NEPR

Received:

Dec 15, 2023

4:54 PM

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

IN RE: AMENDMENT TO POWER PURCHASE OPERATING AGREEMENT BETWEEN PREPA AND AES PUERTO RICO, L.P.	**CASE NO.**: NEPR-AP-2023-0005 **SUBJECT:** Motion in Compliance with *Resolution and Order* Dated December 13, 2023 Requiring PREPA to File Information Regarding the Proposed Amendment, and *Resolution and Order* Dated December 8, 2023 Requiring PREPA to File Information Gathered from Genera

MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER DATED DECEMBER 13, 2023 REQUIRING PREPA TO FILE INFORMATION REGARDING THE PROPOSED AMENDMENT, AND RESOLUTION AND ORDER DATED DECEMBER 8, 2023 REQUIRING PREPA TO FILE INFORMATION GATHERED FROM GENERA

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 December 13, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (the "Energy Bureau") issued a *Resolution and Order* (the "December 13 Order") requesting information from PREPA in connection with PREPA's *Petition for Approval of Third Amendment to Power Purchase Operating Agreement Between the Puerto Rico Electric Power Authority and AES Puerto Rico, L.P.* (the "Petition").

Moreover, on December 7, 2023, PREPA filed certain responses to a prior Energy Bureau request for information. One of responses required Genera PR, LLC's ("Genera") input. PREPA indicated it asked Genera provide the information needed to provide a response to the Energy Bureau's request, but Genera requested that the Energy Bureau grant Genera until Friday

December 15, 2023 to responsibly provide the information. On December 8, 2023, the Energy Bureau issued a *Resolution and Order* (the "December 8 Order") granting PREPA until December 15, 2023 to submit the information it requested from Genera.

In compliance with the Energy Bureau's December 13 Order, attached as **Exhibit A** is the information the Energy Bureau requested and PREPA's responses thereto, and in compliance with the Energy Bureau's December 8 Order, attached as **Exhibit B** is the information provided by Genera.

Certain of the information submitted in **Exhibit A** is confidential. Below is a table summarizing the justifications required to comply with the Energy Bureau's standard for the treatment of confidential information:

Confidential Item	Justification for Confidential Treatment
Exhibits A-1–A-11	• *PREPA's Responses Contain Information Subject to Confidentiality Agreement between PREPA and AES-PR (collectively, the "Parties")* – Before engaging in negotiations over the Proposed Amendment's terms, the Parties executed a confidentiality agreement. This confidentiality agreement is a crucial aspect of the Parties' negotiations in that it protects sensitive financial and operational information exchanged between the Parties, fostering a trusting environment conducive to reaching a resolution. • *PREPA's Responses Contain Trade Secrets* – AES-PR has a strong interest in preserving its proprietary secrets. These responses contain certain confidential information that AES-PR entrusted to PREPA under the assurance of confidentiality under the Confidentiality Agreement and its contract. Sharing this data openly could not only breach such contracts, but also give competitors or business counterparties a competitive edge. • *PREPA's Responses Contain Confidential Infrastructure Information* – The Energy Bureau's *Policy on Management of Confidential Information* (the "Confidentiality Policy") CEPR-MI-2016-0009, issued on August 31, 2016 and partially amended on September 16, 2016, protects confidential infrastructure

	information.[1] The Facility (as defined in the Petition) meets the definition of Critical Infrastructure, and the information included in the exhibits fits squarely within the definition of "Confidential Infrastructure Information." • *PREPA's Responses Contain information protected by the Deliberative Process Privilege* – The deliberative process privilege serves a critical role in preserving the candid and uninhibited exchange of ideas among government officials, which is essential for effective decision-making.

WHEREFORE, PREPA respectfully requests that the Energy Bureau take notice of PREPA's responses, treat PREPA's above highlighted **Exhibit A** items as confidential, and deem PREPA to have complied with the Energy Bureau's December 8 Order and December 13 Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 15th day of November, 2023.

GONZÁLEZ & MARTÍNEZ
1509 López Landrón
Seventh Floor
San Juan, PR 00911-1933
Tel.: (787) 274-7404

s/Alexis G. Rivera-Medina
Alexis G. Rivera-Medina
TSPR No.: 18,747
E-mail: arivera@gmlex.net

[1] The Petition provides definitions for both "Critical Infrastructure" and "Confidential Infrastructure Information."

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.

In San Juan, Puerto Rico, on the 15th day of November, 2023.

s/Alexis G. Rivera-Medina
Alexis G. Rivera-Medina

Exhibit A

Responses to December 13 Order's Requests for Information

PREPA's Responses to the Energy Bureau's December 13 Order's Requests for Information Regarding Proposed Amendment to AES-PR PPOA

---

1. With the *Restructuring Supporting Agreement* in the Exhibit A-2, provide the following information and/or responses: (i) copy of the Trust Agreement dated May 15, 2000; (ii) audited financial statements of AES Guayama Holding B.V. for years 2015 to 2022; (iii) a full set of AES Guayama Holding B.V. interim financial statements as of their latest closing (10/31/2023); (iv) the organizational or corporate chart of AES Puerto Rico LP (affiliates and/or subsidiaries) and its relationship with AES Guayama Holding B.V.; and (v) the organizational or corporate chart of AES Guayama Holding B.V. (affiliates and/or subsidiaries), including its ownership and its relationship with its parent company.

See attached **Exhibit A-1**, which AES-PR provided to PREPA.

Response provided by AES-PR:

Please note that AES Guayama Holdings B.V. does not have audited financials as it is not required to produce audited financials.

2. Explain how the total historical annual costs on AES Puerto Rico LP ("AES-PR") "A5. Financial Information and Calculations" relate to the audited financial statements for each year from 2015 through 2022, including a schedule that takes us from the Total in the exhibit A5 <u>for each year</u> to the Income Statement accounts in the Audited Financials <u>for the same year</u>.

See attached **Exhibit A-2**, which AES-PR provided to PREPA.

3. Explain, using the same format in AS Tab "10. Historicals", what amounts are related to the additional costs for management of Coal Combustion Residuals ("CCR") due to the restrictions established in Act 5-2020. For the avoidance of doubt, the costs sought in this request shall solely be attributable to the implementation of Act-5-2000 not to the costs attributable to the implementation of EPA's 2015 CCR Rule, which shall be reported separately.

Response provided by AES-PR:

Puerto Rico Act 40-2017 and Act 5-2020 substantially increased CCR disposal costs by restricting the on-island disposal of CCR: AES-PR began disposing of CCR off-island at scale in 2017 to comply with these rules. *See* attached **Exhibit A-3**, which AES-PR provided to PREPA, for AES-PR's estimated incremental costs related to off-island versus on-island CCR disposal.

4. Explain, using the same format in AS Tab "10. Historicals", what amounts are related to the additional costs for management of CCR due to the restrictions established in EPA's 2015 CCR Rule. For the avoidance of doubt, the costs sought in this request shall solely be attributable to the implementation of EPA's 2015 CCR Rule not to the costs attributable to the implementation of Act-5-2000, which shall be reported separately.

Response provided by AES-PR:

The EPA 2015 rule established requirements for facilities without liners (e.g., groundwater monitoring, additional inspections), and provided a timeline to install a liner. Please refer to table in attached **Exhibit A-4**, which AES-PR provided to PREPA, for incremental costs associated with this rule.

5. The response to the Second Request for Information ("ROI-2"), Item #5, states that for years 2020 and 2021, the inability of AES-PR to service the facility due to PREPA's request to delay scheduled maintenance activities caused losses related to the 90% EAF contract requirement that exceeds $10MM. For years 2020 and 2021, provide, (i) a detailed description of the nature and scope of the maintenance activities that were delayed at AES PR's facility, (ii) explain how each maintenance activity delayed directly contributed to AES's failure to achieve the 90% EAF, and (iii) provide a detailed calculation (including the backup documentation) that supports the alleged $10 MM losses.

Response provided by AES-PR:

In 2020, at the request of PREPA / LUMA, AES-PR delayed maintenance for Unit 2 from the originally scheduled January 2020 date. PREPA originally requested that the maintenance be delayed to March 2020. Due to the outbreak of the COVID-19 pandemic, this was delayed further to June 2020.

Later in 2020, Unit 1 maintenance was delayed from June 15 to July 25 a consequence of the previous delay to Unit 2. A forced outage occurred on July 9 due in part to. AES-PR worked with PREPA and LUMA to try and minimize the impact to the EAF, however, this was insufficient to prevent the EAF from falling below 90% for the rest of the year (EAF for the rest of 2020 and the first half of 2021 remained around ~85% on average). This resulted in ~$10.5 million of penalties under the PPOA during this period. Please refer specifically to Exhibit A5 from the responses to information requested by the Energy Bureau on November 21, 2023, tab "EAF Historical" row 16 "$ Penalty" between 2020 and 2021 to see total EAF penalties during the period of $10,467,702.

6. The response to ROI-2, Item #6, states that the degradation of the heat rate of AES' facility over the years is attributable to lack of availability of higher-quality coal, lack of financial resources, and delayed maintenance (in many cases requested by PREPA and Luma). For the years 2010 to 2022, (i) provide a detailed estimation of the portion of the degradation of the heat rate directly attributable to delayed maintenance requested by PREPA or Luma (include all relevant supporting documentation).

Response provided by AES-PR:

> Any maintenance delay for a coal plant will result in some heat rate degradation and negative impact to the overall efficiency of the plant. Quantification of this impact would require a detailed technical study performed by third-party consultants, which AES-PR has not performed at this time. *See* attached **Exhibit A-6**, which AES-PR provided to PREPA, for an illustration of historical heat rate over time.

7. The response to ROI-2, Item #9, includes in Exhibit A-9b periodic presentations to PREPA, its governing board, and stakeholders regarding AES' financial situation. Confirm that such documents were prepared by PREPA's consultants in charge of evaluating AES's financial condition and that no other reports were prepared by PREPA's consultants to appraise PREPA of its findings and conclusions regarding AES' alleged financial difficulties. To the extent that additional reports regarding AES' financial difficulties were prepared by PREPA's consultants, provide a copy of each one of them.

Confirmed that the presentations in **ROI-2, Exhibit A-9b** were prepared by PREPA's consultants in charge of evaluating AES-PR's financial condition and no other reports prepared by PREPA's consultants were presented to PREPA regarding AES-PR's financial difficulties. PREPA's consultants assisted PREPA management in preparing (i) the February 25, 2023 memo included in **Exhibit A-9b** and (ii) the additional presentation attached at **Exhibit A-7**, and reviewed and verified the information set forth therein. PREPA's consultants in charge of evaluating AES-PR also had ongoing discussions with PREPA and its stakeholders over several months. These discussions included updates of AES-PR's financial condition, results of the consultants' review of information provided by AES-PR and available in the confidential data room, and the status of negotiations.

8. The response to ROI-2, Item #9 alludes to a confidential data room provided by AES-PR to PREPA's consultants. Provide a draft non-disclosure agreement to be executed by the Energy Bureau's consultants to have full access to the referenced data room.

See attached **Exhibit A-8**, which AES-PR provided to PREPA.

9. The response to ROI-2, Item #11 alludes to a pre-petition proof of claim filed by AES-

PR in PREPA's Title III proceeding. Provide a copy of the referenced pre-petition proof of claim, including all supporting documentation.

Response provided by AES-PR:

The proof of claim ("POC") was filed in 2018, and, as explained in the previous *Motion in Compliance with Energy Bureau Request for PREPA to File Information Regarding the Proposed Amendment* filed on December 7, 2023, the POC is only required to include amounts claimed incurred prior to the petition date. PREPA's Title III petition date was in July 2017. The onerous restrictions relating to on-island disposal of CCR were enacted through Acts 40-2017 and 5-2020, which went effective after the Title III filing. Accordingly, the POC does not detail AES-PR's claims related to such changes in law. As explained in the previous *Motion in Compliance with Energy Bureau Request for PREPA to File Information Regarding the Proposed Amendment* filed on December 7, 2023, such claims would be an administrative claim for which the deadline has not yet been set and will not occur until next year. *See* attached **Exhibit A-9** for the POC.

10. The response to ROI-2, Item #5, Exhibit A-5 includes a Schedule 8 which refers to various attachments not included as part PREPA's response. Provide a copy of all the attachments referenced in Schedule 8.

See attached **Exhibit A-10**, which AES-PR provided to PREPA.

11. Item #2 of Schedule B included in Exhibit A-5 of Response to Item #5 of ROI-2 states that AES-PR incurred costs in excess of $11MM in 2022 due to "atypical unit outages" due to loss in transmission lines. Provide, (i) a detailed description of the nature and scope of each "atypical unit outage[]", (ii) explain how each "atypical unit outage []" contributed to AES' alleged losses, and (iii) provide a detailed calculation (including the backup documentation) that supports the alleged $11 MM losses.

See attached **Exhibit A-11**, which AES-PR provided to PREPA.

12. Provide copy of, (i) AES-PR current Title V Permit and (ii) semi-annual reports submitted to the Puerto Rico Environmental Quality Board (or the Puerto Rico Department of Environmental and Natural Resources) for years 2010 to 2022.

Response provided by AES-PR:

The current permit and extension, and all available reports are available in the data room.

Exhibit B

Response to December 8 Order's Request for Information from Genera

PREPA's Response to the Energy Bureau's December 8 Order's Request for Information from Genera

---

Provide Genera's best estimate of monthly availability by unit for all existing Legacy Generation Units under its control, from December 1, 2023, through the end of year 2027.

Please *see* **Exhibit B** attachments, including: (i) the Genera transmittal letter to PREPA with caveats, assumptions and disclaimers on its forecast; and (ii) the generation availability projection prepared by Genera with estimates of monthly and weekly availability for all existing Legacy Generation Units under its control and other dispatchable generating capacity from January 2024 through December 2027. Genera has included other dispatchable generation not under its control to provide a broader system view, which includes EcoEléctrica, AES-PR, and FEMA temporary generating units at Palo Seco and San Juan. EcoEléctrica and AES-PR availability are projected based on the currently established maintenance plan and historical availability and, notably, the FEMA temporary generation units are assumed to be in place and 100% available for the projection period.

The projected operating reserve, defined as expected available capacity minus LUMA's established reserve margin of 675 MW, is below zero for much of 2024 and periodically until 2028, even with AES-PR in service and FEMA temporary generation. Without AES-PR in service, the percentage of weeks in the forecast period during which the operating reserve is negative more than doubles to represent a majority of the forecast period.

For a utility to responsibly operate the system, it must plan and take actions to keep the operating reserve above zero. The Genera projection illustrates that the capacity from AES-PR is critically needed to support responsible system reliability planning and operations through the end of the PPOA term in 2027.