

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

<b>NEPR</b>  <b>Received:</b>  <b>Dec 23, 2021</b>  <b>6:47 PM</b>
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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:** Informative Motion  
Providing Update on Status and  
Timing of Selection of Virtual Power  
Plant Resources in Relation to the  
Tranche 1 RFP

**INFORMATIVE MOTION PROVIDING UPDATE ON STATUS  
AND TIMING OF SELECTION OF VIRTUAL POWER PLANT  
RESOURCES IN RELATION TO THE TRANCHE 1 RFP**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

**COMES NOW** the Puerto Rico Electric Power Authority, through its counsel of record, and respectfully submits and prays as follows:

On December 3, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (the “Energy Bureau”) issued a Resolution and Order in the captioned case (the “December 3 Order”) in which it established certain deadlines for the finalization of the Tranche 1 RFP process. Tranche 1 is the first of six (6) tranches of procurement of renewable energy and battery storage resources as ordered by the Final Resolution and Order (“IRP Order”) and Modified Preferred Resource Plan, under Case No. CEPR- AP-2018-0001, with respect to the Integrated Resource Plan (“IRP”) of the Puerto Rico Electric Power Authority (“PREPA”). The IRP Order was entered by the Energy Bureau on August 24, 2020.

The December 3, 2021 Order establishes certain deadlines for the finalization of the Tranche 1 RFP process. Among the deadlines, the Energy Bureau ordered PREPA to submit updated price proposal information containing the levelized cost of energy (“LCOE”) and battery energy storage system cost metrics on or before December 8, 2021. The Energy Bureau also required PREPA to

submit, for its evaluation and approval, the corresponding draft Power Purchase and Operating Agreements on or before December 17, 2021 by 1:00 p.m.

On December 8, 2021 PREPA submitted to the Energy Bureau by informative motion updated price proposal information containing recalculated LCOE and LCOS pricing values (the “December 8 Motion”).

Thereafter, on December 9, 2021, a few members of the PREPA Tranche1 RFP Evaluation Committee and some of PREPA’s consultants met with the Energy Bureau Commissioners and their consultants and received feedback from the Energy Bureau regarding the appropriate formula for calculating, and the calculation of, the LCOE pricing values. With such guidance, the RFP Evaluation Committee continued its analysis of proposals and proceeded with the finalization of Phase III. During the December 9 meeting the status of the virtual power plant (“VPPs”) energy resources was also discussed.

On December 16, 2021 PREPA filed a “*Motion Submitting 733 MW of PV Renewable Energy Draft Power Purchase and Operating Agreements Offered In Tranche 1 of PREPA’s Renewable Generation and Energy Storage Resources RFP for Energy Bureau Evaluation and Approval*” (the “PPOA Submittal Motion”). As part of the PPOA Submittal Motion, PREPA informed the Energy Bureau that PREPA’s evaluation of VPP resource proposals remains ongoing and that it intends to (ii) submit Bespoke Contracts for VPP resources to the Energy Bureau for approval on or before January 30, 2022.

Through this motion, PREPA informs the Energy Bureau of the status of the VPP negotiations and the pending issues that could affect the finalization of Grid Services Agreements with VPP proponents, as follows:

- PREPA needs a final version of a Data Integration and Testing Protocol (to be included as Appendix M to the form of Grid Services Agreement). LUMA submitted a draft version of a VPP Testing Protocol to PREPA on Friday, December 17. This draft Protocol is currently being reviewed by PREPA and its technical and legal advisors. PREPA anticipates that representatives of the Evaluation Committee and its technical advisors will propose a meeting with LUMA to discuss their comments on the draft VPP Testing Protocol during the week of December 27, 2021).
- PREPA also needs a document setting forth Operating Procedures applicable to VPP Resources to be incorporated as Appendix L to the form of Grid Services Agreement. LUMA provided a draft VPP Operating Procedures document to PREPA for its review on December 22. PREPA and its advisors are now reviewing that document.
- PREPA must decide on whether to incorporate a price reopener provision in the Grid Services Agreement with fallback to “baseball-style” arbitration in case of failure to agree and, if so, how often pricing will be subject to reopening. PREPA continues to consider this question but has received positive responses to the proposed price reopener mechanism from two of the three VPP Proponents and from a member of the PREB. PREPA anticipates making this decision before resuming negotiations with VPP proponents the week of December 27..
- PREPA must also confirm whether it intends to stand by the position that VPP Resource Providers must transfer to PREPA any RECs/Green Credits to the extent VPP Resources will generate them. The current form of Grid Services Agreement provides at Section 9.5 that Resource Provider shall convey to PREPA, at no additional cost, all such Green Credits. PREPA is aware that at least one member of the PREB takes the

- position that PREPA should be the beneficiary of any RECs/Green Credits generated through the operation of VPPs. PREPA expects that this will be a subject of discussion with VPP Proponents when negotiations resume with them the week of December 27.
- PREPA's position, as reflected in the form of Grid Services Agreement, is that VPP Resource Providers will be compensated for their provision of ancillary services through fixed payments for Demand Build and Demand Reduction services. VPP Proponents have questioned this and have suggested that such services should be separately priced, though they have not provided any specific ancillary services pricing proposals. PREPA's intention is to stand by its previously stated position. It expects that VPP Proponents will seek some sort of agreement as to PREPA's/LUMA's near-term requirements for ancillary services from VPP Resources.
  - PREPA and the VPP Proponents will have to come to a definitive agreement on prices for Demand Build and Demand Reduction services, including the question of whether prices will be subject to escalation.
  - In the case of one proposal, PREPA and the Proponent will need to address in that Proponent's GSA the ability to dispatch VPP resources on the basis of location within one of the 8 mini-grids and eventual alignment of VPP Resources with the mini-grid construct.
  - PREPA (with input from LUMA) will need to reach agreement as a technical matter on the manner in which VPP Resources will be dispatched, particularly during the period prior to completion of upgrades to the existing T&D System Energy Management System.
  - Other issues to be resolved include:

- Contract tenor (10 year v. 20 or 25 year term).
- Precise quantity of capacity to which VPP Proponents will commit.
- Dates for provision of proposal security; amount and timing of posting of performance security.
- Confirmation that VPP Proponents have accepted the revised VPP MTRs.
- Resolution of miscellaneous comments on revised form of GSA Proponents may present.
- Deadline for completion and execution of GSAs with selected Proponents.

Further, PREPA hereby presents to the Energy Bureau, as Attachment A, the current VPP price proposal information. **See Attachment A.**

Lastly, and given that the price proposals in Attachment A are still part of ongoing negotiations with proponents and the information is part of the deliberative process for the Tranche 1 RFP, PREPA submits that the same is confidential in nature and must remain under seal.

In general, the documents in possession of a corporation like PREPA are presumed public. However, access to public information is not absolute and there are various exemptions for access to public information. *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59, 82 (2017). These exceptions are:

(1) a law so declares; (2) the communication is protected by one of the evidentiary privileges that the citizens may invoke; (3) revealing the information may injure the fundamental rights of third parties; (4) it deals with the identity of a confidante and (5) it is ‘official information’ pursuant to Rule 514 of Evidence, 2009, 32 LPRA Ap. VI (formerly Rule 31 of Evidence 32 LPRA for. Ap. IV). *Colon Cabrera v. Caribbean Petroleum*, supra.

*Id.* at 83.

Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, provides that “any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such[.]”<sup>1</sup> “If the Energy [Bureau], after the appropriate evaluation, believes such information should be protected, it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.* at Art. 6.15 (a). If the Energy Bureau determines that the information is confidential, “the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements.” *Id.* at Art. 6.15 (c). “The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.” *Id.* at Art. 6.15 (d).

In the exercise of its powers the Energy Bureau and PREPA approved Regulation 8815 which has force of law. *Id.* at Art. 6.3 (b)<sup>2</sup> Pursuant to Section 4.2 of Regulation 8815, communications between the Energy Bureau and PREPA shall be maintained confidential while the administrative competitive procurement process is ongoing. Also, a participant in a request for proposals process may request the confidential treatment of all or a portion of the information submitted as part of an RFP.

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<sup>1</sup> *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 L.P.R.A. §§ 1051-1056 (“Act 57”) at Art. 6.15.

<sup>2</sup> *See also Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, as amended, 22 L.P.R.A §§ 191-240 (“Act 83”) at Sec. 5 (“The regulations so adopted shall have the force of law once the provisions of Act No. 38-2017, the *Government of Puerto Rico Uniform Administrative Procedure Act*, are complied with.”)

Lastly, PREPA adopted the *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*.<sup>3</sup> Pursuant to Regulation 6285, documents including information related to the evaluation of offers or requests for bids are confidential while the evaluation, adjudication and award processes are still ongoing. *Id.* at Sec. V, ¶ 13.

Pursuant to the above, PREPA respectfully requests confidential treatment of the VPP price proposal information included in Attachment A as this information is not final and is still part of the ongoing deliberative process for the Tranche 1 RFP.

**WHEREFORE**, the Puerto Rico Electric Power Authority respectfully requests that the Energy Bureau notes the updated information contained in this informative motion concerning the status of VPP proposals and grant confidential treatment for the documents in Attachment A as these are currently part of a deliberative process within PREPA.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 23<sup>rd</sup> day of December 2021.

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<sup>3</sup> PREPA, *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*, No. 6285 (Jan. 10, 2001) (“Regulation 6285”).

*s/ Maralíz Vázquez-Marrero*

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**CERTIFICATE OF SERVICE**

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com).

In San Juan, Puerto Rico, this 23<sup>rd</sup> day of December 2021.

s/ Katuska Bolaños-Lugo  
Katuska Bolaños-Lugo

Attachment A

*[This document has been submitted under seal.]*