

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

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: ENERGY BUREAU-APPOINTED
INDEPENDENT COORDINATOR FOR
TRANCHE 2 RFP




RESOLUTION AND ORDER

I. Procedural Background

A. PREPA's IRP

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued the Final Resolution and Order in Case No. CEPR-AP-2018-0001 regarding the Puerto Rico Electric Power Authority's ("PREPA") Integrated Resource Plan ("Approved IRP") through which it approved in part and rejected in part PREPA's Proposed IRP.¹ The Approved IRP orders the adoption and implementation of a Modified Action Plan as set forth therein, which includes the development of competitive solicitation processes for the procurement of new renewable resources and battery energy storage resources in support of, among other things, meeting Act 17-2019² and Act 82-2010³ targets for renewable energy installations.⁴

 The Energy Bureau established a schedule for minimum quantities of renewable resources and battery energy storage resources to be required through Request for Proposals ("RFP") processes and required PREPA to include at least 1,000 MW of solar PV (or energy-equivalent renewable resource) and at least 500 MW (2,000 MWh or equivalent) battery energy storage for the tranche 1 RFP ("Tranche 1").⁵ For tranche 2, the Energy Bureau required PREPA to include at least 500 MW of solar PV (or energy-equivalent renewable resource) and at least 250 MW (1,000 MWh or equivalent) battery energy storage ("Tranche 2").⁶ The Approved IRP contemplated the issuance of the Tranche 1 RFP to be on December 2020, while the issuance of the Tranche 2 RFP would be on June 2021.⁷ Furthermore, the Approved IRP ordered PREPA to submit, among other things, a draft renewable resource and battery energy storage resource procurement plan ("Procurement Plan").⁸

B. Renewables Procurement Plan

On October 6, 2020, the Energy Bureau issued a Resolution and Order through which, among other things, opened the instant docket to manage the implementation phase of the

¹ *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No.: CEPR-AP-2018-0001.

² Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

³ Known as the *Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act*, as amended, ("Act 82-2010").

⁴ Approved IRP, p. 266.

⁵ *Id.*, p. 268.

⁶ *Id.*

⁷ *Id.*, p. 268.

⁸ *Id.*, p. 266.



Approved IRP and the Modified Action Plan (“October 6 Resolution”).⁹ In the October 6 Resolution, the Energy Bureau determined that it was appropriate to separate the implementation phase of the Approved IRP and the Modified Action Plan,¹⁰ since Case No. CEPR-AP-2018-0001 constitutes an adjudicative proceeding that was opened to evaluate PREPA’s Proposed IRP.¹¹ The Energy Bureau also stated that it may open in the future additional dockets related to the implementation of the Approved IRP and Modified Action Plan, as necessary.¹²

On October 23, 2020, PREPA filed in the instant case a document titled *Motion Submitting Draft Procurement Plan* (“October 23 Motion”). As part of the October 23 Motion, PREPA submitted its Draft Procurement Plan.¹³ On December 8, 2020, the Energy Bureau issued a Resolution and Order through which, in pertinent part, it ordered PREPA to modify the Draft Procurement Plan PREPA submitted for the implementation of the Modified Action Plan of its Approved IRP (“December 8 Resolution”). Through the December 8 Resolution, the Energy Bureau set forth specific changes for PREPA to incorporate in its Procurement Plan, and ordered PREPA to file a final version of the Procurement Plan on or before December 22, 2020.¹⁴ Also, the Energy Bureau ordered PREPA, among other things to: (i) file on or before May 1, 2021, an updated Procurement Plan reflecting the specific plans for Tranche 2, and incorporate into that document both lessons learned from the Tranche 1 and any requirements that originated from the Optimization Proceeding¹⁵ or any other intervening Resolutions and Orders issued by the Energy Bureau;¹⁶ and (ii) develop, maintain, update and file with the Energy Bureau every six (6) months a timeline for anticipated installations of renewable energy and battery storage resources.¹⁷

On December 22, 2020, PREPA filed a document titled *Motion in Compliance with Order Submitting Final Procurement Plan and Associated Request for Proposal* through which it submitted a revised Procurement Plan. On that same date, PREPA submitted a document titled *Motion for Reconsideration of Resolution and Order on Draft Procurement Plan* (“December 22 Motion”). Through the December 22 Motion, PREPA asserted, among other things, that the December 8 Resolution failed to acknowledge critically important technical considerations and the need for specific interconnection studies, and that PREPA was concerned with Energy Bureau’s determinations regarding the timeline for evaluation of RFP responses as well as “its failure to take into account the time required for essential interconnection studies.”¹⁸ PREPA argued that it will require from twelve (12) to fourteen (14) months to complete interconnection studies for projects tendered in response to the RFP.¹⁹

Further, through the December 22 Motion, PREPA, in sum, requested the Energy Bureau to: (i) amend the December 8 Resolution to allow PREPA to adequately evaluate the proposals that will result from the RFP process; (ii) reconsider the manner in which the December 8 Resolution addresses the subject of project evaluation timelines; and (iii) clarify that PREPA will not be obligated to execute a power purchase and operating agreement or

⁹ See October 6 Resolution, p. 1.

¹⁰ As described in the IRP Final Resolution and Order, pp. 14-15.

¹¹ *Id.*

¹² *Id.*

¹³ See October 23 Motion, Exhibit A.

¹⁴ See December 8 Resolution, Attachment A.

¹⁵ As described in the IRP Final Resolution and Order, p. 279.

¹⁶ See December 8 Resolution, p. 5.

¹⁷ See December 8 Resolution, Attachment A, p. 8.

¹⁸ *Id.*, pp. 4-6.

¹⁹ *Id.*, pp. 12-13.



energy storage services agreement with any project proponent until the required interconnection Feasibility Study, System Impact Study and Facilities Study have been completed, their results shared with the project proponent and the Energy Bureau, and the results of those studies reflected to the extent appropriate in the pricing and technical provisions of the relevant agreement.²⁰

On January 5, 2021, the Energy Bureau issued a Resolution and Order through which, among other things, it stated that the December 8 Resolution specifically acknowledged underlying technical considerations associated with interconnection studies ("January 5 Resolution").²¹ The Energy Bureau also stated that it does not minimize the importance of time required to review and consider in totality the first set of responses to the RFP.²² However, in consideration of certain PREPA's arguments, the Energy Bureau: (i) extended the time for RFP evaluation from forty-five (45) to seventy-five (75) days;²³ (ii) clarified that it expects PREPA to evaluate responses to the RFP and identify an initial set of respondent proposals that can proceed to the contract negotiation stage ("Phase III") within the 75-day timeline for evaluation of the responses to the RFP;²⁴ (iii) denied PREPA's request that the Energy Bureau clarified PREPA's obligations with respect to executing power purchase and operating agreements or energy storage service agreements until certain interconnection studies have been completed;²⁵ (iv) reminded PREPA that the December 8 Resolution on the evaluation of the Draft Procurement Plan explicitly and extensively directed PREPA to holistically and innovatively consider interconnection issues and not let them delay the planning for and procurement of required levels of renewable resource installation;²⁶ and (v) ordered PREPA to attend a Stakeholder Meeting to be held remotely on January 14, 2021.²⁷

C. Tranche 1 RFP

On January 26, 2021, the Energy Bureau ordered PREPA to issue as soon as possible the RFP for Tranche 1, which shall include the modifications approved through the January 5 Resolution ("January 26 Resolution").²⁸ On February 22, 2021, PREPA filed a document titled *Motion Informing Issuance of Renewables RFP Tranche 1* ("February 22 Motion"). In the February 22 Motion PREPA informed the Energy Bureau that, on that same date, it published the Tranche 1 RFP through its website and the Power Advocate platform.²⁹ PREPA further provided public notice regarding the availability of the Tranche 1 RFP in *El Nuevo Día* newspaper.³⁰

²⁰ *Id.*, p. 16.

²¹ See January 5 Resolution, pp. 3-4.

²² *Id.*, p. 5.

²³ *Id.*, p. 5.

²⁴ *Id.*

²⁵ *Id.*, p. 6

²⁶ *Id.*, pp. 5-6.

²⁷ *Id.*, p. 6.

²⁸ See Resolution and Order, *In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-M1-2020-0012, January 26, 2021, pp. 2-3.

²⁹ See February 22 Motion.

³⁰ *Id.*



D. Updated Renewables Procurement Plan; Tranche 2 RFP; Delays in Tranche 1 RFP

On April 30, 2021, PREPA filed a document titled *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* (“April 30 Motion”). Through the April 30 Motion, PREPA requested an extension of the May 1, 2021, deadline for the filing of an updated Procurement Plan reflecting the specific plans for Tranche 2, as ordered by the Energy Bureau through the December 8 Resolution.³¹ PREPA stated, among other things, that neither PREPA nor its advisors had the benefit of any formal market response to the Tranche 1 RFP and the commercial terms PREPA had proposed for the procurement of energy from renewable generation resources and capacity from energy storage resources and Virtual Power Plants (“VPP”).³² PREPA also stated that it would receive an initial formal market response on or around May 28, 2021.³³ It further alleged that PREPA and its advisors believed that they would be in a position to evaluate and report on that market response and the results of Phase I project evaluations by late June 2021.³⁴ Moreover, PREPA held that it expected 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 2021.³⁵

In the April 30 Motion PREPA argued that it had been solely responsible for managing the procurement process required by its Procurement Plan and the Approved IRP, but that could change with the transition of responsibilities for operation and maintenance of the PREPA's T&D System under the terms of the *Puerto Rico Transmission System Operation and Maintenance Agreement* (“OMA”) among PREPA, the Public-Private Partnerships Authority (“P3A”), LUMA Energy, LLC and LUMA Energy Servco, LLC (collectively “LUMA”), dated as of June 22, 2020.³⁶

On May 11, 2021, the Energy Bureau issued a Resolution and Order through which it partially granted PREPA's April 30 Motion, and ordered PREPA to file the updated Procurement Plan on or before June 15, 2021 (“May 11 Resolution”).³⁷ The Energy Bureau further ordered PREPA that the updated Procurement Plan should be accompanied by a detailed report on the issues faced by PREPA during the procurement process and the solutions implemented to address the same in the next procurement tranche.³⁸ The Energy Bureau stated that filing a request for extension almost at the end of the last day of the term, as PREPA did with the April 30 Motion, is not conducive to proper case management, since it essentially removes the Energy Bureau's discretion to evaluate the merits of the request.³⁹ Thus, the Energy Bureau warned PREPA that, from that moment on, it would only entertain requests that were filed in a timely manner in this or any other procedure, unless there is just cause.⁴⁰

On May 19, 2021, the Solar and Energy Storage Association of Puerto Rico (“SESA”) filed a document through which it stated that there were certain critical issues unresolved,

³¹ See April 30 Motion, pp. 8-9.

³² *Id.*, p. 4.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*, pp. 4-5.

³⁷ See May 11 Resolution, pp. 2-3.

³⁸ *Id.*, p. 3.

³⁹ *Id.*

⁴⁰ *Id.*



unclear and/or reflected large deviations from market norms that could result in low participation by bidders, needlessly high prices, or both (“SESA’s Request”).⁴¹ Through SESA’s Request, SESA also stated that even with a quick turnaround in correcting the issues it identified, it could be worth considering postponement of the current bid deadline beyond May 28, 2021, perhaps by a month, to allow adequate time for potential bidders to integrate changes into their bids and have adequate time for formal questions and answers on them.⁴² On May 21, 2021, the Energy Bureau issued a Resolution and Order through which it ordered PREPA to, on or before May 24, 2021, provide a response to SESA’s Request, including but not limited to the examples provided by SESA, and provide sample calculations for Performance Security and Performance Bond requirements for a typical project size (“May 21 Resolution”).⁴³

On May 24, 2021, PREPA filed a document titled *Response of the Puerto Rico Electric Power Authority to May 21, 2021, Resolution and Order Addressing Comments Presented by the Solar and Energy Storage Association of Puerto Rico and Statement of Support for Extension of Time for Submissions of Proposals in Renewable Generation and Energy Storage Resource RFP Tranche 1* (“May 24 Motion”). In the May 24 Motion PREPA argued that it would support an extension of time of twenty-one (21) days from the deadline of May 28, 2021, until June 18, 2021, for the submission of bidder responses to the Tranche 1 RFP, to permit the evaluation to commence after the June 1, 2021, transition of responsibility from PREPA to LUMA, which would permit the bid evaluation process to proceed much more efficiently.⁴⁴

On May 27, 2021, the Energy Bureau issued a Resolution and Order through which it granted PREPA’s request to extend the bidder response submission deadline until June 18, 2021, and the Selection of Proposals for Phase II Evaluation until July 15, 2021 (“May 27 Resolution”).⁴⁵ However, the Energy Bureau clarified that the May 27 Resolution did not affect the determination stated as part of the May 11 Resolution, regarding the submission of the updated Procurement Plan.⁴⁶

On May 29, 2021, PREPA filed a document titled *Request of the Puerto Rico Electric Power Authority for Additional Time to Issue Second Renewable Generation and Energy Storage Resource Procurement Tranche and to Submit Timeline for Anticipated Installation of Battery Storage and Renewable Energy Resources* (“May 29 Motion”). In its May 29 Motion, PREPA stated that, since the Tranche 1 RFP was issued later than anticipated, it required the postponement of the target June 1, 2021 release date for the Tranche 2 RFP.⁴⁷ It further stated that the market to which its RFP is and will be directed remained occupied with the Tranche 1 RFP process, and that potential participants interested in the development of renewable generation and energy storage resources in Puerto Rico will likely continue to be focused on the Tranche 1 RFP and the finalization of Tranche 1 bids until June 18, 2021.⁴⁸ PREPA argued that rushing the Tranche 2 RFP out while the target market is continuing to devote its full time and attention to the Tranche 1 RFP is likely to be counterproductive and would be inconsistent with the fundamental objective of promoting broad participation in the development of the renewable generation and energy storage resources Puerto Rico urgently needs.⁴⁹

⁴¹ See SESA’s Request, p. 2.

⁴² *Id.*

⁴³ See May 21 Resolution, p. 2.

⁴⁴ PREPA’s Response, pp. 9-10.

⁴⁵ See May 27 Resolution, p. 3.

⁴⁶ *Id.*

⁴⁷ See May 29 Motion, p. 2.

⁴⁸ *Id.*, p. 4.

⁴⁹ *Id.*, pp. 4-5.



Through the May 29 Motion PREPA also requested the Energy Bureau: (i) authorization to modify its Final Procurement Plan to provide that the target date for issuing the second RFP for renewable generation and energy storage resources contemplated by PREPA's Approved IRP and Modified Action Plan shall be August 1, 2021; and (ii) an extension of time until August 31, 2021, to prepare and submit the timeline specified in the December 8 Resolution covering the anticipated installations of renewable generation and battery energy storage resources.⁵⁰

On June 3, 2021, the Energy Bureau issued a Resolution and Order ("June 3 Resolution") through which it: (i) denied PREPA's May 29 Motion; (ii) determined that June 30, 2021, would be the target date for issuing the Tranche 2 RFP for renewable generation and energy storage resources contemplated by the Approved IRP and Modified Action Plan; and (iii) ordered PREPA to submit the timeline specified in the December 8 Resolution covering the anticipated installations of renewable generation and battery energy storage resources on or before July 30, 2021.⁵¹ The Energy Bureau also stated that its June 3 Resolution did not alter the determination stated as part of the May 11 Resolution.⁵²

On June 15, 2021, PREPA filed a document titled *Motion to Submit Updated Procurement Plan Addressing Plans for the Second Renewable Generation and Energy Storage Resource Procurement Tranche* ("June 15 Motion") through which it submitted an updated version of the Procurement Plan regarding specific plans for Tranche 2 ("Updated Procurement Plan").⁵³ On June 24, 2021, the Energy Bureau issued a Resolution and Order ("June 24 Resolution") through which it stated that, in the Updated Procurement Plan, PREPA made several recommendations that raised potentially significant concerns which required further explanation and/or clarification by PREPA before the Energy Bureau completed its evaluation of the Updated Procurement Plan and related documents.⁵⁴ Therefore, Energy Bureau ordered PREPA to: (i) file, on or before June 28, 2021, a redline of the Updated Procurement Plan reflecting the proposed changes; (ii) file, on or before July 1, 2021, a presentation discussing the changes incorporated in the Updated Procurement Plan and related documents and the reasons for such changes, as well as PREPA's proactive, effective, and opportune solutions to overcome any challenges identified by PREPA that could affect PREPA's timely compliance with the Renewable Energy Portfolio requirements; and (iii) attend a Technical Conference on July 6, 2021.⁵⁵ The Energy Bureau also ordered LUMA representatives to attend to the aforementioned Technical Conference.⁵⁶

On June 28, 2021, PREPA filed a document titled *Motion in Compliance with Order Entered on June 14, 2021 Submitting Redline Version of the Updated Procurement Plan* through which it submitted a redline of the Updated Procurement Plan ("June 28 Motion").⁵⁷ Nevertheless, on June 29, 2021 it filed a document titled *Request of the Puerto Rico Electric Power Authority for Extension of Time to File Presentation on Changes Incorporated in Updated Procurement Plan and for a Continuance of the Technical Conference Currently Scheduled for July 6, 2021* ("June 28 Request for Extension"). Essentially, PREPA argued that filing the required presentation and attending the mentioned Technical Conference would distract it from evaluating the seventy (70) proposals received. Therefore, it requested that the filing date for the presentation be moved from July 1, 2021 to July 22, 2021 and that the

⁵⁰ *Id.* p. 8.

⁵¹ See June 3 Resolution, p. 2

⁵² *Id.*

⁵³ See June 15 Motion, Exhibit A.

⁵⁴ June 24 Resolution, p. 1.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See June 28 Motion, Exhibit A.



Technical Conference be moved from July 6, 2021 to July 27, 2021.⁵⁸ On June 30, the Energy Bureau issued a Resolution and Order (“June 30 Resolution”). Through the June 30 Resolution, the Energy Bureau determined that the extensions of time requested in the June 28 Request for Extension were not reasonable, thus, it denied the extension of time to file the presentation and the continuance of the Technical Conference.⁵⁹

On July 1, 2021, PREPA filed before the Energy Bureau a document titled *Urgent Motion for Reconsideration of the June 30, 2021 Motion* (“July 1 Motion”). In the July 1 Motion, PREPA requested the Energy Bureau to (i) to reconsider the June 30 Resolution, (ii) to grant it an extension of time, to July 22, 2021, for the filing of the report on the updated Procurement Plan required by the June 24 Resolution, and (iii) to continue the date for the Technical Conference established by the June 24 Resolution from July 6, 2021 to July 27, 2021.⁶⁰ In sum, PREPA argued that the constraints to comply with the June 24 Resolution had not changed, and that the presentation requested by the Energy Bureau could only be done by PREPA personnel and members of Sargent & Lundy who were performing Phase 1 Evaluations.⁶¹ PREPA further argued that the King and Spalding and Sargent & Lundy firms’ professional services agreements with PREPA expired June 30, 2021, and must be approved by the Federal Oversight and Management Board for Puerto Rico (“FOMB”) and the P3A before they can be executed.⁶² On that same date, the Energy Bureau issued a Resolution and Order (“July 1 Resolution”) through which it eliminated PREPA’s requirement of the presentation but reaffirmed PREPA’s obligation to attend to the Technical Conference.⁶³

On July 6, 2021, PREPA filed a document titled *Motion to Submit Presentation to be Projected by PREPA During the July 6, 2021 technical Conference* (“July 6 Motion”). PREPA included as Exhibit A of the July 6 Motion the presentation to be projected as part of the Technical Conference. On the same date, the Energy Bureau held the Technical Conference as scheduled. During the discussion, LUMA representatives requested to review the Updated Procurement Plan in coordination with PREPA to present to the Energy Bureau a Procurement Plan with the input of both parties.

On July 20, 2021, PREPA filed a document titled *Motion to Inform and Request an Extension of Time* (“July 20 Request for Extension”), through which it requested the Energy Bureau to grant an extension of two (2) additional days to file the revised draft Updated Procurement Plan.⁶⁴

Three (3) days later, on July 23, 2021, PREPA and LUMA filed before the Energy Bureau a document titled *Joint Motion to Submit Revised Updated Procurement Plan* (“July 23 Motion”). Exhibit A to the July 23 Motion included a revised Updated Procurement (“Revised Procurement Plan”).⁶⁵ PREPA and LUMA also included as Exhibit B a mark-up version of the Updated Procurement Plan which reflected the modifications made.⁶⁶

On August 6, 2021, the Energy Bureau issued a Resolution and Order (“August 6 Resolution”) through which, in order to obtain a more thorough understanding of the results of the Tranche 1 RFP, and the relationship with Tranche 2, it ordered PREPA to, on or before August 13, 2021, provide responses to the questions included as Attachment A to the August

⁵⁸ See June 28 Request for Extension, pp. 5-6.

⁵⁹ See June 30 Resolution, p. 2.

⁶⁰ See July 1 Motion, p. 6.

⁶¹ *Id.*, p. 3.

⁶² *Id.*, pp. 4-5.

⁶³ See July 1 Resolution, p. 2.

⁶⁴ See July 20 Request for Extension, p. 2.

⁶⁵ July 23 Motion, Exhibit A.

⁶⁶ *Id.*, Exhibit B.



6 Resolution.⁶⁷ On August 13, 2021, PREPA filed a *Motion to Submit Responses in Compliance with Resolution and Order entered on August 6, 2021* (“August 13 Motion”) through which it submitted responses to the questions included as Attachment A to the August 6 Resolution.⁶⁸

On August 26, 2021, the Energy Bureau issued a Resolution and Order through which it stated that, upon review of the Tranche 1 RFP, it ordered PREPA to provide on or before September 9, 2021, (i) the result of Selection of Proposals for Phase III Evaluation; and (ii) copy of the proposals that were selected for Phase III Evaluation (“August 26 Resolution”).⁶⁹ It was reminded to PREPA that, pursuant to the public policy, the Energy Bureau is the entity ultimately responsible for determining whether the pricing of the selected proposals is just and reasonable, and, thus, if it complies with the current energy policy.⁷⁰ The Energy Bureau further rescheduled the target date for issuance of the Tranche 2 RFP to September 20, 2021.⁷¹

On September 8, 2021, PREPA filed before the Energy Bureau a document titled *Motion for Extension of Time to Submit Information Requested on Resolution and Order Dated August 26, 2021, Including Information Related to Pricing* (“September 8 Request for Extension”). In the September 8 Motion, PREPA alleged that the PREPA Evaluation Committee was still in the process of evaluation for the selection of those proposals that will proceed to Phase III Evaluation.⁷² PREPA also stated that, considering the confidential nature of the RFP process, it requested leave from the Energy Bureau to submit the proposals selected for Phase III with the contracts that will be submitted as part of the Energy Bureau contract approval process contemplated in Section 7.1 of Joint Regulation 8815.⁷³ In the September 8 Motion, PREPA further asserted that its Evaluation Committee was analyzing the pricing information submitted with the proposals to submit prices per technology group based on the proposals selected to proceed to Phase III.⁷⁴ Consequently, PREPA requested an extension of time, until September 20, 2021, for the submittal of such information to the Energy Bureau.⁷⁵

On September 17, 2021, the Energy Bureau issued a Resolution and Order through which it rescheduled the target date for the issuance of the Tranche 2 RFP to October 15, 2021, because PREPA had not provided the requested information.⁷⁶ Nevertheless, it warned PREPA that such determination should not be construed as an additional extension of time to submit the pricing information required by the Energy Bureau.⁷⁷

On September 20, 2021, PREPA filed before the Energy Bureau a document titled *Motion to Submit Proposals Under Seal and Request for Confidential Designation* (“September 20 Motion”). Along with its September 2 Motion, PREPA submitted various documents

⁶⁷ See August 6 Resolution, p. 2.

⁶⁸ See August 13 Motion, Annex.

⁶⁹ See August 26 Resolution, p. 2.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See September 8 Motion, pp. 2-3.

⁷³ *Joint Regulation for the Procurement Evaluation Selection Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet* (“Joint Regulation 8815”).

⁷⁴ See September 8 Motion, p. 3.

⁷⁵ *Id.*

⁷⁶ See *Resolution and Order, In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-M1-2020-0012, September 17, 2021, pp. 2-3.

⁷⁷ *Id.*, p. 3.



included as part of the Proposals, as well as information requests that were made by proponents. PREPA limited the information provided to the Energy Bureau to the proposals that advanced to Phase III of the Tranche 1 RFP process. However, PREPA did not include any comparison or pricing evaluation per technology group of the selected proposals. It alleged that the evaluation of the Proposals had not finished, and the evaluation, award and negotiation of contracts was still ongoing.⁷⁸ PREPA argued that since the process has not been completed, it has the obligation to preserve the confidentiality of the Proposals and asked the Energy Bureau to (i) grant confidential designation and treatment to the Proposals; and (ii) direct Energy Bureau's Secretary to maintain the Proposals under seal.

On October 12, 2021, the Energy Bureau issued a Resolution and Order through which it stated that the procedural background of the present case showed a pattern of delays on PREPA's completion of the Tranche 1 RFP process and that, based on the fact that PREPA had not completed such process, the Energy Bureau rescheduled the target date for the issuance of the Tranche 2 RFP to October 31, 2021 ("October 12 Resolution").⁷⁹ However, the Energy Bureau clarified that the aforementioned reschedule should not be construed as an additional extension of time for PREPA to submit the required pricing information.⁸⁰

Further, the Energy Bureau granted confidential designation and treatment to the Proposals submitted as part of the September 20 Motion.⁸¹ It also stated that, although PREPA requested until September 20, 2021, to submit the prices of each technology group based on the proposals selected to proceed to Phase III information to the Energy Bureau, such information was not included as part of the September 20 Motion and, therefore, the Energy Bureau determined that PREPA had not fully complied with the August 26 Resolution.⁸² Moreover, the Energy Bureau cautioned PREPA that it is actively considering the possibility of conducting the RFP process for the remaining procurement tranches, including Tranche 2, given the dire state of the PREPA generation fleet and the adverse impacts such situation is causing to consumers.⁸³

On October 15, 2021, PREPA filed before the Energy Bureau a document titled *Response to, and Motion for Clarification of, October 12, 2021 Resolution and Order Addressing the Target Date for Issuance of the Tranche 2 RFP and Other Matters* ("October 15 Motion"). In its October 15 Motion, PREPA requests that the Energy Bureau: (i) concludes that PREPA has substantially complied with the Energy Bureau's directives concerning submission of pricing information per technology group; (ii) retract its determination that PREPA has not fully complied with the August 26 Resolution in that regard; (iii) clarify the October 12 Resolution to confirm that PREPA will remain responsible for the Tranche 2 RFP process; (iv) grant PREPA flexibility to anchor the 24-month timeline to achieve Commercial Operations to the Closing Date under the contracts, rather than the date of signing; and (v) agree to extensions of the project development timelines for force majeure and PREPA-caused events without requiring approval from the Energy Bureau in each case.⁸⁴

Among other things, PREPA states that it disagrees with the Energy Bureau's determination that PREPA has failed to submit pricing information per technology group as required by the August 26 Resolution.⁸⁵ PREPA also disagrees with the rescheduling of the

⁷⁸ See September 20 Motion.

⁷⁹ See October 12 Resolution, p. 3.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Motion for Clarification, p. 8.

⁸⁵ *Id.*, p. 2.



target date for the issuance of the Tranche 2 RFP to October 31, 2021.⁸⁶ PREPA further differs from the fact that it has been responsible for a pattern of delays in the completion of the Tranche 1 RFP process.⁸⁷ On that regard, PREPA argues that the RFP process is inherently complex and time consuming.⁸⁸ PREPA also asserts that the fact that it has struggled to comply with some of the Energy Bureau orders in a timeframe that is “substantially compressed” does not establish a pattern of delays on its part.⁸⁹ According to PREPA, the need to resolve or correct inconsistencies and gaps in information supporting the Tranche 1 proposals, to divert resources to responding ongoing requests of information and to adjust the process to implement the Energy Bureau’s requests, has complicated the process.⁹⁰

Furthermore, PREPA argues in its October 15 Motion that a number of the Tranche 1 Proponents with whom it has engaged in Phase III discussions have raised concerns about the “unconventional and off-market timelines” the Energy Bureau has imposed on the RFP process regarding contract finalization, project construction and commercial operation, among which the following stand out: (i) since the Energy Bureau’s overall timeline requires contract finalization before the completion of the System Impact Facility Studies that identify required network updates and other interconnection works feeding into contract pricing, Proponents of utility-scale Energy Resources selected in Phase III must finalize a contract several months before they know what the final contract price will be; (ii) Proponents must achieve commercial operation within twenty-four (24) months of the signing of a contract, even though they will not have a legally binding contract with PREPA until the parties satisfy all conditions for the closing date for the contract after signing, nor do they have control of such closing date; and (iii) based on the Energy Bureau’s requirements for other renewable energy projects, PREPA understands that it cannot grant a time extension for the achievement of commercial operation date under a contract once the aggregate time extensions exceed ten percent (10%) of the 24-month construction period, without first seeking approval from the Energy Bureau.⁹¹ PREPA filed with its Motion for Clarification, a document titled *Summary of Communications*, identified as Attachment A, which allegedly summarizes the communications it received with regard to the aforementioned concerns.⁹²

PREPA also states that, pursuant to Act 120-2018,⁹³ Act 17-2019, Act-29-2009⁹⁴ and Act 83-1941,⁹⁵ it has been tasked by the P3A to continue the renewable generation and energy storage procurement process through Tranche 2.⁹⁶ In that regard, it argues that it would be “legally indefensible” for the Energy Bureau to assume the role of the entity conducting the RFPs intended to result in the contracts arising from the procurement process.⁹⁷

On that same date, PREPA filed before the Energy Bureau a document titled *Motion Submitting Tranche 2 Request for Proposals for Renewable Energy Generation and Energy Storage Resources (RFP)* (“Tranche 2 RFP Submittal Motion”). A part of the Tranche 2 RFP

⁸⁶ *Id.*, pp. 6-7.

⁸⁷ *Id.*, p. 3.

⁸⁸ *Id.*

⁸⁹ *Id.*, pp. 3-4.

⁹⁰ *Id.*, p. 4.

⁹¹ *Id.*, pp. 4-5.

⁹² *Id.*, Attachment A.

⁹³ Known as *Puerto Rico Electric Power System Transformation Act*, as amended (“Act 120-2018”).

⁹⁴ Known as *Public-Private Partnership Authority Act*, as amended (“Act 29-2009”).

⁹⁵ Known as *Puerto Rico Electric Power Authority Act*, as amended (“Act 83-1941”).

⁹⁶ See Motion for Clarification, p. 7.

⁹⁷ *Id.*



Submittal Motion, PREPA submitted a document titled *Request for Proposals No. 128568[*] Renewable Energy Generation and Energy Storage Resources Tranche 2 of 6*, identified as Exhibit A (“Tranche 2 RFP”). The Tranche 2 RFP consists of a Draft Publication Version and various documents identified as Appendixes A through AA. In its Tranche 2 RFP Submittal Motion, PREPA requests the Energy Bureau to find PREPA in compliance with Joint Regulation 8815 in relation to the procurement of renewable energy competitive bidding processes and approve the Tranche 2 RFP for publication.⁹⁸

On October 19, 2021, PREPA filed before the Energy Bureau a document titled *Motion to Supplement Attachment A of “Response to, and Motion for Clarification of, October 12, 2021 Resolution and Order Addressing the Target Date for Issuance of the Tranche 2 RFP and Other Matters”* (“October 19 Motion”). In the October 19 Motion, PREPA states that, since the filing of its Motion for Clarification, it has received additional communications from Proponents regarding their concerns about the timeline and RFP requirements.⁹⁹ Thus, PREPA attached to the October 19 Motion a document titled *Updated Summary of Communications*, identified as Supplement to Attachment A (“Supplement”). Through the Supplement, PREPA updated the Proponents’ concerns informed in the Motion for Clarification, regarding: (i) the requirement that Proponents sign a contract before final contract pricing can be established; (ii) the requirement that Proponents achieve commercial operation within 24 months of the signing of a contract; and (iii) the restriction on PREPA’s ability to grant extensions of time once the aggregate time extensions exceed ten percent (10%) of the 24-month construction period without first seeking approval from the Energy Bureau.¹⁰⁰

II. Scope of the Resolution and Order

The protracted procedural background described before, encompasses three (3) different but intertwined subjects: the renewables Procurement Plan, Tranche 1 RFP, and Tranche 2 RFP. These three (3) subjects are fundamental elements required for the implementation of the specific directives of the Approved IRP regarding the integration of renewable energy to the Puerto Rico Electrical Grid System to meet the applicable Renewable Portfolio Standard.¹⁰¹ Given the ongoing nature of this process, as well as the multiple issues under consideration by the Energy Bureau, in this Resolution and Order the Energy Bureau will only address the procedures that will be implemented for the execution of the Tranche 2 RFP.¹⁰² However, we believe that including a detailed procedural background allows a full understanding of the determination issued by the Energy Bureau regarding the issue at hand.

III. Analysis and Evaluation

(A) Delays in Tranche 1 RFP Process

According to the Approved IRP, PREPA was supposed to issue the Tranche 1 RFP on December 2020.¹⁰³ Nevertheless, the Tranche 1 RFP was issued on February 22, 2021.¹⁰⁴ That is, with a delay of more than two (2) months. PREPA also requested, that the period for

⁹⁸ Tranche 2 RFP Submittal Motion, p. 3.

⁹⁹ See October 19 Motion, p. 1.

¹⁰⁰ *Id.*, Supplement.

¹⁰¹ The Renewable Portfolio Standard is established to achieve a minimum of twenty percent (20%) by 2022, forty percent (40%) on or before 2025; sixty percent (60%) on or before 2040; and one hundred percent (100%) on or before 2050. Article 1.6(7), Act 17-2019.

¹⁰² Through an independent resolution, the Energy Bureau will address PREPA's non-compliance with the Energy Bureau's directives concerning submission of pricing information per technology group regarding the Tranche 1 RFP, as well as certain matters regarding the Tranche 1 Draft Power Purchase Agreement, which are discussed in detail in the October 15 Motion.

¹⁰³ See IRP Final Resolution and Order, p. 268.

¹⁰⁴ See February 22 Motion.



the evaluation of the proposals related to the Tranche 1 RFP be extended from forty-five (45) days to seventy-five (75) days.¹⁰⁵ Although the Energy Bureau granted PREPA's petition to extend the period for the evaluation of the proposals, it clarified that it expected PREPA to evaluate responses to the RFP and identify an initial set of respondent proposals that can proceed to Phase III within the 75-day timeline for evaluation of the responses to the RFP.¹⁰⁶

The Tranche 1 RFP issued by PREPA established that: (i) the Proposal Submission Deadline & Commencement of Phase I Evaluation was May 3, 2021; (ii) the deadline for the Selection of Proposals for Phase II Evaluation was May 24, 2021; and (iii) the deadline for the Selection of Proposals for Phase III Evaluation was July 19, 2021.¹⁰⁷ Therefore, the Tranche 1 RFP, as issued, complied with the 75-day timeline for the evaluation of its responses between the Proposal Submission Deadline and the deadline for the Selection of Proposals for Phase III Evaluation. Nevertheless, PREPA “adjusted” certain aspects of the Tranche 1 RFP milestone schedule through the Addendum No. 10 issued on April 30, 2021.¹⁰⁸ Specifically, PREPA: (i) rescheduled the Proposal Submission Deadline & Commencement of Phase I Evaluation to May 28, 2021; (ii) rescheduled the Selection of Proposals for Phase II Evaluation to June 24, 2021; and (iii) postponed the Selection of Proposals for Phase III Evaluation by a whole month, until August 19, 2021.¹⁰⁹ Such adjustments did not comply with the 75-day timeline, since there are eighty three (83) days between Proposal Submission Deadline and the deadline for the Selection of Proposals for Phase III Evaluation.¹¹⁰

On May 27, 2021, acting upon PREPA’s request, the Energy Bureau granted another reschedule of the Proposal Submission Deadline & Commencement of Phase I Evaluation, until June 18, 2021, to allow the evaluation to commence after the June 1, 2021 transition of responsibility from PREPA to LUMA, which was supposed to permit the bid evaluation process to proceed much more efficiently.¹¹¹ The Energy Bureau also granted a reschedule of the Selection of Proposals for Phase II Evaluation, to July 15, 2021.¹¹²

Contrary to PREPA’s “adjustment” of the deadline for the Selection of Proposals for Phase III Evaluation, by August 19, 2021, such selection had not been notified to the Energy Bureau. Therefore, through the August 26 Resolution, the Energy Bureau ordered PREPA to provide on or before September 9, 2021, the results of the Selection of Proposals for Phase III Evaluation and copy of the proposals that were selected for Phase III Evaluation.¹¹³ With regards to the August 26 Resolution, on September 8, 2021, PREPA requested, among other things, an extension of time until September 20, 2021 since, in sum, its Evaluation Committee was still in the process of evaluating for selection of those proposals that would proceed to Phase III Evaluation.¹¹⁴ Specifically, PREPA requested the Energy Bureau to: (i) to reconsider the August 26 Resolution and allow PREPA to submit proposals selected for Phase III

¹⁰⁵ See December 22 Motion

¹⁰⁶ *Id.*

¹⁰⁷ See Tranche 1 RFP, Table 2-1 – Milestone Schedule.

¹⁰⁸ See April 30 Motion, p. 2.

¹⁰⁹ *Id.*, pp. 2-3.

¹¹⁰ In its April 30 Motion, PREPA stated that it would receive an initial formal market response on or around May 28, 2021 and would be in a position to evaluate and report on that market response and the results of Phase I project evaluations by late June 2021. PREPA also held that it expected to be in a position to form tentative conclusions regarding the results achieved through the Tranche 1 RFP process by late August-early September 2021. *Id.*, p. 4.

¹¹¹ See May 27 Resolution, pp. 2-3.

¹¹² *Id.*

¹¹³ See August 26 Resolution, p. 2.

¹¹⁴ See September 8 Motion, pp. 2-3.



evaluation along with the submittal of the contracts for Energy Bureau approval in compliance with the current milestone timeline; and (ii) grant it an extension of time, until September 20, 2021, for the submittal of the pricing information per technology group selected for Phase III.¹¹⁵

PREPA later requested the Energy Bureau, among other things, to: (i) grant PREPA until September 28, 2021, to communicate its Phase III selection decisions to Tranche 1 RFP proponents and to submit to the Energy Bureau the information related to pricing per technology group selected for Phase III which the Energy Bureau had directed PREPA to file; and (ii) grant PREPA an additional ninety (90) days, until December 15, 2021, to complete Phase III negotiations with the three VPP proponents which submitted proposals in Tranche 1. PREPA also stated that it would be submitting the Tranche 1 RFP proposals.¹¹⁶

As it is evident, an RFP process (Tranche 1 RFP) that should have been finalized long ago, remains ongoing, thus, delaying the upcoming tranches. As discussed in Part I in more detail, the issuance date of Tranche 2 RFP is also under significant delay. This situation, in turn, delays the implementation of the energy public policy and the benefits that the public expects from it.

(B) Regulatory Actions required in connection with Tranche 2 RFP

The Energy Bureau has the power and duty to oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico,¹¹⁷ to establish and implement regulations and the necessary regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of the rates of Puerto Rico's electrical system, and to establish the guidelines, standards, practices, and processes to be followed to purchase power, modernize power plants or electric power generation facilities.¹¹⁸ Further, it has the power to formulate and implement strategies to achieve the energy public policy goals, including, but not limited to, attaining the goals established in the Renewable Portfolio Standard and promoting the storage of energy.¹¹⁹ In sum, the Energy Bureau has broad authority under Act 57-2014, Act. 82-2010 and Act 17-2019 to oversee the acquisition of energy resources by PREPA to help ensure that the Energy Public Policy goals are met and that PREPA's ratepayers' interest are protected.

The process conducted by PREPA in connection with the Tranche 1 RFP suffers from numerous shortcomings, as described in Part I and Part III(A), but more importantly, it fails to comply with important directives and milestones established in the Approved IRP. The involvement of the Energy Bureau in the RFP process to date is not giving the expected results and the renewables Procurement Plan implementation does not progress in the way it should. If the Energy Bureau takes no further action, the implementation of the renewables Procurement Plan, as well as the integration of renewable energy to the Puerto Rico Electrical Grid System (to meet the applicable Renewable Portfolio Standard) will be at risk.

There is an urgent need to properly implement the Approved IRP directives regarding the integration of renewables in order to reform the electric system and meet the energy public policy goals. However, this proceeding has made clear that PREPA is not presently capable of executing the renewables Procurement Plan in a manner that satisfies such policy goals and serves electricity customers' best interests. In sum, PREPA is unable to properly

¹¹⁵ *Id.*, pp. 3-4.

¹¹⁶ See Motion for Extension of Dates for Notification of Proponents Being Selected for Phase III Negotiations, for Submission of Pricing Information Per Technology Group and for Additional Time to Issue the Tranche 2 RFP; and Motion to Clarify Request for Extension of Dates for Notification of Proponents Being Selected for Phase III Negotiations, for Submission of Pricing Information Per Technology Group, In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan, Case No. NEPR-MI-2020-0012, September 17, 2021; September 19, 2021, respectively.

¹¹⁷ Article 6.3(a), Act 57-2014.

¹¹⁸ Article 6.3(c), Act 57-2014.

¹¹⁹ Article 6.3(f), Act 57-2014.



execute the renewables Procurement Plan.

Under these circumstances, allowing PREPA to conduct Tranche 2 RFP, without taking the required regulatory actions would only delay this process without guaranteeing success. Consequently, the Energy Bureau will fill the gap caused by PREPA's noncompliance. The Energy Bureau will execute the Tranche 2 RFP through an independent coordinator ("PREB-Independent Coordinator"). PREPA will keep a significant role in the Tranche 2 RFP process since it is required to provide all the technical and administrative resources necessary for the successful execution of the Tranche 2 RFP process. This action will allow the Energy Bureau to execute a direct role in overseeing the process, and will implement compliance actions required for the successful, swift and transparent implementation of the procurement process.

In a separate resolution, the Energy Bureau will set the detailed powers and duties of the PREB-Independent Coordinator as well as the role of PREPA in the Tranche 2 RFP process. The Energy Bureau will specify the timeline the PREB-independent Coordinator must follow to achieve the overall goals of renewable energy integration public policy. The Energy Bureau will also detail any required modification to the current PREPA Draft Tranche 2 RFP to account for the execution of the process through the PREB-Independent Coordinator. Nevertheless, in general terms, all phases of the Tranche 2 RFP will be conducted by the PREB-Independent Coordinator, and the PREB-Independent Coordinator will coordinate with the Energy Bureau staff throughout the RFP process to ensure that it is undertaken in a fair and unbiased manner, and in accordance with the Energy Bureau's approved Tranche 2 RFP, Updated Renewables Procurement Plan as well as any applicable order or resolution issued by Energy Bureau in connection with the Tranche 2 RFP and/or the Updated Renewables Procurement Plan. PREPA and its consultants will review and discuss with the PREB-Independent Coordinator, without limitation, all decisions regarding the Tranche 2 RFP procedural matters, evaluation, disqualification, non-selection, and selection of proposals.


The role of the PREB-Independent Coordinator, will include, without limitation: (a) conduct all steps of the competitive bidding process; (b) manage all communications with proponents; (c) manage all communications protocols with proponents; (d) assure adherence to the applicable code of conduct; (e) submit comments and recommendations, if any, to the Energy Bureau concerning the Tranche 2 RFP process; (f) develop in coordination with PREPA the proposal evaluation methodology, models, criteria, and assumptions; (g) conduct the evaluation of proposals; (h) conduct contract negotiations with proponents; (i) report to the Energy Bureau on monitoring results during each stage of the RFP process; and (j) assure that the goals of the Tranche 2 RFP and related Updated Renewable Procurement Plan provisions were achieved.

IV. Conclusion

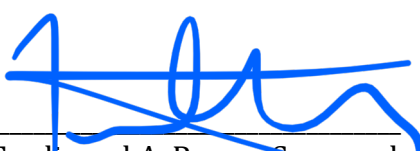
Base on the foregoing discussion the Energy Bureau **DETERMINES** that the Tranche 2 RFP process shall be executed by Energy Bureau trough the PREB-Independent Coordinator, as more fully discussed in Part III of this Resolution and Order.

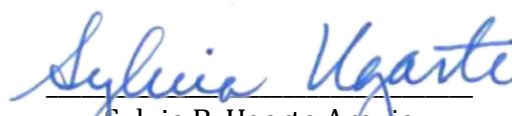
Be it notified and published.





Edison Avilés Deliz
Chairman

Lillian Mateo Santos
Associate Commissioner

Ferdinand A. Ramos Soegaard
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on October 28, 2021. Associate Commissioner Angel R. Rivera de la Cruz did not intervene. I also certify that on October 29, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com; kbolanos@diazvaz.law; mvazquez@diazvaz.law. I also certify that today, October 29, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today October 29, 2021.



Sonia Seda Gaztambide
Clerk