

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

<b>NEPR</b>  <b>Received:</b>  <b>Sep 3, 2022</b>  <b>5:53 PM</b>
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**IN RE:** REVIEW OF THE PUERTO RICO ELECTRIC POWER AUTHORITY’S 10-YEAR INFRASTRUCTURE PLAN – DECEMBER 2020

**CASE NO.:** NEPR-MI-2021-0002

**SUBJECT:** Partial Request for Reconsideration of the August 3 and 18 Orders

**PARTIAL REQUEST FOR RECONSIDERATION  
OF THE AUGUST 3 AND 18 ORDERS**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

On August 9 and 18 of 2022, the Energy Bureau notified two (2) orders which, among other things, determined that the conversion of the San Juan Steam Units to dual-fuel is not consistent with the approved Integrated Resources Plan (“Approved IRP”)<sup>1</sup>. The Energy Bureau also states that it must approve any petition to modify or alter the Approved IRP. The Energy Bureau bases its denial on the fact that the conversions are not contemplated in the Approved IRP.

However, PREPA herein requests the Energy Bureau to set aside the requirement of limiting the review of the conversion of the San Juan Steam Units to dual-fuel to an Integrated Resources Plan (IRP) review proceeding. This has been done by the Energy Bureau in the past and precisely regarding the conversion of steam units located in the San Juan Power Plant, units 5 and 6. *See, In Re: Request for Proposals for Conversion of Units 5 & 6 to Natural Gas*, case no. CEPR-AI-2018-0001.

On January 25, 2019, the Energy Bureau entered a Resolution and Order (“SJ 5&6 Order”) in

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<sup>1</sup> *Final Resolution and Order on the Puerto Rico Electric Power Authority Integrated Resource Plan* entered in case no. CEPR-AP-2018-0001, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*.

a process outside the purview of the IRP. The Energy Bureau reviewed the conversion of the San Juan Units 5 and 6 to dual-fuel and, after an evaluation of the merits and benefits of the conversion, determined to approve the contract to be awarded for the construction of the conversions. This determination was done outside an IRP proceeding. The Energy Bureau, while approving the conversions, made the following relevant findings in the final SJ 5&6 Order:

The Puerto Rico Electric Power Authority ("PREPA") faces unique and unprecedented situations that deserve and require the upmost attention and thoroughness. It faces a dire financial crisis that precludes it from accessing the bond markets and contributes to its demise. These constraints affect PREPA's planning over the near- and long-term.<sup>1</sup> PREPA's infrastructure at the very least can be described as aging and in urgent need for maintenance.

SJ 5&6 Order at p. 1.

To fulfill this Energy Bureau's responsibility, we cannot overlook the unique and extraordinary circumstances faced by PREPA nowadays. Some examples are its fiscal crisis, inaccessibility to capital markets, an aging and highly deteriorated infrastructure that was stroke by two hurricanes, and a continuous risk of hurricanes striking the islands. Another situation that weighs on the Energy Bureau's analysis is the economic outcome of the RFP.

*Id.* at p. 2.

In accordance with the faculties conferred upon the Energy Bureau, particularly its obligation to ensure the sound implementation of public policy regarding power service in Puerto Rico and acting in a proactive manner for the protection of consumers' interests, in order to receive reliable service at a just and reasonable price the Energy Bureau hereby approves the Contract. This decision considered the special and unusual circumstances surrounding the RFP process as stated above, such as: (a) PREPA's critical financial situation, (b) the conditions of PREPA's physical infrastructure, (c) the passage of the Hurricanes, (d) the current proceedings undergoing before the Energy Bureau to establish a new permanent rate and to evaluate and approve the new IRP, (e) PREPA's transformation process led by the Government of Puerto Rico, as well as the substantial estimated savings of approximately \$1,186.4 million dollars in the consumption of fuel for a period of five (5) years which will result in a benefit for the consumers of the electric power service provided by PREPA.<sup>9</sup>

*Id.*

In regard to the matter of approving the conversion of Units 5 and 6 outside the scope of an IRP review process, the Energy Bureau determined:

As discussed before and, in more detail, in the Resolution and Order<sup>22</sup>, the Energy Bureau approved a modified Integrated Resources Plan and Action Plan (the Approved IRP) for PREPA in accordance with the provisions of Act 57-2014. The Action Plan did not include explicitly the conversion of San Juan Units 5 and 6. Nevertheless, on March 14, 2018, the Energy Bureau issued a Resolution and Order in which it determined that the Hurricanes may have caused "substantial changes in the demand and group of resources" which would warrant a review of the modified IRP prior to the three-year mandatory review.<sup>23</sup> Accordingly, the Energy Bureau ordered PREPA to file an updated IRP no later than October 31, 2018.<sup>24</sup> Currently PREPA is pursuing the approval of a new IRP.

As the Energy Bureau recognized in the Resolution and Order, due to the conditions of the electric system in the aftermath of the Hurricanes and the critical role of the electric service in the economic development of the Island, it is reasonable that until the new IRP is approved, the Energy Bureau does not remain inert in front of certain beneficial initiatives that do not have a significant impact on the Approved IRP while simultaneously promotes the electric system sustainable development in the long term.<sup>25</sup> In the Resolution and Order the Energy Bureau also recognized other initiatives it undertook to pursue these objectives.<sup>26</sup>

*Id.* at p. 6

The Energy Bureau reiterates that conversion of San Juan Units 5 and 6 does not constitute a significant modification to the Approved IRP, which entails its amendment. It is worth noting that the San Juan Units 5 and 6 have a combined capacity of 440 MW, which is less than 7% of PREPA's total capacity (own generation and purchased). Moreover, the proposed conversion would not necessarily modify the capacity of San Juan Units 5 and 6.

*Id.* at p. 8

The Energy Bureau then proceeded to evaluate the project's benefits presented by PREPA. Notwithstanding this clear precedent, the Energy Bureau hasn't even granted one technical conference to discuss the merits of PREPA's petition despite the current request for conversion of the San Juan Steam Units.

The findings made by the Energy Bureau during the evaluation of the San Juan Units 5 and 6 conversions are still applicable today. Moreover, current pressing matters are relevant to PREPA's request to convert the San Juan Steam Units to dual-fuel.

PREPA is still facing unique and unprecedented situations that deserve and require the utmost attention and thoroughness. It continues to face a dire financial crisis that precludes it from accessing the bond markets and contributes to its demise. These financial issues were exacerbated by the impact of hurricanes Irma and María, the January 2020 earthquakes, the COVID-19 pandemic, and the worldwide economic issues created by the unjustified invasion of Russia to Ukraine, including its effects on fuel prices and the worldwide competition for raw materials for renewable energy infrastructure, and current delay in the renewable energy tranches. These constraints affect PREPA's planning over the near- and long-term. PREPA's infrastructure at the very least can be described as aging and in urgent need for maintenance and repairs. Today, that same infrastructure is more than three (3) years older since the Energy Bureau made this same finding that PREPA's fleet is in urgent need of maintenance.

In accordance with the faculties conferred upon the Energy Bureau, particularly its obligation to ensure the sound implementation of public policy regarding power service in Puerto Rico and to act proactively for the protection of consumers' interests, to receive reliable service at a just and reasonable price the Energy Bureau should at the very least, consider the petition to convert the San Juan Steam Units on the merits and outside a process to amend the IRP. This decision must consider the unique and unusual circumstances surrounding the request for the conversion, such as:

- PREPA's critical financial situation,
- the proposed conversions can be 100% federally funded, thus at no cost to the People

of Puerto Rico,

- the conditions of PREPA's physical infrastructure,
- the passage of the Hurricanes Irma and María,
- the January 2020 earthquakes,
- the COVID-19 pandemic,
- the unjustified invasion of Ukraine by Russia,
- the worldwide competition for raw materials to be used in renewable energy infrastructure,
- the delays in the Modified Action Plan Renewable Energy Tranches,
- the review of the Approved IRP will commence in approximately one (1) year and will take at least an additional year to finalize,
- the fact that liquified natural gas is the cheapest fuel,
- PREPA's transformation process led by the Government of Puerto Rico,
- the reliability that the conversions will add to the system,
- the savings in the consumption of fuel,
- the compliance with the State Implementation Plan and the potential loss of millions of dollars in federal funds for not achieving attainment.

The Approved IRP and Modified Action Plan do not explicitly include the San Juan Steam Units conversion. Likewise, the operative IRP when the Energy Bureau approved the conversion of San Juan Units 5 and 6 did not explicitly include these conversions. Nevertheless, the Energy Bureau must again recognize, as it did in 2019, that “due to the conditions of the electric system in the aftermath of the Hurricanes, the critical role of the electric service in the economic development of the Island,” Title III, the COVID-19 pandemic, earthquakes, ongoing war effects,

cost and availability of raw materials for renewable energy and delay in the renewable energy tranches, and PREPA is *still* not able to access capital markets, “it is reasonable that until the new IRP is approved, the Energy Bureau **does not remain inert** in front of certain beneficial initiatives that do not have a significant impact on the Approved IRP while simultaneously promot[ing] the electric system sustainable development in the long term.” SJ 5&6 Approval at p. 6.

The process that needs to be followed to analyze the beneficial activities that PREPA presents to the Energy Bureau may be considered outside the IRP process. Two (2) of the four (4) Commissioners sitting today as Chairman and Commissioner of the Energy Bureau agreed and signed off in 2019 on the latter statement, which is still applicable today.

The SJ 5&6 Order is not the only occasion in which the Energy Bureau has stated that an IRP review process is not warranted when evaluating new projects. In 2018, the Energy Bureau considered several generation projects under Section 503<sup>2</sup> of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), Public Law No. 114-187, and determined that<sup>3</sup>:

The referenced statute requires the [Energy Bureau] to make two findings: first, whether the project "affects" an approved Integrated Resource Plan and, second, whether it will "adversely affect" an approved Integrated Resource Plan (“IRP”). For the Commission to determine a project has no adverse effect on an IRP, it must be consistent with such IRP by: (i) being specified in an approved IRP; (ii) being a reasonable substitute for a project specified in an approved IRP; or (iii) **satisfying a legitimate need, as**

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<sup>2</sup> Section 503(b)(1)(D) of PROMESA establishes:

In the case of an Energy Project that will connect with the Puerto Rico Electric Power Authority's transmission or distribution facilities, [the Critical Project Report shall include] a recommendation by the Energy Commission of Puerto Rico, if the Energy Commission determines such Energy Project will affect an approved Integrated Resource Plan, as defined under Puerto Rico Act 57-2014. If the Energy Commission determines the Energy Project will adversely affect an approved Integrated Resource Plan, then the Energy Commission shall provide the reasons for such determination and the Energy Project shall be ineligible for Critical Project designation, provided that such determination must be made during the 60-day timeframe for the development of the Critical Project Report.

<sup>3</sup> See <https://energia.pr.gov/en/critical-projects/> (last visited September 2, 2022)

**determined by the Commission, regardless of whether such need is identified in an existing approved IRP. Furthermore, to avoid a determination of adverse effect, projects not specified in an approved IRP must also demonstrate cost-effectiveness, which may be achieved by demonstrating having been selected through a competitive bidding process or that its costs are no greater than necessary to satisfy the project's stated purpose.**

*See, i.e.*, letter from the Energy Bureau, former Energy Commission, to the Financial Oversight and Management Board for Puerto Rico, dated April 16, 2018, available at <https://energia.pr.gov/wp-content/uploads/sites/7/formidable/54/Commission-Recommendation-Blue-Beetle-III-PV-Solar-Plant-2.pdf> (last visited September 2, 2022) (emphasis added).

Undoubtedly, the Energy Bureau has allowed for projects not explicitly contemplated in the IRP to go forward. There is a legitimate need for the San Juan Steam Unit conversions. The generation fleet's dire situation is unacceptable; it is an old and aging fleet that is still needed while the transition to renewable energy sources is finalized. Further, the fact that such conversions will add reliability to the system implies that it will be reimbursed by FEMA, allowing for an unprecedented opportunity to finance the conversion of the San Juan Steam Units for the benefit of the People of Puerto Rico. These benefits, as will be discussed once the Energy Bureau grants PREPA the opportunity to present the project, are two-fold: (1) economic because the costs of the conversions will be at no cost to PREPA because FEMA will reimburse the expenses and (2) adding reliability to the system while the transition to renewable energy sources ensues.

PREPA hereby requests the Energy Bureau to reconsider its denial to grant the conversions and respectfully requests the Energy Bureau to, at the very least, grant a Technical Conference to allow PREPA the opportunity to present the Energy Bureau with the technical considerations and benefits of the conversion of the San Juan Steam Units.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau to set aside the denial to commence the works to convert the San Juan Steam Units and grant PREPA a technical conference

to discuss the technical considerations and benefits of the proposed conversions.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 3<sup>rd</sup> day September 2022.

/s Katuska Bolaños-Lugo  
Katuska Bolaños-Lugo  
kbolanos@diazvaz.law  
TSPR 18,888

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

**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, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com).

In San Juan, Puerto Rico, this 3<sup>rd</sup> day of September 2022.