

**GOBIERNO DE PUERTO RICO**  
**JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO**  
**NEGOCIADO DE ENERGÍA DE PUERTO RICO**

**NEPR**

**Received:**

**Sep 22, 2020**

**6:19 PM**

**IN RE:**

**ENMIENDAS A CONTRATOS DE  
COMPRAVENTA DE ENERGÍA  
RENOVABLE: PROYECTOS NO-  
OPERACIONALES  
(Desarrollos del Norte Inc. d/b/a Atenas  
Solar Farm)**

Caso núm.: NEPR-AP-2020-0016

Asunto:  
Enmienda a Contratos de Compra de Energía

**MOCIÓN PARA INFORMAR RETIRO DE ENMIENDA A CONTRATO DE COMPRA  
DE ENERGÍA SIN PERJUICIO DE PRESENTACIÓN POSTERIOR**

AL HONORABLE NEGOCIADO DE ENERGÍA:

COMPARECE la Autoridad de Energía Eléctrica de Puerto Rico y muy respetuosamente expone y solicita:

1. El 19 de junio de 2020, la Autoridad de Energía Eléctrica de Puerto Rico (la “Autoridad”) presentó un escrito titulado *Petición de Aprobación de Enmiendas a Contratos de Compraventa de energía Renovable: Proyectos No-Operacionales* (la “Petición”).<sup>1</sup> En la Petición

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<sup>1</sup> La Autoridad presentó la Petición solicitando que se aprobaran enmiendas a dieciséis (16) contratos de compraventa de energía renovable. Sin embargo, el 8 de julio de 2020, el Negociado de Energía emitió una *Resolución y Orden* mediante la cual determinó que las solicitudes de enmiendas se verían en casos separados y determinó abrir los siguientes expedientes: *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Xzerta-Tec Solar I, LLC)*, caso núm.: NEPR-AP-2020-0003; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (SolarBlue Bemoga, LLC)*, caso núm.: NEPR-AP-2020-0004; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Solaner Puerto Rico One, LLC)*, caso núm.: NEPR-AP-2020-0005; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Blue Bettle III, LLC)*, caso núm.: NEPR-AP-2020-0006; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (PBJL Energy Corporation)*, caso núm.: NEPR-AP-2020-0007; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (CIRO One Salinas, LLC)*, caso núm.: NEPR-AP-2020-0009; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Guayama Solar Energy, LLC)*, caso núm.: NEPR-AP-2020-0009; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Solar Project San Juan, LLC)*, caso núm.: NEPR-AP-2020-00010; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Vega Baja Solar Project, LLC)*, caso núm.: NEPR-AP-2020-0011; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Renewable Energy Authority, LLC)*, caso núm.: NEPR-AP-2020-0012; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (REA Energy*

la Autoridad solicitó al Negociado de Energía de la Junta Reglamentadora del Servicio Público que apruebe enmiendas al contrato de compraventa de energía renovable entre la Autoridad y Desarrollos del Norte Inc. d/b/a Atenas Solar Farm (el “Productor”)(el “PPOA Renegociado”) y otros quince (15) productores de energía renovable. Los contratos renegociados suman alrededor de 590MW de energía renovable para el sistema de la Autoridad. El PPOA Renegociado fue presentado simultáneamente a la Junta de Supervisión y Administración Financiera para Puerto Rico (la “Junta”) para su aprobación correspondiente bajo su política de revisión de contratos.<sup>2</sup>

2. El pasado 25 de agosto de 2020, el Negociado de Energía aprobó el PPOA Renegociado condicionado al cumplimiento con ciertas órdenes incluidas en la Resolución.<sup>3</sup> Sin embargo, el pasado 17 de agosto de 2020, la Junta notificó una carta a la Autoridad mediante la cual informó, entre otras cosas, que el total de energía renovable que se debía desarrollar a través de los contrato renegociados no debía exceder 150MW y, además, otras consideraciones que la Autoridad debía tener al momento de evaluar que productores serían los seleccionados para ejecutar los contratos dentro de esa limitación de hasta 150MW. Exhibit A.

3. La Autoridad comunicó la determinación, tanto del Negociado aprobando el PPOA Renegociado como la de la Junta limitando la capacidad de la contratación y solicitando información adicional para hacer una determinación, a los dieciséis (16) productores cuyos

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*Hatillo Solar Plant*), caso núm.: NEPR-AP-2020-0013; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Caracol Solar, LLC)*, caso núm.: NEPR-AP-2020-0014; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Sierra Solar Farm, LLC)*, caso núm.: NEPR-AP-2020-0015; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Desarrollos del Norte, Inc. d/b/a Atenas Solar Farm)*, caso núm.: NEPR-AP-2020-0016; *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Morovis Solar, LLC)*, caso núm.: NEPR-AP-2020-0017; and *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (ReSun (Barceloneta), LLC)*, caso núm.: NEPR-AP-2020-0018. Véase Resolución y Orden en el caso *In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales (Xzerta-Tec Solar I, LLC)*, caso núm.: NEPR-AP-2020-0003, págs. 6-7.

<sup>2</sup> FOMB Policy: Review of Contracts, aprobado el pasado 6 de noviembre de 2017 y modificado el 3 de julio de 2018, <https://drive.google.com/file/d/1HpG4mTrniBeguHp5iutGP3CnQcDPj8zL/view>

<sup>3</sup> Resolución y Orden notificada por el Negociado de Energía el pasado 25 de agosto de 2020 (la “Resolución”).

contratos renegociados habían sido presentados para la consideración de este Negociado. Exhibit B. La fecha que la Autoridad dio a los productores para que respondieran a las preguntas de la Junta vence este próximo 2 de octubre de 2020. *Id.* Cuando la Autoridad reciba las respuestas las presentará para la evaluación y determinación de la Junta.

4. Como podemos ver, la misiva enviada por la Junta ha provocado que se reevalúen los dieciséis (16) contratos presentados para la aprobación del Negociado, incluyendo el PPOA Renegociado entre la Autoridad y el Productor. Así las cosas, la Autoridad entiende prudente retirar la solicitud de enmienda presentada bajo el caso de epígrafe sin perjuicio de poder presentarla nuevamente cuando se complete la evaluación y determinación de la Junta.

POR TODO LO CUAL, se solicita al Negociado de Energía que tome conocimiento de lo aquí informado y decrete el cierre del proceso de epígrafe sin perjuicio de la Autoridad poder volver a presentar el asunto ante el Negociado en el futuro.

RESPECTUOSAMENTE SOMETIDO.

En San Juan, Puerto Rico, este 22 de septiembre de 2020.

/s Katuska Bolaños Lugo  
Katuska Bolaños Lugo  
kbolanos@diazvaz.law  
TSPR 18,888

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Exhibit A

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD  
FOR PUERTO RICO**



*José B. Carrión III*  
Chair

BY ELECTRONIC MAIL

August 17, 2020

Ralph A. Kreil Rivera

Chairman  
Governing Board  
Puerto Rico Electric Power Authority

Dear Chairman Kreil Rivera:

We write in response to the Puerto Rico Electric Power Authority's ("PREPA") July 1, 2020 submission of 16 renegotiated non-operational renewable energy power purchase and operating agreements ("PPOAs") (together, the "Proposed Contracts"), as required by the Oversight Board's Contract Review Policy, established pursuant to Section 204(b) of PROMESA.<sup>1</sup> Since then, we have worked with PREPA and its advisors to assess the alignment of these Proposed Contracts with the objectives set forth in PREPA's 2020 Certified Fiscal Plan (the "2020 Certified Fiscal Plan"), which highlights the need for a full transformation of Puerto Rico's energy system to deliver clean, reliable, and affordable electric service to customers. A key tenet of this transformation is the expedient deployment of renewable generation at overall affordable pricing levels, which requires PREPA to renegotiate both operational and non-operational renewable energy PPOAs to reduce their energy prices to levels **consistent with the 2020 Certified Fiscal Plan projections**.

As explained in detail below, the Oversight Board concludes that the Proposed Contracts are **inconsistent** with the requirements of the 2020 Fiscal Plan which pertain to the **overall reduction of retail energy prices**. Specifically, we note that for non-operational renewable energy PPOAs, the intent of the 2020 Certified Fiscal Plan is to increase Puerto Rico's share of renewable resources on an accelerated timeline, while simultaneously achieving **the lowest possible cost to PREPA's customers**. Doing so would require PREPA to achieve a balance between the (i) the orderly, yet expedient, deployment and integration of renewable capacity and (ii) the prices at

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

Members

*Andrew G. Biggs*  
*Carlos M. García*  
*Arthur J. González*  
*José R. González*  
*Ana J. Matosantos*  
*David A. Skeel, Jr.*

*Natalie Jaresko*  
Executive Director

which it acquired said resources, to allow PREPA and its customers to benefit from new, clean, and reliable energy resources without significantly impacting retail energy prices.

Despite achieving improved prices (when compared to original prices) and more favorable contracts terms to PREPA, the approval and development of **all 16 Proposed Contracts** (representing a total renewable energy capacity of **593 MW**), would result in overall retail energy rates that are **higher** than the average retail energy rates projected in the 2020 Certified Fiscal Plan. Specifically, the 2020 Certified Fiscal Plan assumes new utility scale solar generation prices of **8 c/kWh** in FY2023, increasing to **9.7 c/kWh in FY2049**, while the Proposed Contracts, on average, **start at 9.9 c/kWh**, increasing to **14.1 c/kWh by FY2042**. Consequently, if PREPA were to integrate all of the proposed 593MW solar capacity at the renegotiated price, **projected energy rates in FY2035 would be 33.6 c/kWh, 0.5 c/kWh higher than the energy price forecasts in the 2020 Certified Fiscal Plan.**<sup>2</sup> On the other hand, integrating half of the Proposed Contracts capacity (~300 MW) reduces this differences by 0.3 c/kWh by FY2035, while integrating a quarter (~150MW) of the Proposed Contracts' capacity produces this differences by 0.4 c/kWh by FY2035 (Exhibit 1), providing ~\$20-30M in annual fuel and purchased power savings over the next 25 years.<sup>3</sup>

Notwithstanding, the Oversight Board acknowledges that the renegotiated prices for the Proposed Contracts achieved by PREPA represent a considerable improvement from the pricing terms in the original contracts. According to PREPA, when compared to the original pricing, the Proposed Contracts are expected to allow PREPA to avoid ~\$1 billion in costs over the lifetime of the projects when compared to what PREPA would have otherwise paid under the original terms of the contracts.<sup>4</sup> Furthermore, the Proposed Contracts reflect improvements in the terms and conditions of the agreements, including stipulations that the developer must pay for costs incurred to meet PREPA's Minimum Technical Requirements (MTR), as well as meet requirements for a Guaranteed Full Notice to Proceed date within 6-12 months from the date the agreements are approved by the Title III court. However, this does not offset the fact that, taken together, the potential net impact of integrating all of the 593MW of renewable energy capacity contemplated in the Proposed Contracts results in retail energy rates that are **0.5c/kWh higher than the rate projections outlined in the 2020 Certified Fiscal Plan.**

As previously indicated, a structured development approach, whereby no more than 150MW of renewable energy capacity is developed at the Proposed Contract prices, would result in retail

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<sup>2</sup> 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.

<sup>3</sup> This assumes that any remaining renewable energy capacity is procured at prices that are consistent with the price projections reflected in the 2020 Certified Fiscal Plan.

<sup>4</sup> Projected savings represent avoided costs to PREPA, not actual reductions in existing energy rates since none of the contracts are operational or reflected in PREPA's existing retail energy rates. The Oversight Board has not validated PREPA's cost reduction calculations. Prior estimates made by the Oversight Board suggest renegotiated prices may yield \$200M+ in savings (compared to original prices) over 25 years.

energy prices that are **no more than 0.1c/kWh above retail energy prices projected in the 2020 Certified Fiscal Plan**. This adjustment is deemed acceptable by the “shovel-ready” nature of the Proposed Contracts, which allows for a faster development timeline, and therefore, a faster integration of new renewable resources, than what would otherwise be possible if PREPA were to conduct a new competitive procurement process.

Therefore, the Oversight Board concludes that, to ensure consistency with the retail energy rate projections included in the 2020 Certified Fiscal Plan, the total renewable energy capacity developed through the Proposed Contracts should be **no more than 150MW**. In determining how to proceed, the Oversight Board recommends PREPA pursue an objective assessment of each proponents’ technical and financial qualifications (Exhibit 2), alongside any additional qualifications PREPA deems relevant, in order to qualify those proponents with the highest degree of technical and financial capabilities.<sup>5</sup>

We reiterate that the acceptance of those Proposed Contracts is predicated **exclusively** upon the 2020 Certified Fiscal Plan’s requirement to achieve an accelerated deployment of renewable energy capacity in Puerto Rico. **A determination based solely on the prices of the Proposed Contracts would entail the rejection of all such Proposed Contracts for inconsistency with the prices contemplated in the 2020 Certified Fiscal Plan. However, such a blanket rejection would be detrimental to PREPA’s progress towards being able to deliver clean, reliable, and affordable electric service to customers.**

Another area of concern to the Oversight Board relates to the possibility that the completion of the Proposed Contracts may be delayed or impeded by the contractual ability of the proponents to, in certain circumstances, sell the facility and/or transfer a majority of their equity interest in the project to a third-party. As is customary in competitive procurement processes, the Oversight Board believes PREPA should aim to ensure that the party with which PREPA enters into a Proposed Contract has an interest in (i) fulfilling its obligations under the agreement and (ii) remaining a party to the agreement for a sufficient amount of time to fulfill such obligations.

In light of the above, before approving the Proposed Contracts, the Oversight Board requires the following changes:

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<sup>5</sup> The Oversight Board is concerned that the lack of a formal process to assess the capabilities of each proponent—as ordinarily done in a competitive procurement processes—means that PREPA is unable to prioritize those projects that are more likely to be developed successfully and allocate its limited resources to support such projects, thereby increasing the uncertainty around the ability to successfully complete each project. This concern is based on the fact that, on June 4, 2020, in response to PREPA’s public statement announcing the renegotiation of the Proposed Contracts, the Oversight Board sent a letter requiring PREPA to provide the rationale for agreeing to approve all 16 Proposed Contracts and how such determination was consistent with PREPA’s Certified Fiscal Plan. However, in a letter dated June 11, 2020, PREPA stated it “would not be surprised if the majority of these projects did not reach completion” and, therefore, “it would be far more prudent to execute contracts with all of the advanced development projects that were willing to proceed on the new economic terms to ensure the highest likelihood of seeing new generation actually constructed. See “PREPA June 11 Response”, Annex A, page 2.

- Transferability of the projects undertaken pursuant to the Proposed Contract shall only be permitted upon **substantial completion** of such projects by the original proponent, as defined by applicable law.
- Part (c) of Section 6.5 of the Proposed Contracts shall be amended to **require PREPA's prior expressed written consent, regardless of the new owner's compliance with any of the requirements set forth therein**. Moreover, net worth requirements should be uniform across all Proposed Contracts and should be set at **\$25 million for the new owner and/or \$75 million for the new owner's parent entity**.
- To the extent not already reflected in the Proposed Contract, Section 20.3 of the Proposed Contracts shall be amended to provide that any transfer of rights and responsibilities of Seller to an Affiliate of the Seller shall require PREPA's **prior expressed written approval**, if such transfer will result in **51% or more of Seller's equity control** in the project being transferred to a third-party other than the Seller.
- To the extent not already reflected in the Proposed Contract, Section 20.4 of the Proposed Contracts shall be amended so that it is consistent with the amendments required to Part (c) of Section 6.5 and Section 20.3 of the Proposed Contracts. Specifically, the amendment shall reflect the requirement to obtain PREPA's **prior expressed written approval for any transfer of Seller's equity** in the project, as provided in Part (c) of Section 6.5 and Section 20.3 of the Proposed Contract. Moreover, PREPA's lack of response shall not be deemed or construed as an acceptance or consent to a proposed transfer.
- Moving forward, PREPA should aim to take advantage of decreasing solar equipment prices to procure solar energy capacity (at pricing levels that are aligned with the 2020 Fiscal Plan.<sup>6</sup> PREPA's eventual exit from Title III may provide additional opportunities to achieve lower solar generation prices, as reflected in the assessment conducted by New Energy Partners and commissioned by PREPA's Governing Board.<sup>7</sup>

PREPA should report on the status of the implementation of these observations on a weekly basis, with the first update to be provided to the Board within **seven days from the issuance of this letter**.

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<sup>6</sup> Average cost for solar equipment in the US is projected to decline by ~40% over the next five years. The Wood Mackenzie Q2 2020 Solar Executive Briefing projects average costs for 10 MW bifacial tracker system equipment (modules and inverters only) to decline from from \$0.49/Wdc in 2019 to \$0.30/Wdc in 2024.

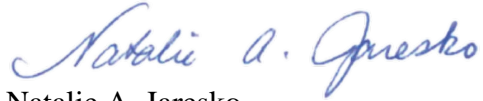
<sup>7</sup> The report issued by New Energy Partners on November 2019 concluded that PREPA could benefit from post-bankruptcy prices for new, utility-scale solar starting at 7.5 c/kWh.



Mr. Kreil Rivera  
August 17, 2020  
Page 5 of 5

We look forward to working with you for the benefit of the people of Puerto Rico.

Sincerely,

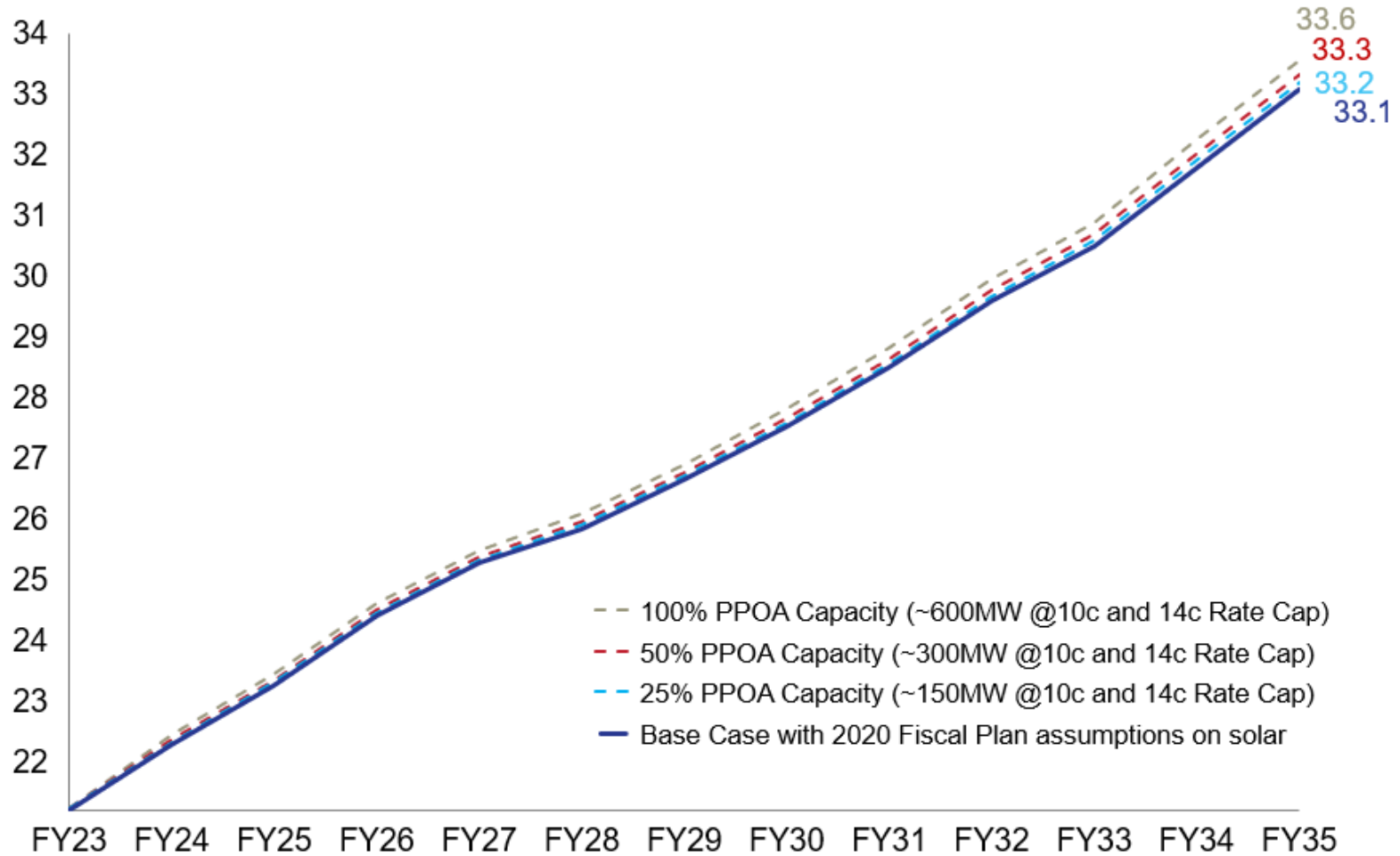


Natalie A. Jaresko

CC: Mr. Omar J. Marrero Díaz  
Mr. Efran Paredes Maisonet  
Mr. David K. Owens  
Mr. Charles E. Bayless  
Mr. Robert G. Poe  
Ms. María Palou-Abasolo  
Mr. Gerardo Lorán-Butrón  
Mr. Tomás J. Torres-Placa  
Mr. Joel Pizá-Batiz  
Mr. Eduardo Arosemena-Muñoz

EXHIBIT 1. LONG-TERM REVENUE REQUIREMENT RATE AT VARYING LEVELS OF APPROVED SHOVEL-READY PPOA CAPACITY.

### Overall Revenue Requirement Rate (c/kWh)



Note: Assumes FY23 as Year 0 for all the renewables PPOA contracts. All contracts are subject to a 2% price escalation until reaching the rate cap of 14.1 c/kWh

**EXHIBIT 2. TECHNICAL AND FINANCIAL CRITERIA FOR PERIODIZATION OF NON-OPERATIONAL PPOA CONTRACTS**

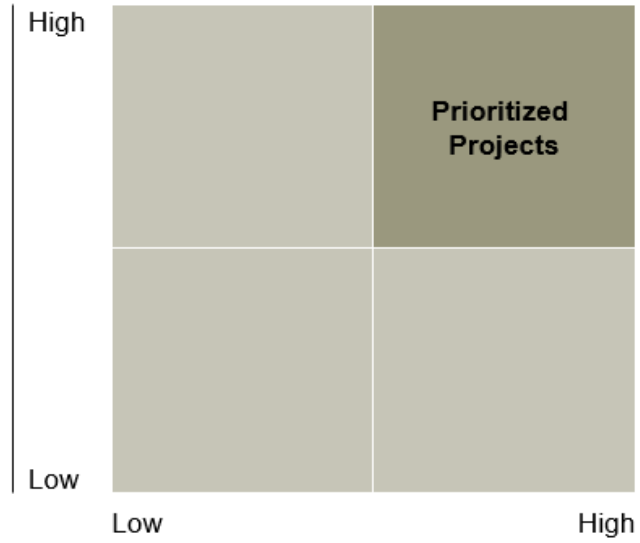
**Projects**

- Morovis
- Solar Project San Juan
- Vega Baja
- REA Vega Baja
- Ciro One
- Solaner
- Xzerta-Tec
- Blue Beetle
- ReSun
- Montalva Solar Farm
- SolarBlue
- Atenas
- REA Hatillo (North)
- Caracol
- Sierra
- Guayama Solar Energy

**Prioritization Matrix**

**Technical Qualifications**

- Scale and footprint
- International solar experience
- Puerto Rico solar experience
- Ability to meet PREPA's Minimum Technical Requirements



**Financial Strength**

- Robust financial statements, or
- Financial backing from reputable investors, or
- Access to financing
- Solvency
- Proof of credit worthiness

Exhibit B



# GOVERNMENT OF PUERTO RICO

Puerto Rico Electric Power Authority

**CONFIDENTIAL**

September 2, 2020

**VIA EMAIL**

**RE: NEXT STEPS IN RENEGOTIATION OF POWER PURCHASE AND OPERATING AGREEMENT ("PPOA")**

Dear Project Sponsor:

As you know, following the approval of your PPOA by the Governing Board of the Puerto Rico Electric Power Authority ("**PREPA**") in May 2020, PREPA submitted your PPOA, together with 15 others representing an aggregate 593 MW of new photovoltaic solar power generation (collectively, the "**Non-Operating PPOAs**"), to the Financial Oversight and Management Board ("**FOMB**") and the Puerto Rico Energy Bureau ("**PREB**") for approval pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act ("**PROMESA**") and the Puerto Rico Energy Public Policy Act ("**Act 17**"), respectively. These stakeholders have each recently issued decisions establishing approval requirements (summarized below) that impact all of the Non-Operating PPOAs, including the FOMB placing a limit of 150 MW on the aggregate capacity that it will approve at the current pricing. Moving forward, PREPA will need all of the Non-Operating PPOA developers to provide, within 30 days of the date of this letter, written confirmation of (1) willingness to proceed with your project under these new approval requirements, and (2) the status of your project, including updates regarding certain criteria established by the FOMB, which PREPA will use in any evaluation process for meeting the 150 MW or other final capacity acceptable to the FOMB. If we do not receive anything from you within the 30 day timeframe, we will interpret that as a sign that you no longer wish to proceed.

While PREPA has repeatedly emphasized to you the necessity of these approvals before any binding commitments could be made, we are very disappointed with these recent developments. PREPA collaborated with the FOMB and PREB, keeping them updated since negotiations began in early 2019, to increase the likelihood of gaining approval and ensure they had sufficient information early on to offer guidance. We were under the impression that everyone was onboard, and were quite surprised with the letter that we received from the FOMB on August 17, 2020 (the "**FOMB Letter**"), which we have attached as Annex A.

### ***FOMB Approval Requirements***

The FOMB Letter did not identify any projects for approval. Instead, it stated, as more specifically set out in the FOMB Letter, that the FOMB would only approve:

1. 150 MW of new solar projects at the currently renegotiated pricing; and
2. Non-Operating PPOAs that included restrictions on the ability of project sponsors to transfer project assets and/or equity in project companies (i) prior to "substantial

completion” of the project, (ii) at any time without PREPA’s express written consent, or (iii) at any time to entities that fail to meet certain financial and/or control criteria.

The FOMB went on to suggest that PREPA select the 150 MW of projects by completing a McKinsey matrix on the developers. Please refer to Exhibit 2 of the FOMB Letter.

PREPA’s Governing Board expressed its deep disappointment with the FOMB’s decision in a letter to the FOMB dated August 21, 2020, and fiercely argued for approval of all of the projects at in-person meetings and calls this past week. Ultimately, however, while the contents of the FOMB Letter completely surprised and disappointed PREPA, we must comply with the requirements set by the FOMB.

### ***PREB Approval Requirements***

In parallel with the FOMB’s review of the 16 PPOAs, the PREB proceeded with its own analysis (approaching them individually rather than as a group), and has thus far issued conditional approvals for seven of the Non-Operating PPOAs. Thus far, these approvals include consistent conditions for all of the Non-Operating PPOAs that the PREB has considered.<sup>1</sup> These conditions essentially require, and we expect further approvals to require, the following key changes to the Non-Operating PPOA terms:

- A. the addition of an interpretive provision to ensure nothing in the PPOA will be construed to limit the PREB’s authority under Puerto Rico law;
- B. the inclusion of a provision requiring all disputes to be resolved exclusively before the PREB, in accordance with the Puerto Rico Energy Transformation and RELIEF Act (“**Act 57-2014**”);
- C. a reduction of the time to begin construction of your project to eight months from signing the PPOA;
- D. inclusion of a limitation on PREPA’s ability to grant an extension of the Guaranteed Commercial Operation Date beyond 10% of the time originally provided under the PPOA, unless the PREB approves an extension; and
- E. the addition of a requirement to give monthly updates to the PREB on permitting, third-party contracting and financing, among other things, during the development and construction phases.

Before signing the PPOAs, PREPA must resubmit the agreements to the PREB to demonstrate compliance with the foregoing and any other requirements in the relevant resolution.

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<sup>1</sup> **Note:** The consistency of the resolutions suggests that the PREB has a template approval resolution that it will follow for all agreements; but it remains possible that they could conclude differently and/or alter their resolutions in the future. Individual resolutions may have additional requirements. We have only set out the common points that PREPA views as more significant. Developers should review the publicly-available resolutions applicable to their projects.

### *Next Steps*

Given the requirements summarized above, we respectfully request that, no later than 30 days from the date of this letter, you please provide us with the following:

- a. confirmation of whether, given the approval requirements above, you wish to continue with or withdraw from the renegotiation process; and
- b. if you wish to continue, then kindly:
  - i. provide confirmation of your willingness to accept all of the contractual changes that the FOMB and PREB are requiring; and
  - ii. provide a summary chart, referencing supporting documentation attached as annexes to such chart (regardless of whether previously provided), succinctly describing status of your project (including land control, financing and permitting) and how your company and/or project currently satisfies each of the criteria listed in Exhibit 2 of the FOMB Letter.

Your responses are highly valued, and we appreciate your prompt cooperation on this. We encourage you to prepare a thorough response as the information you provide will directly inform decisions going forward.

Finally, we would like to thank you for your time in reviewing this letter and your dedication to your project. We greatly appreciate the significant effort that you have made over the last several years, and share your frustration with the recent developments. We apologize on behalf of those involved for the changing requirements, but reiterate PREPA's commitment to bring significantly more renewable energy to Puerto Rico in the near term and our need to comply with stakeholder requirements. Please provide the information requested above as soon as possible (particularly, the feedback requested in sub-paragraphs (a) and (b)(i) of the Next Steps), no later than 30 days after the date of this letter. PREPA has already begun to review its options, and barring any further changes, will make a decision on which projects can proceed in this round at the PREPA Governing Board Meeting in October, 2020. For those who do not make it through this round, PREPA has also already begun preparation of a new request for proposals ("RFP"), and will invite those parties to submit their project again in that process. The recently approved Integrated Resource Plan for Puerto Rico contemplates the need for over 3,500 MW of renewable energy generation by 2025, highlighting the need for many RFPs and future opportunities for those who do not make it at this time to continue pushing their projects ahead.

We look forward to your responses. Please let us know if you have any questions.

Sincerely,

**PUERTO RICO ELECTRIC POWER AUTHORITY**



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Fernando M. Padilla

Director

Restructuring and Fiscal Affairs

Enc:

**Annex A – FOMB Letter to PREPA dated August 17, 2020**



**Annex A**

**FOMB Letter to PREPA dated August 17, 2020**