

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

NEPR

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IN RE:

ENMIENDAS A CONTRATOS DE
COMPRAVENTA DE ENERGÍA
RENOVABLE: PROYECTOS NO
OPERACIONALES (REA ENERGY HATILLO
SOLAR PLANT, LLC)

CASO NÚM.: NEPR-AP-2020-0013

ASUNTO: Resolución Final sobre Solicitud
de Aprobación de Enmiendas a Contrato de
Compraventa de Energía Renovable:
Proyectos No-Operacionales entre REA
Energy Hatillo Solar Plant, LLC y la Autoridad
de Energía Eléctrica

SOLICITUD DE RECONSIDERACIÓN Y OTROS REMEDIOS

AL HONORABLE NEGOCIADO DE ENERGÍA:

COMPARECE REA Energy Hatillo Solar Plant, LLC (en lo sucesivo “REA Hatillo”), por conducto de los abogados que suscriben, y muy respetuosamente EXPONE, ALEGA y SOLICITA:

I. Solicitud de Reconsideración

1. El 19 de junio de 2020, la Autoridad de Energía Eléctrica (“AEE”) solicitó ante el Negociado la aprobación de las enmiendas negociadas de dieciséis (16) contratos de compraventa de energía renovable (“PPOA” por sus siglas en inglés), entre ellos la enmienda al PPOA entre la AEE y la compareciente REA Hatillo.

2. Luego de varios trámites procesales, el 28 de agosto de 2020 el Negociado emitió una Resolución y Orden en este caso, mediante la cual aprobó la enmienda al PPOA de REA Hatillo y determinó, entre otras cosas, lo siguiente:

- a. La enmienda al PPOA es consistente con el Plan Integrado de Recursos (“PIR”) recientemente aprobado por el Negociado de Energía;
- b. La estructura de cargos establecida en la enmienda al PPOA es razonable;
- c. El margen de ganancia es razonable y está alineado con los parámetros de rentabilidad;
- d. Los escaladores y topes propuestos están alineados con los estándares de la industria;
- e. La estructura de cargos protege el interés público y al erario; y
- f. La interconexión del proyecto propuesto no pondría en riesgo la confiabilidad y estabilidad del sistema de la AEE.

3. No obstante lo anterior, el Negociado determinó aprobar la enmienda al PPOA sujeto a ciertas condiciones enumeradas en el acápite V. de la Resolución y Orden titulada “Conclusión.” REA Hatillo no tiene objeción a ninguna de las condiciones establecidas por el

Negociado excepto en cuanto a requerir que se comience la construcción del proyecto dentro de *los ocho (8) meses contados a partir de la fecha del otorgamiento de la enmienda al PPOA.*

4. REA Hatillo es la contraparte de la AEE en la enmienda al PPOA aprobada por el Negociado y se verá adversamente afectada por el requisito antes mencionado. Debido a lo anterior y dentro del término provisto por la Sección 11.01 del Reglamento de Procedimientos Adjudicativos, Avisos de Incumplimiento, Revisión de Tarifas e Investigaciones (“Reglamento 8543”) y las disposiciones aplicables de la Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico (“LPAU”), Ley 38-2017, según enmendada, REA Hatillo respetuosamente solicita reconsideración por las siguientes razones.

5. Primero, la Resolución y Orden requiere que se comience construcción del proyecto en un término que se debe computar *a partir de la fecha de otorgamiento de la enmienda al PPOA.* Sin embargo, este requerimiento obvia que bajo el Título III de PROMESA la AEE puede rechazar o asumir los PPOAs, y que hasta tanto la AEE no los asuma, la situación legal de los proponentes es incierta. Este hecho está expresamente reconocido en la página 12 de la Resolución y Orden y en las notas al calce 64 y 65. Hasta tanto la AEE no solicite y se le conceda asumir los PPOAs según enmendados, será prácticamente imposible formalizar el financiamiento de los proyectos o adelantar significativamente los procesos requeridos para comenzar su construcción, pues el riesgo del rechazo de los contratos continuaría estando presente. Por esta razón, cualquier requerimiento para iniciar construcción debe contabilizarse, no desde que se firme el contrato, sino desde que el Tribunal de Distrito de los Estados Unidos para el Distrito de Puerto Rico expida la orden autorizando a la AEE a asumir los contratos.

6. Por las mismas razones, establecer un término para comenzar construcción que se compute a partir de la fecha el otorgamiento del contrato tendrá el efecto de acortar dicho término por el tiempo que se demore obtener el “Assumption Order,” según esta frase se define en el borrador de enmienda al PPOA presentado ante el Negociado. A juzgar por los casos anteriores en los que se solicitó asumir contratos de compraventa de energía, este proceso puede demorar varios meses, lo cual acortaría aún más el término que ha requerido el Negociado.

7. Por otro lado, la enmienda al PPOA establece un proceso extremadamente detallado e iterativo en el que el proponente le presenta a la AEE, entre otras cosas, un diseño preliminar del proyecto y de las instalaciones de interconexión, y también un modelo matemático del mismo; la AEE evalúa esta información y realiza un estudio de interconexión y de instalaciones; la AEE le provee al proponente la información y datos requeridos para preparar el diseño final del proyecto y de las instalaciones de interconexión; el proponente presenta el diseño final que es evaluado por la AEE para proveer su aprobación o comentarios; el proponente presenta un diseño revisado conforme estos últimos, y este proceso se repite hasta que la AEE aprueba el diseño final. Este proceso, cuya explicación hemos simplificado grandemente para propósitos de esta discusión, está regulado por los Artículos 4.1, 4.2, y 9.4 de la enmienda al PPOA. Un examen somero de estas disposiciones demuestra que, aun si tanto el proponente

como la AEE cumplieran a la perfección con todos los términos, el tiempo transcurrido para ir a través del proceso excedería los ocho (8) meses establecidos por el Negociado de Energía para comenzar la construcción del proyecto. Este cómputo, debe señalarse, no toma en consideración el tiempo necesario para modificar permisos existentes o, de ser necesario, obtener permisos nuevos una vez la AEE apruebe el diseño final del proyecto, que conforme a la enmienda al PPOA contaría con un 25% de mayor capacidad.

8. Durante la negociación de la enmienda al PPOA, se tomaron en consideración diversos factores a la hora de acordar un término para comenzar la construcción del proyecto. Entre ellos, además de los señalados en el párrafo anterior, (a) que la enmienda requiere que el proyecto cumpla con los estrictos Requisitos Técnicos Mínimos (“MTRs” por sus siglas en inglés) según actualizados al 2020; (b) que a la misma vez que REA Hatillo estará presentando su diseño, lo mismo estarán haciendo los demás proyectos; y (c) que la AEE cuenta con recursos limitados para revisar, comentar y aprobar toda la información, incluyendo diseños preliminares y finales, que se le estarán presentando.

9. Por todas estas razones, respetuosamente solicitamos que el Negociado de Energía reconsidere su determinación de requerir que se comience la construcción del proyecto dentro de los ocho (8) meses de la firma de la enmienda al PPOA y que, en su lugar, el Negociado apruebe los términos que mutuamente acordaron las partes y que dan la debida consideración a los factores antes enumerados.

II. Solicitud de Otros Remedios

10. Como establece la propia Resolución y Orden emitida en este caso, el Negociado es el ente regulador encargado de fiscalizar y asegurar la cabal ejecución e implementación de la política pública sobre el servicio eléctrico en Puerto Rico. A tenor con las disposiciones de la Ley 57-2014, el Negociado de Energía tiene a su cargo, entre otros deberes y facultades, establecer e implementar las acciones regulatorias necesarias para garantizar la capacidad, confiabilidad, seguridad y eficiencia del sistema eléctrico de Puerto Rico. Véase Resolución y Orden a la pág. 7.

11. En lo que a PPOAs se refiere, el Artículo 6.32(c) de la Ley 57-2014, faculta al Negociado para adoptar las guías necesarias para la evaluación y aprobación de los contratos de compraventa de energía. Asimismo, el Negociado de Energía tiene el poder de establecer mediante reglamento las normas de política pública en relación con las compañías de servicio eléctrico, así como toda transacción, acción u omisión que incida sobre la red eléctrica y la infraestructura eléctrica en Puerto Rico e implementar dichas normas de política pública. En este rol, el Negociado aplica normas consistentes con la política pública energética aprobada por legislación. Véase Resolución y Orden a la pág. 7.

12. En cuanto a este último punto, la Ley 17-2019 modificó la Cartera de Energía Renovable establecida en la Ley 82-2010 para aumentar sustancial y progresivamente el

requisito de generación de energía a base de fuentes renovables hasta el punto de requerir un 100% para el año 2050. Las metas intermedias incluyen un 20% para el 2022 (establecido mediante la Ley 33-2019), 40% para el 2025 y 60% para el 2040.

13. Según indicado anteriormente, el Negociado de Energía previamente determinó aprobar la enmienda al PPOA, entre otras razones, por ser consistente con el PIR recientemente aprobado y estar alineado con la política pública energética en cuanto a la Cartera de Energía Renovable, la reducción de la dependencia en la generación con combustibles fósiles, y el aumento en la generación de energía a través de recursos renovables. Véase Resolución y Orden a las págs. 29-30.

14. No obstante lo anterior, mediante carta fechada el 2 de septiembre de 2020, la AEE le solicitó a los proponentes de los dieciséis proyectos renovables antes mencionados – incluyendo a la compareciente – someterse a un proceso nuevo, recién anunciado, para seleccionar hasta 150 MW de capacidad con los cuales la AEE procedería en este momento, del total de 593 MW que representan actualmente la capacidad total de los proyectos. Véase carta del 2 de septiembre de 2020 firmada por Fernando M. Padilla, Director, Restructuring and Fiscal Affairs, de la AEE, incluida como Apéndice I. Esta solicitud responde a un requerimiento de la Junta de Supervisión Fiscal (“JSF”), copia de cuya carta se incluye como Apéndice II. De no estar dispuesto a someterse a este proceso, la AEE simplemente no procedería con el proyecto y el mismo se vería relegado a la posibilidad de participar en el futuro en alguna solicitud de propuestas, obviamente sin certeza alguna de ser seleccionado.

15. Según la información provista por la JSF misma, la JSF hizo su requerimiento a la AEE basada en la información sometida por la propia AEE en su borrador del PIR en lo que respecta a la proyección de nueva capacidad de generación solar y los precios a los que la energía sería comprada. Ahora bien, se desprende de la Resolución y Orden emitida en este caso que la información considerada por la AEE en el borrador del PIR – y presuntamente sometida a la JSF – estaba errada porque, entre otras cosas, subestimó el costo de capital y no tomó en consideración el costo de seguro en contra de huracanes. Véase Resolución y Orden a las páginas 15-21. Lo anterior se traduce en una determinación basada en información incorrecta provista por la AEE a la JSF, o al menos no actualizada con la información considerada por este Negociado, por ejemplo, el informe titulado “Review of Legacy Solar PV PPOAs and Recommendations for Disposition” de New Energy Partners (“Informe NEP”). Ciertamente, esta determinación tampoco contó con el beneficio del recién publicado PIR.

16. Respetuosamente sostenemos que una vez este Honorable Negociado determinó aprobar la enmienda al PPOA objeto de este caso a solicitud de la AEE, la AEE está impedida de alterar esta determinación unilateralmente, sin importar que esta actuación responda a un pedido de la JSF. Permitir esta actuación subvertiría el orden establecido mediante legislación, al amparo del cual le corresponde al Negociado la facultad de fiscalizar y asegurar la cabal ejecución e implementación de la política pública sobre el servicio eléctrico en Puerto Rico.

17. Por las anteriores razones, REA Hatillo respetuosamente solicita que este Honorable Negociado le emita una orden a la AEE para que (a) le someta información correcta y actualizada a la JSF, incluyendo la Resolución y Orden emitida en este caso, el recién publicado PIR y el Informe NEP en lo concerniente a la nueva capacidad de generación solar y los precios de energía anticipados, y (b) cese y desista del proceso con el cual se propone proceder conforme a su carta del 2 de septiembre de 2020.

POR TODO LO CUAL, REA Energy Hatillo Solar Plant, LLC muy respetuosamente solicita de este Honorable Negociado (1) que, conforme a lo antes expuesto, reconsidere su determinación de requerir que se comience la construcción del proyecto dentro de los ocho (8) meses de la firma de la enmienda al PPOA y que, en su lugar, el Negociado apruebe los términos que mutuamente acordaron las partes; y (2) emita una orden a la AEE para que (a) le someta información correcta y actualizada a la JSF, incluyendo la Resolución y Orden emitida en este caso, el recién publicado PIR y el Informe NEP en lo concerniente a la nueva capacidad de generación solar y los precios de energía anticipados, y (b) cese y desista del proceso con el cual se propone proceder según carta de la AEE del 2 de septiembre de 2020.

RESPETUOSAMENTE SOMETIDA.

CERTIFICO haber notificado con copia de este escrito a los siguientes:

- i. Negociado de Energía: secretaria@energia.pr.gov; legal@energia.pr.gov; wcordero@energia.pr.gov y sugarte@energia.pr.gov.
- ii. Autoridad de Energía Eléctrica: astrid.rodriguez@prepa.com; jorge.ruiz@prepa.com; n-vazquez@aepr.com; c-aquino@prepa.com; y kbolanos@diazvaz.law.

En San Juan, Puerto Rico, hoy 17 de septiembre de 2020.

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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.¹ 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.

¹ **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.

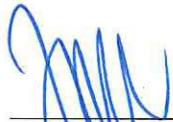
Your responses are highly valued, and we appreciate your prompt cooperation on this. We encourage you to prepare a thorough response as the information you provide will directly inform decisions going forward.

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



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

**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.¹ 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

¹ 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.**² 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.³

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.⁴ 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

² 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.

³ 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.

⁴ 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.⁵

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:

⁵ 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.⁶ 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.⁷

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**.

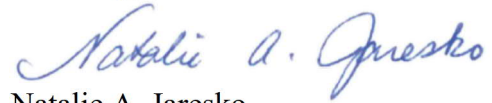
⁶ Average cost for solar equipment in the US is projected to decline by ~40% over the next five years. The Wood Mackenzie Q2 2020 Solar Executive Briefing projects average costs for 10 MW bifacial tracker system equipment (modules and inverters only) to decline from from \$0.49/Wdc in 2019 to \$0.30/Wdc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

⁷ 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
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We look forward to working with you for the benefit of the people of Puerto Rico.

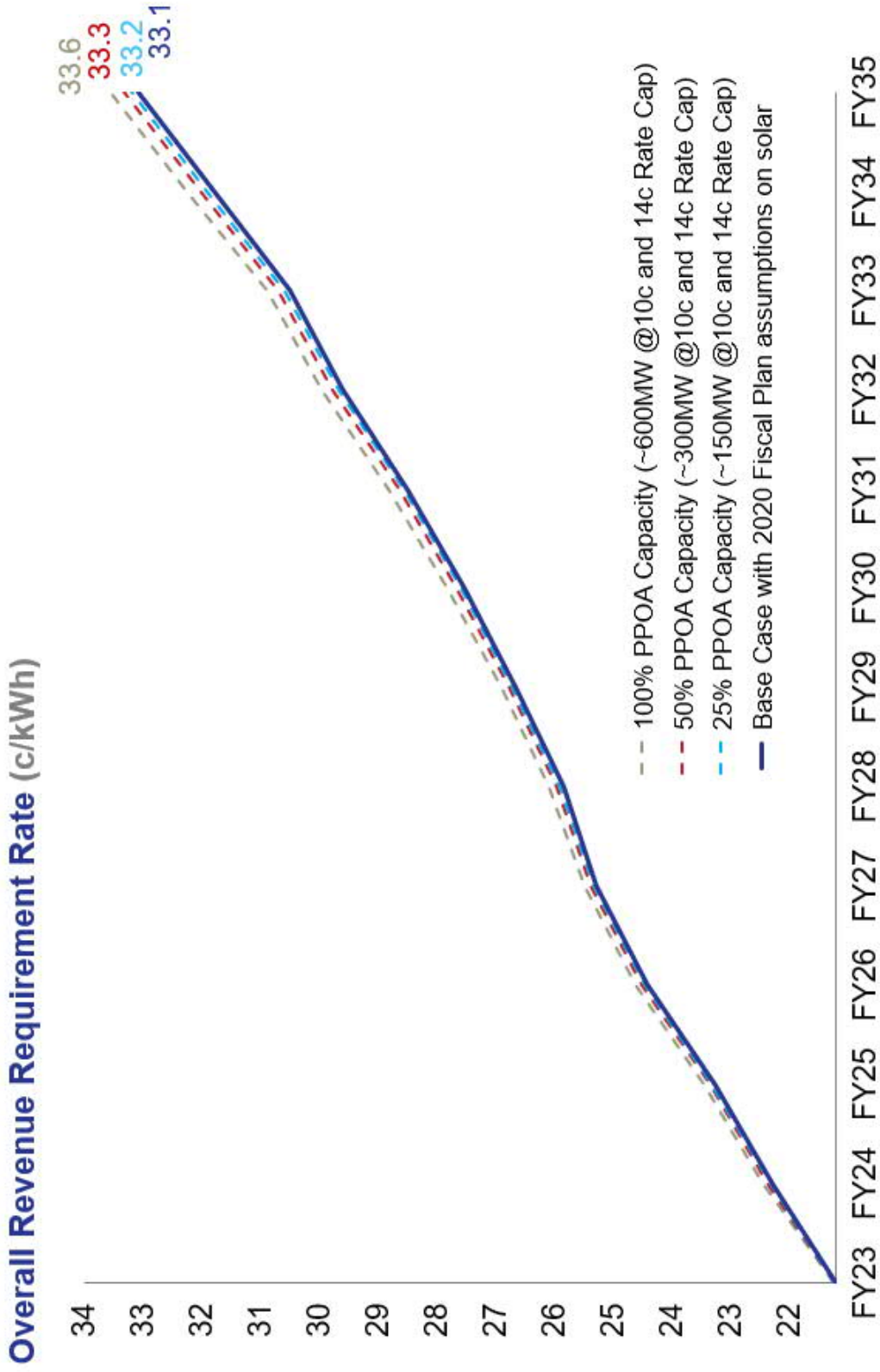
Sincerely,



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.



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

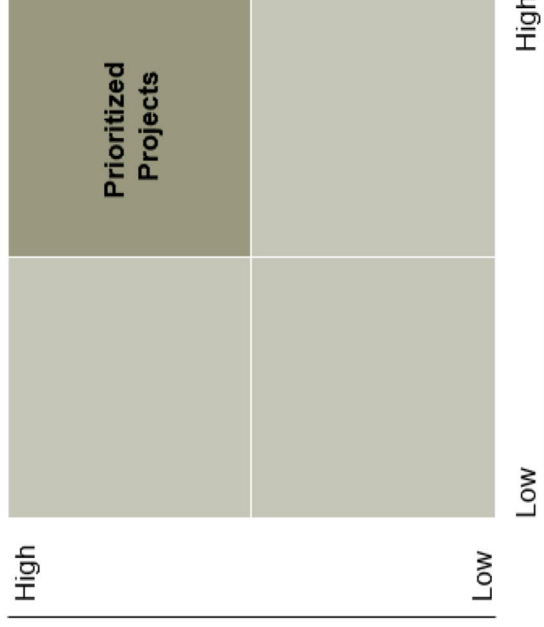
EXHIBIT 2. TECHNICAL AND FINANCIAL CRITERIA FOR PERIODIZATION OF NON-OPERATIONAL PPOA CONTRACTS

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