

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

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| NEPR Received: Dec 8, 2021 8:03 PM |
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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: Motion Submitting
Pricing Information Per Technology
Group in Compliance with December
3, 2021, Resolution and Order

**MOTION SUBMITTING UPDATED PRICING INFORMATION PER TECHNOLOGY
GROUP IN COMPLIANCE WITH DECEMBER 3, 2021, RESOLUTION AND ORDER**

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:

1. 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.

2. As relevant to the latest procedural milestones of Tranche 1, on November 8, 2021 the Energy Bureau issued a Resolution and Order (“November 8 Order”) ordering PREPA to (i) on or before November 12, 2021, submit the results of Selection of Proposals for Phase III with the pricing evaluation per technology group required by the Energy Bureau together with copies of any communications to proponents selected to proceed to Phase III; and (ii) on or before

December 1, 2021, complete Phase III and submit to the Energy Bureau for its evaluation and approval the corresponding draft Power Purchase and Operation Agreements.

3. In compliance with the above, on November 9, 2021, PREPA submitted a Sargent and Lundy (S&L) report titled Renewable Energy Generation and Energy Storage RFP Tranche 1, Phase III Qualitative and pricing Evaluation ("S&L Report") which included the pricing per technology group as requested by the Energy Bureau.

4. Thereafter, on November 18, 2021, PREPA requested an extension, until December 8, 2021, to complete Phase III and submit to the Energy Bureau for its evaluation and approval, the corresponding draft Power Purchase and Operation Agreements.

5. Notwithstanding, and as a result of the Energy Bureau's evaluation of the S&L Report, the Energy Bureau ordered PREPA to revise the formulations it uses to report on Tranche 1 respondent resource costs to be in line with the cost parameterization methods used in the IRP which presented solar PV costs on a levelized basis using the U.S. National Renewable Energy Laboratory (NREL) simplified Levelized Cost of Energy (sLCOE) methodology and presented battery energy storage costs in terms of capital and operating costs.

6. Further, the Energy Bureau stated that "[t]he S&L Report provided by PREPA did not explain why it used a formulation that discounted the energy term in the denominator of the LCOE formula and in the denominator of the levelized cost of storage (LCOS) formula. The NREL approach does not discount the energy term in the denominator of the formula for levelized cost of energy."

7. As a result of the above, the Energy Bureau ordered PREPA to submit the updated price proposal information containing the LCOE and battery cost metrics described in the December 3

Order on or before December 8, 2021. It also extended the December 1, 2021, deadline required by the November 8 Order, and ordered PREPA to complete Phase III and submit to the Energy Bureau for its evaluation and approval, the corresponding draft Power Purchase and Operation Agreements on or before December 17, 2021 by 1:00 p.m.

8. In compliance with Order, PREPA hereby submits, as Attachment A, the updated LCOE and LCOS price proposal information and provides additional information for the Energy Bureau to have, as a point of reference, the process carried out by PREPA consultant, Sargent & Lundy.

9. As related to the solar PV projects, the Energy Bureau ordered PREPA to include actual respondents' costs and estimated resource output and develop a levelized cost of energy (LCOE) metric consistent across all respondents and consistent with the formulation used to estimate LCOE as presented in the IRP without discounting the energy term used in the denominator of the LCOE equation.

10. As to the cost for battery energy storage resources, the Energy Bureau ordered PREPA to prepare battery energy storage cost summaries for respondents' offers so it allows for meaningful comparison to the battery cost assumptions used in the IRP. This, given the fact that the cost for battery energy storage resources was presented in the IRP in Capital and Operating cost assumptions.¹ Even though the Energy Bureau did not explicitly require PREPA to compute a LCOS, it did require that PREPA present cost information that allows for direct comparison to the assumptions used in the IRP. In the event PREPA elected to compute a LCOS, the Energy Bureau ordered PREPA not to discount the energy term used

¹ PREPA IRP, Exhibit 6-38 and 6-39, 4-hour Li-Ion Battery System Capital Cost Forecasts, and Li-Ion Battery System Capital Cost and Operating Cost Assumptions - Base Case (respectively). Page 6-31. June 2019.

in the denominator of the LCOS equation. PREPA hereby informs the Energy Bureau that it has presented the ESSA costs using the LCOS methodology. PREPA has elected to do this because the Proponents were only required to submit monthly capacity payment pricing, fixed O&M, and variable O&M costs for energy storage projects. PREPA did not receive the information necessary to present the ESSA costs in a format that allows for meaningful comparison to the battery cost assumptions used in the IRP.

11. Accordingly, PREPA proceeded to calculate the applicable LCOE and LCOS using the IEA Methodology for LCOE and LCOS, the IRP Methodology for Simple LCOE (sLCOE) and LCOS (sLCOS), the NREL Methodology for Simple LCOE (sLCOE) and LCOS (sLCOS) and the PREB Order Methodology for LCOE and LCOS. The results of the computations with each formula are as follows:

a. IEA Methodology for LCOE and LCOS

Description. Methodology discounts both the sum of costs over lifetime of the project and the sum of electrical energy produced over lifetime of the project. This methodology takes into account the future value of cash flows by discounting the numerator and degradation over the life of the project by discounting the denominator.

$$LCOE = \frac{\sum_{t=1}^n \frac{I_t + M_t + F_t}{(1+r)^t}}{\sum_{t=1}^n \frac{E_t}{(1+r)^t}}$$

- It. investment expenditures in the year t
- Mt. Operations and maintenance expenditures in the year t
- Ft. Fuel expenditures in the year t
- Et. electrical energy generated in the year t
- r. discount rate
- n. expected lifetime of system or power station

b. IRP Methodology for Simple LCOE (sLCOE) and LCOS (sLCOS)

Description. This methodology assumes that the yearly cost is the same throughout the life of the project and the electrical energy produced over lifetime of the project does not change (e.g. no degradation).

$$LCOE = \frac{\text{Overnight Capital Cost} * \text{Capital Recovery Factor} + \text{Fixed O\&M}}{\text{Energy Produced in First Year}}$$

c. NREL Methodology for Simple LCOE (sLCOE) and LCOS (sLCOS)

Description. This methodology assumes that the yearly cost is the same throughout the life of the project and the electrical energy produced over lifetime of the project does not change (e.g. no degradation).

$$LCOE = \frac{\text{Overnight Capital Cost} * \text{Capital Recovery Factor} + \text{Fixed O\&M}}{8760 * \text{Capacity Factor}} + \text{Variable O\&M}$$

d. PREB Order Methodology for LCOE and LCOS

Description. Methodology discounts only the sum of costs over lifetime of the project. This methodology deviates from the IEA, IRP, and NREL methodology. Without discounting the energy and/or applying a capital recovery factor into the equation this method significantly underestimates the LCOE compared to the IEA, IRP, and NREL methodology.

$$LCOE = \frac{\sum_{t=1}^n \frac{I_t + M_t + F_t}{(1+r)^t}}{\sum_{t=1}^n E_t}$$

- It. investment expenditures in the year t
- Mt. Operations and maintenance expenditures in the year t
- Ft. Fuel expenditures in the year t
- Et. electrical energy generated in the year t
- r. discount rate
- n. expected lifetime of system or power station

12. The resulting weighted averages for LCOE's with each formula are:

| LCOE Weighted Average (November BFO) \$/MWh | | | |
|--|------------|-------------|-------------------|
| IEA | IRP | NREL | PREB Order |
| 118.50 | 123.81 | 117.82 | 51.87 |

13. The resulting weighted averages for LCOS for each formula are:

| LCOS Weighted Average (November BFO) \$/MWh | | | |
|--|------------|-------------|-------------------|
| IEA | IRP | NREL | PREB Order |
| 227.84 | 255.76 | 246.21 | 97.61 |

14. Further and given that the requested updated price proposal information submitted is still part of the ongoing deliberative process for the Tranche 1 RFP it is confidential in nature and must remain under seal.

15. 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.² 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.³

² *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59, 82 (2017) (emphasis added).

³ *Id.* at 83.

16. 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[.]”⁴ “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.”⁵ 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.”⁶ “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.”⁷

17. In the exercise of its powers the Energy Bureau and PREPA approved Regulation 8815 which has force of law.⁸ 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.

⁴ *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.

⁵ *Id.* at Art. 6.15 (a).

⁶ *Id.* at Art. 6.15 (c).

⁷ *Id.* at Art. 6.15 (d).

⁸ *Id.* at Art. 6.3 (b); *see also Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, as amended, 22 L.P.R.A §§ 191-240 (“Act83”) 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.”)

18. Lastly, PREPA adopted the *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*.⁹ 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.¹⁰

19. Pursuant to the above, PREPA respectfully requests confidential treatment of the updated price proposal information containing the LCOE and LCOS as these are part of the ongoing deliberative process for the Tranche 1 RFP which has yet to be awarded.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Energy Bureau 1) find PREPA in compliance with the December 3 Order in relation to the submittal of the updated price proposal information containing the LCOE and LCOS and 2) grant confidential treatment to the documents in Attachment A as these are currently part of a deliberative process within PREPA.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 8th day of December 2021.

⁹ PREPA, *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*, No. 6285 (Jan. 10, 2001) (“Regulation 6285”).

¹⁰ *Id.* at Sec. V, ¶ 13.

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

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

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

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 and laura.rozas@us.dlapiper.com.

In San Juan, Puerto Rico, this 8th day of December 2021.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo

Attachment A