
FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

December 21, 2020

Congressman Raul M. Grijalva,
Chairman, US House Natural Resources Committee
US House of Representatives

Congressman José E. Serrano
US House of Representatives

Congressman Darren Soto
US House of Representatives

Dear Congressmen Grijalva, Serrano, and Soto,

We write in response to your letter of December 7, 2020 (attached as Appendix A) requesting additional information regarding the Oversight Board's decision to approve 150MW of 593MW of renegotiated non-operational renewable energy power purchase and operating agreements ("PPOAs") proposed by the Puerto Rico Electric Power Authority ("PREPA"). We appreciate your questions regarding the Oversight Board's decision and share your interest in modernizing the Island's energy system through the deployment of low-cost, clean renewable energy resources.

As you are aware, established by the bipartisan Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), the Financial Oversight and Management Board for Puerto Rico ("the "Oversight Board") works for the benefit of the people of Puerto Rico and towards the objective of fiscal sustainability for the Island. As required by its Contract Review Policy adopted pursuant to section 204(b)2 of PROMESA, the Oversight Board reviews contracts proposed by Government entities and instrumentalities, including PREPA, to ensure such contracts "promote market competition" and "are not inconsistent with the approved fiscal plan." In line

with this mandate, the Oversight Board evaluated PREPA's July 1, 2020 submission¹ of 16 renegotiated non-operational renewable energy PPOAs (together, the "Proposed Contracts").

After a thorough review of the Proposed Contracts, the Oversight Board concluded such contracts, and PREPA's determination to enter into all 16 PPOAs, were neither consistent with PREPA's Certified Fiscal Plan nor promoted market competition, given the proposed prices represent incremental costs to Puerto Rico's residents in excess of the certified fiscal plan's projections and none of the Proposed Contracts were procured competitively. Notwithstanding these issues, in the interest of advancing the goal of increasing Puerto Rico's share of renewable energy resources, the Oversight Board authorized PREPA to develop up to 150MW of the Proposed Contracts, given such amount would represent minimal incremental costs to PREPA's customers, while showing good faith efforts towards developing additional renewable energy resources.

It is worth noting that the Oversight Board's decision regarding the Proposed Contracts is not aimed at delaying or impeding the development of renewable resources. To the contrary, it is a decision in favor of competitively procured and cheap renewable energy: Since 2017, the Oversight Board has been consistent in its belief that Puerto Rico's energy system must dramatically and drastically increase its renewable energy resources and reduce its overdependence on oil-fired generation. Therefore, the Oversight Board has consistently encouraged PREPA to undertake transparent competitive procurement processes for renewable energy resources and believes that market competition will lead to significantly better pricing outcomes for Puerto Rico than the Proposed Contracts. Yet, to date, PREPA has not made significant progress in procuring the 3,750 MW in renewable generation required by its approved Integrated Resource Plan. Nonetheless, the Oversight Board is optimistic that, as LUMA Energy takes over responsibilities for managing and operating PREPA's transmission and distribution ("T&D") system, measurable progress will be achieved on this front and Puerto Rico will be on track to meet its renewable energy targets.

With the aforementioned in mind, we proceed to address your specific concerns:

- A. *Avoidance of fines associated with not achieving renewable energy goals mandated by Puerto Rico law and not complying with federal Mercury and Air Toxic Standards ("MATS") regulations:*

After reviewing the information and documentation provided by PREPA, the Oversight Board determined that there was significant uncertainty as to whether a significant portion of the projects represented by the Proposed Contracts would be successfully completed. In its June 11th letter to the Oversight Board, PREPA stated that "we would not be surprised if the majority of these projects did not reach completion." As such, it is uncertain whether the Proposed Contracts would help meet Puerto Rico's RPS targets or federal MATS regulations.

¹ As supplemented by PREPA's July 27, 2020 responses to requests for information.

Additionally, even if all the Proposed Contracts had been approved, meeting Puerto Rico's RPS targets or complying with federal MATS regulation would require additional procurement of renewable capacity. Therefore, the Oversight Board's decision will not impact PREPA's ability to meet RPS or MATS regulations, since PREPA would not have reached them even if the Proposed Contracts had been approved. Furthermore, during its Board meeting on October 28, 2020, PREPA stated that it expected to issue RFPs that would enable it to comply with Puerto Rico's RPS mandates.²

B. Economic (job creation, investments, and increased tax base) and Environmental Benefits:

As stated above, since 2017, the Oversight Board has been consistent in its belief that Puerto Rico's energy system must dramatically and drastically increase its renewable energy resources. Such a transition from fossil fuels to renewable energy would unlock significant economic and environmental benefits for the people of Puerto Rico. However, these benefits are not unique or only tied to the Proposed Contracts. Rather, these benefits can be achieved through any renewable energy project. Consequently, the Oversight Board is focused on enabling PREPA to procure renewable energy at the lowest possible price to ensure the greatest benefit to the people of Puerto Rico.

C. Savings to PREPA and PREPA Ratepayers:

Even after renegotiation, prices in the Proposed Contracts (starting price of 9.9c/kWh, increasing to 14.1c/kWh by FY2042) are considerably higher than the price assumptions underlying PREPA's approved fiscal plan (starting price of 8.0c/kWh increasing to 9.7c/kWh in FY2049), which assumes that oil-fired capacity is replaced by renewable generation. As a result, implementing the proposed 593MW of solar capacity would increase projected retail electricity rates above those forecasted in the 2020 Certified Fiscal Plan³, resulting in PREPA's customers having to pay up to \$460M in additional costs between 2023 and 2047⁴.

Additionally, the prices in the Proposed Contracts are higher than benchmarks elsewhere in the US: PPOAs in Hawaii for solar + storage installations have recently been awarded for prices as low as 6-8 c/kWh⁵, and mainland solar PPOAs have even reached leveled prices of 2-4 c/kWh. In Florida, for instance, Gainesville Regional Utilities earlier this year,

² PREPA Board meeting recording, October 28, 2020; retrieved from: <https://www.youtube.com/watch?t=959&v=cTD0Dpji3Ow&feature=youtu.be>

³ In FY2035 the rate would have been increased to 33.6 c/kWh, 0.5 c/kWh higher than the forecasted rate. The gap between the proposed PPOA pricing and the 2020 Fiscal Plan base case grows year over year as a result of the 2% escalation clause in each of the proposed PPOA contracts.

⁴ Discounted at 5% p.a. The analysis compared installing the 593MW at the prices proposed by the 16 PPOAs (starting price of 9.9c/kWh, increasing to 14.1c/kWh by FY2042) against a base case using PREPA's IRP cost assumptions for new solar (starting price of 8.2c/kWh increasing to 9.7c/kWh in FY2049).

⁵ Utility Scale Solar report, Dec 2019, Lawrence Berkeley National Laboratory

in May 2020, signed a PPA for the “FL Solar 6 – Sand Bluff” solar plant (50MW solar PV with 12MW of storage), with a levelized PPA price of 2.6c/kwh.⁶

D. Litigation Costs:

Over the last years, the Oversight Board has consistently encouraged PREPA to follow competitive procurement processes and apply robust, transparent, and objective supplier evaluation and selection criteria. Such practices not only promote market competition, but also minimize the risk of litigation by increasing the likelihood of the projects being delivered on budget and on time, and reducing the likelihood of arbitrary supplier selection, which would provide reasonable grounds for litigation.

Once again, we thank you for your interest in Puerto Rico’s energy future and look forward to working collaboratively with you for the benefit of the people of Puerto Rico.

Sincerely,

Natalie A. Jaresko

CC: Mr. Omar Marrero Díaz

⁶ Lawrence Berkeley National Laboratory, 2020 Utility Scale Solar Data Update. These prices compare to the ~18c/kWh that PREPA is paying on average for renewable energy in Fiscal Year 2021 (as per PREPA’s FY21 Certified Budget). This significant price differential highlights the need to procure renewable energy through processes that promote market competition, to avoid penalizing ratepayers.

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

December 7, 2020

Natalie Jaresko
Executive Director
Puerto Rico Financial Oversight
and Management Board
P.O. Box 192018
San Juan, Puerto Rico 00919-218

Dear Ms. Jaresko:

On August 17, 2020, the Financial Oversight Management Board (FOMB) wrote a letter¹ to the Governing Board of the Puerto Rico Electric Power Authority (PREPA) detailing its decision to not approve all 16 Power Purchase and Operating Agreements (PPOAs) already sanctioned by the Governor of Puerto Rico, the PREPA Governing Board, and the Puerto Rico Energy Bureau (PREB). We are writing to request more information about the FOMB's analysis utilized to reach its determination.

In the letter, the FOMB made two claims in its decision to not approve the PPOAs that would have increased PREPA's renewable energy capacity by approximately 593MW: 1) the PPOAs lacked terms and conditions restricting sale or transfers to third parties, which could cause potential delays in construction, and 2) the negotiated price levels were inconsistent with those in PREPA's 2020 Certified Fiscal Plan.² We can understand the need to adjust certain terms and conditions in the contracts, but we are concerned with the methods employed by the FOMB to determine the cost-effectiveness of the proposed projects.

It is unclear whether the FOMB's determination considers important financial, economic, and social factors. For example, we believe the following criteria should also be included and quantified in the analysis: fines associated with not achieving renewable energy goals mandated under Puerto Rico law³ and federal Mercury and Air Toxics Standards ("MATS") regulations, job creation and investment on the island, increased state and municipal tax base, savings to ratepayers over the life of the project, diminished reliance on fossil-fueled generation resources and reduced

¹ Letter from the FOMB to PREPA Governing Board (Aug. 17, 2020).

² PREPA, *2020 Fiscal Plan for PREPA as certified by the FOMB* (June 29, 2020).

³ Act No. 82 of 2010, Section 2.12.

fuel price volatility,⁴ and better health of local communities. Furthermore, the FOMB's determination may result in costly and protracted litigation that could potentially negate the additional savings sought by the FOMB, while undermining the Government of Puerto Rico's credibility and PREPA's ability to secure the much-needed renewable energy generation for the benefit of Puerto Rico as mandated under local law.⁵

Therefore, we seek clarity on how the FOMB came to its decision in the August 17, 2020 letter. We ask that the FOMB respond to the following questions and requests as soon as possible, but **no later than Monday, December 21, 2020:**

1. Please provide documents and analysis detailing how the FOMB concluded that the net impact of the proposed 16 PPOAs would result in "retail energy rates that are 0.5c/kWh higher than the rate projections outlined in the 2020 Certified Fiscal Plan." Did the rate used to characterize the energy costs of all the 16 PPOAs and other alternatives take into consideration the potential fines for not achieving renewable energy goals mandated under Puerto Rico law and federal MATS regulations?
2. Please provide documents and analysis detailing how the FOMB decided on 150MW of renewable energy capacity as the limit for the proposed PPOAs.
3. Did the FOMB conduct a cost-benefit analysis to estimate the strengths and weaknesses of not approving all 16 PPOAs? Were the following economic, financial, and social factors quantified as part of the FOMB's determination?
 - avoidance of fines associated with not achieving renewable energy goals mandated under Puerto Rico law
 - avoidance of fines associated with not achieving compliance with federal Mercury and Air Toxics Standards ("MATS") regulations
 - job creation and investment in Puerto Rico
 - increased state and municipal tax base
 - savings to PREPA ratepayers over the life of the project
 - diminished reliance on fossil-fueled generation resources and reduced fuel price volatility
 - avoided costs resulting from displacement of exiting fossil-fueled generation
 - better health of local communities
 - litigation costs

The Committee will be informed by the requested information and looks forward to its receipt. Please contact Margarita Varela-Rosa with the Committee's Office of Insular Affairs at

⁴ More than half of PREPA's budgeted expenses for FY 2020 (\$3,037 million) were allocated to fuel procurement (\$1,405 million). PREPA, *2020 Fiscal Plan for PREPA as certified by the FOMB – Exhibit 10* (June 29, 2020).

⁵ Act No. 17 of 2019.

Margarita.Varela-Rosa@mail.house.gov or (202) 748-2828 if you have any questions about this request.

Thank you for your attention to this matter.

Sincerely,



RAÚL M. GRIJALVA
Chair
Committee on Natural Resources



JOSÉ E. SERRANO
Member of Congress



DARREN SOTO
Member of Congress