

**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: Resolution and Order on the
January 20 Motion

RESOLUTION AND ORDER

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 Report.² In pertinent part, through the First Petition, the P3 Authority requested the Energy Bureau to issue a Certificate of Energy Compliance for the First Preliminary Contract, which relates to a PREPA Transaction, in accordance with the provisions of Act 120-2018,³ Act 29-2009⁴ and Act 57-2014⁵.

After several procedural incidents, on January 14, 2023, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority's Motion Submitting Documents, As Further Amended, and Requesting Confidential Treatment* through which, in pertinent part, it requested the Energy Bureau to take into consideration the revised Preliminary Agreement ("Preliminary Contract") attached therein as Exhibit I in considering and issuing the Certificate of Energy Compliance required under Act 120-2018.⁶

On January 15, 2023, the Energy Bureau issued a Resolution and Order ("January 15 Resolution") through which it determined that the Preliminary Contract complies with the Puerto Rico Energy Public Policy and regulatory framework and, therefore, issued a Certificate of Energy Compliance in connection with the Preliminary Contract.⁷

On January 20, 2023, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority's Informative Motion in Connection with "Resolution and Order" and Confidential Treatment* ("January 20 Motion") through which it informed that, following the issuance of the January 15 Resolution, its Board of Directors held a meeting which resulted in certain minor non-substantive and non-material revisions to the Preliminary Contract.⁸ The Preliminary Contract (as modified) was attached to the January 20 Motion, as Exhibit I

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 ("First 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 *Puerto Rico Electric Power System Transformation Act*, as amended ("Act 120-2018").

⁴ Known as *Public-Private Partnership Act*, as amended ("Act 29-2009").

⁵ Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

⁶ The detailed procedural background of this case is discussed in January 15 Resolution, *infra*.

⁷ See, January 15 resolution, pp. 18-19.

⁸ See, January 20 Motion, p. 3, ¶ 4.



thereto. Through the January 20 Motion, the P3 Authority requests the Energy Bureau to, (i) take notice of the foregoing, (ii) grant appropriate remedy according to law, and (iii) grant confidential treatment to the January 20 Motion, to every document submitted theretofore, and to any additional document that might be submitted until the execution of the Transformation Contract.⁹

II. Analysis

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In the January 20 Motion, the P3 Authority argues that the modifications made to the Preliminary Contract were only intended to reinforce certain of the Operator's (as defined in the Preliminary Contract) obligations under the Preliminary Contract which are, among other, the following: (i) reporting obligations and other transparency requirements; (ii) obligations towards the Puerto Rico Electric Power Authority's ("PREPA") former employees that are to be hired by the Operator; and (iii) Operator's obligations to employ reasonable efforts to purchase goods and services from local providers.¹⁰ According to the P3 Authority, these modifications represent minor, non-substantive and non-material revisions, and do not impinge upon the substantive validity of the legal analysis included in the January 15 Resolution.¹¹

MA
Jim
The P3 Authority lists in the January 20 Motion the provisions of the Preliminary Contract allegedly subject of the minor non-material and non-substantive modifications.¹² After a comprehensive evaluation of the relevant documents the Energy Bureau notes that the following provisions were the ones modified: Section 1.1, definition of "Governmental Body;"¹³ Section 2.3(b);¹⁴ Sections 4.2(g)(iii) and (p)(i);¹⁵ Section 5.14(c)(iii);¹⁶ Section 7.5(a);¹⁷ Section 9.3(a), (b) and (c);¹⁸ and Section 21.19's initial paragraph and Subsections (e) and (f).¹⁹

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Upon a careful review of the minor non-material and non-substantive modifications to the Preliminary Contract provisions, the Energy Bureau **DETERMINES** that none of the Preliminary Contract's terms and conditions were materially modified. The modifications made to the Preliminary Contract only clarify certain aspects regarding the scope of its provisions. Specifically, they address the matters mentioned in the January 20 Motion with respect to the Operator's obligations. Such modifications do not affect or alter in any way the Energy Bureau's analysis and evaluation in connection with the issuance of a Certificate of Energy Compliance through the January 15 Resolution. Notwithstanding the foregoing, the Energy Bureau clarifies that all references to the Preliminary Contract in the January 15 Resolution (Certificate of Energy Compliance) are applicable to the Preliminary Contract as modified. That is, to the Preliminary Contract attached as Exhibit I to the January 20 Motion.²⁰

⁹ *Id.*, p. 4.

¹⁰ *Id.*, p. 3, ¶ 5.

¹¹ *Id.*, pp. 3-4, ¶¶ 5.

¹² *Id.*, p. 3, ¶ 6.

¹³ *See*, Preliminary Contract (as modified), p. 19.

¹⁴ *Id.*, p. 39.

¹⁵ *Id.*, pp. 46, 49.

¹⁶ *Id.*, p. 77.

¹⁷ *Id.*, p. 89.

¹⁸ *Id.*, p. 97.

¹⁹ *Id.*, p. 144-145.

²⁰ For ready reference the January 15 Resolution, which remains in full force and effect, is attached to this Resolution and Order as its Annex A.



The Energy Bureau deems that given the foregoing determination, the issuance of a new Energy Compliance Certificate in connection with the Preliminary Contract (as modified) is not necessary.

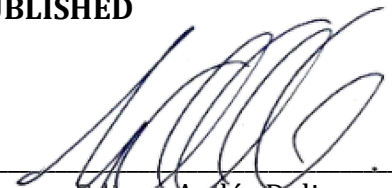
III. Conclusion

For the foregoing reasons, the Energy Bureau reiterates the analysis and evaluation included in the January 15 Resolution and, therefore, it **UPHOLDS** the Energy Compliance Certificate as issued through the January 15 Resolution in connection with the Preliminary Contract (as modified).

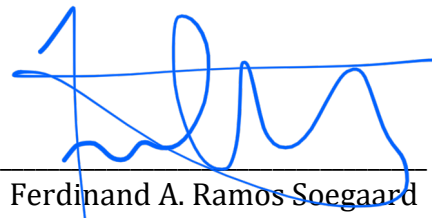
Moreover, based on the same reasoning included in the December 27 Resolution on Confidential Treatment (as defined in the January 15 Resolution), the Energy Bureau **GRANTS** confidential treatment to the Preliminary Contract (as modified).

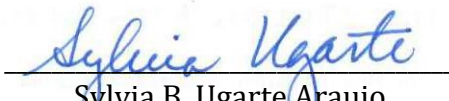
THE CLERK OF THE ENERGY BUREAU SHALL NOTIFY THIS RESOLUTION AND ORDER TO THE P3 AUTHORITY ONLY AND SHALL KEEP IT CONFIDENTIAL UNTIL OTHERWISE INSTRUCTED BY THE ENERGY BUREAU.


BE IT NOTIFIED AND NOT PUBLISHED


Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner


Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 21, 2023. I also certify that on January 21, 2023 a copy of this Resolution and Order was notified by electronic mail to the following: fermin.fontanes@p3.pr.gov, shylene.dejesus@p3.pr.gov. I also certify that today, January 21, 2023, 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 January 21, 2023.


Sonia Seda Gaztambide
Clerk

