend up to \$5 million for preliminary economic, siting, permitting, and planning analysis.

The Energy Bureau warned PREPA it must be highly cost-efficient with any preliminary permitting and engineering activity it undertakes, and **these activities shall not interfere with or delay the procurement of solar PV (or other renewable energy) and battery energy storage resources as directed in the Modified Action Plan.** The August 24 Resolution also instructed PREPA to submit quarterly progress reports to the Energy Bureau describing the work performed, the staffing or consultant resources used to complete the preliminary work for a new CC at Palo Seco, and the status of the overall preliminary efforts.

Additionally, the Modified Action Plan includes several directives to retire fossil fuel plants over the next five (5) years consisting of the retirement of the oil-fired steam resources, at San Juan, including units 7, 8, 9, and 10; at Palo Seco, including units 3 and 4, and at Aguirre, including steam units 1 and 2; and the Aguirre CC units 1 and 2.

On November 15, 2021, PREPA filed before the Energy Bureau a document titled *Motion to Submit November 2021 Status Report in Compliance with Order Entered on February 1, 2021* ("November 15 Motion"). Through the November 15 Motion, PREPA provided a report regarding the status of the development of the studies for the CC at Palo Seco. PREPA also stated that the Planning Analysis Workstreams reports expected to be submitted to the Energy Bureau by the end of October 2021 were not completed, due to a change in the strategy to retire thermal generation assets.

According to PREPA, said change of strategy **includes the retirement and life extension of existing legacy generation units and the addition of new generation currently under evaluation as part of the Federal Emergency Management Agency ("FEMA") 404 and 428 programs.** PREPA expressed that a revised Retirement of Existing Thermal Resources Report will be prepared **to align the new generation asset strategy and is expected to be completed between the first and second quarters of 2022.**



II. The IRP Process

Act 57-2014¹, was enacted to, amongst other things, create an independent regulatory body to oversee PREPA's and all other certified electric service companies' operations, and to establish strategic planning and information requirement to promote transparency and active citizen participation.² Essential to carrying out this legislative intent is a planning process, directed and overseen by the Energy Bureau. Act 57-2014 requires PREPA to submit and the Energy Bureau to approve, an integrated resource plan, defined as:

... a plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of twenty (20) years, including those related to the offering of electric power, whether existing, traditional, or new resources, and those related to energy demand, such as energy conservation and efficiency, or DR and localized energy generation by the customer. Every integrated resource plan shall be subject to the rules established by PREB and approved by the same. Every plan shall be devised with a broad participation from citizens and other interested groups.³

Regulation 9021 defines the term "Integrated Resource Plan" or "IRP" as follows:

[A] plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of time, including those relating to the offering of electric power, whether existing, traditional, and/or new resources, and those relating to energy demand such as energy conservation and efficiency or DR and localized energy generation by the customer, while recognizing the obligation of compliance with laws and regulations that constrain resource selection.⁴

Under Article 6.23 of Act 57-2014, the Energy Bureau has the mandate to establish regulations to govern the IRP that PREPA is required to file. The IRP is the centerpiece for carrying out the legislative intent to modernize the electric system, so it is less reliant on fossil fuels, employs more utility scale and distributed renewable energy and promotes efficiency and conservation to improve the environment, comply with federal laws addressing clean air and manage the cost of electricity. The goal of the IRP proceeding is to evaluate PREPA's resources to develop a cost-effective (least cost) plan to meet Puerto Rico's energy needs in the future.

The IRP considers a planning period of twenty (20) years and must be reviewed every three years.⁵ Notwithstanding the foregoing, at any moment before the 3-year filing requirement, PREPA may propose an amendment or update in accordance with Article 6.23 of Act 57-2014 and Section 2.05 of Regulation 9021. Such review process shall include public participation, intervenors, public hearings, etc. **An approved IRP shall remain in effect until the approval of a subsequent IRP by the Energy Bureau.**⁶

Act 17-2019⁷ built upon the foundation created in Act 57-2014 for integrated resource planning and sharpened the focus on accelerated renewable energy penetration, and energy

¹ *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.

² See Act 57-2014, Statement of Motives.

³ See Act 57-2014 § 1.3 (II).

⁴ See Regulation 9021, § 1.08(B)(20).

⁵ See Section 6.23 of Act 57-2014 and Regulation 9021, § 2.04.

⁶ See Regulation 9021, § 2.01.

⁷ *The Puerto Rico Energy Public Policy Act*.



conservation and efficiency.⁸ Act 17-2019 increased the renewable portfolio to at least forty percent (40%) by 2025, sixty percent (60%) by 2040 and one hundred percent (100%) by 2050.⁹ It also created an energy efficiency target of thirty percent (30%) by 2040.¹⁰

Further, Act 17-2019 **reinforces the authority of the Energy Bureau to conduct IRP proceedings.**¹¹ To that effect, that the IRP will be prepared by the electric power company responsible for the operations of the electrical system and shall be approved by the Energy Bureau.¹² Allowance for preparation by an entity other than PREPA acknowledges the changes contemplated under future IRPs as a result of the implementation of Act 120-2018¹³. The legislation also set forth more details than that contained within Act 57-2014 on the content of the IRP.¹⁴ However, this modification is consistent with the Energy Bureau's IRP requirements in Regulation 9021.¹⁵ A central point throughout the legislation is that **actions taken regarding generation and related matters must be consistent with the approved IRP**, highlighting the importance of the IRP as a central planning tool. Any changes or amendments to the IRP shall be approved by the Energy Bureau.¹⁶

Additionally, Act 17-2019 states that the IRP shall be evaluated and approved by the Energy Bureau **and may not be eliminated or altered under any circumstances until a plan review process is thus carried out before the Energy Bureau and evidence thereof is furnished.** The Energy Bureau shall issue all the necessary rules to be followed when devising its integrated resource plan, which shall include an evaluation plan for attaining the goals set.¹⁷ Act 57-2014 further provides **that the IRP shall be evaluated and approved by the Energy Bureau and may not be eliminated or altered by any subsequent PREPA Board without first carrying out, and thus evidencing, a plan review process, before the Energy Bureau.**¹⁸

III. Penalties for Noncompliance

To ensure full compliance with Act 57-2014, the Puerto Rico energy policy, and regulations and orders issued, Article 6.36 of Act 57-2014 establishes that the Energy Bureau may enforce and impose the following penalties:¹⁹

(a) The Energy Bureau shall impose administrative fines for violations of this Act, or the regulations and orders issued thereunder, committed by any person or electric

⁸ See Act 17-2019, § 1.2(p).

⁹ *Id.* at § 1.6(7).

¹⁰ *Id.* at § 1.6 (10).

¹¹ *Id.* at § 1.2(r).

¹² *Id.* at § 1.9(1).

¹³ *The Puerto Rico Power System Transformation Act*, as amended.

¹⁴ Act 17-2019 at § 1.9(3); § 5.18 amending § 6.23 of Act 57-2014.

¹⁵ See *Regulation on the Integrated Resource Plan for the Puerto Rico Electric Power Authority*, April 24, 2018 (Regulation 9021). Regulation 9021 is the culmination of a rulemaking proceeding in which comments were sought by interested stakeholders. See, *Regulation of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, CEPR-MI-2018-0005, February 8, 2018. Note that Regulation 9021 superseded Regulation 8594, which was expeditiously enacted in order to provide guidance to PREPA to meet the statutory deadline to file its first IRP by July 1, 2015. The experience gained during the previous IRP proceeding, allowed the Energy Bureau in Regulation 9021, to improve, expand and elaborate on the requirements set forth in Regulation 8574.

¹⁶ See Act 17-2019, § 1.9(2).

¹⁷ *Id.* § 1.9(4).

¹⁸ See Act 57-2014, § 2.9(h)(iii).

¹⁹ *Id.* § 6.36.



power company subject to its jurisdiction, of up to a maximum of twenty-five thousand dollars (\$25,000) per day. Said fines shall in no event exceed five percent (5%) of the gross sales, fifteen percent (15%) of the net income, or ten percent (10%) of the net worth of the sanctioned person or the electric power company. The greater of the aforementioned amounts corresponding to the most recent taxable year shall be the amount of the fine.

(b) If the person or certified electric power company commits a subsequent violation of this Act, the Energy Bureau may impose penalties of up to a maximum of twenty-five thousand dollars (\$25,000) per day. In such case and by unanimous determination of the Energy Bureau, it may impose fines up to twice the limitations based on sales, income, or assets set forth in subsection (a) of this Section and up to five hundred thousand dollars (\$500,000).

(c) Any claim or cause of action authorized by law filed by any person with legal standing shall not affect the powers granted under this Section to impose administrative sanctions.

(d) **Any person who intentionally violates any provision of this Act, omits, disregards, or refuses to obey, observe, and comply with any rule or decision of the Energy Bureau shall commit a misdemeanor and upon conviction shall be punished by imprisonment for a term not to exceed six (6) months, or by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), at the discretion of the Energy Bureau. In the event of recurrence, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.**

(e) The Energy Bureau may resort to the pertinent forums to seek any remedy, including account garnishment, to ensure compliance with the penalties imposed.

IV. Conclusion

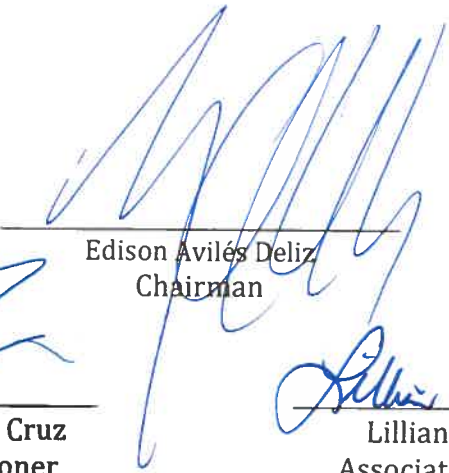
Through the November 15 Motion, PREPA stated that it has changed its strategy to retire certain thermal generation assets and to extend the useful life of others.

The IRP shall be subject to the rules established by the Energy Bureau and approved by the same. **All actions taken by PREPA regarding generation and related matters must be consistent with the Approved IRP and the Approved Action Plan. Any changes or amendments to the IRP shall be approved by the Energy Bureau. The IRP may not be eliminated or altered by anyone under any circumstances, until a plan review process is thus carried out before the Energy Bureau and evidence thereof is furnished.**

The Energy Bureau **TAKES NOTICE** of the November 15 Motion and its attachments. However, the Energy Bureau **WARNS** PREPA that failure to abide by, or to comply with, the Approved IRP or the Approved Action Plan, **will result in the imposition of administrative sanctions and/or a referral for the commencement of the penal process established in paragraph (e) of Article 6.36 of Act 57-2014.**

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



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 November 18, 2021. I also certify that on November 18, 2021, a copy of this Resolution and Order was notified by electronic mail to the following: kbolanos@diazvaz.law; jmarrero@diazvaz.law. I also certify that today, November 18, 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 18, 2021.



Sonia Seda Gaztambide
Clerk

