

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

**NEPR**

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**IN RE:** SOLICITUD DE APROBACIÓN DE ENMIENDA A CONTRATO DE COMPRAVENTA DE ENERGÍA RENOVABLE ENTRE LA AUTORIDAD DE ENERGÍA ELÉCTRICA DE PUERTO RICO Y XZERTA TEC SOLAR I, LLC

**CASO NÚM.:** NEPR-AP-2021-0002

**ASUNTO:** Cumplimiento de Orden; Solicitud de Determinación de Confidencialidad

**MOCIÓN EN CUMPLIMIENTO DE ORDEN Y SOLICITUD  
DE DETERMINACIÓN DE CONFIDENCIALIDAD**

AL HONORABLE NEGOCIADO DE ENERGÍA:

COMPARECE la Autoridad de Energía Eléctrica de Puerto Rico a través de la representación legal que suscribe y muy respetuosamente expone y solicita:

**I. INTRODUCCIÓN**

El 17 de marzo de 2021, la Autoridad de Energía Eléctrica de Puerto Rico (la “Autoridad”) presentó al Negociado de Energía de la Junta Reglamentadora del Servicio Público de Puerto Rico (el “Negociado de Energía” o “Negociado”) su *Petición de Aprobación a Enmiendas de Contrato de Compraventa de Energía Renovable con Xzerta Tec Solar I. LLC*.<sup>1</sup> La Petición de Aprobación dio lugar a la apertura al caso de epígrafe y mediante la misma la Autoridad solicita al Negociado que apruebe la enmienda al acuerdo de operación y compraventa de energía (PPOA, por sus siglas en inglés) con Xzerta Solar I, LLC (“Xzerta”).

El 8 de abril del 2021, el Negociado de Energía emitió *Resolución y Orden*, mediante la cual ordenó a la Autoridad a presentar información adicional que permitiría al Negociado iniciar

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<sup>1</sup> *Petición de Aprobación a Enmiendas de Contrato de Compraventa de Energía Renovable con Xzerta Tec Solar I. LLC* presentada por la Autoridad el 17 de marzo del 2021 (la “Petición de Aprobación”).

la evaluación de la Petición de Aprobación (la “Orden”). Las solicitudes del Negociado según listadas por el Negociado en la Orden se enumeran a continuación:

1. Informe de One Conexus ("Conexus") al cual se hace referencia en la página 579 de la Petición según el Exhibit G titulado "Review of Legacy Solar PV PPOAS and Recommendations for Ranking and Negotiations - Final Report Amended per FOMB 1/26/21".
2. Todos los documentos que se mencionan en la columna de "Reference" para Xzerta Tec 60 MW, pagina 597 a 599 de la Petición, según descrito en el Exhibit H - informe titulado "Review of Legacy Solar PV PPOAS for Ranking and Negotiations - Annex A: Amendment on Financial Strength of Finalists - February 22, 2021" - Annex B: Financial Strength Documentation
3. Versión del PPOA con Xzerta con revisiones (*i.e.*, redline) de manera que permita comparar/contrastar los términos y condiciones originales contra las enmiendas propuestas incluidas en el Acuerdo. La Autoridad deberá asegurarse de incluir cualquier apéndice contenido en el acuerdo original.

## II. CUMPLIMIENTO DE ORDEN

En cumplimiento con la Orden, la Autoridad presenta al Negociado de Energía una serie de documentos. Es importante resaltar que varios de los documentos que aquí se presentan se están presentando sellados por ser confidenciales. La tabla que se incluye a continuación detalla a que enumerado de la Orden responde el documento que se presenta, bajo que exhibit fue identificado, si la Autoridad solicita que el Negociado determine que es confidencial o no, y, de la Autoridad haber solicitado dicha determinación de confidencialidad, la última columna incluye la base de dicha solicitud.

Enumerado de la Orden	Título	Exhibit	Confidencialidad
1	Memorandum de One Conexus Advisory Group con fecha del 28 de diciembre de 2020 dirigida al Sr. Fernando Padilla	A	Ninguna reclamada
2	Carta de Auriga Capital Management con fecha del 20 de febrero de 2021	B	Propiedad Intelectual de Tercero; Negociación de Potencial Contrato

2	Carta de Origis Energy con fecha de Febrero 18 2021 dirigida al Sr. Fernando Molini sobre Xzerta Tec Solar I, LLC	C	Propiedad Intelectual de Tercero; Negociación de Potencial Contrato
2	Carta de Generate Capital con fecha del 18 de febrero de 2021.	D	Propiedad Intelectual de Tercero
2	Global Atlantic Financial Group Interim Consolidated Financial Statements (unaudited) as of September 30,2020 and December 31,2019.	E	Secreto de Negocio de Tercero; Negociación de Potencial Contrato
2	United States Securities Exchange Commission form 10-K Annual Report KKR & Co. for year ended December 31, 2020	F	Secreto de Negocio de Tercero; Negociación de Potencial Contrato
3	Redline-Amended and Restated Renewable Power Purchase and Operating Agreement between PREPA and Xzerta Tec I, LLC.	G	Transacción Comercial; Negociación de Potencial Contrato

### **III. SOLICITUD DE TRATO CONFIDENCIAL A DOCUMENTACIÓN PRESENTADA SELLADA**

En cumplimiento con la Orden, la Autoridad adjunta a la presente Moción una serie de documentos. Según se mencionó anteriormente, algunos de estos documentos se presentan sellados. Un grupo de estos documentos se presentan sellados ya que contienen información sobre los términos de la renegociación con Xzerta. Estos términos podrían variar porque no han sido aprobados por el Negociado de Energía aún. Además, estos términos alterarían cualquier negociación futura que se tuviese que dar con otros productores de energía si el acuerdo sujeto de esta petición no es aprobado. En fin, publicar esta información cuando el proceso de aprobación no es final aun colocaría a la Autoridad en una desventaja competitiva la cual puede tener como consecuencia final afectar a sus clientes. Por lo tanto, según las leyes y regulaciones aplicables, esta información es confidencial y debe permanecer sellada.

Otro grupo de documentos que se producen en cumplimiento de la Orden contienen información de propiedad intelectual y secretos de negocios de terceras personas o entidades, como, por ejemplo, las cartas y los estados financieros de Xzerta, compartidos con la Autoridad para el proceso de negociación y evaluación del PPOA.

La norma constitucional es que los documentos preparados por una entidad gubernamental, como la Autoridad, son públicos. Sin embargo, según ya decidido por nuestro Tribunal Supremo, esta norma, como muchas otras, tiene sus excepciones. Por ejemplo, en el caso *Pueblo v. Tribunal Superior*, 96 DPR 746 (1968), el Tribunal Supremo de Puerto Rico tuvo ante sí una controversia sobre la naturaleza especial de aquellos documentos que son preparados y circulados en el curso del cargo de un funcionario para fines internos de la entidad gubernamental. Allí resolvió el Tribunal Supremo, a la luz del antiguo Art. 1170 del Código Civil de Puerto Rico<sup>2</sup>, que

un informe, memorando o escrito preparado por un empleado o funcionario en el ejercicio de su cargo o empleo para su superior o para fines internos de las decisiones y actuaciones departamentales no son documentos públicos (énfasis nuestro) que, conforme al Art. 47 de la Ley de Evidencia, todo ciudadano tiene derecho a inspeccionar.

*Pueblo v. Tribunal Superior, supra*, págs. 755-756.

La determinación en ese caso se basó en motivos de orden público y en las implicaciones que resolver lo contrario podría tener en el funcionamiento efectivo del Gobierno.

Específicamente, se indicó que

[p]or razones de orden público; porque ello afectaría el efectivo funcionamiento del gobierno e impediría que los funcionarios actuaran con entera libertad y entereza, sin temor o inhibición alguna en la preparación de informes, memorandos u otras expresiones o comunicaciones en el curso de sus cargos, para fines departamentales, debemos concluir que el Informe que aquí se interesa, como tal, no está sujeto a inspección bajo la Regla 95 como un “documento” o “papel” obtenido por El Pueblo, de otra persona”.

*Id.*, pág. 757.

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<sup>2</sup> 32 LPRA sec. 3271 (derogado).

Por otra parte, el artículo 6.15 de la Ley 57-2014<sup>3</sup>, provee que:

Si alguna persona que tenga la obligación de someter información a la [Negociado] de Energía entiende que la información a someterse goza de algún privilegio de confidencialidad, podrá pedirle a dicha [Negociado] que le dé dicho tratamiento sujeto a lo siguiente: (a) Si la [Negociado] de Energía, luego de la evaluación de rigor, entiende que la información debe ser protegida, buscará la manera de conceder esta protección en la forma que menos impacte al público, a la transparencia y el derecho de las partes envueltas en el procedimiento administrativo en el cual se somete el documento alegadamente confidencial.

Así mismo, el legislador, en la ley orgánica de la Autoridad<sup>4</sup>, estableció como parte de los poderes y deberes de la Autoridad el deber de proveer documentos que sean solicitado por los clientes, a excepción de:

(i) información que sea privilegiada a tenor con lo dispuesto en las Reglas de Evidencia de Puerto Rico; (ii) información relacionada con la negociación de convenios colectivos, con disputas laborales o con asuntos de personal, tales como nombramientos, evaluaciones, disciplina y despido; (iii) **ideas en relación con la negociación de potenciales contratos de la Autoridad o con la determinación de resolver o rescindir contratos vigentes**; (iv) información sobre estrategias en asuntos litigiosos de la Autoridad; (v) información sobre investigaciones internas de la Autoridad mientras estas estén en curso; (vi) **aspectos sobre la propiedad intelectual de terceras personas**; (vii) **secretos de negocios de terceras personas**; (viii) asuntos que la Autoridad deba mantener en confidencia al amparo de algún acuerdo de confidencialidad, siempre y cuando dicho acuerdo no sea contrario al interés público; o (ix) asuntos de seguridad pública relacionados con amenazas contra la Autoridad, sus bienes o sus empleados. (énfasis suplido).

En el ejercicio de sus facultades y poderes otorgados por la Ley 57-2014, el Negociado de Energía aprobó el *Reglamento De Procedimientos Adjudicativos, Avisos de Incumplimiento, Revisión De Tarifas e Investigaciones*, Reglamento Núm. 8543, Negociado de Energía de Puerto

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<sup>3</sup> *Ley de Transformación y ALIVIO Energético*, Ley Núm. 57 de 27 de mayo de 2014, según enmendada (“Ley 57-2014”).

<sup>4</sup> *Ley de la Autoridad de Energía Eléctrica de Puerto Rico*, Ley Núm. 83 de 2 de mayo de 1941, según enmendada (“Ley 83-1941”).

Rico, 18 de diciembre de 2014 (el “Reglamento 8543”). Este reglamento incluye también una disposición en relación con las salvaguardas que el Negociado de Energía da a la información confidencial. El reglamento provee que

[s]i en cumplimiento con lo dispuesto en [el Reglamento 8543] o en alguna orden [del Negociado de Energía], una persona tuviese el deber de presentar [al Negociado de Energía] información que, a su juicio es privilegiada a tenor con lo dispuesto en las Reglas de Evidencia, dicha compañía identificará la información alegadamente privilegiada, solicitará [al Negociado de Energía] la protección de dicha información, y expondrá por escrito los argumentos en apoyo a su planteamiento sobre la naturaleza privilegiada de la información. [El Negociado] evaluará la petición y, de entender que la información amerita protección, procederá de conformidad con lo dispuesto en el Artículo 6.15 de la Ley 57-2014, según enmendada.

*Id.*, Sección 1.15.

De igual forma *el Reglamento Para el Programa de Administración de Documentos de la Autoridad de Energía Eléctrica*, Reglamento Núm. 6285 del 9 de febrero de 2001 (“Reglamento 6285”), regula la administración de documentos de la Autoridad e indica en su Sección V las categorías de documentos que se pueden designar como confidenciales. Según el Reglamento, y en relación con este caso, es confidencial:

[La] [i]nformación revelada o generada por la Autoridad, como parte de una transacción comercial, cuya divulgación podría ser utilizada por terceras personas para proveer bienes o servicios a la Autoridad, a un precio más alto del que regularmente se ofrecerán tales bienes o servicios, en detrimento de los propósitos contenidos con la ley habilitadora de la Autoridad, de hacer asequible el servicio de energía eléctrica en la forma económica más amplia.

Reglamento 6285, Sec. V.15.

Por disposición de ley, entonces, la Autoridad puede reclamar como privilegiados y confidenciales aquellos documentos e información transacciones comerciales que están en

curso. En estas categorías de documentos se encuentra los Exhibits B, C, D E, F, G (los “Documentos Confidenciales”).

Durante el proceso de negociación del acuerdo presentado para la aprobación del Honorable Negociado de Energía, la Autoridad se coloca en el lugar de un comprador ordinario.<sup>5</sup> Los Documentos Confidenciales presentados sellados contienen información deliberativa y comercial de la Autoridad que se preparó con el propósito de negociar el mencionado acuerdo. Entre dicha información hay estrategias y deliberaciones comerciales de la Autoridad y de terceros, en análisis de precios y economía para la negociación y evaluación del PPOA. La información contenida en los Documentos Confidenciales no puede ser revelada hasta que los acuerdos se aprueben por el Negociado de Energía. La divulgación prematura de esta información colocaría a la Autoridad en una posición de desventaja en la competencia para las negociaciones tanto con Xzerta, como con otros productores de energía en caso de que el acuerdo con Xzerta no sea aprobado y la Autoridad tenga que negociar con otros productores para procurar la energía renovable que necesita adquirir.

#### **IV. CONCLUSIÓN**

A tono con lo anteriormente expresado, la divulgación de los Documentos Confidenciales está exenta por la jurisprudencia, leyes y reglamentos aplicables. Mantener la confidencialidad es una consideración que inclina la balanza en contra de la divulgación de los mismos por estos tener información que pondría en desventaja competitiva a la Autoridad y en consecuencia afectaría al pueblo de Puerto Rico, sus clientes.

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<sup>5</sup> *Fed. Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 363 (1979); *Gov't Land Bank v. Gen. Servs. Admin.*, 671 F.2d 663, 665-66 (1st Cir. 1982).

POR TODO LO CUAL, se solicita al Negociado de Energía que determine que la Autoridad ha cumplido con la Orden, determine que los exhibits B, C, D E, F y G son confidenciales y, además, ordene que estos permanezcan sellados.

RESPETUOSAMENTE SOMETIDO.

En San Juan, Puerto Rico, este 13 de abril de 2021.

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Exhibit A

## MEMORANDUM

DATE: December 28<sup>th</sup>, 2020

TO: **Fernando Padilla**  
PREPA Administrator of Restructuring and Fiscal Affairs

CC: **Francisco Santos Rivera**  
PREPA Senior Attorney

FROM: **Mario-José Medina.**  
One Conexus Managing Director

RE: Renewable Energy Special Project: Review Five Financial Variables Requested by FOMB

### I. Background

FOMB and PREPA agreed upon the Fiscal Plan 2020 to join efforts in a full transformation of Puerto Rico's energy system to deliver clean, reliable, and affordable electric service to customers. The Fiscal Plan requires the implementation of renewable energy at overall affordable pricing levels. PREPA is responsible to renegotiate both operational and non-operational renewable energy PPOAs to align prices with the Fiscal Plan projections. On July 1st, 2020, PREPA submitted 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.

On August 17, 2020 FOMB responded to PREPA's July 1st submission of 16 renegotiated PPOAs by electronic mail. FOMB recognized PREPA was able to renegotiate the contracts to a lower cost compared to the original PPOAs and included contract improvements. Original pricing vs. re-negotiated pricing amount to ~\$1 billion in avoided costs over the lifetime of the projects. The Proposed Contracts reflect improvements in: Terms and conditions of the agreements, including stipulations were the developer must pay for costs incurred to meet PREPA's Minimum Technical Requirements (MTR), and 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.

The lower prices however did not align with the 2020 Fiscal Plan projection of retail energy prices. To resolve the matter, FOMB evaluated scenarios through a structured development approach and concluded no more than 150 MW of renewable energy capacity would be approved. This conclusion was developed using the proposed contract prices and results in retail energy prices that are no more than 0.1c/kWh above retail energy prices projected in the 2020 Certified Fiscal Plan. PREPA should deliberate and choose developers that reach no more than 150 MW.

FOMB's recommendation to choose proponents include:

1. Perform an objective assessment of each proponents' technical and financial qualifications, alongside any additional qualifications PREPA deems relevant, in order to qualify those proponents with the highest degree of technical and financial capabilities.
2. Financial qualifications are:
  - Robust financial statements, or
  - Financial backing from reputable investors, or
  - Access to financing
  - Solvency
  - Proof of creditworthiness
3. Other requirements not related to financial qualifications. Please view **Appendix I** for a full list of qualifications.

A letter was sent by PREPA on September 2nd, 2020 to all the 16 developers on the additional requirements needed to proceed with the renegotiations. On November 30, 2020, King & Spalding, LLP drafted a letter to PREPA with the developers' responses to the new requirements. All 16 of the developers agreed on the additional requirements.

PREPA contracted New Energy Partners, Inc. ("NEP") with the objective of performing an assessment and providing recommendations as requested by FOMB. NEP completed "Review of Legacy Solar PV PPOAs and Recommendations for Ranking and Negotiations Report" on December 1st to support PREPA with the decision-making process. The report was used to rank and highlight the developer's dependent on the requirements from FOMB and PREB in order to move forward with the renegotiations. Report details are found in **Appendix II**.

NEP recommended proceeding with the proponents Xzerta Tec and Ciro One. Together, the projects total the 150WM limit set by FOMB. If either of these fails upon finalization of diligence or refusal to honor the representations in their September 2nd final proposal letter, then the negotiations should proceed to REA Hatillo. If REA Hatillo fails, then ReSun and Blue Beetle should be negotiated together since the synergies in sharing the interconnection line provide benefits to ratepayers according to the report.

On December 16, 2020 One Conexus met with Robert Lurie, Kevin Futch and Francisco Santos to discuss scope of work for the financial qualifications needed to comply with FOMB's requests. On December 22, 2020 another meeting was held where One Conexus presented its observations after reviewing the documents, email sent on December 21<sup>st</sup> (1:32 AST) with talking points. The meeting held confirmed the review was to be performed only with the information made available as no additional information could be requested to proponents. Attendees were Kevin Futch, Robert Lurie, and Francisco Santos (PREPA).

One Conexus performed a review with the financial related information at hand on the top five ranked developers according to NEP's report with the information available at hand. This review is not to be considered a qualitative or quantitative financial assessment due to the limitation of information received.

*\*\*\* Disclaimer: Please note this document is not to be considered a legal opinion, accounting opinion, or tax opinion. Interpretation and Advice set forth below could change upon disclosure or discovery of any correspondence, amendments, renegotiations, side-agreements, or regulatory matters not available at the moment this document is released.*

## II. Procedures Performed

One Conexus reviewed all documents (a total of 15 documents) made available by PREPA. Please see **Appendix III** for list of documents received. The documents were used to verify FOMB's 5 financial qualifications: robust financial statements (of proponents' legal entity), financial backing from reputable investors, access to financing, solvency, and proof of creditworthiness.

Two matrixes were complete:

1. Matrix 1;
  - a. Xzerta Tec 60 MW – left side
  - b. Ciro One 90 MW – right side
  
2. Matrix 2;
  - a. REA Hatillo 25 MW – left side
  - b. ReSun 35 MW – center
  - c. Blue Beetle 30 MW – right side
  
3. Summary Matrix – summary of matrix 1 and 2, with simple scoring.

Additional research was performed on developers with insufficient documents (Xzerta Tec). Dun & Bradstreet, a reputable website that provides commercial data, analytics, and insights for businesses was used for additional financial information. Past relationships between the developers and PREPA were also verified.

Matrix definitions:

- Yes: the proponent submitted some sort of information regarding variables requested by FOMB
- No: the proponent did not submit any kind of information regarding variables requested by FOMB
  - N/A: not applicable (no information to reference)
- References: page number of response documents.

**MATRIX 1**

	Xzerta Tec 60 MW			Ciro One 90 MW		
FOMB Criteria	Yes/ No	Comments	Reference	Yes/ No	Comments	Reference
<b>Financial Statements</b>	No	No information made available.	n/a	No	No information made available.	n/a
<b>Financial Backing from Reputable Investors</b>	Yes	<p>Funding will be available through its solar sister companies:</p> <ul style="list-style-type: none"> <li>-Auriga Capital Management (closed over \$150 of credit facilities and over \$25m of equity)</li> <li>-Delaware River Solar owns 300mw development pipeline in NY. Successfully sold/contracted to sell 188mw.</li> <li>-Empire Valorize: an engineering, procurement, and construction who have managed 67 MW since 2016 in NY.</li> </ul> <p>Xzerta Tec is the result of a joint venture among:</p> <ul style="list-style-type: none"> <li>-Origis: has capital investments from Global Atlantic Financial Group allowing Origis Energy access to the lowest cost of development and long-term equity capital with a diversified asset base exceeding \$ 70 Billion of assets under management and is the leading US investor in renewable</li> </ul>	pg.5-6	Yes	<p>Unaudited reviewed comparative FS 2019-18 (18 is audited) in RMB &amp; IFRS for GCL-Poly Energy Holdings Limited.</p> <p>Putam Bridge (private equity fund) funding letter has funds of \$250m available to be deployed and committed immediately funding to the project.</p>	Exhibit B: Financial Capabilities pg.26-27

	Xzerta Tec 60 MW			Ciro One 90 MW		
FOMB Criteria	Yes/ No	Comments	Reference	Yes/ No	Comments	Reference
<b>Financial Backing (cont.)</b>		energy and energy storage. -Next Stage Solar: local investments and pre-developed financing. Xzerta Tec is a joint venture between Origis and New Steps Solar.				
<b>Access to Financing</b>	Yes	Lists "Solar Financing Alliances" stating \$1billion in financial strength. Lists reputable financial institutions: Citi, Wells Fargo, Bank of America, Santander, etc.	pg. 7	Yes	From Affiliate companies: GCL Solar Energy and Ciro Group Corp. They do not intend to have to ask for financing because of the available capital from Putam Bridge	Exhibit A: Statement of Qualifications Brief pg. 10
<b>Solvency</b>	No	No financial statement or any other liquidity information was made available to confirm solvency.	n/a	Yes	Only determined by the financial statements of GCL Energy Holdings net assets of 26,661,744 RMB'000 = \$4.075 Billion Current Ratio: 0.53 Quick Ratio: 0.51 Net debt to equity attributable to owners of the company 211%	pg.78
<b>Proof of Creditworthiness</b>	No	No information made available to confirm creditworthiness.	n/a	No	No information made available to confirm creditworthiness.	n/a

	<b>Xzerta Tec 60 MW</b>		<b>Ciro One 90 MW</b>	
	<b>Comments</b>	<b>Reference</b>	<b>Comments</b>	<b>Reference</b>
<b>Quotes from proponents' response letters</b>	<p>"We want to remind PREPA and FOMB that if we are to develop our project in absence of any agreement and become a Qualified Facility under PURPA as a Small Power Producer (80 MW or less), PREPA will be obligated to purchase our energy production at the avoided cost which is considerably more expensive than the terms currently approved in the renegotiated PPOA and would certainly more severely impact the approved fiscal plan. Although such an approach entails some additional financial risks at the beginning, it certainly makes up for it in the increased stream of revenue over the life of the project."</p>	<p>Part of their response letter</p>	<p>"Putnam Bridge, through one of its private equity funds, will provide the necessary capital to develop and build the Project. See proof of funds letter showing available capital in excess of \$150 million provided as Exhibit B and an overview of Putnam Bridge's financial strengths and capabilities as Exhibit A. Putnam does not expect having to obtain any financing for the development and construction of the Projects. GCL Solar is wholly owned by GCL-Poly Energy Holdings Ltd ("GCL-Poly"), also known as 3800.HK (Hong Kong) on the Hong Kong Stock Exchange. GCL-Poly is one of the world's largest producers of polysilicon and wafers (annual production capacity of 20 GW/year). GCL-Poly is a supplier to the world's largest module manufactures, as well as a recognized Tier 1 module supplier to the industry. Across the GCL Group family of companies, there are more than 7.3 GW of operating projects worldwide, which includes over 100 MW of operating assets in the United States. As of the end of fiscal year 2019, GCL-Poly recorded approximately \$3.8 billion in assets."</p>	<p>Their response on the criteria for:</p> <p>Robust financial statements, or Financial backing from reputable investors or Access to financing Solvency Proof of credit worthiness. Pg. 7</p>

**MATRIX 2**

FOMB Criteria	REA Hatillo 25 MW			ReSun 35 MW			Blue Beetle 30 MW		
	Yes/No	Comments	Reference	Yes/No	Comments	Reference	Yes/No	Comments	Reference
<b>Financial Statements</b>	No	No information made available.	n/a	No	No information made available.	n/a	No	Blue Beetle III (received the Parent company) in EUR & in IFRS	Exhibit 9: Blue pg.167
<b>Financial Backing from Reputable Investors</b>	Yes	2019 10-K for Sponsor MasTec.  Sponsored by MasTec endorsed by interest letter	Pg. 43 of response letter,  MasTec Support Letter - REA Hatillo - Executed	Yes	Origis: has capital investments from Global Atlantic Financial (and minority shareholder) Group allowing Origis Energy access to the lowest cost of development and longterm equity capital with a diversified asset base exceeding \$ 70 Billion of assets under management and is the leading US investor in renewable energy and energy storage	Orgis' confirming letter of interest	Yes	Audited Consolidated: -OPDEnergy 2019-18 in EUR & in IFRS  -Sponsored by OODEnergy in Financial Commitment letter	Exhibit 8: OPDEnergy pg.73  OPD Energy Financial Commitment letter pg. 59



FOMB Criteria	REA Hatillo 25 MW			ReSun 35 MW			Blue Beetle 30 MW		
	Yes/No	Comments	Reference	Yes/No	Comments	Reference	Yes/No	Comments	Reference
<b>Access to Financing</b>	Yes	MasTec, Inc. is a public company with reported revenues of \$7.2 billion (2019), equity investments totaling \$ZOOM in value and an average of 21,000 employees in 350 locations.	MasTec Support Letter	Yes	Orgis has raised and deployed solar capital investments of over \$1billion. Closed financing with over 15 international financial institutions	Orgis' confirming letter of interest	Yes	-Greenfield PV assets in Spain: In 1Q19, raised €81MM In long-term PF with <b>Sabadell</b> as underwriter for 150 MWp. In 4Q19, raised €57MM with <b>Santander</b> to construct 111MWp, 61 MWp of which connected in October 2020 -In 3Q19, raised \$86MM In long-term PF With <b>SMBC</b> for 2 PV assets (144MWp) in Mexico -In 3Q20, raised \$103MM in long-term PF for 50MW onshore wind and 104MWp PV in Chile with <b>SMBC</b> ; in addition to \$14M for 17MWp in PMGDs with <b>Cifi</b>	Project Finance Pg. 7
<b>Solvency</b>	Yes	Only determined by MasTec 10k with \$1.7 billion in equity and \$4.9billion in assets. Current Ratio: 1.75 Quick Ratio: 0.76	MASTEC FORM 10-K 12.31.2019 pg.48	No	No financial statement or any other liquidity information was made available to confirm solvency.	n/a	Yes	Only determined by OPDEnergy and Blue Beetle III financial statements OPDEnergy: €77.4m in equity, €291.2m in assets, Current Ratio: 1.64, Quick Ratio: 0.52 Blue Beetle III €8.1m in equity, €12.7m in assets, Current Ratio: 3.5, Quick Ratio: 2.1	Exhibit 9: Blue pg.167 Exhibit 8: OPDEnergy pg.64

FOMB Criteria	REA Hatillo 25 MW			ReSun 35 MW			Blue Beetle 30 MW		
	Yes/No	Comments	Reference	Yes/No	Comments	Reference	Yes/No	Comments	Reference
<b>Proof of Credit Worthiness</b>	No	No information made available to confirm creditworthiness.	n/a	No	No information made available to confirm creditworthiness.	n/a	No	No information made available to confirm creditworthiness.	n/a
<b>Quotes from proponents' response letters</b>	"The Sponsor has agreed with MasTec on the terms for the joint construction and financing of the Projects. The financing would include a construction loan with an option, subject to certain conditions, for MasTec to acquire the Project Companies' equity interests in order to qualify for investment tax credits. MasTec readily meets the net worth requirements set forth in the FOMB's letter to PREPA."		Part of their response letter	"We are confident that as soon as we execute a final agreement with PREPA, ORIGIS and RESUN will sign a final agreement for the financing, development, construction and operation of RESUN's project."		Part of their response letter			

**SUMMARY MATRIX – Yes = 1 point, No = 0 point**

FOMB Financial Qualifications	Xzerta Tec 60 MW	Ciro One 90 MW	REA Hatillo 25 MW	ReSun 35 MW	Blue Beetle 30 MW
<b>Financial Statements</b>	No	No	No	No	No
<b>Financial Backing from Reputable Investors</b>	Yes	Yes	Yes	Yes	Yes
<b>Access to Financing</b>	Yes	Yes	Yes	Yes	Yes
<b>Solvency</b>	No	Yes	Yes	No	Yes
<b>Proof of Credit Worthiness</b>	No	No	No	No	No
<b>Scores</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>3</b>

## **IV. Additional Comments Post Matrix Preparation**

New Energy Partners, Inc.'s report ranked Xzerta Tec, Ciro One, REA Hatillo, Blue Beetle, and ReSun as the top 5 developers. It was noted from the Fiscal Plan 2020 that 11 out of the 16 developers currently have running operating contracts with PREPA.

Xzerta Tec is the leading developer out of the 16 projects according to the NEP report. It is noted in the NEP report that they did not submit the adequate documents in order to determine its financial qualifications. NEP also recommended PREPA to request additional documentation. According to Xzerta Tec's response, their "sister companies" will help fund the project. The companies report positive sales according to Dun & Bradstreet website. Although it is not solid evidence, this helps alleviate the uncertainty of the financial capabilities of their sister companies. Xzerta Tec also mentions they are part of a joint venture between Origis Energy and Next Stage Solar. No evidence was found to confirm the joint venture.

Ciro One is the second best developer according to NEP's report. Evidence provided, reasonably attends to respond to the developer's financial capabilities. Xzerta Tec (P00042) and Ciro One (P00043) currently have running operating PPOAs with PREPA and therefore demonstrates PREPA's willingness to continue its relationship with both developers.

As referenced from the NEP report, if any of the top two developers fails upon finalization of diligence or refusal to honor the representations in their September 2nd final proposal letter then the negotiations should proceed to REA Hatillo. If REA Hatillo fails, then ReSun and Blue Beetle should be negotiated together since the synergies in sharing the interconnection line provide benefits to ratepayers according to the report.

REA Hatillo's and Blue Beetle's evidence provided reasonably attends to respond to the developer's financial capabilities. ReSun will be supported financially by Origis Energy by acquiring interest in the company. This was confirmed through an interest letter from Origis Energy, yet no financial information was provided or found to confirm Origis's financial position. These 3 companies also have operations PPOAs with PREPA. (REA Hatillo P00075, Blue Beetle P00037, ReSun P00061).

## **V. Final Remarks**

Based on the information made available for this review, the evidence provided by the five proponents' by some means relates to the FOMB variables requested. This memorandum is not to be considered a qualitative or quantitative financial assessment due to the limitation of information provided. It is intended to provide Prepa and independent summary of how the information provided relates to FOMB's variables.

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## Appendix I

List of FOMB Qualifications to proceed:

- Agree to proceed with the negotiations following the 150WM limit
- Amend contract to include addition of an interpretive provision stating that nothing in the PPOA will be construed to limit the authority of the Puerto Rico Energy Bureau (“PREB”);
- Include a clause requiring that all disputes be resolved exclusively before the PREB;
- Amend contract to include provision which would limit PREPA’s ability to grant an extension of the Guaranteed Commercial Operation Date beyond 10% of the time originally provided under the PPOA to the PREB approving such an extension;
- Requirement to provide monthly updates to the PREB on permitting, third-party contracting and financing, among others, during the development and construction phases
- Requirement to reduce the time to commence construction of the projects to eight (8) months from the execution of the PPOA

## Appendix II

NEP's report states the following:

**Stage One: 6 Pass/Fail Gates:** series of six pass/fail tests ("gates") to determine each project's eligibility to move to stage two. Projects have to pass all six pass/fail tests to be considered in Stage Two.

- **Gate 1:** Legal Contractual Compliance - All projects must be willing to sign the updated PPOA that is entirely consistent with the FOMB criteria listed on page 4 of the August 17 2020 letter related to transferability, and changes to Section 6.5(c), Section 20.3 and Section 20.4., as well as the PREB additional conditions.
- **Gate 2:** Financial Compliance and Due Diligence on Financial Strength - The FOMB has set the net worth requirements at \$25 MM for any new owners and \$75 MM for any new parent entity. In addition to these requirements, the standard financial due diligence to ensure the developer:
  - has adequate equity secured to fund its share of the proposed project,
  - has secured financing,
  - has robust financial statements or financial backing from reputable investors and
  - that there are no financial red flags in solvency and proof of credit worthiness.
- **Gate 3:** Interconnection Concerns - Sargent and Lundy reevaluated and redesigned the interconnection for these projects (Report CS-0034). S&L has informed NEP that it did not do a system evaluation, only an interconnection evaluation, so it can not determine the frequency of curtailment.
- **Gate 4:** Public Benefits Test
- **Gate 5:** Development Stage: Ability to Start Construction in 8 months
- **Gate 6:** Solar Development Experience

**Stage Two: Ranking of Remaining Projects:** Rank Order remaining 10 projects based on Public Benefits and secondary criteria. They analyzed and ranked the present value energy costs savings net of interconnection costs.

The projects are first ranked by their value to PREPA ratepayers on NPV \$/MW basis. This ensures a "pareto" optimization of ratepayer value, in essence maximizing the ratepayer value of the 150 MW of allowable contracts. If any two projects have a ratepayer value within 5% of each other, then secondary criteria are applied. The most important subsequent criteria is time: if a project is in a later stage of development, then it is given negotiation order preference.

## Appendix III

List of documents provided by PREPA to perform a review of the financial related information.

Item	From	Name	Description
1	PREB	Shovel Ready Project Development Status.xls	Permit status on the 16 developers.
2	New Energy Partners Inc.	PREPA SOLAR REVIEW_Report_120320vfn.pdf	New Energy Partners, Inc. report on recommendations for ranking and negotiations.
3	King & Spalding	KS Letter to K. Datta (Draft 11.30.20) copy.doc	Letter with list of 16 developers' response agreeing with new FOMB responses.
4	PREB	Annex A to PREPA Letter re Non-Operating PPOA (FOMB Letter).pdf	Letter from FOMB to PREPA on the 16 Proposed Contracts. (Comments and required changes to continue negotiations)
5	Ciro One	2020-10-01_CiroOne_Response.pdf	Response for the 9/2/2020 letter from PREPA on new requirements needed to continue negotiations. Includes: Body of Letter: Response statement, list of permits, Exhibit A: statement of Qualifications & ppt presentation, Exhibit B: financial capabilities (proof of funds letter & Unaudited financial statements), Exhibit C: General Breakdown of major investments, Exhibit D: Salinas Lease Agreement, Exhibit E: Permits COS, Exhibit F: Insurance, Exhibit G: Contractor Quotes, Exhibit H: Guayama Lease, Exhibit I: Permits GSE
6	Xzerta	2020-09-30_Xzerta_PREPA NEXT STEPS FINAL VERSION 9-30-2020.pdf	Response for the 9/2/2020 letter from PREPA on new requirements needed to continue negotiations. Includes: Response statement and milestones completed.

Item	From	Name	Description
7	Blue Beetle	2020 Blue Beetle III_Next Ste_Renecogiation_PREPA_POA	Response for the 9/2/2020 letter from PREPA on new requirements needed to continue negotiations. Includes: Response statement and milestones completed Exhibit 1: Permitting Status Exhibit 2: Permitting Tracking Log Exhibit 3: Site Control Exhibit 4: Lease Assessment Exhibit 5: Site Control Exhibit 6: OPDEnergy Financial Commitment Letter Exhibit 7: OPDEnergy Company Profile Exhibit 8: OPDEnergy Financial Statement Exhibit 9: Blue Beetle III Parent Company Audited FS Exhibit 10: Critical Project Designation
8	ReSun	RESUN response To PREPA Letter Sept 2_2020	Response for the 9/2/2020 letter from PREPA on new requirements needed to continue negotiations. Includes: Response statement
9	ReSun	RESUN Barceloneta Principals	Value of previous projects \$500m. (Barceloneta Principals)
10	ReSun	20.09.30 OE Support Letter Executed	Letter of endorsement to ReSun (Sponsor Letter)
11	Resun	ORIGIS ENERGY - Corporate Presentation -ABB	Origis Accomplishments (Sponsor Company Profile)
12	Hatillo	Letter to F. Padilla re New PPOA Approval Requirements	Response for the 9/2/2020 letter from PREPA on new requirements needed to continue negotiations. Includes: Response statement
13	Hatillo	MasTec Support Letter - REA Hatillo - Executed	Letter of endorsement to REA Hatillo (Sponsor Interest Letter)
14	Hatillo	2020 07 31_MASTEC Corporate Presentation	MasTec accomplishments (Sponsor Presentation)
15	Hatillo	MASTEC FORM 10-K 12.31.2019	MasTec financial statements. (Sponsor 10-k)

Exhibits B, C, D, E, F, G

*[Estos documentos han sido presentado sellados]*