

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

IN RE: CERTIFICATE OF ENERGY
COMPLIANCE

CASE NO.: NEPR-AP-2022-0001

SUBJECT: Request to Deem Withdrawn the
Preliminary Contract.

RESOLUTION

I. Relevant Background

On October 21, 2022, the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) a document titled *Puerto Rico Public-Private Partnerships Authority’s Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment* (“First Petition”). The First Petition included these documents: Exhibit 1: First Preliminary Contract¹ and Exhibit 2: the Report².

Through the First Petition, the P3 Authority requested the Energy Bureau to issue, within thirty (30) days, a Certificate of Energy Compliance³ for the First Preliminary Contract, which relates to the *Request for Proposals Puerto Rico Electric Power Thermal Generation Facilities — RFP 2020-1*, issued by the P3 Authority on November 10, 2020, pursuant to Act 120-2018,⁴ Act 17-2019⁵ and Act 29-2009,⁶ in connection to a Puerto Rico Electric Power Authority (“PREPA”) Transaction for the delegation of the operation and maintenance functions of the LGA. The P3 Authority also requested the Energy Bureau to treat and designate the First Petition, the First Preliminary Contract, and the Report as confidential documents.⁷

On November 17, 2022, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority’s Motion Submitting Documents and Requesting Confidential Treatment* (“Second Petition”) through which it requested the Energy Bureau to take notice of the documents included therein and grant confidential treatment. The P3 Authority stated that it acknowledges that filing the Second Petition triggers a new deadline for issuing a Certificate of Energy Compliance by the Energy Bureau.⁸ The P3 Authority annexed these documents to the Second Petition: Exhibit 1: *Memorandum Regarding Comments on the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, Draft of October 21, 2022*, which includes a redline version of the Preliminary Contract with certain

¹ See, PUERTO RICO THERMAL GENERATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT dated as of [●], 2022, by and among THE PUERTO RICO ELECTRIC POWER AUTHORITY, PREPA GENCO, LLC as Owner, THE PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY as Administrator, and [REDACTED-CONFIDENTIAL] as Operator (“Initial Preliminary Contract”).

² See, *Partnership Committee Report, Puerto Rico Public-Private Partnership for the Puerto Rico Electric Power Thermal Generation Facilities*, dated October 17, 2022 (“Report”).

³ Except as otherwise provided, capitalized terms used but not otherwise defined in this Resolution and Order have the meaning ascribed to them in, as applicable, Act 120-2018, Act 29-2009, Act 57-2014, Act 17-2019, and the Preliminary Contract.

⁴ Known as *Puerto Rico Electric Power System Transformation Act*, as amended (“Act 120-2018”).

⁵ Known as *Puerto Rico Energy Public Policy Act* (“Act 17-2019”).

⁶ Known as *Public-Private Partnership Act*, as amended (“Act 29-2009”).

⁷ See, Initial Petition, pp. 6-16.

⁸ See, Petition, p. 2, footnote 3.



amendments, identified as Exhibit A (“Memorandum”), and an amended version of the First Preliminary Contract (“Second Preliminary Contract”), identified as Exhibit B.

On November 21, 2022, the Energy Bureau issued a Resolution (“November 21 Resolution”) through which it determined that the P3 Authority withdrew the First Preliminary Contract and through the Second Petition it requests the Energy Bureau to evaluate the Second Preliminary Contract and issue an Energy Compliance Certificate in connection therewith. However, the Energy Bureau clarified that for procedural economy, it would use all the documents submitted by the P3 Authority in the instant case to evaluate the Second Preliminary Contract, including without limitation, the Report.

On December 16, 2022, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority's Petition to Withdraw November 17th Filing and to Hold in Abeyance its Request for Issuance of Certificate of Energy Compliance, as Amended, and Requesting Further Confidential Treatment of Documents Submitted* (“December 16 Motion”), through which it requested the Energy Bureau to: (i) consider withdrawn its November 17 filing and hold in abeyance the Second Petition, and (ii) treat as confidential the December 16 Motion, all the documents submitted and any additional document that might be submitted until the execution of the Transformation Contract.⁹ The P3 Authority stated that it understands that once it submits the revised version of the Second Preliminary Contract to the Energy Bureau, the 30-day term provided by Act 120-2018 would run anew.¹⁰

II. Analysis

Section 5(g) of Act 120-2018 establishes that any contract related to a PREPA Transaction shall require an Energy Compliance Certificate. The Partnership Committee shall submit to the Energy Bureau the Report drafted pursuant to Section 9(g) of Act 29-2009 before submitting it to the Boards of Directors of the P3 Authority and Puerto Rico Electric Power Authority (“PREPA”).¹¹ The Energy Bureau shall have thirty (30) days from the date on which the Preliminary Contract was submitted to issue a Certificate of Compliance or a resolution to deny the issuance of it.¹²

The P3 Authority submitted the First Preliminary Contract on October 21, 2022, and the 30-day term for the Energy Bureau to issue a Certificate of Compliance or a resolution to deny the issuance of it began on such date and would have expired on November 21, 2022. However, the P3 Authority amended the First Preliminary Contract for which it requested the issuance of an Energy Compliance Certificate. On November 17, 2022, the P3 Authority filed the Second Preliminary Contract through its Second Petition. The Second Preliminary Contract had several modifications to the First Preliminary Contract. Such filing triggered a new deadline for the Energy Bureau to issue a Certificate of Energy Compliance, which would have expired on December 19, 2022.

Pending the Energy Bureau's evaluation of the Second Preliminary Contract, through the December 16 Motion, the P3 Authority requests the Energy Bureau to withdraw the Second Preliminary Contract, submitted through its Second Petition. Consistent with such request, the Energy Bureau considers that the 30-day term established by Act 120-2018 to issue a Certificate of Energy Compliance with the Second Preliminary Contract would be inapplicable. The referenced term will run anew upon filing a new request to issue an Energy Compliance Certificate in accordance with Act 120-2018.¹³

⁹ December 16 Motion, pp. 3-4.

¹⁰ *Id.*, p. 2, note #2.

¹¹ *Id.*

¹² *Id.*

¹³ For purposes of procedural economy, upon the P3 Authority's filing of the “revised Preliminary Contract” referenced in the December 16 Motion, the Energy Bureau will use all the documents submitted by the P3 Authority in the instant case to evaluate such contract, including without limitation, the Report.




III. Conclusion


The Energy Bureau **GRANTS** the P3 Authority's request to withdraw the Second Preliminary Contract.

THE CLERK OF THE ENERGY BUREAU SHALL NOTIFY THIS RESOLUTION AND ORDER TO THE P3 AUTHORITY ONLY AND SHALL KEEP IT CONFIDENTIAL UNTIL OTHERWISE INSTRUCTED BY THE ENERGY BUREAU.

Be it notified.



Edison Aviles Deliz
Chairman

Lillian Mateo Santos
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 27, 2022. Associate Commissioner Ferdinand A. Ramos Soegaard did not intervene. I also certify that on December 27, 2022 a copy of this Resolution was notified by electronic mail to iperez@p3.pr.gov and fermin.fontanes@p3.pr.gov and 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 December 27, 2022.



Sonia Seda Gaztambide
Clerk