

**GOVERNMENT OF PUERTO RICO
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: Compliance of the of Revised
Proposed Amendment to the AES PPOA with
the February 1 Resolution.

RESOLUTION AND ORDER

I. PROCEDURAL BACKGROUND

On November 7, 2023, the Puerto Rico Electric Power Authority ("PREPA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Petition for Approval of Third Amendment to Power Purchase Operating Agreement Between the Puerto Rico Electric Power Authority and AES Puerto Rico, L.P.* ("November 7 Motion"). In the November 7 Motion, PREPA requests the approval of a third amendment to the *Power Purchase and Operating Agreement between AES Puerto Rico, L.P., and Puerto Rico Electric Power Authority* executed on October 11, 1994, between PREPA and AES Puerto Rico, L.P., ("AES-PR"), as amended on November 16, 1999 and, or about July 17, 2015.¹ A copy of the proposed third amendment was attached to the November 7 Motion as Exhibit B ("Proposed Amendment").

On February 1, 2024, the Energy Bureau issued a Resolution and Order approving the Proposed Amendment, subject to certain modifications set forth by the Energy Bureau (the "February 1 Resolution"). In the February 1 Resolution the Energy Bureau scheduled a Technical Conference for February 2, 2024 at 1:00 p.m. to afford PREPA the opportunity to clarify any doubts they may have regarding the February 1 Resolution ("Technical Conference"). Also, the Energy Bureau stated that if PREPA determines that the Technical Conference is unnecessary, it must inform the Energy Bureau no later than February 2, 2024 at 9:00 a.m.

On February 2, 2024, PREPA filed before the Energy Bureau a document titled *Motion in Compliance with February 1, 2024 Resolution and Order* ("February 2 Motion") in which, as required in the February 1 Resolution, PREPA states that the Technical Conference will not be necessary. Also, PREPA filed a document titled *PREPA Certification Pursuant to PREB Resolution and Order dated February 1, 2024*, as required by the Energy Bureau in the February 1 Resolution ("PREPA's Certification"). On February 2, 2024, the Energy Bureau issued a Resolution and Orden in which canceled the Technical Conference ("February 2 Resolution").

On February 23, 2024, PREPA filed before the Energy Bureau a *Second Motion in Compliance with February 1, 2024 Resolution and Order* ("February 23 Motion"). The February 23 Motion included the following Exhibits:

- (a) Exhibit A: *Revised Proposed Amendment* ("Revised Proposed Amendment").
- (b) Exhibit B: *Redline of the Revised Proposed Amendment* ("Redline").
- (c) Confidential Exhibit C.1: *GTS and True-up*
- (d) Confidential Exhibit C.2: *GTS Reallocation EAF Projections*

PREPA requested that the Energy Bureau grant confidential designation and treatment to Exhibit C.²

¹ Unless otherwise stated, the AES PPOA, as amended by the first and second amendments, is collectively referred to as the "AES PPOA".

² February 23 Motion, p. 2, footnote 1.



II. Discussion and Findings

The February 1 Resolution approved the Proposed Amendment, contingent upon the modification of various provisions. Below is the evaluation and analysis of the proposed modifications included by PREPA in the Revised Proposed Amendment.

A. Section 2(i) of the Proposed Amendment

The Energy Bureau required the modification of Section 2(i) of the Proposed Amendment to replace the proposed heat rate of 11,000 BTU per net kWh with a heat rate of 10,620 BTU per net kWh.³ It further required AES-PR to submit annual reports concerning heat rates in Case No.: CEPR-CT-2016-0013, starting on March 1, 2025.⁴ These reports shall include detailed data on heat rate and related parameters.⁵

Section 2(h) of the Revised Proposed Amendment⁶ includes the required modification regarding the heat rate value (10,620 BTU per net kWh).⁷ The Proposed Amendment was approved to take effect on December 1, 2023. However, given the updated date for the execution of the Revised Proposed Amendment, February 29, 2024, a true-up provision has been incorporated into the Green Transition Stabilization Payment in Section 2(k) of the Revised Proposed Amendment. Part of this true-up provision accounts for heat rate payments spanning December 2023 through February 2024. The heat rate payment true-up equals \$4,687,266.⁸ These payments are in accordance with the amounts authorized in the February 1 Resolution. Therefore, after careful consideration, the Energy Bureau considers these modifications reasonable and in compliance with the February 1 Resolution.⁹

B. Sections 2(k) and (l) of the Proposed Amendment

The Energy Bureau required modifications to Sections 2(k) and 2(l) of the Proposed Amendment to include an updated payment schedule that accounts for changes permitted in the Green Transition Stabilization Payment under the February 1 Resolution.¹⁰ Additionally, it required the addition of contractual provisions to make sure Coal Combustion Residuals ("CCR") management remains within the reasonable bounds of the forecasted volume each year and that the annual volumes of CCR disposed align with the authorized payments.¹¹

Section 2(k) of the Revised Proposed Amendment includes the required modification regarding the authorized Green Transition Stabilization Payment.¹² The adjustments in the Green Transition Stabilization Payments are as follows: (i) \$9.62/ kilowatts of Dependable Capacity per Month, for the period beginning on March 1, 2024, and continuing until

³ February 1 Resolution, Part III (D), p. 19.

⁴ *Id.*, pp. 19-20.

⁵ *Id.*

⁶ Note that due to certain additions and deletions, the Proposed Amendment has been renumbered. Section 2(i) of the Proposed Amendment is now Section 2(h) in the Revised Proposed Amendment.

⁷ Note that the requirement for reporting the heat rate related data is not meant to be a modification of the AES-PPOA. It is an additional requirement that AES-PR must fulfill in its reporting compliance as a certified electric company under Case No.: CEPR-CT-2016-0013.

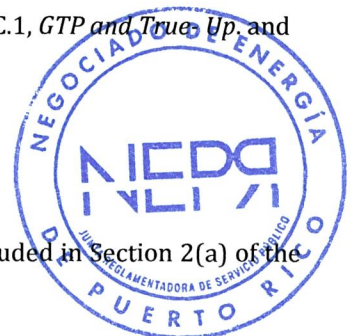
⁸ February 23 Motion, Exhibit C.1, *True-Up* and Exhibit C.2, *GTP Reallocation and True-Up*, Column #69.

⁹ See Revised Proposed Amendment, Section 2(k) and February 23 Motion, Exhibit C.1, *GTP and True-Up*, and Exhibit C.2, *GTP Reallocation and True-Up*.

¹⁰ February 1 Resolution, Part III (E), pp. 23-25.

¹¹ *Id.*, pp. 24-25.

¹² Revised Proposed Amendment, Section 2(l). Relevant definitions have been included in Section 2(a) of the Revised Proposed Amendment.



November 30, 2024, and (ii) \$3.37/ kilowatts of Dependable Capacity per Month for the period beginning on December 1, 2024, and continuing for the rest of the Term of the AES-PPOA.¹³ These adjustments are aligned with the amounts authorized in the February 1 Resolution.

Also, Section 2(l) of the Revised Proposed Amendment states that in the event that AES-PR disposes of a volume of CCR lower than the forecasted amount for any given year, a corresponding downward payment adjustment may be applied to the GTS Payment.¹⁴ Notably, if the actual volume of CCR disposed by AES-PR in any given year is over 5% below the forecasted volume, the GTS Payment for the subsequent year shall be reduced by an amount equal to 69.52 times the shortfall in metric tons from the previous year's forecasted volume.¹⁵ The implementation of the downward reduction will begin in January of the year following the one in which the deviation exceeding 5% occurred.¹⁶ The total downward adjustment will be proportionally distributed over a twelve-month period.¹⁷ If, in any given year where a downward adjustment is implemented, AES-PR disposes of a volume of CCR that exceeds the forecasted volume for that year by an amount equal to or greater than the volume subject to the previous year's downward adjustment due to shortfall, AES-PR may recoup the downward adjustment.¹⁸ Section 2(l) of the Revised Proposed Amendment also provides that AES-PR shall maintain accurate and comprehensive records of CCR disposal volumes and provide these records to PREPA (and to the Energy Bureau upon request).¹⁹

Again, due to the update in the execution date of the Revised Proposed Amendment, Section 2(k) of the Revised Proposed Amendment has been modified to account for the Green Transition Stabilization Payments corresponding to December 2023 through February 2024. The Green Transition Stabilization Payments true-up equals \$13,111,098.²⁰ These payments are in accordance with the amounts authorized in the February 1 Resolution. Therefore, the Energy Bureau considers these modifications reasonable and in compliance with the February 1 Resolution.

C. Sections 2(h) and (x) of the Proposed Amendment

The Energy Bureau required the modification of Sections 2(h) and (x) of the Proposed Amendment to remove all references to the Green Energy Commitment and term sheet.²¹ The Revised Proposed Amendment has been changed accordingly.²²

D. Section 2(d) of the Proposed Amendment

The Energy Bureau required the modification of Section 2(d) of the Proposed Amendment to include language ensuring AES-PR's compliance with applicable laws and regulations

¹³ February 23 Motion, Exhibit C.1, *GTP Payment Adjustment*.

¹⁴ Revised Proposed Amendment, Section 2(l).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See February 23 Motion, Exhibit C.1, *GTP Payment Adjustment* and Exhibit C.2, *GTP Reallocation and True-Up*, Column #70.

²¹ February 1 Resolution, Part III (G), pp. 26-27.

²² February 23 Motion, Exhibit B, Redline, p. 7 and p. 11.



concerning CCR storage.²³ The Revised Proposed Amendment has been changed accordingly.²⁴

E. Section 2(o) of the Proposed Amendment

The Energy Bureau required the modification of Section 2(o) of the Proposed Amendment to remove the additional language initially proposed in Article 14.2 of the AES PPOA regarding PREPA's liability for damages.²⁵ The Revised Proposed Amendment has been changed accordingly.²⁶

F. Section 2(m) of the Proposed Amendment

Section 2(m) of the Proposed Amendment sought to reset the accumulated 12-month outage/derated hours as of October 1, 2023.²⁷ According to AES-PR this reset aims to indirectly recover a portion of capacity payments that were reduced due to maintenance delays in 2020 and 2021, as requested by PREPA. AES-PR also envisions a forward-looking adjustment that will eliminate past derated hours from EAF calculations going forward, thus reducing penalties on a go-forward basis, while providing AES-PR an opportunity to ensure proper plant maintenance.²⁸ The Energy Bureau did not require the modification of Section 2(m) of the Proposed Amendment in the February 1 Resolution.²⁹ On the contrary, it approved PREPA's proposed modification to the AES-PPOA.³⁰

In the Revised Proposed Amendment, PREPA seeks to reset the accumulated 12-month outage/derated hours as of March 1, 2024, instead of October 1, 2023.³¹ PREPA submitted calculations which indicates that the AES-PR may incur in higher penalties with the new reset date proposed.³² Considering the foregoing, the Energy Bureau deems the proposed changes to be reasonable and in the interest of ratepayers, and in alignment with the February 1 Resolution.

III. Confidential Designation and Treatment

Act 57-2014³³ establishes that any person having the obligation to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.³⁴ Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information provided that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected".³⁵ In such case, the Energy Bureau "shall grant such protection in a manner that

²³ February 1 Resolution, Part III (H), p. 28.

²⁴ Section 2(d) of the Revised Proposed Amendment, p. 6.

²⁵ February 1 Resolution, Part III (I), pp. 28-29.

²⁶ February 23 Motion, Exhibit B, Redline, pp., 9-10.

²⁷ February 1 Resolution, p. 25.

²⁸ *Id.*

²⁹ *Id.*, p. 26

³⁰ *Id.*

³¹ Section 2(m) of the Revised Proposed Amendment, p. 9.

³² February 23 Motion, Exhibit C.2: *GTS Reallocation EAF Projections*, Column #108.

³³ Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

³⁴ Section 6.15 of Act 57-2014.

³⁵ *Id.*



least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.”³⁶

After a review of PREPA’s arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to the documents included as Exhibit C (*i.e.*, Exhibit C.1 and Exhibit C.2) of the February 23 Motion.

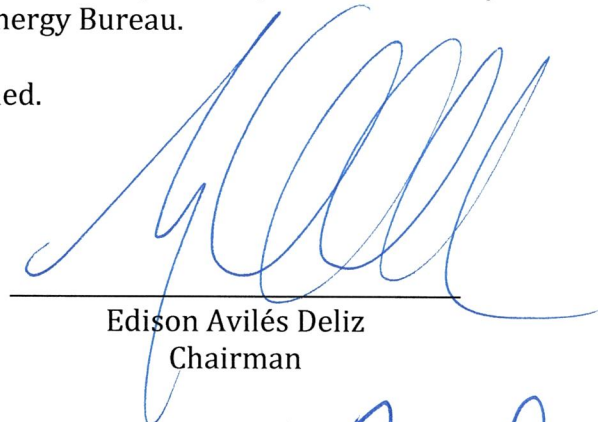
IV. Conclusion

The Energy Bureau has carefully and comprehensively reviewed the Revised Proposed Amendment, along with the accompanying explanations and supporting documents submitted with the February 23 Motion. The Energy Bureau **DETERMINES** that the Revised Proposed Amendment adheres to all the conditions set forth in the February 1 Resolution. It **APPROVES** the Revised Proposed Amendment and authorizes PREPA to execute the document without the need for further consultations with the Energy Bureau. However, before the execution of the Revised Proposed Amendment, PREPA shall obtain the approval of the Financial Oversight & Management Board for Puerto Rico (“FOMB”).

The Energy Bureau **ORDERS** PREPA to file the executed version of the Third Amendment within five (5) days of its execution.

The Energy Bureau **WARNS** PREPA that any person who intentionally violates any provision of Act 57-2014, omits, neglects or refuses to obey, observe and comply with any rule or decision of the Energy Bureau shall incur a less serious and convicted offense that may be punished with imprisonment not exceeding six (6) months, or with a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000), at the discretion of the Energy Bureau. In case of recidivism, the established penalty will increase to a fine of not less than ten thousand dollars (\$10,000) nor over twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

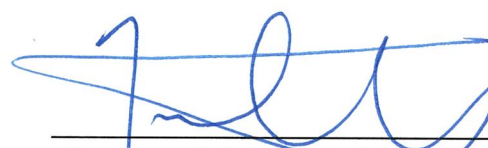
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Associate Commissioner



Antonio Torres Miranda
Associate Commissioner




³⁶ *Id.* (Emphasis added).

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on February 27, 2024. Also certify that on February 27, 2024, I have proceeded with the filing of this Resolution and Order and was notified by email to arivera@gmlex.net; mvalle@gmlex.net.

I sign in San Juan, Puerto Rico, today, February 27, 2024.



Sonia Seda Gaztambide
Clerk

