

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

NEPR

Received:

Jun 3, 2022

5:08 PM

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: Motion to Submit Letter Sent By
the Oversight Board, to Reiterate the Petition
to Initiate Works to Comply with
Environmental Regulations, and Request for
Technical Conference

**MOTION TO SUBMIT LETTER SENT BY THE OVERSIGHT BOARD,
TO REITERATE THE PETITION TO INITIATE WORKS TO COMPLY
WITH ENVIRONMENTAL REGULATIONS, AND REQUEST
FOR TECHNICAL CONFERENCE**

COMES NOW the Puerto Rico Electric Power Authority (PREPA), through its counsel
of record, and respectfully submits and requests as follows:

I. INTRODUCTION

In 2018 the United States Environmental Protection Agency (EPA) designated the Guayama-Salinas and San Juan air districts as areas that do not meet or contribute to ambient air quality in a nearby area that does not meet the national ambient air quality standard (NAAQS). These areas must clean up emissions to reach or “attain” the official parameter for the sulfur dioxide (SO₂) pollutant. The Commonwealth of Puerto Rico (the “Commonwealth”) failed to meet the original compliance deadline. As stated in the *Petition for Leave to Conduct Works in PREPA’s Steam Units to Achieve Environmental Regulatory Compliance* (the “Petition”)¹, the Government of Puerto Rico must submit to EPA a plan with feasible proposals to attain to the NAAQS on or before June 3, 2022. This submittal must be made in the form of a state implementation plan

¹ The Petition was filed by PREPA on February 11, 2022, in case no. NEPR-MI-2021-0002, *In Re: Review Of The Puerto Rico Electric Power Authority's 10 Year Infrastructure Plan- December 2020* (the “Infrastructure Docket”).

(“NAA-SIP”). It is paramount that the NAA-SIP is finalized by the June 3 deadline to avoid the imposition of sanctions and restrictions. The Puerto Rico Department of Natural and Environmental Resources (DNER), in representation of the Commonwealth, has made several analyses using data and information requested to PREPA and, after careful consideration, determined that burning natural gas in the existing steam units of Aguirre, San Juan, and Palo Seco power plants would achieve “attainment” in the designated districts. Based on these analyses, PREPA submitted its Petition to the Puerto Rico Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau” or “Bureau”) requesting leave for conducting fuel conversion works in San Juan Power Plant steam units. However, three (3) months have passed since PREPA presented the Petition, which submits to the Energy Bureau PREPA’s plans to achieve attainment. The Energy Bureau has yet to make one single expression regarding this matter of utmost importance. It is respectfully submitted that remaining idle **is not** an option.

On March 25, 2022, the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) addressed a letter to Hon. Omar Marrero-Diaz, Executive Director of the Fiscal Agency and Financial Advisory Authority (AAFAF, for its Spanish acronym) (the “March 25 Letter”) concerning the non-attainment areas and the NAA-SIP. *See* Exhibit A. It is clear from the Oversight Board’s letter that PREPA’s concern is shared; the Commonwealth would have severe power generation constraints and lose millions of dollars in federal funds if the NAA-SIP to address the non-attainment is not approved. As PREPA’s regulator, the Energy Bureau is tasked with approving PREPA’s plans which, as stated in the Petition, include the conversions of generation units to burn natural gas. As stated in the Petition, the conversion to gas-burning generating units is the road PREPA supports as the feasible plan to approve the NAA-SIP. PREPA understands that the fuel conversion works included as part of the compliance strategy proposed

in the NAA-SIP must have the Energy Bureau's approval. However, even with PREPA's insistence, the Energy Bureau has yet to make a single expression regarding the Petition. As stated in the Oversight Board's letter and echoed by PREPA, time is of the essence.

Even though PREPA submitted the Petition to the Energy Bureau on February 11, 2022, the Energy Bureau has not entered any order or contacted PREPA to discuss this critical matter. However, as the Energy Bureau published in its social networks, the Bureau did hold meetings with other stakeholders to discuss the draft NAA-SIP. Even though PREPA recognizes the Energy Bureau's independence, including deciding which stakeholders it meets to discuss the draft NAA-SIP, leaving PREPA outside of the conversations is counterproductive. PREPA, recognizing the Energy Bureau's role and broad powers, filed a request for leave to conduct the works that, per studies and modeling, would allow NAAQS attainment. PREPA respectfully urges the Energy Bureau to grant PREPA a hearing or meeting and that it be provided the same opportunity that is being afforded to other entities. The Oversight Boards' request for "collaboration" is on point and essential.

Therefore, PREPA respectfully requests the Energy Bureau to schedule a technical conference with the urgency that is required and, at this point, unquestionable. As stated by the Oversight Board in the March 25 Letter, "all relevant government stakeholders, including DRNA and PREPA, [must] work in close collaboration with [the Energy Bureau] to develop a NAA-SIP that complies with the [Clean Air Act] (CAA)² requirements, is deemed implementable and consistent with the IRP³ by [the Energy Bureau], to do so as promptly as possible to comply with

² 42 U.S.C. §§ 7401 *et seq.*

³ *Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan*, entered by the Energy Bureau on August 24, 2020, in case no. CEPR-AP-2018-0001, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, in which the Energy Bureau approved the Modified IRP with a Modified Action Plan ("IRP", "IRP Order" or "Approved IRP").

the imposed deadline of June 3, 2022.” March 25 Letter at p. 2. PREPA shares what the Oversight Boards lays out as the correct course of action and requests the Energy Bureau to address the Petition, which includes the Commonwealth’s plan to achieve attainment, with the urgency that it has.

II. PREPA REQUESTS THE ENERGY BUREAU TO ADDRESS THE PETITION

As stated in the Petition, the EPA designated the Guayama-Salinas and San Juan air districts as non-attainment areas for the SO₂ NAAQS, effective April 9, 2018. EPA’s non-attainment designation was based on SO₂ modeling results from modeling performed on these air districts. The air district of Guayama-Salinas includes part of the municipalities of Guayama and Salinas. In the case of the San Juan air district, it consists of the municipality of Cataño and part of the municipalities of San Juan, Guaynabo, Bayamón, and Toa Baja. PREPA’s Aguirre, San Juan, and Palo Seco steam plants are located in these air districts.

Given the non-attainment designation by EPA under the CAA, the DNER must submit a final NAA-SIP for EPA approval, which shall provide for attainment of the 2010 1-Hour SO₂ NAAQS in the Guayama-Salinas and San Juan non-attainment areas by April 9, 2023. The submittal to EPA of an approved NAA-SIP was due by October 9, 2019. However, because the DNER missed the October 9, 2019’s deadline, EPA issued the *Findings of Failure To Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS)* (FFS), with an effective date of December 3, 2020. 85 Fed. Reg. 69,504 (Nov. 3, 2020). The FFS triggers CAA deadlines for EPA to impose mandatory sanctions if EPA has not determined that Puerto Rico made a complete NAA-SIP submittal and starts a 2-year clock for EPA to issue a Federal Implementation Plan.

According to the current Puerto Rico NAA-SIP process, EPA must determine that the DNER's final NAA-SIP submission is complete **by June 3, 2022**, to avoid the imposition of 2:1 offset sanctions in the non-attainment areas. If the EPA does not determine that DNER has made a complete NAA-SIP submittal by this date, each new ton of SO₂ emitted from any new or modified source in the non-attainment areas must be offset by a two-ton reduction. In addition to PREPA's power plants, the 2:1 offset sanction applies to all emissions sources in the non-attainment areas, including private facilities and other publicly owned installations. To comply with EPA's regulations, the 2:1 offset sanction will require all the owners and operators of emissions sources in the non-attainment areas to implement emissions control measures for twice the emissions compared to their actual emissions. This sanction would increment the operational and maintenance costs of operating industrial and commercial facilities in the non-attainment areas, affecting the economic development in these areas.

Furthermore, should EPA determine that the NAA-SIP is not complete by December 3, 2022, additional sanctions will apply, consisting of a moratorium on roads and highway funds for projects in the non-attainment areas. These projects include new roads or improvements to existing roads and highways. Puerto Rico depends on receiving these federal funds, amounting to **over \$144 million annually**, to develop roads and highway projects. These federal funds will enter a moratorium if the NAA-SIP submitted by the DNER is not declared complete by December 3, 2022. Considering the current fiscal situation of the Government of Puerto Rico, the safe transit across the roads and highways in the non-attainment areas would be adversely affected due to the lack of funds to execute the necessary maintenance, repairs, and construction on these roads and highways.

As part of the process of developing the draft NAA-SIP, the DNER modeled the SO₂ emissions in the Guayama-Salinas and San Juan air districts and found that these areas cannot achieve attainment if PREPA continues burning bunker C and regular diesel fuels in the generating units of Aguirre, San Juan, and Palo Seco power plants, absent generating unit retirements. When modeling combustion turbines using ultra-low sulfur diesel (ULSD), the emissions are reduced but **not enough** to achieve attainment because some steam units would still burn bunker C. In the absence of generation retirements, various modeling runs indicated that achieving attainment in the relevant air districts would require burning natural gas in existing steam units of Aguirre, San Juan, and Palo Seco power plants.

PREPA has held several meetings with DNER and EPA staff to look for an environmental compliance strategy that allows PREPA's thermal units to remain operational while the reliable transition to new renewable energy resources is achieved. During these meetings, both the DNER and PREPA agreed on the dual priorities of providing reliable electricity to the residents of Puerto Rico while meeting the NAAQS requirements for the benefit, health, and welfare of the People of Puerto Rico. PREPA respectfully submits that these priorities can be met with the plans laid out in the Petition and draft NAA-SIP.

III. THE OVERSIGHT BOARD'S MARCH 25 LETTER

The Oversight Board's March 25 Letter to Hon. Omar Marrero sets forth concerns that PREPA shares and were already brought to the attention of the Honorable Energy Bureau in the Petition.

First, “if the Commonwealth’s non-compliance with the EPA’s approval of the NAA-SIP continues by December 2022, the EPA Administrator may prohibit the United States Secretary of Transportation from funding projects or awarding grants within the non-attainment areas.” March 25 Letter at p. 2. Therefore, failure to have an approved NAA-SIP by December 3, 2022, jeopardizes Puerto Rico’s capability of producing sufficient power to meet the demand and over \$100 million annually that is earmarked for transportation projects. It is worth noting that the People of Puerto Rico would ultimately bear the risk is losing federal grants and the exposure of paying fines.

Second, PREPA shares the concern of the Oversight Board that several components of the draft NAA-SIP must be consistent with the Approved IRP. Such a statement goes to the crux of the Petition filing. The Petition presents the Energy Bureau with capital projects that must be approved to deem them compliant with the Approved IRP and, thus, applicable local law. However, PREPA defers from the Oversight Board’s understanding that several components of the draft NAA-SIP are inconsistent with the IRP. The fact that PREPA’s projects to achieve compliance with the NAAQS are not explicitly mentioned in the Approved IRP doesn’t mean that they are outright prohibited. To the contrary, as stated below, PREPA’s proposal further supports the implementation of the Approved IRP and the Commonwealth’s energy public policy.

PREPA reiterates its request for the Energy Bureau to, at the very least, grant PREPA an urgent technical conference to discuss the Petition and the draft NAA-SIP. As stated by the Oversight Board in the March 25 Letter, the DNER may not have time before June 3, 2022, to develop a draft NAA-SIP if the Energy Bureau doesn’t allow the collaboration that PREPA seeks with the Petition submittal.

IV. WAITING FOR THE INTEGRATION OF RENEWABLE ENERGY TO COMPLY WITH THE SO₂ STANDARDS IS NOT REALISTIC⁴

On August 24, 2020, the Energy Bureau approved the IRP and the Modified Action Plan, including a comprehensive plan to achieve Puerto Rico’s energy public policy. The Modified Action Plan will be implemented during the next five (5) years unless the Energy Bureau revises it before said term elapses. Even though there is a general misconception about the IRP being a straitjacket, as stated by the Energy Bureau itself, “[t]he IRP Order is a *framework* for decision making going forward.”⁵

One of the Modified Action Plan targets approved by the Energy Bureau is to comply with Act 82⁶ and Act 17’s⁷ Renewable Energy Portfolio Standard (RPS). The approved RPS seeks to reduce and eventually eliminate electric power generation from fossil fuels by integrating orderly and gradually alternative renewable energy while safeguarding the stability of the electrical system and maximizing renewable energy resources in short-, medium-, and long-term. The current RPS was established to achieve a minimum of twenty percent (20%) on or before 2020⁸; forty percent (40%) on or before 2025; sixty percent (60%) on or before 2040; and one hundred percent (100%) on or before 2050 of renewable energy production in Puerto Rico. Act 17 also calls for a total ban on coal-based generation by January 1, 2028. This, in essence, is what is commonly referred to as “Puerto Rico’s energy public policy.”

⁴ References in this subpart are to the docket in case NEPR-MI-2020-0012, *In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*.

⁵ *Final Resolution And Order Establishing Wheeling Tariffs And Further Process* at p. 10, entered in case no. NEPR-AP-2018-0004; *In Re: The Unbundling Of The Assets Of The Puerto Rico Electric Power Authority*.

⁶ *Public Policy on Energy Diversification through Sustainable and Alternative Renewable Energy in Puerto Rico*, Act No. 82 of July 19, 2020, as amended, 22 L.P.R.A. §§ 8121 - 8136 (“Act 82”).

⁷ *Puerto Rico Energy Public Policy Act, Act No. 17 of April 11, 2019*, 22 L.P.R.A. §§ 1141-1141f (“Act 17”).

⁸ *Puerto Rico Climate Change Mitigation, Adoption and Resilience Act*, Act No. 33 of May 22, 2019, 12 L.P.R.A §§ 8011 – 8014.

The Energy Bureau included several steps that PREPA must take to transition from fossil fuels to clean and renewable energy in the approved Modified Action Plan to meet the energy public policy's ambitious targets. One of these endeavors is developing a plan and procuring 3,750 MW of renewable energy generation and 1,500 MW of battery energy storage systems (BESS) by 2023. The request for proposals (RFP) for the first tranche ("Tranche 1 RFP") was published by PREPA on February 22, 2021.

As part of the Tranche 1 RFP process, on February 3, 2022, after PREPA's evaluation and approval, the Energy Bureau approved eighteen (18) PV projects totaling 844.8 MW. On March 25, 2022, the Oversight Board also approved them. PREPA expects to complete the Tranche 1 RFP procurement process after LUMA Energy, LLC (LUMA) completes the interconnection studies of the proposed projects, which, according to LUMA, will be done this week. After these studies are conducted, PREPA will revise the LCOS with the interconnection cost and decide whether to proceed with the projects and sign the PPOAs. According to the Energy Bureau and the Oversight Board's approved procedure, and as included in the PPOAs, the PPOAs will be executed this summer. Afterward, all approved PV projects have up to twenty-four (24) months to achieve commercial operation. Thus, should PREPA sign all eighteen (18) PPOAs, the first 884.8 MW of renewable energy may be integrated into the energy system by the **fall of 2024**. However, as highlighted above, the Commonwealth must achieve NAAQS compliance by April 9, 2023. Therefore, waiting and relying solely on renewable energy integration to reduce SO₂ by the compliance date is unrealistic.

V. THERE ARE OTHER ACTIONS THAT THE ENERGY BUREAU MUST TAKE TO ALLOW LONG-TERM COMPLIANCE WITH ENVIRONMENTAL REGULATIONS AND POLICY

It is respectfully asserted that the Petition's approval is not the only action that the Honorable Energy Bureau must take to allow long-term compliance with environmental regulations and the Commonwealth's energy public policy. The approval of several repair work projects would support PREPA's plans to comply with the long-term implementation of achieving 100% clean energy generation with zero emissions.

On November 15, 2021, PREPA filed a *Motion to Submit Fourth Group of Generation Projects* ("November 15 Motion").⁹ With the November 15 Motion, PREPA presented a comprehensive list of generation projects which consist of repair work projects of generation assets and for which PREPA will seek reimbursement under several programs of the Federal Emergency Management Agency (FEMA). PREPA submitted to the Bureau that it is of paramount importance that it approves and allows PREPA to move forward with the relevant request for reimbursement of the generation projects because, among other reasons, the People of Puerto Rico should not pay the costs for the generation projects if there are funds available to cover those expenses. In the November 15 Motion, PREPA asserted that the execution of the generation projects would serve the People of Puerto Rico and allow PREPA to follow its responsibility and duty to provide reliable and continuous electric service. The generation projects present the minimum repairs required to keep the existing generating fleet running and a reliable operation during an average of five (5) years following the repairs. In general, significant repairs of old generating units are needed, on average, every five (5) years to maintain the generation fleet's reliable and continuous operations. PREPA moved the Energy Bureau to approve the generation projects to allow PREPA to present them to the Central Office for Recovery, Reconstruction and Resiliency (COR3) and FEMA.

On November 18, 2021, the Energy Bureau entered a *Resolution and Order* partially

⁹ References in this subpart is to the Infrastructure Plan Docket.

addressing the November 15 Motion (“November 18 Order”). In the November 18 Order, the Energy Bureau stated that “[it would] promptly issue a resolution evaluating the Proposed Generation Projects” and “that it would evaluate the Generation Projects with the urgency that circumstances require.” November 18 Order at pp. 1-2.

On November 29, 2021, PREPA filed a *Motion to Clarify and Request for Technical Conference* (“November 29 Motion”) to provide additional information to aid the Energy Bureau in evaluating the previously submitted generation projects. In the November 29 Motion, PREPA reiterated its objective to pursue projects that comply with and follow the Approved IRP. PREPA then requested the Energy Bureau to schedule a technical conference to discuss further the concerns and questions the Bureau may have relating to those projects.

On January 4, 2022, the Energy Bureau entered a *Resolution and Order* (“January 4 Order”) by which the Energy Bureau divided the projects in two groups: (i) the works included in Attachments A to H of the January 4 Order, which were conditionally approved (“Conditionally Approved Projects”) and (ii) projects that the Energy Bureau determined to defer for further evaluation and are listed in Attachment I of the January 4 Order (“Deferred Projects”).

On February 10, 2022, the Energy Bureau stated that it would discuss the Deferred Projects in a technical conference that would be scheduled once PREPA files all pending statements of works and responds to all requests for information stated in the January 4 Order. PREPA met both conditions on February 23, 2022, and, to date, no such technical conference has been scheduled.

PREPA respectfully submits that failure to approve all the generation projects included in the November 15 Motion is counterproductive to achieving long-term environmental compliance. These repairs are necessary to maintain the system’s reliability while the integration of renewable resources is completed. Further, regarding the retirement of specific thermal generation units

during the next five (5) years,¹⁰ the Energy Bureau noted in the Approved IRP that retirement schedules for older oil-fired generating units depend on achieving specific reliability milestones related to the integration of new resources.¹¹ The Approved IRP further provides that “PREPA should retire the older, oil-fired steam assets, roughly in order of declining cost to operate (and in consideration of retirement sequencing by the unit to align with synchronous condenser conversion) as soon as they are no longer necessary for reliable system operations.” IRP Order at p. 193, ¶ 630. The Energy Bureau approved PREPA’s retirement plan for the steam units that PREPA presented to the Energy Bureau in June 2020. Under the IRP Order, the retirement must be “in accordance with PREPA’s caveats⁹¹⁷ indicating a need for replacement capacity, assurance of meeting the overall reliability needs, and in alignment with more specific timing thresholds described in the Modified Action Plan.” *Id.* The caveats and limitations related to the retirement of the existing steam generating fleet adopted by the Energy Bureau in the IRP Order (as cited and incorporated in footnote 917 of the IRP Order) provide that “these recommendations are based on other prerequisite developments which include the forecasted reduction in load, assumed levels of reliability of the remaining of the existing fleet at the time of retirement, and the commissioning of the new generation resources” and “the retirement of existing generating units should be only implemented after all the prerequisites above have been met, particularly that all new resources are fully operational, and units planned for retirement are not required for reliable operation of the system.” *See* PREPA’s Proposed IRP filed on June 7, 2019, in case no. CEPR-AP-2018-0001,

¹⁰ November 18 Order at p. 1.

¹¹ IRP Order at p. 10, ¶ 64 (“The Energy Bureau FINDS that PREPA should retire its older, oil-fired steam assets in order of the declining cost to operate when they are no longer necessary for system reliability. The retirements should align with synchronous condenser conversion.”); *see also* IRP Order at pp. 14-15, ¶ 92 (“[The] Modified Action Plan consists of specific directives to PREPA, including the following key components:” (...) “Determination of retirement schedules for older oil-fired generating units (with approval of conversion of some units to synchronous condensing operation), which will be dependent on achieving specific reliability milestones: completion of new battery energy storage capacity, potential additional peaking capacity, and obtaining DR resources and peak load reduction through EE provision.”)

Part 9, Caveats and Limitations, No. 17, page 9-4.¹²

According to the caveats and limitations stated in the Approved IRP, the generation units' retirement shall occur upon the reliable integration of new resources with the power system. To date, no such integration has happened. Hence, keeping the existing generating units operational and running is necessary until the reliable integration of new resources is completed. Repairs works like those presented for approval in the November 15 Motion provide a safe pathway to keep dependable generation available during the development and integration of renewable generation resources.

Additionally, the Approved IRP states as a specific directive to PREPA, to determine the thermal generating units' retirement schedules in compliance with the provisions of these plans. PREPA is committed to determining the units' retirement schedules consistent with the Approved IRP and presenting them for the Energy Bureau's approval. This was recently confirmed by the Energy Bureau in the Final Wheeling Tarif Order,¹³ in which it is explicitly stated that:

The IRP Order is a framework **for decision-making** in the future. While some scenarios are viewed as more likely and some elements of the IRP Order, there are many areas where PREPA (and now LUMA) are explicitly required **to adjust to updated circumstances** as warranted in the more specific proceedings coming out of the IRP Order. **Nowhere is this more apparent than the discussion of retirement schedules for older oil-fired generating units**, an issue directly relevant to the possibility of marginal cost savings from declining load. On p. 262 of the IRP Order, the retirement schedule for older oil-fired generating units depends on reliability milestones: completion of new battery energy storage capacity, potential additional other peaking capacity, and obtaining DR resources and peak load reduction through EE. This is further detailed on pages 271-72 of the IRP Order, where the Energy Bureau details several **contingencies and updates required to rationally make these retirement decisions**. Future work on marginal cost or avoided cost analysis should take these realities into account and should not hold the IRP Order as an independent and fixed

¹² Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2019/06/2-IRP2019-Main-Report-REV2-06072019.pdf> (Last visited November 22, 2021).

¹³ *Final Resolution and Order*, case no. NEPR-AP-2018-0004; *In Re: The Unbundling of the Assets of the Puerto Rico Electric Power Authority* (March 24, 2022).

input.

Final Wheeling Tariff Order at p. 10 (emphasis added) (footnotes omitted).

Wherefore, PREPA should be allowed to continue with the generation projects, which will bring reliability not only to the generation system but also stability to allow for the integration of the renewable resources that will enable the determination of an appropriate retirement schedule for the older oil-fired generating units, thus securing a long-term reduction of emissions and therefore, environmental compliance.

VI. CONCLUSION

The NAA-SIP developed by the DNER consists of a feasible compliance strategy, which includes both the integration of renewable energy according to the mandated RPS and the conversion of existing steam units to burn natural gas. This strategy is consistent with the Approved IRP and Act 17, as it promotes and facilitates the transition to cleaner energy and zero emissions. Allowing the request for relief submitted by PREPA in the Petition will have the ultimate result of proposing to the EPA a feasible NAA-SIP to attain to the NAAQS on or before June 3, 2022, avoid the imposition of sanctions and fines for failure to comply with environmental standards, avoid the risk of disallowance of federal funds, and avoid generation restrictions. This, considering that the direct effect of not complying will be large scale outages and blackouts, affecting the economic development and quality of life of the People of Puerto Rico.

As stated by the Oversight Board in the March 25 Letter, PREPA and the Energy Bureau's collaboration in this process is of the essence. PREPA has asked the Energy Bureau to begin such collaboration efforts, but the Energy Bureau has failed to address PREPA's petition. This communication gap is counterproductive and should always be avoided. All the components of the

Commonwealth must work together to achieve what should be the common goal of all: the benefit of the People of Puerto Rico.

WHEREFORE, PREPA reiterates the remedies sought in the Petition and requests the Energy Bureau to schedule a technical conference to receive testimony from PREPA's officers to resolve all the main outstanding matters, including the Petition and the approval of the Deferred Projects.

RESPECTFULLY SUBMITTED.

In San Juan Puerto Rico, 31st day of May 2022.

/s Maralíz Vázquez-Marrero
Maralíz Vázquez-Marrero
mvazquez@diazvaz.law
TSPR 16,187

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo
kbolanos@diazvaz.law
TSPR No. 18,888

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.
290 Jesús T. Piñero Ave.
Oriental Tower, Suite 803
San Juan, PR 00918
Tel. (787) 395-7133
Fax. (787) 497-9664

CERTIFICATE OF SERVICE

It is hereby certified that I have filed the foregoing with the Clerk of the Energy Bureau using the electronic filing system using <https://radicacion.energia.pr.gov/login> and also that I have served a copy on LUMA Energy, LLC and LUMA Energy ServCo, LLC through their counsel of record at laura.rozas@us.dlapiper.com and margarita.mercado@us.dlapiper.com.

In San Juan, Puerto Rico, this 3rd day of June 2022.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo

Exhibit A

FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



David A. Skeel, Jr.
Chair

Members
Andrew G. Biggs
Arthur J. González
Antonio L. Medina
John E. Nixon
Justin M. Peterson
Betty A. Rosa

Natalie A. Jaresko
Executive Director

BY ELECTRONIC MAIL

March 25, 2022

Hon. Omar Marrero Díaz
Executive Director
Fiscal Agency and Financial Advisory Authority (“AAFAF”)

RE: Non-Attainment Area – State Implementation Plan

Dear Mr. Marrero Díaz,

We write to you regarding non-attainment areas and the Commonwealth’s federal highway funds.

On January 9, 2018, the Environment Protection Agency (“EPA”) published its decision to designate areas of Puerto Rico as non-attainment areas for the 2010 SO₂ National Ambient Air Quality Standards.¹ These designations² took effect on April 9, 2018, and required the Department of Natural and Environmental Resources (“DRNA” for its Spanish acronym) to develop and obtain EPA approval of a Non-Attainment Area State Implementation Plan (“NAA-SIP”) that meets the requirements of Section 172(c) of the Clean Air Act (“CAA”) by December 2020. When the Commonwealth failed to meet this deadline, the federal government extended the deadline to June 3, 2022.

Should the Government of Puerto Rico not obtain approval from the EPA of its NAA-SIP by June 3, 2022, the designated non-attainment areas will have imposed upon them a new 2:1 emission offset requirement for all new or modified emission sources (in Puerto Rico, these sources are generally energy generation units) installed in those areas. The offset requirement implies that any modified source within the non-attainment areas would have to reduce air pollutants or not

¹ Findings of Failure To Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS), 83 Fed. Reg. 69507 (Nov. 3, 2020).

² These designations correspond to the Air Quality Control Regions (AQCRs) covering areas within the Municipalities of San Juan, Guaynabo, Toa Baja, and Bayamón. They further apply to the entire Cataño Municipality on the north of the main island and sectors of the Guayama and Salinas Municipalities on the south of the main island.

generate incremental pollutants. In the case of a new emission source, the offset requirement requires other existing sources in the non-attainment area to be converted in order to offset on a 2:1 ratio any air pollutants arising from the new source.

If the Commonwealth's non-compliance with EPA's approval of the NAA-SIP continues by December 2022, the EPA Administrator may prohibit the United States Secretary of Transportation from funding projects or awarding grants within the non-attainment areas.³ Such a prohibition would jeopardize the Commonwealth's ability to utilize federal funding for construction of roads and bridges within the designated non-attainment areas and could potentially cost the Island up to \$100 million annually, while the noncompliance continues.

Created in 2014, the Puerto Rico Energy Bureau ("PREB") regulates and oversees the Puerto Rico energy sector and has, pursuant to Act 17-2019, the sole authority to approve energy resource planning in Puerto Rico through an Integrated Resource Plan ("IRP"). The IRP is a twenty-year plan that serves as the roadmap for energy investments in Puerto Rico and is revised at least every three years. The current IRP, approved on August 24, 2020, is required by law to examine the environmental impact of energy system investments, and ensure such investments help meet the applicable renewable energy portfolio standards.

The Oversight Board understands several components of the draft NAA-SIP may be inconsistent with the IRP and Puerto Rico's energy policy.⁴ A NAA-SIP that is inconsistent with the IRP may not be implemented as a matter of law. Given this apparent conflict, the Oversight Board is concerned DRNA and PREPA may not have the time before June 3, 2022 to develop a NAA-SIP consistent with Puerto Rico energy policy. Failure to do so could lead to the federal sanctions outlined above. The Oversight Board therefore urges all relevant government stakeholders, including DRNA and PREPA, to work in close collaboration with PREB to develop a NAA-SIP that complies with CAA requirements, is deemed implementable and consistent with the IRP by PREB, and to do so as promptly as possible to comply with the imposed deadline of June 3, 2022.

Lastly, to meet the EPA's requirements, DRNA must develop a series of effective amendments to the Air Pollution Control Regulation (the "Proposed Amendments"). Doing so will take time, not only because of the technical nature of the requirements, but also because the Oversight Board understands such regulations will have to be developed in compliance with the procedures set forth in the Uniform Administrative Procedures Act, Act 38-2017, as amended. Further, the DRNA must submit the Proposed Amendments to the Oversight Board prior to their issuance, in accordance with the Rules, Regulations and Orders Review Policy established pursuant to Section 204(b)(4) of PROMESA. Given this requirement, it would be advisable to submit the Proposed Amendments to the Oversight Board by no later than April 4, 2022 to facilitate a swift approval process.

³ 42 U.S. Code § 7509; 40 CFR § 52.31

⁴ See PREPA's *Petition for Leave to Conduct Works in PREPA's Steam Units to Achieve Environmental Regulation Compliance*, NEPR-MI-2021-0002.

Hon. Marrero Díaz


March 25, 2022

Page 3 of 3

The Oversight Board urges the Government to actively work to complete this critical task and prevent the potential consequences of non-compliance with aforementioned EPA regulations, in particular, the potential loss of access to \$100M in federal funding for roads and highways in Non-Attainment Areas.

We are available to support the Commonwealth in this regulatory process for the benefit of the people of Puerto Rico.

Sincerely,



Jaime A. El Koury
General Counsel

CC: Hon. Pedro R. Pierluisi Urrutia
Hon. Rafael Machargo
Hon. Eileen Vélez Vega
Mr. Josué Colón Ortíz
Mr. Edison Avilés
Mr. Edwin González