

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

IN RE: REQUEST FOR APPROVAL OF RFP
PROCESS FOR THE NEW BLACK-START
SYSTEMS AT COSTA SUR AND YABUCOA

CASE NO.: NEPR-MI-2022-0005

SUBJECT: Resolution and Order regarding
*Motion Requesting Expedited Approval of the
RFP Process for the New Black-Start Systems at
Costa Sur and Yabucoa*, filed by the Puerto
Rico Electric Power Authority

RESOLUTION AND ORDER

I. Relevant Background

On August 24, 2020, the Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued the IRP Order¹, regarding the Integrated Resource Plan (“IRP”) of the Puerto Rico Electric Power Authority (“PREPA”). The IRP Order approved a Modified Action Plan that included allowance for replacing a portion of PREPA’s older gas turbine peaking resources, up to 81 MW in total, subject to competitive procurement. The Modified Action Plan further indicated that PREPA should consider placing such peaking resources at locations with zero or only one remaining older peaking units (*i.e.*, Costa Sur, Aguirre, and Yabucoa); and that the design of such procurement should define services to be provided such as (for example) black start, rather than specific technologies.²

After initial submissions by PREPA of a 10-Year Infrastructure Plan and the Energy Bureau Resolutions and Orders addressing deficiencies in those plans.³ On March 19, 2021, PREPA filed a document titled *Motion Submitting March 2021 Revised 10-Year Infrastructure Plan* (“March 19 Motion”). Through the March 19 Motion, PREPA filed a new updated version of the plan (“March 2021 Revised 10-Year Plan”) which included new black start units at Aguirre and Costa Sur.

On March 26, 2021, in alignment with the IRP Order and the Modified Action Plan the Energy Bureau, approved PREPA’s request for black start units at Aguirre and Costa Sur⁴.

On April 14, 2021, PREPA filed a document titled *Motion in Compliance with the Resolution and Order Entered on March 26, 2021* (“April 14 Motion”), which included a list of projects under the categories of transmission, distribution, and substations.

On April 22, 2021, the Energy Bureau issued a Resolution and Order requesting additional information for each project included in the April 14 Motion under the different project categories, including but not limited to Transmission Line Projects, Transmission and Distribution Substation Projects, and Distribution System Projects.

On April 28, 2021 PREPA filed a document titled *Motion in Compliance with the Resolution and Order Entered on April 22, 2021* through which it included, among other things, the scope

¹ See, 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 (“IRP Order”).

² IRP Order, pp. 275-276, ¶ 885.

³ On December 31, 2020, PREPA submitted its initial 10-Year Infrastructure Plan in docket NEPR-MI-2020-0016. On January 25, 2021 in NEPR-MI-2021-0002 the Energy Bureau issued a Resolution and Order requiring PREPA to file an updated plan in accordance with the IRP (“January 25 Order”). On February 16, 2021, PREPA filed a revised 10-year plan.

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.



of the projects with cost estimates of the New Black Start System Units at Aguirre and Costa Sur.

On June 8, 2021 the Energy Bureau issued a Resolution and Order ("June 8 Resolution") in which, among others, approved the Costa Sur and Aguirre Black Start Projects.

On July 6 2021, PREPA and LUMA Energy, LLC and LUMA Energy ServCo, LLC ("LUMA") filed a document titled *Joint Motion Submitting Updated 10-Year Infrastructure Work Plan* through which it filed an updated version of the 10-Year Infrastructure Plan, which included the Costa Sur and Aguirre Black Start Projects ("10-Year Infrastructure Plan, June 2021 Update").

On September 7, 2021, PREPA filed a document titled *Motion to Submit Second Group of Generation Projects Initial SOWS* ("September 7 Motion"). In the September 7 Motion, PREPA requested approval to substitute the Aguirre Black Start Project⁵ for the Yabucoa Black Start Project.⁶

In a Resolution and Order issued on September 28, 2021, the Energy Bureau ("September 28 2021 Resolution"), among others, approved PREPA's request to substitute the location of the New Black Start System from Aguirre to Yabucoa.

On August 2, 2022, PREPA filed before the Energy Bureau a document titled *Motion to Inform Reallocation of FEMA 404 HMGP Funds and Request for Approval of Generation Projects* ("August 2 Motion"). Through the August 2 Motion, PREPA notified the Energy Bureau its determination to allocate Hazard Mitigation Grant Program Funds ("404 HMGP Funds") in part to cover an updated cost estimate of \$190 million for the Costa Sur and Yabucoa Black-Start Units. PREPA asserted that the substantive price increase from the original \$90.4 million to the updated estimate was due to the recent disruption in the supply chain and inflation.

On August 18, 2022, the Energy Bureau issued a Resolution and Order ("August 18 Order") containing questions for PREPA to address, including the reasons for the approximately \$100,000,000.00 cost increase of the black start units compared to initial estimates. The August 18 Resolution also required PREPA to provide the work performed and diligences set forth by PREPA upon approval to acquire both Black Start Units close to a year ago.⁷

On September 7, 2021, PREPA filed a document titled *Motion to Submit Responses to Requests for Information Ordered in the August 18 Order* ("September 7 Motion") in which PREPA responded to August 18 Order. Pertaining to the Black Start Units, PREPA indicated that the delay was caused by selecting Yabucoa as a better site and the engineering services to complete the studies and specifications required for the draft RFP were submitted by Sargent & Lundy in March of 2022.⁸

⁵ Previously approved through the June 8 Resolution.

⁶ Included in the September 7 Motion: "PREPA respectfully asserts that, after further analysis, it has concluded that it would best serve system needs to install black-start units at the Yabucoa location instead of Aguirre. This project is therefore being submitted in place of, not in addition to, the New Black Start System at Aguirre project. With the approach as explained above, PREPA believes that black-start and continuous emergency operation services will be most maximized while complying with the Integrated Resource Plan (IRP) goals, by reaching a much broader area coverage and diversity of clients who provide critical services to the population. As an example, in the aftermath of Hurricane María, the Yabucoa plant was responsible to provide continuous service on isolated, island mode for the region, as well as black-start services on several occasions to an important oxygen plant located in the Humacao industrial area, when oxygen for hospitals was urgently needed. Also, as a matter of fact, the Yabucoa plant was also responsible for black starting the Aguirre Power Complex during the blackout caused by the earthquake on January 7, 2020. This project will be funded with the FEMA Section 404 Hazard Mitigation Grant Program."

⁷ August 18 Resolution, p. 10.

⁸ September 7 Motion, p. 9.



On September 15, 2022, the Energy Bureau issued a Resolution and Order (“September 15 Order”), among others, approved the \$100 million increase for the black start units as the updated cost assumption, versus the roughly \$90 million cost contained in the initial approval of Resolution June 8 Resolution and the September 28 2021 Resolution. In its September 15 Order the Energy Bureau emphasized **that PREPA’s lack of diligence in procuring these projects will result in approximately one hundred million (\$100 MM) less to transform the Puerto Rico Electric System.**⁹

On November 10, 2022, PREPA filed under seal a confidential letter to the Chairman of the Energy Bureau, seeking approval of the Energy Bureau for the launch of a Request for Proposal (“RFP”) for black start generation units at Yabucoa and Costa Sur¹⁰ (“November 10 Request”). Included in the filing was a draft RFP for the black start units, separate technical specifications for an EPC (“Engineering, Procurement, and Construction”) contract, and draft contract forms for each of the Yabucoa and Costa Sur location (“November 10 Confidential Documents”).

The RFP specifically references the attached technical specification documents.¹¹ The Technical Specifications state “[t]he new plan will utilize two (2) combustion turbine generators (CTGs) with a net output for the facility between 36 and 60 MW at site conditions and nameplate power factor”.¹² The draft contract forms explicitly reference simple-cycle electric generation.¹³ At other locations in the technical specification documents, reference is made to simple cycle generating unit or combustion turbines providing the black start service.¹⁴ Section A.13 of the Technical Specifications in its entirety is labeled as “Combustion Turbine Generator Requirements”.

On November 15, 2022, PREPA filed a document titled *Memorandum of Law Requesting Confidential Designation and Treatment of the Black-Start Systems Draft RFP Submitted to the Energy Bureau on November 10, 2022* (“November 15 Request”) requesting that the Energy Bureau determine that the request for approval and the New Black-Start Systems Draft RFP are confidential. PREPA refers to Article 4.2 of Regulation 8815¹⁵ which in pertinent part states ... “[t]hese communications shall be maintained confidential while the administrative competitive procurement process is ongoing.”¹⁶

On November 23, 2022, PREPA filed a document titled *Motion Requesting Expedited Approval of the RFP Process for the New Black-Start Systems at Costa Sur and Yabucoa* (“November 23 Motion”). Through the November 23 Motion, PREPA requested the Energy Bureau to consider an expedited process for the approval of the launching of the RFP for black start service at Yabucoa and Costa Sur. PREPA further noted that under the terms of Regulation

⁹ September 15 Order, p. 3.

¹⁰ Black Start Units at Yabucoa and Costa Sur (“Black Start Projects”).

¹¹ RFP, Page 16. “...set forth in the attached Specification No. CPG-003 and Specification CPG-002 (the “Technical Specifications”) and in accordance with the General Conditions and Special Conditions and the documents listed in the Table of Contents...”

¹² Technical Specifications, Page A.1-1.

¹³ See, for example, Attachment A.1, Contract for Costa Sur gas plant, Article 1 Scope of Work.

¹⁴ Technical Specifications, for example at Section A.1.6.1; and Section 13.1.

¹⁵ *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*, November 9, 2016 (“Regulation No. 8815”).

¹⁶ November 15 Request, pp. 1-2, ¶3.



8815,¹⁷ the Energy Bureau has 45 days to approve, reject, or propose modifications to the proposed project or project parameters. Accordingly, PREPA requested the Energy Bureau to expedite the approval of the RFP process for the New Black-Start Systems at Costa Sur and Yabucoa as soon as possible and before the timeframe provided by Regulation 8815.

II. Discussion and Findings

The Energy Bureau notes that the New Black Start Systems at Costa Sur and Yabucoa were approved since June 8, 2021, **more than 16 months ago**. However, PREPA's **lengthy and unexplained delays** in the procurement of these projects triggered a substantial increase of \$100 million dollars in the projects' costs which is more than double of the original estimate. This delay by PREPA reduces by \$100 million the opportunities to develop other projects that would benefit the Puerto Rico Electric System and hence, benefit the ratepayers. PREPA's actions exemplify a **clear lack of due diligence** and created **self-inflicted harm**. The Energy Bureau has diligently revised and approved PREPA request for the Black -Start Unit Projects on June 8, 2021, a PREPA request for location modification on September 28, 2021 and most recently a PREPA request for a cost increase of \$100 million on September 15, 2022. Nevertheless, through the November 23 Motion, PREPA requests the Energy Bureau to expedite the approval of the RFP process for the referenced projects. PREPA's arguments are unpersuasive and inconsistent with its own actions. The significant delay in the procurement for said projects was resulted from PREPA's own lack of diligence since the Black-Start Unit Projects have been approved by the Energy Bureau since June 8, 2021.

The Energy Bureau **APPROVES** the November 10 Request conditioned to the implementation of the modifications stated below.

The IRP Order approved a maximum of 81 MW of new peaking facilities for the provision of capacity services including black start capability.¹⁸ On November 4, 2022, the Energy Bureau conditionally approved seven additional peaking facilities in response to PREPA's October 27 Motion.¹⁹ The current RFP states that a range from 36 to 60 MW of net output at each site – Costa Sur and Yabucoa – is being considered. The upper limit of this range, if executed at both locations, far exceeds the 81 MW IRP limit without even considering the additional fossil peaking capacity approved in the November 4, 2022 Resolution and Order.

The Energy Bureau thus **ORDERS** PREPA to limit its total procurement of black start resource capacity at the combined Costa Sur and Yabucoa sites to no more than 81 MW of net output capacity, in accordance with the IRP.

The IRP Order allowing for up to 81 MW of new peaking facilities, including for use as a black start resource, included a specific directive to allow competition for provision of the service required, rather than a specific technology:

"In its competitive procurement process, PREPA shall design the procurement to solicit providers of services to the energy grid, rather than specific technologies. That is, PREPA shall define the services to be provided (such as

¹⁷ Joint Regulation for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation, and Award Process for the Modernization of the Generation Fleet ("Regulation 8815").

¹⁸ IRP Order, pp. 275-276, ¶ 885. "When determining the total required capacity of new peaking generation to replace the retired Frame 5 units, PREPA shall include in its analysis the peaking capacity provided by the MegaGen mobile units totaling 66 MW installed at Palo Seco. This leaves up to 81 MW of new capacity to procure."

¹⁹ 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, November 4, 2022 regarding the *Motion to Clarify Regarding Amendment to 404 HMGP Application Package* filed by PREPA on October 27, 2022 and requested approval for PREPA submission to COR3 and FEMA an amended 4040 HMGP package that included four black start units at Costa Sur and Yabucoa and seven simple cycle gas turbine peaking units.



peak capacity or reduction, fast ramping, black start, or load following services) rather than the specific technologies (GTs, RICE units, DR programs, renewables with batteries, etc.). PREPA may require, subject to the Energy Bureau approval, that proposed projects meet a minimum performance threshold or service during and after major storms.”²⁰

PREPA’s RFP references Technical Specifications implying a competitive procurement for a simply cycle gas turbine resource.²¹ In accordance with the IRP, PREPA cannot limit the black start resource procurement options to only simple cycle Combustion Gas Turbine (“CGTs”) resources. The Energy Bureau **ORDERS** PREPA to modify the Technical Specifications to allow for black start capable resources other than simple cycle CGTs to participate in the solicitation. The Energy Bureau further **ORDERS** PREPA to clarify in the “Purpose and Intent” section of the RFP that the solicitation is open to all resources that can provide black start capability in accordance with required performance for the black start service.

The Energy Bureau **FINDS** that the “Project Requirements and Scope” (Section A.1 of the Technical Specifications) and the “Plant General Configuration” (Section A.1.2.1 of the Technical Specifications) contains the general characteristics required for provision of black start services, with the key exception being the characterization that black start service will be provided only by a CGT generator technology. The Energy Bureau **ACCEPTS** the remainder of the current description provided by PREPA’s contractor Sargent and Lundy in these sections as setting a minimum threshold for black start services required for these solicited resources. The Energy Bureau **ORDERS** PREPA to ensure that the Technical Specifications and the draft contract form does not include other instances where the black start service requirement is implied to be provided only by a CGT resource.

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 57-2014.²²

Additionally, upon review of PREPA’s arguments and pursuant to the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to the Draft RFP submitted by PREPA in its November 10 Request.

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 IRP Order, pp. 275-276, ¶ 885.

²¹ Technical Specification for EPC Contract, at page A.1.-1


²² *Puerto Rico Energy Transformation and RELIEF Act*, as amended (“Act 57-2014”).



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 5, 2022. I also certify that on December 5, 2022, a copy of this Resolution and Order was notified by electronic mail to the following: laura.rozas@us.dlapiper.com, margarita.mercado@us.dlapiper.com, kbolanos@diazvaz.law and mvazquez@diazvaz.law. I also certify that today, December 5, 2022, 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 December 5, 2022.


Wanda I. Cordero Morales
Interim Clerk

