

**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:** Motion to Reiterate  
Request For Entry Of Resolution And  
Order Detailing PREPA's Role In The  
Tranche 2 RFP Process

**MOTION TO REITERATE REQUEST FOR ENTRY OF RESOLUTION AND  
ORDER DETAILING PREPA'S ROLE IN THE TRANCHE 2 RFP PROCESS**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

**I. INTRODUCTION**

Yesterday, several news outlets published details about the Energy Bureau<sup>1</sup> launching a portal to publish and receive information for upcoming procurement processes that they will manage, including the Tranche 2 RFP. Pursuant to the Energy Bureau's previous orders, PREPA has previously requested the Energy Bureau to comply with *its* order to enter a resolution and order detailing PREPA's role in the upcoming Tranche 2 RFP, to no avail. As PREPA previously stated, the Tranche 2 RFP must be issued as soon as possible. Nevertheless, the Energy Bureau must enter a resolution detailing of the tasks and responsibilities PREPA will continue to be manage during the process. Timely notice of such responsibilities would give PREPA the opportunity to coordinate the internal and external resources that it needs to comply with the duties the Energy

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<sup>1</sup> Capitalized terms not defined herein shall be ascribed the same meaning provided to them in the motions listed in the next foot note.

Bureau allocates on PREPA. This reiterated request is in the best interest of making the Tranche 2 RFP a success.

## **II. ARGUMENT<sup>2</sup>**

On August 24, 2020, the Energy Bureau issued the Final Resolution and Order on the PREPA Integrated Resource Plan ("IRP Final Order") under Case No. CEPR-AP-2018-0001. Through the IRP Final Order, the Energy Bureau approved in part and rejected in part PREPA's proposed IRP and also, ordered the implementation of the Modified Action Plan as set forth therein.

One of the key orders in the Modified Action Plan is the formulation of several tranches of request for proposals (RFP) to procure at least 3,750 MW of solar PV (or energy-equivalent renewable resource) and at least 1,500 MW battery energy storage for the first tranche RFP. This process will support meeting targets for renewable energy installations set forth in Act 17-2019<sup>3</sup>. As part of the IRP Final Order and Modified Action Plan, the Energy Bureau 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 first tranche RFP ("Tranche 1 RFP") and, a second tranche of 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 RFP").

In compliance with the above, on February 22, 2021, PREPA issued Request for Proposal 112648 for Renewable Energy Generation and Energy Storage Resources Tranche 1 of 6 soliciting

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<sup>2</sup> PREPA hereby incorporates and adopts by reference the arguments and request for relief made in the *Motion Requesting Expedited Appointment of the PREB Independent Coordinator and Resolution and Order Detailing PREPA Role in Anticipation for the Tranche 2 RFP* file on December 13, 2021.

<sup>3</sup> *Puerto Rico Energy Public Policy Act*, Act No. 17 of April 11, 2019, 22 L.P.R.A. §§ 1141-1141f.

proposals for renewable energy, energy storage and virtual power plant resources. PREPA conducted the Tranche 1 RFP process in compliance with the Energy Bureau and PREPA's *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*, Regulation No. 8815 of October 11, 2016 (Regulation 8815).

While the Tranche 1 RFP process was ongoing, PREPA, in compliance with the Energy Bureau's orders, worked in parallel updating the Procurement Plan and draft Tranche 2 RFP.<sup>4</sup> On October 15, 2021, PREPA submitted a document titled *Request for Proposals No. 128568[\*] Renewable Energy Generation and Energy Storage Resources Tranche 2 of 6* ("Draft Tranche 2 RFP"). As part of its Draft Tranche 2 RFP submittal motion, PREPA requested the Energy Bureau, *inter alia*, to approve the Tranche 2 RFP for publication. PREB did not issue any order or resolution in reaction to the Draft Tranche 2 RFP submittal.

Thereafter, on October 29, 2021, the Energy Bureau issued a *Resolution and Order* (the "October 29 Resolution") in which, on its own accord, it determined to appoint an independent coordinator for the Tranche 2 RFP. Among the arguments made by the Energy Bureau in the October 29 Resolution, it expressed that it would "execute the Tranche 2 RFP through an independent coordinator ("PREB-Independent Coordinator") [but that] 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." October 29 Resolution at p. 14. The Energy Bureau added that the appointment of the PREB-

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<sup>4</sup>After various procedural milestones, on October 12, 2021, the Energy Bureau issued a Resolution and Order in the captioned case in which, on its own motion, it rescheduled the target date for PREPA's issuance of the Tranche 2 RFP for renewable generation and energy storage resources from October 15, 2021 to October 31, 2021.

Independent Coordinator would 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.” *Id.*

The Energy Bureau further stated that, “[i]n a separate resolution, [it would] set the detailed powers and duties of the PREB-Independent Coordinator as well as the role of PREPA in the Tranche 2 RFP process.” *Id.* Further, the Energy Bureau resolved that “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.” *Id.* (emphasis added). No such resolution has been entered, and thus, the coordination and allocation of legal responsibilities regarding the Tranche 2 RFP procedures have not been determined.

Since PREPA has to provide all the technical and administrative resources necessary for the successful execution of the Tranche 2 RFP process, it is essential that PREPA coordinates and seeks approval of any consultants it needs in a timely fashion. Hence, on December 13, 2021, PREPA filed the *Motion Requesting Expedited Appointment of the PREB Independent Coordinator and Resolution and Order Detailing PREPA Role in Anticipation for the Tranche 2 RFP* (“December 13 Motion”). PREB did not issue any order or resolution in reaction to PREPA’s December 13 Motion.

Yesterday, the Energy Bureau and several news outlets published details about the launch of a portal through which the Energy Bureau will publish and receive information regarding the upcoming Tranche 2 RFP. PREPA learned of such launch through this news because, unfortunately, the Energy Bureau has not answered PREPA’s request for more details, neither regarding the appointment of the PREB-Independent Coordinator, nor regarding the Tranche 2

RFP publication. Through a press release, the Energy Bureau informed that it had “joined forces” with Accion Group LLC (“Accion”) (a private state-side corporation) to guarantee that the processes directed to acquire goods and services to improve and reconstruct the transmission and distribution system in the Island are *uniform* and *transparent*.<sup>5</sup> It also transpired that the Tranche 2 will be administered *and evaluated* by Accion, who hosts the referenced platform, and which will serve as the required vehicle for the Tranche 2 RFP.<sup>6</sup> Chairman Avilés stated that using Accion’s platform will allow each interested entity, in equal conditions, the requirement of each project, and compliance with state and federal regulations.<sup>7</sup>

It must be stressed that PREPA strictly follows uniform and transparent processes to acquire all its goods and services. These processes follow PREPA’s enabling law and regulations enacted pursuant to such law. This has not been different in the Tranche 1 RFP administration. Moreover, the Tranche 1 RFP is conducted pursuant to Regulation 8815, a *joint* regulation of PREPA and the Energy Bureau. PREPA has kept the Energy Bureau abreast of all the developments of the Tranche 1 RFP and the process has been entirely uniform and transparent. Also, PREPA uses the PowerAdvocate® platform as a document repository, including proposals, and communication method for every step of the evaluation of requests for proposals in general. PowerAdvocate® is widely use in the energy industry, specifically to promote uniformity and transparency. This platform that has been used during the entire Tranche 1 RFP process is a safe and reliable tool for downloading and uploading documents and for the communication between

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<sup>5</sup> Energy Bureau, *Negociado de Energía Promueve Transparencia y Uniformidad en Procesos de Subastas* <https://twitter.com/JuntaJRSP/status/1481618757957169152?s=20> (Last visited Jan. 14, 2022)

<sup>6</sup> The Star Staff, *RFP to be issued for PREPA green generation & storage projects*, *the San Juan Daily Star*, Jan. 13, 2022, <https://www.sanjuandailystar.com/post/rfp-to-be-issued-for-prepa-green-generation-storage-projects> (Last visited Jan. 14, 2022)

<sup>7</sup> *Id.* at FN 1.

the proponents and the RFP evaluating committee. Furthermore, PREPA has requested the Energy Bureau to concede confidential treatment only to those documents and information that must be kept confidential until the completion of the RFP process. During the Tranche 1 RFP process, all PREPA's public and non-confidential information and documents related to this process have been posted and are currently available in the Energy Bureau's website. Therefore, PREPA has in place, and uses, mechanisms that promote uniform and transparent processes to acquire goods and services.

As emphasized before, PREPA is committed to the launching of the Tranche 2 RFP process and implementing those lessons it has learned from managing the Tranche 1 RFP. Further, PREPA welcomes the appointment of the PREB-Independent Coordinator and the assistance of the Energy Bureau for the purpose of accomplishing a successful renewable energy and battery storage procurement process. Notwithstanding, in order to be able to fully and effectively work together with the PREB-Independent Coordinator in the Tranche 2 RFP process, PREPA asks the Energy Bureau to enter a resolution detailing the legal responsibilities the PREB-Independent Coordinator, the Energy Bureau and PREPA will have.

As it is known, PREPA is a public corporation of the Commonwealth of Puerto Rico responsible of managing public funds and also, as a covered entity<sup>8</sup> under PROMESA, requires various levels of approval to retain professional services. This fact compels PREPA to coordinate and seek approval of any consultants it needs in a timely fashion to engage both the technical and administrative resources needed in anticipation to the successful implementation of Tranche 2.

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<sup>8</sup> On September 30, 2016, the Financial Oversight and Management Board for Puerto Rico designated Puerto Rico Electric Power Authority ("PREPA") as a covered instrumentality under PROMESA section 101(d). On July 2, 2017, the Oversight Board filed a voluntary petition for relief for PREPA pursuant to PROMESA section 304(a), commencing a case under title III thereof (the "Title III Case").

PREPA wishes that the Tranche 2 RFP be issued as soon as possible and, for this purpose, seeks an official resolution and order for the appointment of the PREB-Independent Coordinator and a detailed list of the tasks and legal responsibilities PREPA will continue to be managing during that process. Knowing PREPA's tasks and responsibilities will help PREPA to coordinate and provide the necessary technical and administrative assistance to the PREB-Independent Coordinator. Such resolution will allow PREPA to begin **reviewing and discussing** with the PREB-Independent Coordinator, without limitation, **all decisions** regarding the Tranche 2 RFP, as the Energy Bureau stated that would happen.

### **III. CONCLUSION**

**WHEREFORE**, the Puerto Rico Electric Power Authority respectfully requests that the Energy Bureau issue a resolution and order detailing the role of PREPA in the Tranche 2 RFP.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14<sup>th</sup> day of December 2021.

*/s Maralíz Vázquez-Marrero*  
Maralíz Vázquez-Marrero  
[mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law)  
TSPR 16,187

*/s Katuska Bolaños-Lugo*  
Katuska Bolaños-Lugo  
[kbolanos@diazvaz.law](mailto: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](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com).

In San Juan, Puerto Rico, this 14<sup>th</sup> day of December 2021.

*s/ Maralíz Vázquez-Marrero*  
Maralíz Vázquez-Marrero