

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

IN RE: COMPETITIVE PROCUREMENT FOR
NEW GENERATION SOURCES

CASE NO.: NEPR-MI-2025-0001

SUBJECT: Resolution and Order addressing
Act 1-2025 underscoring the need for new
generation sources.

RESOLUTION AND ORDER

I. Introduction

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) issued a Final Resolution and Order on Puerto Rico Electric Power Authority’s (“PREPA”) Integrated Resource Plan (“IRP”) under Case No. CEPR-AP-2018-0001 (“Approved IRP”). The Energy Bureau approved in part the Proposed PREPA’s IRP. Through the Approved IRP, the Energy Bureau accepted in part and rejected in part PREPA’s IRP and ordered the adoption and implementation of the Modified Action Plan.

On July 12, 2023, the Energy Bureau initiated a new IRP process to outline the island’s energy strategy for the next twenty (20) years. As part of this process, LUMA¹ submitted the First Interim 2025 IRP Filing before the Energy Bureau on November 25, 2024. This filing represents a significant milestone in developing a comprehensive plan to meet Puerto Rico’s future energy needs. The IRP process is ongoing, with further evaluations and stakeholder engagements planned to ensure a sustainable and reliable energy future for the island.

The IRP is developed using enacted policy as a guide to make assumptions and future projections. If there are policy changes, the IRP must be modified to reflect these changes. House Bill 267 has been enacted into law (“Act 1-2025”), amending *Puerto Rico’s Public Energy Policy Act* (“Act 17-2019”) and the *Energy Diversification Act*, as amended (“Act 82-2010”). Act 1-2025 extends the lawful use of coal-based power generation, until 2032, allowing the AES² power plant in Guayama to continue operations. It also adjusts the island’s energy transition goals to reflect current energy conditions and ensure system reliability. Additionally, it eliminates the interim renewable energy targets of 40% by 2025 and 60% by 2040, while maintaining the goal of achieving 100% renewable energy by 2050. The law also includes provisions to enhance energy efficiency and promote the integration of renewable energy sources into the grid.

As of today, numerous Independent Power Producers (“IPPs”) have been awarded renewable energy projects that could potentially supply from 30% to 40% of the total energy needed to meet the island’s yearly energy demand.

II. The IRP Process

The *Puerto Rico Energy Transformation and RELIEF Act*, as amended (“Act 57-2014”) was enacted to, amongst other things, create an independent regulatory body to oversee PREPA’s and all other certified electric service companies’ operations, and to establish strategic planning and information requirement to promote transparency and active citizen participation.³ Essential to carrying out this legislative intent is a planning process, directed

¹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (referred to jointly as “LUMA”).

² AES Puerto Rico, Inc. (“AES”).

³ Act 57-2014, Statement of Motives.



and overseen by the Energy Bureau. Act 57-2014 requires PREPA to submit and the Energy Bureau to approve an integrated resource plan, defined as:

... a plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of twenty (20) years, including those related to the offering of electric power, whether existing, traditional, or new resources, and those related to energy demand, such as energy conservation and efficiency, or DR and localized energy generation by the customer. Every integrated resource plan shall be subject to the rules established by PREB and approved by the same. Every plan shall be devised with broad participation from citizens and other interested groups.⁴

Regulation 9021⁵ defines the term “Integrated Resource Plan” or “IRP” as follows:

[A] plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of time, including those relating to the offering of electric power, whether existing, traditional, and/or new resources, and those relating to energy demand such as energy conservation and efficiency or DR and localized energy generation by the customer, while recognizing the obligation of compliance with laws and regulations that constrain resource selection.⁶

Under Article 6.23 of Act 57-2014, the Energy Bureau has the mandate to establish regulations to govern the IRP that LUMA, as PREPA’s representative, must file. The IRP is the centerpiece for carrying out the legislative intent to modernize the electric system. The goal of the IRP, according to Act 1-2025, is to evaluate PREPA’s resources to develop a **cost-effective (least cost)** plan to meet Puerto Rico’s energy needs.

III. Act 120-2018 “*Puerto Rico Electric Power System Transformation Act*” and Act No. 29-2009 “*Public Private Partnership Act*”

Act 120-2018 creates the legal framework and the mechanism for the sale or transfer of PREPA assets related to electric power generation as well as for the establishment of Public-Private Partnership (“P3”) regarding any PREPA functions, service, or facility.⁷ It is the public policy of the Government of Puerto Rico’s (the “Government”) to expedite a fair and transparent process for the establishment of P3s with any functions, services, or facilities of PREPA.⁸

A P3 couples the resources and efforts of the public sector with resources of the private sector by means of a joint investment that results in the benefit of both parties. Such Partnerships are sought to provide a service for citizens and building or operating a facility or project held in high priority by the Government, be it due to the urgency, the need or convenience for the citizens. These Partnerships shall be vested in high public interest, the Government is neither relinquishing its responsibility of protecting such interest,

⁴ Act 57-2014 § 1.3 (II).

⁵ *Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority*, Regulation 9021, April 24, 2018.

⁶ Regulation 9021, § 1.08(B)(20).

⁷ Act 120-2018, Statement of Motives.

⁸ Act 120-2018, § 3.

nor waiving its rights to receive an efficient service, nor renouncing the ownership of the public assets included into the Partnership Contract.⁹

The establishment of P3s calls for a legal and administrative framework that incorporates processes to foster purity and transparency in the development of projects. This process should elicit transparency from the Government in the negotiation and agreements for executing contracts, while still protecting the confidentiality of the so-called “trade secrets” of private business from possible harm from competitors. Such process should promote competition in the request for proposals and afford access to available information to attract the best proponents to ensure the primacy of the free market and of free competition.¹⁰

P3s allow for the development of projects and the rendering of some services more efficiently and in a less costly manner by delegating the risks inherent to such development or service onto the party capable of assessing and managing such risks. Likewise, these Partnerships enable the Government to make infrastructure projects feasible when the funds needed to set a project are not available in the public treasury.¹¹

Section 4 of Act 120-2018 states all Act No. 29-2009 shall apply to PREPA Transactions.¹² Concerning PREPA Transactions, Section 5 of Act 120-2018 specifically provides that PREPA may conduct any PREPA Transaction and enter Partnerships or Sales Contracts in relation thereto. **Any PREPA transaction shall be conducted in accordance with the Public Private Partnership’s establishment process in Act No. 29-2009.**¹³

The Puerto Rico Public-Private Partnerships Authority (“P3 Authority”)¹⁴ is designated as the sole Government Entity authorized to and responsible for: (1) implementing the public policy on PREPA Transactions conducted under Act 120-2018; (2) **determining the Functions, Services, or Facilities for which such Partnerships shall be established**, subject to the priorities, objectives, and principles established in the energy policy and the regulatory framework to be developed under Section 9 of this Act; and (3) determining which PREPA Assets related to electric power generation shall be sold or transferred through Sales Contracts.¹⁵

PREPA may only sell and dispose of PREPA Assets related to electric power generation through the process established in this Act and **may only conduct transactions related to electric power generation, distribution, and transmission, metering, and any other PREPA function, service, or facility through Partnership Contracts.**¹⁶

The P3 Authority shall designate a Partnership Committee, pursuant to Act No. 29-2009, to evaluate and select qualified persons and the PREPA Transaction

⁹ Act 29-2009, Statement of Motives.

¹⁰ *Id.*

¹¹ *Id.*

¹² PREPA Transaction is defined as: Any and all transactions carried out in accordance with the provisions of Act No. 29-2009 and this Act, whereby PREPA or the Government of Puerto Rico establishes one or more Partnerships on connection with any of PREPA’s functions, services, or facilities, or executes a Sales Contract for PREPA Assets related to electric power generation.

¹³ Act 120-2018, § 5(a).

¹⁴ The Public-Private Partnership Authority was created by Act 29-2009, also known as the *Public-Private Partnerships Act*, for the purpose of implementing the public policy of the Government of Puerto Rico concerning Public-Private Partnerships, as set forth under the Act.

¹⁵ Act 120-2018, § 5(b).

¹⁶ *Id.*



Proponents, and to establish and negotiate the terms and conditions it deems appropriate for the pertinent Partnership or Sales Contracts under Act 120-2018 and Act No. 29-2009.¹⁷

Since PREPA Transactions may have particularities that distinguish them from other transactions conducted by the P3 Authority, the latter is empowered to create and approve one or more specific regulations for any PREPA Transaction, pursuant to Section 6(b)(ii) of Act No. 29-2009.¹⁸

Any contract related to a PREPA Transaction shall include a clause enforcing full compliance with the energy policy and the regulatory framework, except for those excluded by this Act or those authorized by the Legislative Assembly.¹⁹

Additionally, any contract related to a PREPA Transaction requires an Energy Compliance Certificate, as defined by Act 120-2018. The Partnership Committee shall submit to the Energy Bureau the Report drafted pursuant to Section 9(g) of Act No. 29-2009 before submitting it to the Board of Directors of the P3 Authority and PREPA. The Energy Bureau shall evaluate the Report and the Preliminary Contract and issue an Energy Compliance Certificate if they comply with the energy public policy and the regulatory framework. The Energy Compliance Certificate or the resolution to deny the issuance thereof shall state the basis for such determination. The Energy Bureau shall have fifteen (15) business days as of the date on which the Preliminary Contract was submitted to issue a Certificate of Compliance or the resolution to deny the issuance thereof. If a Certificate of Compliance or the resolution to deny the issuance thereof is not issued within the aforementioned term, the PREPA Transaction shall be deemed approved by the Energy Bureau and it shall be understood that an Energy Compliance Certificate has been issued for such PREPA Transaction. Once the Energy Compliance Certificate has been issued, any amendments made to the Preliminary Contract shall require the issuance of a new Energy Compliance Certificate. The mere issuance of an Energy Compliance Certificate shall not constitute grounds for claiming any compensation, reimbursement, or payment because of any expectations arising in the stages, or for the expenses incurred during the qualification process or the submission of proposals. Reviews in connection with the Energy Compliance Certificate issued by the Energy Bureau shall be filed with the Court of Appeals within a term of fifteen (15) days as of the notice thereof.²⁰

IV. Analysis

The main purpose of Act 1-2025 is to adjust Puerto Rico's energy transition timeline, including the elimination of interim renewable energy goals for 2025 and 2040. It emphasizes the importance of satisfying the island's energy demands through a mix of **new generation sources**, including the continued operation of the AES coal plant in Guayama, to ensure stability and reliability in the grid. The law maintains the long-term goal of achieving 100% renewable energy by 2050, while recognizing the need to balance renewable integration with reliable, sustainable generation sources to meet current and future energy needs.

¹⁷ Act 120-2018, § 5(c).

¹⁸ *Id.*, § 5(d).

¹⁹ *Id.*, § 5(f).

²⁰ *Id.*, § 5(g).



The Energy Bureau has the power and duty to oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico,²¹ to establish and implement regulations and the regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of the rates of Puerto Rico's electrical system, and to establish the guidelines, standards, practices, and processes to be followed to purchase power, modernize power plants or electric power generation facilities.²² It has the power to formulate and implement strategies to achieve the energy public policy goals, including, but not limited to, attaining the goals established in the Renewable Portfolio Standard and promoting the storage of energy.²³ The Energy Bureau has broad authority under Act 57-2014, Act 82-2010²⁴ and Act 17-2019 to oversee the acquisition of energy resources by PREPA to help ensure that the Energy Public Policy goals are met and that PREPA's ratepayers' interests are protected.

Given the pattern of forced outages of PREPA's existing, aging, thermal generation fleet, the available generation capacity is extremely limited and may complicate needed maintenance and repairs to the existing fleet. The Energy Bureau **DETERMINES** there is a need to explore the costs and timeframe of availability of new, modern, generation sources that will allow Puerto Rico to reach the goals set in the new energy public policy and serve the electricity customers' best interests. Preferably, the new units should not exceed 400MW and shall have a certain level of flexibility to further facilitate the integration of renewables to meet the 100% target by 2050. Additionally, they should not be limited to gas plants but should include all types of generation, as long as they are considered baseload generation under the existing public policy. It should also be promoted that, to the extent possible, the location of these units be as close as possible to load centers. The Energy Bureau further **DETERMINES** that this effort shall explore a total of 2,500 to 3,000MW of new capacity.

Nothing in the new legislation limits consideration of new generation sources in any location in Puerto Rico and it is within the Energy Bureau's authority to ascertain the costs and availability of such new resources at different locations on the island or allow respondents to indicate which locations they consider best. The Energy Bureau would expect that costs would be lower in regions that already have some electrical, port, and fuel-handling infrastructure in place. Also, the Energy Bureau expects that costs be lower if new generation sources are placed in existing PREPA generation sites.

As discussed, Act 120-2018 specifically provides that any PREPA Transaction, shall be conducted in accordance with the process in Act No. 29-2009 for the establishment of P3s and that the P3 Authority is the sole Government Entity authorized to and responsible for implementing the public policy on PREPA Transactions and determining the Functions, Services, or Facilities for which such Partnerships shall be established. It is further mandated under Act 120-2018 that PREPA may only conduct transactions related to electric power generation, distribution, and transmission, metering, and any other PREPA function, service, or facility through Partnership Contracts.

²¹ Act 57-2014, Article 6.3(a).

²² *Id.*, Article 6.3(c).

²³ *Id.*, Article 6.3(f).

²⁴ *Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act*, as amended, ("Act 82-2010").



V. Conclusion

The Energy Bureau **ORDERS** PREPA to notify the P3 Authority **within the next five (5) business** days from the notification of this Resolution and Order about the Energy Bureau's determination regarding the establishment of a P3 RFP for **new generation sources at any location in Puerto Rico, especially in existing PREPA generation sites**, for the P3 Authority to take the steps for the commencement of a competitive procurement process in alignment with the present Energy Bureau's determination. The Energy Bureau **REITERATES** the new units should be located as close as possible to load centers, shall not be limited to gas plants and, preferably, not exceed 400MW. Further, the Energy Bureau **ORDERS** PREPA to, **within the aforementioned timeframe**, file before the Energy Bureau evidence of compliance with this Resolution and Order.

Be it notified and 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 March 19, 2025. I also certify that on March 19, 2025, a copy of this Resolution and Order was notified by electronic mail to lionel.santa@prepa.pr.gov; and 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, on March 19, 2025.



Sonia Seda Gaztambide
Clerk