

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

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

CASE NO.: NEPR-MI-2021-0002

SUBJECT: Resolution on PREPA's
September 3 and 7, 2022 Motions.

RESOLUTION

I. Relevant Factual Background

Through a Resolution issued on August 3, 2022 in the captioned case ("August 3 Resolution"), the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") determined that the conversion to dual fuel use of the San Juan Power Plant Steam Units 7, 8, 9 and 10 (collectively, "SJ 7-10") is not consistent with the Approved IRP,¹ and therefore, denied the *Petition for Leave to Conduct Works in PREPA's Steam Units to Achieve Environmental Regulatory Compliance* filed on February 1, 2022, by the Puerto Rico Electric Power Authority ("PREPA").²

On August 18, 2022, the Energy Bureau issued a Resolution and Order ("August 18 Resolution")³ through which it established that the *Motion to Inform Reallocation of FEMA 404 HMGP Funds and Request for Approval of Generation Projects* filed August 2, 2022 by PREPA ("August 2 Motion") was clearly inconsistent with the March 26 Resolution,⁴ which ordered PREPA to abstain from using studies and plans as collateral attacks to the Approved IRP and Modified Action Plan. Moreover, the Energy Bureau determined that the reallocations proposed through the August 2 Motion ignore the Approved IRP and the Energy Bureau's orders in the March 26 Resolution regarding the consideration of renewables and batteries as alternatives for the use of the 404 Section Funds.⁵ The Energy Bureau further determined that such reallocations are inconsistent with the federal public policy strongly supporting renewable energy. Through the August 18 Resolution, the Energy Bureau reaffirmed the August 3 Resolution and denied PREPA's request for the conversion of SJ 7-10 to burn natural gas since that petition is inconsistent with the Approved IRP.

On September 3, 2022, PREPA filed a document titled *Partial Request for Reconsideration of the August 3 and 18 Orders* ("September 3 Motion") through which it requested the Energy Bureau to set aside the denial to commence the works to convert SJ 7-10 and grant PREPA a technical conference to discuss their conversions to dual-fuel units.⁶

II. Analysis

A. Conversion of SJ 7-10 to Dual-Fuel

¹ *Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("Approved IRP"). Minor modifications and/or clarifications to the Approved IRP were introduced through a *Resolution and Order on Reconsiderations, In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, December 2, 2020. The Approved IRP is final and firm.

² The "February 1 Petition".

³ Capitalized terms used but not defined in this Resolution and Order shall have the meanings ascribed to such terms in the August 3 Resolution and the August 18 Resolution.

⁴ See, Resolution and Order, *In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan - December 2020*, Case No. NEPR-MI-2021-0002, March 26, 2021 ("March 26 Resolution").

⁵ Hazard Mitigation Grant Program Funds ("404 HMGP Funds").

⁶ September 3 Motion, pp. 7-8.



Through the September 3 Motion, PREPA argues that the Energy Bureau has previously set aside the requirement of limiting the review of the conversion of San Juan Power Plant units 5 and 6 (collectively, “SJ 5 & 6”) to dual-fuel, to an Integrated Resource Plan (“IRP”) review proceeding.⁷ To support its argument, PREPA heavily relies on the Resolution and Order issued by the Energy Bureau on January 25, 2019 in *In re: Request for Proposals for Conversion of Units 5 & 6 to Natural Gas*, Case No. CEPR-AI-2018-0001 (“January 25 Resolution”).⁸ PREPA argues that the findings made by the Energy Bureau during the evaluation of SJ 5 & 6 conversions are still applicable today, and that current pressing matters relate to its request to convert SJ 7-10.⁹

As the Energy Bureau has established throughout this proceeding, the approval of an IRP has the purpose of developing a plan for the least costly options to serve customer demand, while considering important policy objectives such as renewable energy, resiliency, reliability, and the goals of the utility, the government, society, and the environment.¹⁰ In the January 25 Resolution referenced by PREPA, the Energy Bureau considered several elements including that **there was a pending proceeding before the Energy Bureau for the evaluation and approval of a new IRP**. After a comprehensive process that lasted more than two (2) years, a new IRP was approved on August 24, 2020 (*i.e.*, the Approved IRP). As part of that thorough approval process, the Energy Bureau considered most elements that moved the Energy Bureau to issue the January 25 Resolution, and therefore, the Approved IRP incorporated all those elements. The Energy Bureau believes that PREPA has not set forth convincing arguments that the procedural and extraordinary circumstances that prompted the issuance of the January 25 Resolution are present in the instant case. We reiterate, that PREPA shall not ignore the Approved IRP nor the set of facts, assumptions, and analyses that PREPA itself propounded in the Proposed IRP.¹¹

In view of the above and considering there is no pending proceeding before the Energy Bureau to modify the Approved IRP or to approve a new IRP, as well as the fact that PREPA recognizes that the Approved IRP and the Modified Action Plan do not include the conversion of SJ 7-10, the Energy Bureau deems that PREPA’s request for reconsideration is not warranted. Therefore, the Energy Bureau **DENIES** the September 3 Motion.

The Energy Bureau reminds PREPA that, although an IRP shall be reviewed and updated every three (3) years,¹² provided there is a substantial change in the energy demand or in the set of resources needed to meet the demand for energy, the review process may be conducted before such period, to respond and mitigate changes in the energy demand or in the set of resources needed to meet the demand for energy.¹³ Besides, should circumstances arise, for just cause, the Energy Bureau may grant waivers or exemptions to an approved IRP. Any modification to the Approved IRP must be carried out using the applicable legal procedures prescribed by the law and the Energy Bureau's regulations.

⁷ *Id.*, pp. 1-2.

⁸ *Id.*, pp. 2-3.

⁹ *Id.*, pp. 4-5.

¹⁰ See, in general, Articles 1.3 (11) and 6.23 of the *Puerto Rico Energy Transformation and RELIEF Act*, as amended (“Act 57-2014”); Articles 1.2(p) and 1.9 of the *Puerto Rico Energy Public Policy Act* (“Act 17-2019”); Sections 2(o) and 6(B) of the *Electric Power Authority Act*, as amended (“Act 83-1941”); and *Regulation on the Integrated Resource Plan for the Puerto Rico Electric Power Authority*, April 24, 2018 (“Regulation 9021”).

¹¹ PREPA’s *Motion to Leave File IRP Main Report “ERRATA” Version*, dated June 14, 2019, which included a corrected version of the Main IRP Report submitted on June 7, 2019, and is titled *Integrated Resource Plan 2018-2019, Draft for the Review of the Puerto Rico Energy Bureau, Prepared for the Puerto Rico Electric Power Authority, June 7, 2019 (Rev. 2.1)* (“Proposed IRP”).

¹² Act 17-2019, Article 1.9(2); Act 57-2014, Article 6.23(d).

¹³ *Id.*



B. New Black Starts Systems at Costa Sur and Yabucoa

Regarding the New Black Starts Systems at Costa Sur and Yabucoa, comprising approximately a combined generation capacity of 80 MW, the Energy Bureau clarifies that it has determined these projects are consistent with the Approved IRP since June 8, 2021. In addition, the SOWs submitted by PREPA at that time were duly approved by the Energy Bureau. Nevertheless, the substantial increase in the projects' costs informed by PREPA in the August 2 Motion prompted an inquiry by the Energy Bureau as to PREPA's diligence in the implementation of these projects (approved more than a year ago). As emphasized in the August 18 Resolution, **PREPA shall make the most prudent and adequate use and need to maximize FEMA funds.**

Today, to further the reliability and stability of the Puerto Rico Electrical System, the Energy Bureau reiterates the **APPROVAL** of the New Black Star Systems for at Costa Sur and Yabucoa. However, after evaluating the information provided by PREPA, the Energy Bureau concludes that **PREPA's lack of diligence in procuring these projects will result in approximately one hundred million dollars (\$100MM) less to transform the Puerto Rico Electrical System.**

C. Emergency Generation Peaker Units

In the August 18 Resolution the Energy Bureau ordered PREPA to immediately cease all work regarding the Phase I engineering of the Emergency Peaker project ("New Emergency Peaker Project"). It further requested PREPA to submit certain information before issue a determination regarding the proposed project.

In the Approved IRP, the Energy Bureau rejected PREPA's proposed inclusion of approximately 400 MW of new fossil-fuel peaking resources in a least-cost plan.¹⁴ However, the Energy Bureau determined to allow the use of new peaking resources to provide reliability to existing operating older gas turbine units.¹⁵ To that effect, the Energy Bureau approved the replacement of a small portion of the older gas turbine resources with new peaking resources.¹⁶ Specifically, the Energy Bureau allowed the replacement of 147 MW of gas turbine capacity with fossil-fuel generators providing peaking support services.¹⁷ This peaking capacity includes the *MegaGen* mobile units totaling 66 MW installed at Palo Seco. This leaves up to 81 MW of new capacity to procure¹⁸, which -as stated before- PREPA will pursue through the New Black Starts Systems at Costa Sur and Yabucoa.

Considering the foregoing, after a careful evaluation of PREPA's arguments and the information provided, the Energy Bureau **DENIES** the reallocation of funds requested by PREPA concerning the New Emergency Peaker Project. Therefore, PREPA shall cease all work regarding the New Emergency Peaker Project. The Energy Bureau clarifies that this determination does not preclude PREPA from seeking funds from FEMA -as applicable- in accordance with FEMA requirements, to conduct necessary repairs and renovations to keep the existing functional Emergency Peakers fleet in optimal operational conditions in accordance with the Approved IRP.¹⁹

¹⁴ Approved IRP, ¶ 648, p. 199.

¹⁵ *Id.* ¶ 869, ¶ 871 and ¶ 873, pp. 270-271.

¹⁶ *Id.*

¹⁷ Approved IRP, ¶ 885, p. 275.

¹⁸ *Id.*

¹⁹ Note that this determination shall not be interpreted and/or construed as an implicit approval for other "repairs" that have been duly deferred by the Energy Bureau as they were associated to the gas conversions.



D. Small-Scale Residential PV with Storage

Regarding PREPA's request for the reallocation of \$34.7 million for small scale residential PV with storage in "inaccessible sectors of Puerto Rico", the Energy Bureau reiterates its guidance that to the extent feasible under the Approved IRP and the Modified Action Plan, PREPA can explore the acquisition of additional required capacity in a combination of renewable generation and BESS technology or BESS technology alone.²⁰

III. Conclusion


Based on the preceding discussion the Energy Bureau determines as follows:

- (a) **DENIES** PREPA's reconsideration concerning its petition to execute works conducive to the conversion for dual fuel use in SJ 7-10.
- (b) **APPROVES** the New Black Starts Systems at Costa Sur and Yabucoa.
- (c) **DENIES** the reallocation of FEMA funds to be used for the new Emergency Generation Peaker Units. Nevertheless, authorizes the use of federal funds – as applicable – and in accordance with FEMA requirements, to conduct necessary repairs and renovations to keep the existing functional Emergency Peakers fleet in optimal operational conditions in accordance with the Approved IRP.
- (d) **REITERATES** its guidance that to the extent feasible under the Approved IRP and the Modified Action Plan, PREPA can explore the acquisition of additional required capacity in a combination of renewable generation and BESS technology or BESS technology alone.
- (e) The request for a Technical Conference is **DENIED**.

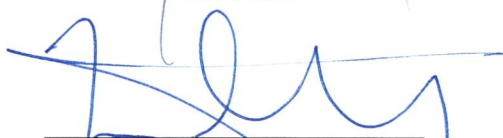
PREPA shall file with the corresponding Scope of Works for the Energy Bureau's review and approval within 30 days, if applicable, from the notification of this Resolution and Order.

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



Ferdinand A. Ramos Soegaard
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

²⁰ March 26 Resolution, p. 11.



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on September 15, 2022. I also certify that on September 15, 2022, a copy of this Resolution was notified by electronic mail to the following: Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com, laura.rozas@us.dlapiper.com, kbolanos@diazvaz.law; mvazquez@diazvaz.law, jmarrero@diazvaz.law. I also certify that today, September 15, 2022, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today September 15, 2022.



Sonia Seda Gaztambide
Clerk

