

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

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**IN RE: THE IMPLEMENTATION OF
THE PUERTO RICO ELECTRIC
POWER AUTHORITY INTEGRATED
RESOURCE PLAN AND MODIFIED
ACTION PLAN**

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Request for Extension of Time to
File Updated Procurement Plan Required by
December 8, 2020 Resolution and Order

**REQUEST OF THE PUERTO RICO ELECTRIC
POWER AUTHORITY FOR EXTENSION OF TIME TO FILE AN UPDATED
PROCUREMENT PLAN ADDRESSING PLANS FOR THE SECOND RENEWABLE
GENERATION AND ENERGY STORAGE RESOURCE PROCUREMENT TRANCHE**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

By Resolution and Order issued in the captioned proceeding on December 8, 2020 (the “December 8 Resolution”), the Puerto Rico Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) directed the Puerto Rico Electric Power Authority (“PREPA”) to adopt a Final Procurement Plan and implement a Request for Proposals (“RFP”) process to govern PREPA’s procurement of new renewable generation and energy storage resources through a series of procurement tranches. The Energy Bureau required PREPA to “consider the Procurement Plan to be a living document subject to continued revision and application of lessons learned from each tranche of procurement and for other proceedings.”¹ It accordingly directed PREPA to “file an updated Procurement Plan reflecting the specific plans for the second tranche **on or before May 1, 2021** and incorporate into that document both lessons learned from the first tranche and any requirements that originate from the Optimization Proceeding or any other intervening Resolutions or Orders by the Energy Bureau.”² PREPA seeks an extension of this May 1, 2021 deadline.

¹ December 8 Resolution at Section IV. A. 1, p. 5 and Appendix A at Section I. 2.

² *Id.* at Section IV. A. 1, p. 5 and Appendix A at Section I. 2 (bolding in original).

I. INTRODUCTION AND BACKGROUND

Since well before the issuance of the December 8 Resolution, PREPA has been working diligently to implement the Energy Bureau's August 24, 2020 Final Resolution and Order on PREPA's Integrated Resource Plan ("IRP") issued in Case No. CEPR-AP-2018-0001. On February 21, 2021, PREPA published its Tranche 1 RFP, through which it seeks to procure 1,000 MW of renewable energy resource capacity and 500 MW of energy storage resource capacity, including 150 MW of capacity to be provided by virtual power plants.³ This RFP represents the first of six RFP tranches soliciting proposals for a cumulative total of 3,750 MW of renewable energy resources and 1,500 MW of energy storage resources which PREPA is to undertake during a three-year period in accordance with the approved IRP and various Energy Bureau Resolutions. Since the publication of that RFP, PREPA has responded to more than two hundred eighty Requests for Clarification. PREPA has issued revised forms of Power Purchase and Operating Agreement ("PPOA") and Energy Storage Services Agreement ("ESSA") addressing comments on the original RFP forms offered by prospective project proponents. It has only recently been in a position to issue a form of Grid Services Agreement ("GSA") that would be used to document commercial arrangements with proponents of Virtual Power Plants ("VPPs"), and expects to receive feedback on that form of agreement in the near future.

Recognizing that the Tranche 1 RFP process has to some extent been an interactive one, and at the suggestion of a number of potential proponents, PREPA has adjusted aspects of the RFP milestone schedule to accommodate various requests for additional time to seek and evaluate information and to incorporate responses to requests for clarification into project proposals. Nevertheless, proposals responding to the Tranche 1 RFP are due, and the evaluation process is to

³ See Motion Informing Issuance of Renewables RFP Tranche 1, Case No. NEPR-MI-2020-0012 (filed Feb. 22, 2021) at p. 2.

commence, on May 28, 2021. The current Milestone Schedule, as published via Addendum No. 10 on April 30, 2021, is as follows:

Table 2-1 - Milestone Schedule

<i>No</i>	<i>Milestone</i>	<i>Date</i>
1	<i>RFP Released to Public</i>	<i>22 February 2021</i>
2	<i>Kick-Off Presentation Made Available</i>	<i>25 February 2021</i>
3	<i>Kick-Off Presentation</i>	<i>3 March 2021</i>
4	<i>Notice of Intent to Respond and signed NDA Deadline</i>	<i>12 April 2021</i>
5	<i>Contract Exceptions Deadline for PPOA & ESSA</i>	<i>29 March 2021</i>
6	<i>Release of (i) Final Proposal Versions of PPOA & ESSA, and (ii) Preliminary Template GSA</i>	<i>22 April 2021</i>
7	<i>Contract Exceptions Deadline for GSA</i>	<i>12 May 2021</i>
8	<i>Request for Clarification Submittal Deadline for Energy Resource Proposals Other Than VPPs</i>	<i>17 May 2021</i>
9	<i>Release of Final Proposal Version of GSA</i>	<i>19 May 2021</i>
10	<i>Request for Clarification Submittal Deadline for VPP Proposals</i>	<i>21 May 2021</i>
11	<i>Proposal Submission Deadline & Commencement of Phase I Evaluation</i>	<i>28 May 2021</i>
12	<i>Proposal Hard Copy Submission Deadline</i>	<i>3 June 2021</i>
13	<i>Selection of Proposals for Phase II Evaluation</i>	<i>24 June 2021</i>
14	<i>Selection of Proposals for Phase III Evaluation</i>	<i>19 August 2021</i>
15	<i>FOMB Approval of Execution Version of Contract</i>	<i>7 September 2021</i>
16	<i>Execution of Contracts with Proponent(s) selected for Phase III Evaluation</i>	<i>10 September 2021</i>
17	<i>Energy Bureau Approval of Contracts executed in Milestone No. 16</i>	<i>15 October 2021</i>

As of today, although it has received some feedback through the Tranche 1 RFP Request for Clarification process, PREPA and its advisors do not have the benefit of any formal market response to the Tranche 1 RFP and the commercial terms PREPA has proposed for the procurement of energy from renewable generation resources and capacity from energy storage resources and VPPs. PREPA will receive an initial formal market response on or around May 28, 2021, and PREPA and its advisors believe that they will be in a position to evaluate and report on that market response and the results of Phase I project evaluations by late June 2021. They would expect to be in a position to form tentative conclusions regarding the results achieved through the Tranche 1 RFP process and to offer their assessment of lessons learned through that process by late August-early September 2021.

The December 8 Resolution directs PREPA to include in an updated Procurement Plan not only “lessons learned from the first tranche” but also “any requirements that originate from the Optimization Proceeding or any other intervening Resolutions or Orders by the Energy Bureau.”⁴ To date, the Optimization Proceeding remains pending, with participants in that proceeding having only recently submitted responses to a number of Energy Bureau questions. The Energy Bureau has not yet imposed any requirements through the Optimization Proceeding.

To date, PREPA has been solely responsible for managing the procurement process required by its Procurement Plan and the Approved IRP. But this could change with the transition of responsibilities for operation and maintenance of the PREPA system under the terms of the Puerto Rico Transmission System Operation and Maintenance Agreement among PREPA, the P3 Authority, LUMA Energy, LLC and LUMA Energy Servco, LLC, dated as of June 22, 2020 (the

⁴ December 8 Resolution at Section IV. A. 1, p. 5 (citing August 24, 2020 Final Resolution and Order issued in Case No. CEPR-AP-2018-0001 at ¶ 899, p. 279). The Energy Bureau has docketed the referenced Optimization Proceeding as Case No. NEPR-MI-2020-0016.

“T&D O&M Agreement”). Section 5.13(d) of that Agreement provides that responsibility for implementation of the Approved IRP and the resource procurement processes it contemplates, including implementation of PREPA’s Procurement Plan, may shift from PREPA to LUMA, as Operator under the T&D O&M Agreement, once LUMA assumes the responsibilities of Operator:

- d. Procurement of Generation Projects and Generation Supply Contracts. Operator shall maintain Resource Adequacy that may require new generation procurement for Generation Projects or Generation Supply Contracts, which procurement shall be done in accordance with the Integrated Resource Plan and Applicable Law. Any such Generation Project or Generation Supply Contract shall be subject to the applicable procurement processes and approval by PREB in accordance with Applicable Law. With respect to any such procurement, Operator shall:
- (i) prepare risk assessments and analyses in support of Resource Adequacy and Generation Project or Generation Supply Contract procurement prioritization and planning, which shall take into account the Integrated Resource Plan and Applicable Law (and which assessments and analyses PREB may request from time to time);
 - (ii) prepare long and short-range transmission and distribution planning analyses and forecasts to determine the need for Generation Project or Generation Supply Contract procurement which shall take into account the Integrated Resource Plan to the extent applicable (and which analyses and forecasts PREB may request from time to time);
 - (iii) meet with PREB on an annual basis to review and assess the prepared analyses, demand projections (prepared in accordance with the Integrated Resource Plan), existing System Power Supply, Legacy Generation Assets and generation assets owned by IPPs related to the supply of Power and Electricity, and determine whether additional power supply sources are needed; and
 - (iv) coordinate any start-up related services required from Owner [*i.e.*, PREPA] in connection with any such Generation Project or Generation Supply Contract.

For the avoidance of doubt, in the event that Operator recommends new generation procurement for a Generation Project subject to Act 120, Operator shall undertake (i) through (iv) above, but Administrator [*i.e.*, the Puerto Rico Public-Private Partnerships Authority (the “P3 Authority”)] (or any other entity required by Applicable Law to undertake such procurement) shall manage all aspects of the procurement process with the support of Operator, as necessary.

Moreover, under the terms of the laws and regulations that govern PREPA's ongoing transformation process,⁵ the P3 Authority has the responsibility to determine whether to authorize PREPA to proceed with procurements and to execute agreements qualifying as "PREPA Transactions."⁶ The P3 Authority has authorized PREPA to proceed with the procurement contemplated by the Tranche 1 RFP; PREPA understands that the P3 Authority has not yet decided whether to retain the responsibility to conduct future procurements required by the Approved IRP and described in PREPA's Procurement Plan, or will continue to authorize PREPA to manage the procurement process. As a consequence, it is not clear as of the date of this Motion what degree of responsibility PREPA will have for the management of the future procurement processes that will be addressed by an updated Procurement Plan.

II. ARGUMENT

PREPA requires additional time in order to complete an updated Procurement Plan that would incorporate lessons learned through the Tranche 1 RFP process. Today PREPA has only limited visibility into the market's reaction to the Tranche 1 RFP, and as a result has few lessons on which to report. It has gotten preliminary market feedback on the forms of PPOA and GSA and has incorporated that feedback into revised forms that have been made available through an RFP Addendum. But beyond being able to note that an updated Procurement Plan would incorporate these revised forms into the Tranche 2 RFP, and perhaps to identify and attempt to address a handful of concerns that multiple potential proponents have shared through Requests for Clarification, PREPA has scant basis today on which to update its Procurement Plan to take into

⁵ Among these laws are Act No. 120-2018, as amended, known as the Puerto Rico Electric System Transformation Act ("Act 120"); the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act 120, as amended; Act No. 17-2019, known as the Puerto Rico Energy Public Policy Act; Act No. 29-2009, known as the Puerto Rico Public Private Partnership Authority Act, as amended; and Act No. 83-1941, as amended, known as the Puerto Rico Electric Power Authority Act.

⁶ See Act 120, Section 5(b).

account its experience with the Tranche 1 RFP process. PREPA does not expect to have a solid foundation on which to complete a comprehensive update of its Procurement Plan until after it selects proposals for Phase III evaluation (currently expected to be on or around August 19, 2021). By that time, PREPA and its advisors expect to have a much more complete view than they do today as to what worked and what did not work in the Tranche 1 RFP process, and as to what improvements can be made to address any identified deficiencies.

Moreover, as the Energy Bureau is aware, the Optimization Proceeding remains pending in Case No. NEPR-MI-2020-0016, and no action has been taken in that proceeding that could be reflected in an updated Procurement Plan. Thus, any Procurement Plan updates PREPA might offer today or in the near future would have to be further updated to reflect any directives that come out of the Optimization Proceeding, requiring an additional expenditure of resources on the part of both PREPA and the Energy Bureau to little productive end.

Under the terms of the T&D O&M Agreement and Act 120, responsibility for the management of the procurement of renewable generation and energy storage resources could be shifted from PREPA to LUMA and/or the P3 Authority. PREPA understands that the P3 Authority has not yet decided in the exercise of its discretion under Act 120 whether it will continue to authorize PREPA to manage the procurement process, or whether it will assume that role itself, perhaps with support from some combination of PREPA and LUMA personnel. If responsibility for the procurement process is transferred from PREPA, it would be appropriate for the newly responsible entity to play a significant role in updating the Procurement Plan. That will not be possible if an updated Procurement Plan must be filed in the near future.

PREPA personnel and advisors responsible for the Tranche 1 RFP process are fully engaged in completing responses to outstanding Requests for Clarification and they will continue

to be so engaged until shortly after the late May deadline for Requests for Clarification. Over the near term they will also need to respond to exceptions to the initial proposed form of GSA and in preparing for the May 28, 2021 submission of Tranche 1 RFP proposals. Given the extremely limited amount of information currently available to update the Procurement Plan, there is little benefit to the RFP process to be gained by requiring PREPA to adhere to the May 1, 2021 deadline submission of a Procurement Plan update. Both the Energy Bureau's and PREPA's limited resources can more usefully be devoted to other tasks.

Accordingly, PREPA respectfully submits that the interest that it and the Energy Bureau share in benefiting from lessons learned from the Tranche 1 RFP process would best be served by affording PREPA (or its successor responsible for the procurement process) additional time to prepare and submit the updated Procurement Plan required by the December 8 Resolution. PREPA requests that, in order to permit it to take fully into account the experience it accumulates in Tranche 1 RFP process through final project selection, the Energy Bureau grant it (or its successor responsible for the procurement process) an extension of time until August 31, 2021 to prepare and submit a comprehensive update to the Procurement Plan.

Notwithstanding the deferral of the due date for a formal update of the Procurement Plan, PREPA hereby commits to incorporate into the Tranche 2 RFP process and documentation (or to recommend to its successor responsible for the procurement process) (i) the revised versions of form PPOA, ESSA and GSA it has developed through the Tranche 1 RFP process, (ii) all revisions to the RFP documentation which PREPA has made in the course of that process through RFP Addenda, and (iii) any other modifications in the RFP documentation which in PREPA's judgment should be made to reflect its responses to Requests for Clarification advanced by potential project proponents. In this way, PREPA will ensure that the lessons it has learned to date in the Tranche

1 RFP process are appropriately reflected in the Tranche 2 RFP, even if not yet formally included in an updated Procurement Plan.

III. CONCLUSION

WHEREFORE, the Puerto Rico Electric Power Authority requests the Energy Bureau to grant an extension of time, to August 31, 2021, for the filing of the updated Procurement Plan required by the December 8, 2020 Resolution and Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30th day of April 2021.

s/ Maralíz Vázquez-Marrero

Maralíz Vázquez-Marrero
TSPR 16,187
mvazquez@diazvaz.law

s/ Katuska Bolaños-Lugo

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

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.

290 Jesús T. Piñero Ave.
Oriental Tower, Suite 803
San Juan, PR 00918
Tel.: (787) 395-7133
Fax. (787) 497-9664