

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

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IN RE:

**REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN**

CASE NO.: CEPR-AP-2018-0001

SUBJECT:
DISCOVERY

**MOTION TO QUASH LOCAL ENVIRONMENTAL
ORGANIZATIONS DISALLOWED DISCOVERY**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority through the undersigned legal representation and respectfully sets forth and pray:

I. Introduction

1. During the week of February 3-7, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (the “Energy Bureau”) held Evidentiary Hearings to further evaluate the Puerto Rico Electric Power Authority (PREPA)’s Proposed Integrated Resource Plan (the “Proposed IRP”). During the hearings, the parties, through their counsels, had the opportunity to cross-examine PREPA’s witnesses. At times, some parties had follow-up questions or additional requests for information. The parties would submit their request for the record and the Energy Bureau would rule and determine if PREPA had to respond to the request or if the request was denied. As per the Energy Bureau’s orders, if a request was granted, the parties had to served PREPA with the request in writing. PREPA has already responded to the majority of the previously allowed requests that were submitted in writing.

2. On February 9, 2020, the Local Environmental Organizations (LEO) presented its request of information through a *Request of Information to Puerto Rico Electric Power Authority*

from Local Environmental Organizations, In Accordance with the Bureau's Order (the "LEO Requests").¹ The LEO Requests has several requests for information that have already been denied by the Energy Bureau and therefore, PREPA requests the Energy Bureau to quash them.

3. The LEO Requests include information requests that have been previously denied by the Energy Bureau or that were not made during the Evidentiary Hearings. Evidently, portions of the LEO Requests are discovery on cross-examination, which doesn't exist. The Evidentiary Hearing was a process to cross-examine witnesses, not depositions in which a party can request the deponent for supplemental information on their responses. Portions of LEO Requests are a conspicuous attempt to do discovery on cross-examination and to gather information that they did not timely request during the discovery period, which expired on November 13, 2020.² The vast majority of the LEO Requests are unwarranted and untimely.

4. Moreover, the Energy Bureau specifically resolved that the allowance of requests of information was not "open season on discovery"³ and that the allowed information requests were limited to those that the Energy Bureau granted leave to a party to serve or that PREPA had voluntarily agreed to produce. Additionally, in an effort identify and evaluate the request made by the parties during the first days of the evidentiary hearings, on February 5, 2020, the Energy Bureau allotted time at the end of Panel F, for the parties' counsels to inform the Energy Bureau of information that they had requested during the course of the first days of the hearings and, that the

¹ On March 13, 2020, the Energy Bureau issued a *Resolution and Order* in response to PREPA's *Request for Extension of Time to File Reply to Legal Briefs* (the "March 13 Order"). In the March 13 Order, the Energy Bureau granted PREPA's request for extension and ordered PREPA to provide a response to the LEO Request on or before March 20, 2020. PREPA had inadvertently missed the service of the LEO Request. The Energy Bureau issued orders in case NEPR-MI-2020-0005 were all deadlines from March 16, 2020 were stayed until May 3, 2020 due to the Government of Puerto Rico's Executive Orders OE-2020-023, OE-2020-029 and OE-2020-033. However, on April 15, 2020, the Energy Bureau issued a *Resolution and Order* in the case of caption establishing a final deadline for all parties to submit their IRP Reply Briefs and ordering PREPA to respond to the LEO Request on or before April 20, 2020 at 5:00 pm.

² PREPA Resp. ROI 03-57 at AP-2018-0001 *Local Environmental Organizations ROI Set 3 10-25-2019. rev JMC.*

³ See Panel F, February 5, 2020, <https://www.youtube.com/watch?v=8nIYVqDaEb8&t=2s>, 2:17:17.

Energy Bureau had allowed. The parties were provided an opportunity to list their questions for the record. Some parties' requests were granted, while other parties' requests were disallowed. The Energy Commission directed the parties that had allowed requests for information to served them on PREPA in writing.

5. LEO was dully represented by several attorneys while the requests for information during those discussions. As a matter of fact, LEO made a couple of requirements of information. LEO inquired on hazard or risk analysis of San Juan Bay from the United States Coast Guard about the conversion San Juan 5 & 6. Said line of questions and request for discovery was disallowed. LEO also had questions related to a previous ROI about flood prone areas. The Energy Bureau directed LEO to submit those in writing for their evaluation and ruling for allowance or not. LEO's counsel did not submit more questions at that moment and asked to supplement their request later on. The Energy Bureau's Commissioner Mateo and the Hearing Examiner emphasized that the request for additional information was **limited to those that the Energy Bureau had already allowed** and therefore, It was not supposed to be a long list.⁴

II. Item no. 2 of the LEO Requests.

1. The LEO Requests' item no. 2 referrers to the Palo Seco facility being in a flood-prone area. LEO had requested information on the Palo Seco matter in its ROI 3-27. ROI 3-27

⁴ See Panel F, Feb 5, 2020, <https://www.youtube.com/watch?v=vIXWJt52Hfk> 4:55:00.

The Energy Bureau stated that the hearing were not a new round for discovery (Commissioner Mateo: This is not a new discovery process, this is about having a concerted effort to be clear on what the ruling were, so we are ready to produce them, PREPA or whomever is responsible after we finish this. So, I'm surprised, as the Hearing Examiner says, that your list is so long because I don't remember that many rulings.

Attorney Ruth Santiago, Counsel for LEO: Um, I'm wondering whether documents that we or other intervenors requested with no ruling are included in this list?

Commissioner Mateo: No, no, no, those documents should have been part of the discovery. We had an ample opportunity for discovery, we had direct testimony, supplemental testimony, and other rounds of supplemental ROIs. Today we are making a list of what was ruled by us, that you could get.)

was answered by PREPA in accordance with the discovery processes established by the Energy Bureau. PREPA served the responses to ROI 3 on LEO. LEO never LEO never served PREPA with an objection to the responses, a request to meet and confer or a motion to compel.

2. Item no. 2 is not a request for information made during the Evidentiary Hearing, is a second bite at the apple for a response of an ROI that was not to LEO's satisfaction. Therefore, LEO Requests' Item no. 2 should be quashed.

3. Furthermore, the LEO Requests include a list of "synapse" requests and random phrases and topics. LEO doesn't even assert that these were allowed by the Energy Bureau. The "requests" are general, irrelevant, immaterial, overbroad, ambiguous, burdensome bullet points, and do not provide enough information that allows PREPA to identify what is it that they seek. PREPA would have to guess and this is certainly not a process in which a party must assume what other parties' questions or requests for production are. These "requests" should be quashed.

4. PREPA also moves the Energy Bureau to quash requests that are identified as "failed to answer." These bullets include the opinion of an intervenor and not a request for production. There is no general obligation for PREPA to respond questions it failed to answer during the hearings after the hearings and discovery processes have ended.

III. Information PREPA Officers Voluntarily Agreed to Provide.

1. The LEO Requests also include a list of requests for information that PREPA voluntarily agreed to produce.

2. The following list includes the requests and PREPA's response.

- a. Mr. Marcelo Saenz offered to provide information on energy efficiency in writing, since the "true expert on energy efficiency" could not come to the hearing.

Response: Marcelo Saenz answered the question and commented that the true expert of Energy Efficiency was not at the hearing. Siemens expressed that Mr. Tim

Pettit is their EE expert he answered a couple of ROIs but was not called as a witness to the IRP Evidentiary Hearings.

- b. [Eng.] Paredes agreed to produce, if available, an EE study conducted about 15 years ago.

Response: The Planning Division searched for the study and did not find it.

- c. [Eng.] Paredes agreed to produce, if available (checking in CEO's office), workpapers of solar siting studies.

Response: PREPA searched and did not find the study.

- d. Mr. Deliz offered to provide answers in one month on FEMA funding for transmission & distribution damages.

Response: At the moment, for permanent work, FEMA has approved Project Worksheet 1165 for Architectural & Engineering Services with a Total Project Costs of \$111,453,804.00.

- e. [Eng.] Paredes agreed to produce the name of the vendor that provided the unsolicited proposal for gas peakers.

Response: The unsolicited proposal for gas peakers was submitted by a group called Team Peaker.

- f. Dr. Bacalao offered to produce the information on the increased costs to earthquake-proof a CCGT.

Response: Dr. Bacalao expressed that Mr. Ken Bean from Siemens provided the information below:

Costs to meet seismic standards depend on the design basis earthquake magnitude. The recent Puerto Rico earthquake was about a 6.4. and PR had a 1918 earthquake that was a 7.1. The largest recorded earthquake in California is about 7.9, and recent ones were about 7.1. An earthquake design standard for PR arguably would be less stringent than one for CA. Thus, costs of CA power plants meeting their seismic standards should bound the costs of such plants for PR, when adjusted for all the other region-specific factors for material costs, labor rates, productivity, etc.

At the level of factored estimating used in the study, we do not have an explicit seismic standard, it would be implied in the regional cost factor for PR vs. US average costs. Good practice would dictate meeting a reasonable seismic standard in any power plant design.

[Siemens doesn't] have a definitive basis for estimating the specific premium for meeting an increased seismic standard. Power plant equipment costs are a large percentage of the overall costs. Seismic can affect structures, foundations, pipe and

cable supports, etc. The HRSGs' steel would be a little heavier for a higher seismic standard.

Bottom line, seismic standards likely would be considered within the cost range already used for these estimates. If common practice in PR has been to design major structures to a much lower standard, then there could be a small cost impact, probably less than 5%.

WHEREFORE, the Puerto Rico Electric Power Authority requests the Energy Bureau to quash items of the LEO Requests on discovery and note the responses herein provided.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of April 2020.

/s Katuska Bolaños
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CERTIFICATE OF SERVICE

It is hereby certified that, on this same date I have filed the above motion using the Energy Bureau's Electronic Filing System, at the following address: <http://radicacion.energia.pr.gov> and that a courtesy copy of the filing was sent via e-mail to: sierra@arctas.com; tonytorres2366@gmail.com; cfl@mcvpr.com; gnr@mcvpr.com; info@liga.coop; amaneser2020@gmail.com; hriviera@oipc.pr.gov; jriviera@cnslpr.com; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com; manuelgabrielfernandez@gmail.com; acarbo@edf.org; pedrosaade5@gmail.com; rmurthy@earthjustice.org; rstgo2@gmail.com; larroyo@earthjustice.org; jluebkmann@earthjustice.org; acasellas@amgprlaw.com; loliver@amgprlaw.com; epo@amgprlaw.com; robert.berezin@weil.com; marcia.goldstein@weil.com; jonathan.polkes@weil.com; gregory.silbert@weil.com; agraitfe@agraitlawpr.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; castrodiappalaw@gmail.com; voxpopulix@gmail.com; paul.demoudt@shell.com; javier.ruajovet@sunrun.com; escott@ferraiuoli.com; SProctor@huntonak.com; GiaCribbs@huntonak.com; mgrpcorp@gmail.com; aconer.pr@gmail.com; axel.colon@aes.com; rtorbert@rmi.org; apagan@mpmlawpr.com; sboxerman@sidley.com; bmundel@sidley.com.

In San Juan, Puerto Rico, this 20th day of April 2020.

s/ Katuska Bolaños
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