

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

NEPR Received: Jan 31, 2022 11:01 AM

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 in Compliance with the
January 28 Order Submitting Responses to
Attachment A of the December 28 Order and
Memorandum of Law Requesting Confidential
Treatment

**MOTION IN COMPLIANCE WITH THE JANUARY 28 ORDER SUBMITTING
RESPONSES TO ATTACHMENT A OF THE DECEMBER 28 ORDER AND
MEMORANDUM OF LAW REQUESTING CONFIDENTIAL TREATMENT**

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. RELEVANT PROCEDURAL BACKGROUND¹

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued the IRP Order, with respect to PREPA’s Integrated Resource Plan ("IRP"). The IRP Order approved a Modified Preferred Resource Plan that included a plan for six (6) tranches of procurement of renewable energy and battery storage resources. After the various procedural milestones related to the Tranche 1 RFP process, on December 16, 2021, PREPA tendered the *Motion Submitting Draft Power Purchase and Operating Agreements Offered in*

¹ PREPA adopts by reference the recitals and definitions to capitalized terms included in the *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* and the *Supplemental Motion Submitting PV Renewable Energy Draft Power Purchase And Operating Agreements (PPOA’s) As Well As Energy Storage Service Agreements (ESSA’s) As Part Of PREPA’s Tranche 1 Renewable Generation And Energy Storage Resources RFP For Energy Bureau Evaluation And Approval* and the *Request For Clarification, Partial Reconsideration Of The December 28 Order, Confidential Meeting, And For Extension of Time* filed by PREPA on December 16 and December 23, 2021 and January 6, 2022, respectively. Capitalized terms not defined in these three motions shall be ascribed the meaning provided to them in this motion.

Tranche 1 of PREPA's Renewable Generation and Energy Storage Resources RFP for Energy Bureau Evaluation (the “December 16 Motion”). With the December 16 Motion, PREPA submitted the Tranche 1 Report and Bespoke Contracts and asked the Energy Bureau to evaluate and approve them. In the December 16 Motion, PREPA informed the Energy Bureau that it had finalized Phase III of the Tranche 1 RFP with an offer to fifteen (15) proposals for Solar PV projects that comprise a capacity of 732.7 MW and that it had effectively sought contracts for energy storage resources that encompass a capacity of 220 MW. PREPA also informed that the evaluation of VPP resource proposals remained ongoing.

On December 23, 2021, PREPA submitted the *Supplemental Motion Submitting PV Renewable Energy Draft Power Purchase And Operating Agreements (PPOA's) As Well As Energy Storage Service Agreements (ESSA's) As Part Of PREPA's Tranche 1 Renewable Generation And Energy Storage Resources RFP For Energy Bureau Evaluation And Approval* (the “December 23 Motion”). PREPA explained to the Energy Bureau that since the December 16 Motion had been submitted, PREPA had received additional offers from Proponents that met the LCOE and LCOS thresholds previously determined by the Tranche 1 Committee and that these projects represent an additional 112.1 MW of capacity, to continue in the Phase III evaluation process. With this determination, the total Solar PV capacity of Tranche 1 amounts to 844 MW.

That same day PREPA submitted the *Informative Motion Providing Update on Status and Timing of Selection of Virtual Power Plant Resources in Relation to the Tranche 1 RFP*, through which PREPA informed the Energy Bureau of the status of the VPP negotiations and the pending issues that could affect the finalization of GSAs with VPP proponents.

On December 28, 2021, the Energy Bureau entered a *Resolution and Order* (the “December 28 Order”) in which the Energy Bureau resolved “that additional information is needed from

PREPA to allow for a more thorough Phase III evaluation of respondent offerings for both solar PV and battery energy storage resources in Tranche 1” and ordered PREPA (i) to answer the questions included as Attachment A to the December 28 Order; (ii) file the Bespoke Contracts for VPP resources; (iii) to include and file with the Energy Bureau at least the next four (4) solar PV proposed offerings representing 130 MW additional nameplate capacity (“Four Additional PV”) to PREPA's identified fifteen (15) projects; and (iv) and directly include and file with the Energy Bureau at least the next additional six (6) battery energy storage proposed offerings representing 445 MW additional to PREPAs identified three (3) project offerings, in its continuing Phase III evaluation process for battery energy storage resources.

In response, on January 6, 2022, PREPA submitted a *Request For Clarification, Partial Reconsideration Of The December 28 Order, Confidential Meeting, And For Extension of Time* (the “January 6 Motion”). In the January 6 Motion, PREPA noted that the December 23 Motion included a PREPA Tranche 1 Committee recommendation that, based on meeting the LCOE thresholds, additional solar PV procurement totaling 112.1 MW should be approved, for a total solar PV Tranche 1 capacity of 844 MW. PREPA further requested a confidential meeting to discuss energy storage proposal selection processes and to extend the deadline for submitting responses to the December 28 Order questions. PREPA also requested to be relieved from providing the Financial Oversight Management Board (“FOMB”) approvals for projects since FOMB will not be in position to review the PPOAs and ESSAs until the Energy Bureau approves those projects. PREPA also requested clarification or reconsideration of the December 28 Order, and to set aside the Energy Bureau's request to submit additional solar PV offerings. On January 12, 2022, PREPA filed a document titled *Motion in Compliance with the December 28 Order Submitting 167 MW of VPP Resources and Reiterating Request for Confidential Meeting and*

Extension of Time ("January 12 Motion"). In the January 12 Motion PREPA reiterates the request for a confidential meeting and filed drafts of Bespoke Contracts for Virtual Power Plants ("VPP") Resources ("Draft GSAs") with two VPP Proponents. Thereafter, on January 26, 2022, PRERA filed a document titled *Motion Reiterating Request for Meeting to Discuss Responses to Attachment A of the December 28 Order and Energy Storage Resources* ("January 26 Motion"). In the January 26 Motion PREPA reiterated its request for a confidential meeting to discuss the energy storage information as well as the questions in Attachment A to the December 28 Resolution and to grant ten (10) business days after the requested meeting to submit the information required.

In response to the Orders and filings mentioned above, on January 28, 2022, the Energy Bureau entered Resolution and Order (the "January 28 Order") resolving and ordering, *inter alia*, the following:

Upon review of the January 12 Motion and the January 26 Request, the Energy Bureau **DETERMINES** that PREPA shall respond, **without further delay**, to the questions of Attachment A to the December 28 Resolution. Therefore, the Energy Bureau **ORDERS** PREPA to submit on or before **Monday January 31, 2022, at 12:00 pm**, the responses that PREPA has already prepared. For any questions that PREPA has not yet prepared responses to, PREPA must submit those answers no later than **Wednesday February 2, 2022**. The Energy Bureau will address PREPA's several requests⁷ for a meeting⁸ after receiving and reviewing the responses to the Attachment A questions.

The Energy Bureau **CLARIFIES** that its findings in the December 28 Resolution did not account for the December 23 Motion requesting approval for a further 112.1 MW of solar PV project offerings.

The Energy Bureau **GRANTS** PREPA's request in its January 6 Request to not refile the "Four Additional PV" projects as stated in the December 28 Resolution.

However, the Energy Bureau **ORDERS** PREPA to further file the two projects totaling 50 MW of solar PV resource that was contained in the original "Four Additional PV" projects noted in the December 28

Resolution. Those two projects may also be in alignment with the intentions of the IRP Modified Action Plan including a need for further evaluation considering their LCOE in real currency terms and considering their regional locations in Puerto Rico.

The Energy Bureau **REMINDS** PREPA that the Energy Bureau order from the December 28 Resolution regarding filing of the next six battery energy storage projects in addition to the 220 MW contained in PREPA's December 16 Motion stands.

January 28 Order at pp. 2-3 (emphasis in the original) (footnotes omitted).

II. COMPLIANCE WITH THE DECEMBER 28 AND JANUARY 28 ORDERS

In compliance with the directives established by the Energy Bureau in in the December 28 Order, PREPA hereby submits the requested responses. **Attachment A.**²

III. REQUEST FOR CONFIDENTIAL TREATMENT OF ATTACHMENT A

PREPA respectfully submits that the contents of Attachment A, submitted with this motion, are confidential, and thus, should remain under seal until the Tranche 1 RFP process is finalized. Granting confidential information to the attachment hereto is of paramount importance to maintain the integrity of the ongoing process and negotiations that are not yet final.

PREPA's confidentiality request is supported by applicable laws and regulations. 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) (emphasis added).

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

² PREPA will respond to additional the directives established by the Energy Bureau in the January 28 Order, on or before this next Wednesday, February 2, 2022.

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[.]” Act 57 at Art. 6.15. “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). 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.”). 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.

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

The information disclosed in Attachment A, submitted with this motion, reveals information about the Tranche 1 deliberative process, the business strategies that PREPA is pursuing in these negotiations and the analysis and strategies behind those negotiations. Accordingly, disclosing the information submitted herein would affect the deliberative processes that are still pending.

Pursuant to the above, PREPA respectfully requests confidential treatment to Attachment A of this motion.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau:

- a. determine that PREPA has complied with the January 28 Order in what pertains to the submittal of responses to Attachment A of the December 28 Order; and
- b. grant confidential treatment to Attachment A of this motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31st day of January 2022.

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Attachment A

(This attachment has been submitted under seal)