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

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IN RE: AMENDMENTS TO RENEWABLE ENERGY POWER PURCHASE AGREEMENT: NON-OPERATIONAL PROJECTS (CIRO ONE SALINAS, LLC)	CASE NO. NEPR-AP-2021-0001 MATTER: Resolution on Motion to Submit Comments submitted by the Comité Diálogo Ambiental, Inc., Frente Unido Pro-Defensa Valle de Lajas, Inc., Sierra Club de Puerto Rico, Inc., and El Puente: Enlace Latino de Acción Climática (El Puente Williamsburg, Inc.)
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MOTION FOR RECONSIDERATION

COMES NOW CIRO One Salinas, LLC (“CIRO”) through the undersigned legal counsel, and very respectfully states and prays:

Introduction

1. On May 14, 2021, the Honorable Energy Bureau issued a Resolution and Order in the above captioned case wherein it granted the Puerto Rico Electric Power Authority (“PREPA”) until May 17, 2021, at 12:00pm to provide a clean and unredacted version of the captioned amended power purchase and operating agreement. Also, per the Resolution and Order, the public may submit comments in regard to the captioned energy project, the amended power purchase agreement, and/or the evaluation of the Energy Bureau of the captioned case on or before May 21, 2021, at 5:00pm. CIRO herein requests that the Energy Bureau reconsider said Resolution and Order, mainly in opposition to the present proceeding being subject to public comment in an amicus or intervenor-like fashion.

Procedural Background

2. The power purchase and operating agreement between PREPA and CIRO that is the subject of the present proceeding was originally negotiated and executed in the year 2010, before the promulgation of Law 57-2014. Amendments to the original agreement were executed

through the year 2015 and beyond. The amended power purchase agreement between PREPA and CIRO, including all amendments thereto effective as of this date, is hereinafter referred to as the “PREPA-CIRO PPOA.”

3. On June 19, 2020, PREPA filed a *Petición de Aprobación de Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacionales* in case NEPR-AP-2020-0008 wherein it requested the Energy Bureau’s approval of amendments to sixteen power purchase agreements, among them the PREPA-CIRO PPOA.

4. Through *Resolución y Orden* dated September 10, 2020 in case NEPR-AP-2020-0008, the Honorable Energy Board determined that (1) the PREPA-CIRO PPOA is in accordance with the Integrated Resource Plan; (2) the PREPA-CIRO PPOA is in alignment with the Renewal Portfolio Standard, with the reduction of dependency on fossil fuels, and with the increase of generation through renewable resources; (3) the proposed pricing structure is reasonable; (4) the profit margin is reasonable; (5) the proposed scales and caps are aligned with industry standards; (6) the proposed rate structure protects the public interest and taxpayers; (7) interconnection of the proposed project will not put system reliability and stability at risk. Thus, the Energy Bureau approved the PREPA-CIRO PPOA subject to certain conditions.

5. On September 10, 2020, the Comité Diálogo Ambiental, Inc., Frente Unido Pro-Defensa del Valle de Lajas, Inc., Sierra Club de Puerto Rico, Inc., and El Puente: Enlace Latino de Acción Climática (El Puente de Williamsburg, Inc.) (hereinafter, “the Petitioning Group”) filed a *Petición de Intervención* in case NEPR-AP-2020-0008 to submit information and for public and administrative hearings to be held and for case information to be available to the public for effective participation.

6. On September 22, 2020, PREPA filed a *Moción para Informar Retiro de Enmienda a Contrato de Compra de Energía sin Perjuicio de Presentación Posterior* in case NEPR-AP-

2020-0008 wherein PREPA requested to withdraw the PREPA-CIRO PPOA and close said proceeding.

7. On December 8, 2020, the Honorable Energy Bureau issued a *Resolución y Orden* wherein it denied the Petitioning Group's request to intervene in case NEPR-AP-2020-0008 on the basis that said proceeding was not adjudicative and closed said proceeding, without prejudice, and notified PREPA that any future petition in connection with the PREPA-CIRO PPOA would be evaluated as a new case.

8. On March 17, 2021, PREPA filed before the Energy Bureau a *Petición de Aprobación de Enmiendas a Contrato de Compraventa de Energía Renovable con Ciro One Salinas, LLC*, which commenced the captioned proceeding. PREPA informed the PREPA-CIRO PPOA had been renegotiated to reduce the price per kilowatt-hour and, if approved, the project would become operational two (2) years after commencement of construction. The PREPA-CIRO PPOA had also been approved by the Fiscal Oversight and Management Board.

9. On April 8, 2021, the Honorable Energy Board issued a *Resolución y Orden* and wherein it determined to grant confidential treatment to Exhibit J of PREPA's petition and required PREPA to submit additional information to deem the filing complete.

10. On April 13, 2021, PREPA submitted the information requested by the Energy Bureau and explained that during negotiations of the PREPA-CIRO PPOA, PREPA is in the position of an ordinary commercial buyer or seller. Also, documents annexed to the PREPA-CIRO PPOA contained information used by PREPA to deliberate and make business decisions in regard to the negotiation. For these documents, PREPA also requested confidential treatment, which request was granted by the Energy Bureau via *Resolución y Orden* dated May 11, 2021.

11. On May 12, 2021, the Petitioning Group appeared in the captioned case through a *Moción para Presentar Comentarios* and requested that confidential treatment of documents

related to the PREPA-CIRO PPOA be revoked to be examined by the public, that the public be allowed to participate in the proceeding, that a thirty (30)-day period be granted to submit additional information and expert analysis, that public and administrative hearings be held, and that CIRO cease construction of the project and impose applicable penalties.

12. Through *Resolución y Order* dated May 14, 2021, the Honorable Energy granted until May 21, 2021, 5pm for the public to submit comments on the PREPA-CIRO PPOA and also required PREPA to submit a copy of the PREPA-CIRO PPOA without redactions.

13. On May 18, 2021, PREPA submitted a *Solicitud de Reconsideración de Resolución y Orden Notificada el 14 de mayo de 2021* wherein it requested that the Honorable Energy Bureau reconsider its determination to effectively revoke its determination to grant confidential treatment of the PREPA-CIRO PPOA and provide a thirty (30)-day period for PREPA to state its position or act accordingly.

CIRO's Position

14. CIRO agrees with PREPA's contention that the Energy Bureau is effectively changing procedural rules without any basis. First, in relation to the Energy Bureau's reversal of its determination to confer confidential treatment of the PREPA-CIRO PPOA, CIRO is concerned that sensitive information that has already been determined to be confidential be suddenly available to the public. This may put CIRO at a commercial disadvantage in relation to competitors, which among others could include entities that were not selected in the procurement of 150 MW of renewable energy sources from shovel-ready projects and who may use the commenting process that the Energy Bureau has allowed to get a second opportunity at bat.

15. CIRO's concerns are supported by the fact that the Energy Bureau had previously determined that the proceeding to amend and approve the PREPA-CIRO PPOA would not

permit intervenors since such proceeding is not adjudicative under Section 3.5 of the Government of Puerto Rico Uniform Administrative Procedure Act (see *Resolución y Orden* dated December 8, 2020, in case NEPR-AP-2020-0008). The Energy Bureau has ruled in like manner in other proceedings to amend and approve renegotiated power purchase agreements (see *Resolución y Orden* dated December 9, 2020, in case NEPR-AP-2020-0013).

16. Moreover, CIRO has found that, of all the cases related to the power purchase and operating agreements that PREPA had renegotiated, the Petitioning Group only requested to intervene in only two (2) of them, one of them being CIRO's project (including intervention in the prior proceeding NEPR-AP-2020-0008) and other one being PBJL Energy Corporation's project in Guánica (case NEPR-AP-2020-0007). Among others, the Petitioning Group opposes CIRO's project on account that it supposedly does not align with their purpose of promoting rooftop solar facilities, and that it purportedly will become a burden to ratepayers in terms of pricing without providing resiliency, but it is worthwhile to note that no similar arguments were made with respect to any of the other solar projects. The Petitioning Group essentially makes the same arguments in opposition to PBJL Energy Corporation's project in Guánica.

17. However, the PREPA-CIRO PPOA was considered as part of the approved Integrated Resource Plan. Most of the entities that conform the Petitioning Group were intervening parties in the Integrated Resources Plan proceeding, case CEPR-AP-2018-0001, and actively participated in the same. In fact, it can be argued that the Petitioning Group agreed with the approved Integrated Resource Plan (see *Local Environmental Organizations' Motion Requesting that PREB Enforce the Approved Integrated Resource Plan*, dated October 20, 2020, in case CEPR-AP-2018-0001). Therefore, the Petitioning Group, as well as the general public, already had the opportunity to participate in matters of non-operational renewable energy

facilities whose power purchase agreements were being renegotiated, such as CIRO's project, and how such facilities fit within supply resources.

18. Lastly, CIRO is concerned that the opening of the present proceeding for public comment may make way for multiple pleadings from any and all persons, genuine stakeholders or not, that may delay the construction of the project. The PREPA-CIRO PPOA has already been approved by the Fiscal Oversight and Management Board as well as the Energy Bureau in case NEPR-AP-2020-0008. Allowing public comment, even for a brief period, in processes which to date had been the exclusive realm of the petitioner and the Bureau would arguably revert the Energy Bureau's prior determinations that such proceedings are not adjudicative and would, in practice, render them into a sui generis quasi-amicus or intervenor-like proceedings. This will create unnecessary legal and procedural uncertainty in relation to the Energy Bureau's precedents and also with respect to contracts going forward.

THEREFORE, CIRO One Salinas, LLC respectfully requests that the Honorable Energy Board reconsider its *Resolución y Orden* dated May 14, 2021. In the alternative, CIRO One Salinas, LLC requests that this pleading be considered CIRO One Salinas, LLC's comments in favor the PREPA-CIRO PPOA as renegotiated and approved so that the construction of the project can proceed.

Respectfully submitted on May 21, 2021.

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