

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

NEPR

Received:

Jun 24, 2022

7:10 AM

CASE NO.: NEPR-MI-2021-0002

IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY'S 10
YEAR INFRASTRUCTURE PLAN-
DECEMBER 2020

SUBJECT: Second Motion to Reiterate
Petition for Leave to Conduct Works to
Achieve Environmental Regulatory
Compliance and Request for Technical
Conference

**SECOND MOTION TO REITERATE PETITION FOR LEAVE TO CONDUCT
WORKS TO ACHIEVE ENVIRONMENTAL REGULATORY COMPLIANCE
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 AND RELEVANT BACKGROUND INFORMATION

This is PREPA’s *third* motion requesting the Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau” or “PREB”) to act upon a matter of utmost importance: Leave to conduct works for the conversion of steam units to burn natural gas, through which PREPA will achieve environmental regulatory compliance and will also add reliability to the electric system during the development and interconnection of the renewable projects.

On February 11, 2022, PREPA filed a document titled *Petition for Leave to Conduct Works in PREPA’s Steam Units to Achieve Environmental Regulatory Compliance* (“February 11 Petition”) before the Energy Bureau. Likewise, on March 31, 2022, PREPA submitted a document titled *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* (“March 31 Motion”). Five (5) months have passed since PREPA presented the February 11 Petition and

the Energy Bureau has not addressed PREPA's reiterated February 11 Petition. The February 11 Petition submits to the Energy Bureau PREPA's plans to achieve attainment with environmental considerations, and notwithstanding PREPA has stressed the importance of PREB's authorization. PREPA had also made themselves available for a Technical Conference, to coordinate all efforts with the environmental agencies and achieve compliance by the now-elapsd June 3, 2022, deadline. PREPA hereby restates, incorporates, and adopts by reference the arguments and request for relief made in the February 11 Petition and the March 31 Motion.

As PREPA had previously presented to the Energy Bureau, "The electric power system should be reliable and accessible, promote industrial, commercial, and community development, improve the quality of life at just and reasonable cost, and promote the economic development of the Island." Statement of Motives, Act 17.¹ PREPA remains committed to meeting these goals and providing continuous, reliable, clean, and affordable power service to Puerto Rico. However, as it becomes more apparent each time, PREPA's infrastructure is aging and requires repairs that will guarantee the integrity of the system while the transition to renewable energy ensues. Among the many challenges the aging of units entails, the most important one is achieving environmental compliance, which is of paramount importance as it aims to improve the air quality for the residents of Puerto Rico by reducing harmful emissions. For this purpose, PREPA has been proactive in providing the Energy Bureau solutions that can be implemented shortly to comply with environmental regulations. Failure to comply with these regulations has resulted in the imposition of fines on PREPA, which PREPA's customers ultimately bear. These exact near-term solutions also serve to avoid the costs associated with unit shutdowns and generation shortfalls.

¹ *Puerto Rico Energy Public Policy Act*, Act No. 17 of April 11, 2019, 22 L.P.R.A. §§ 1141-1141f ("Act 17").

Additionally, at present, Puerto Rico has the unique opportunity to use billions of dollars earmarked for Puerto Rico by the Federal Government. Still, some of those funds are subject to compliance in different areas, including compliance with certain environmental rules and regulations. Thus, failing to comply with mandated environmental policies do not only be costly because of the fines but could also have the effect of disallowing the use of federal funds for failure to meet mandatory standards.

As the Energy Bureau is aware, 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 that 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 Government of Puerto Rico was scheduled to submit to EPA a plan with feasible proposals to attain the official standards on or before June 3, 2022 (the “June 3 Plan”). For this purpose, the Puerto Rico Department of Natural and Environmental Resources (DNER) and PREPA had made several analyses 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. However, failing to submit the June 3 Plan caused the imposition of first fines to the Government of Puerto Rico. It also caused any permit issued by the DNER in the metropolitan and south areas of Puerto Rico to be more restrictive.

PREPA maintains that the conversion of the existing steam units of the San Juan power plant to the burn of natural gas is the correct path forward to achieve environmental attainment. It also supports PREPA’s transition from fossil fuels to clean and renewable energy, which must be executed in parallel with delivering a safe and reliable electric service to the People of Puerto Rico.

Consequently, the proposed conversions shall provide the optimal operational and economic conditions for the new renewable resources' integration.

Therefore, PREPA herein restates its requests for leave from the Energy Bureau to begin preliminary works to convert the existing steam units of the San Juan power plant to burn natural gas. This request has the ultimate goal of submitting to the EPA a feasible plan to attain the official emissions standards, 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. The Energy Bureau still has a chance to rule on this request as the major deadline for compliance with the EPA regulation elapses in December 2022.

II. PREPA REQUESTS THE ENERGY BUREAU TO ADDRESS THE FEBRUARY 11 PETITION AND THE MARCH 31 MOTION

As stated in the February 11 Petition and the March 31 Motion, 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.

Based on the current Puerto Rico NAA-SIP process, EPA had to determine that the DNER's final NAA-SIP submission was complete by June 3, 2022, to avoid the imposition of 2:1 offset sanctions in the non-attainment areas. Since the EPA did not determine that DNER completed the June 3 Plan, 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 increments 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 in operation while, at the same time, the reliable transition to new renewable energy resources is achieved. During these meetings, 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 satisfied with the plans laid out in the February 11 Petition and draft NAA-SIP.

III. WAITING FOR THE INTEGRATION OF RENEWABLE ENERGY TO COMPLY WITH THE SO₂ STANDARDS IS NOT REALISTIC²

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 in the next five (5) years unless the Energy Bureau revises it before the term elapses. Even though there is a general misconception about the IRP being a straitjacket, as the Energy Bureau states, “[t]he IRP Order is a *framework* for decision making going forward.”³

One of the Modified Action Plan targets approved by the Energy Bureau is to comply with Act 82⁴ and Act 17’s⁵ 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 the short-, medium, and long-term. The current RPS was established to achieve a minimum of twenty percent (20%) on or before 2020⁶; 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.”

² 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*.

³ *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*.

⁴ *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”).

⁵ *Puerto Rico Energy Public Policy Act, Act No. 17 of April 11, 2019*, 22 L.P.R.A. §§ 1141-1141f (“Act 17”).

⁶ *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 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 supported them. PREPA expects that all the PPOAs for the eighteen (18) PV projects will be executed next week. 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 844.8 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.

IV. CONCLUSION

The NAA-SIP developed by the DNER consists of a feasible compliance strategy, which includes integrating renewable energy according to the mandated RPS and converting 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 February 11 Petition will have the ultimate result of proposing to the EPA a feasible NAA-SIP to attain the NAAQS, avoid the imposition of further 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 significant scale outages and blackouts, affecting the economic development and quality of life of the People of Puerto Rico.

PREPA feels confident that the Energy Bureau shares PREPA's goal of ensuring a cost-effective and reliable supply of energy while avoiding jeopardizing the health and safety of the citizens of Puerto Rico due to generation shortfalls and noncompliance with environmental regulations. With the conversion of steam units to burning natural gas, PREPA will achieve environmental regulatory compliance and add reliability to the system during the development and interconnection of renewable energy projects.

WHEREFORE, PREPA reiterates the remedies sought in the February 11 Petition, the March 31 Motion, and respectfully requests the Honorable Energy Bureau grant leave for PREPA to begin works to convert the existing steam units of San Juan power plant to burn natural gas to achieve environmental regulatory compliance and also to schedule a technical conference to receive testimony from PREPA's officers to resolve all the main outstanding matters.

RESPECTFULLY SUBMITTED.

In San Juan Puerto Rico, 24th day of June 2022.

s/ Katuska Bolaños-Lugo
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CERTIFICATE OF SERVICE

It is hereby certified that I have filed the preceding 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 24th day of June 2022.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo