

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

NEGOCIADO DE ENERGÍA  
DE PUERTO RICO

2022 MAR 17 PM 2:10

IN RE: IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN	CASE NO.: NEPR-MI-2020-0012  SUBJECT: Renewable Energy Generation and Energy Storage Resource Procurement Plan-First Tranche Projects for Phase III Contract Negotiation and Final Interconnection Plan Approvals
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**MOCION SOLICITANDO ACCION REFERENTE A MOCION TITULADA "REQUEST  
FOR ACCESS TO INFORMATION CONCERNING TRANCHE I RENEWABLE  
CONTRACTS" RADICADA EL 8 DE FEBRERO DE 2022**

**AL NEGOCIADO:**

Comparece Windmar Renewable Energy, Inc. (Windmar) por conducto del abogado que suscribe y muy respetuosamente expone, alega y solicita:

1. Que el día 8 de febrero de 2022 se radicó moción titulada "Request for Access to Information Concerning Tranche I Renewable Contracts". (Se acompaña copia)
2. Que al día de hoy 17 de marzo de 2022 no se ha recibido contestación alguna del Negociado referente a la moción presentada.

POR TODO LO CUAL, se solicita del Negociado tome conocimiento de lo antes expresado y actúe sobre la solicitud.

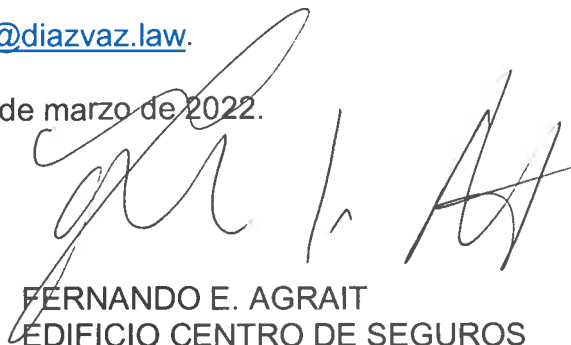
CERTIFICO: Haber enviado copia fiel y exacta de este escrito por correo electrónico a

[laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com);

[margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com);

[kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law) and [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law).

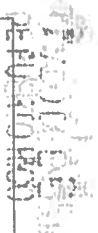
En San Juan, Puerto Rico, a 17 de marzo de 2022.

A handwritten signature in black ink, appearing to read 'Fernando E. Agrait', is written over the typed name and address.

FERNANDO E. AGRAIT  
EDIFICIO CENTRO DE SEGUROS  
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PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU

2022 FEB - 8 AM 9: 26



IN RE: IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN	CASE NO.: NEPR-MI-2020-0012  SUBJECT: Renewable Energy Generation and Energy Storage Resource Procurement Plan-First Tranche Projects for Phase III Contract Negotiation and Final Interconnection Plan Approvals
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**REQUEST FOR ACCESS TO INFORMATION CONCERNING TRANCHE I  
RENEWABLE CONTRACTS**

TO THE BUREAU:

Now Comes, Windmar Renewable Energy, Inc. (Windmar) represented by appearing counsel and respectfully states, alleges and claims:

1. On February 2, 2022 the Puerto Rico energy Bureau (PREB) issued Resolution and Order approving 18 solar PV Projects.
2. The approval projects appear on the resolution as "Confidential Exhibit A".
3. The Exhibit offers absolutely no information to stakeholders, it is a joke, for not even the name of the projects are provided.
4. The approved projects are direct competitors of the appearing party. As such the appearing party has a right to know the terms of the contracts, once the same have been approved, in order to be able to verify whether PREPA is treating similar cases- in a similar ways. This is something that has not necessarily occurred in the past.

5. Windmar's PPOA's terms and conditions, the same as M. Solar, Sonnedix, Ciro Salinas, Irradia Morovis, PPOA's, among others, when openly analyzed in open PREB proceedings.

Why now, on this Tranche I cases the information is confidential?

6. The access to information is not just a theoretical issue:

The Law 17 states:

"Section 1.4.- Guiding Principles of the Puerto Rico Electrical System.

The activities or functions related to the electric power service shall be governed by the principles of efficiency, quality, continuity, adaptability, impartiality, solidarity, and equality.

i) The efficiency principle compels the correct allocation and use of resources to guarantee that services are rendered at the lowest possible cost and that resources which compose the Electrical System are developed according to the best industry practices;

ii) By virtue of the quality principle, electric power services rendered must meet the technical requirements and the reliability and quality standards established therefor;

iii) The continuity principle implies that services shall be rendered without interruptions, other than those programmed due to technical reasons, force majeure, or fortuitous events, or as a penalty when a customer fails to fulfill his obligations, and even in the event of bankruptcy, liquidation, audit, or substitution or termination of contracts entered into with the companies responsible for rendering such services;

iv) The adaptability principle leads to the incorporation of scientific and technological advances that improve the quality and efficiency of services rendered at the lowest possible cost;

v) The impartiality principle requires that, under the same conditions, consumers are treated equally regardless of their social condition and purchasing power, or the technical conditions or characteristics of the service rendered;

vi) The solidarity principle establishes that the design of the rate structure shall take into account the goal of providing affordable electricity prices to all consumers, particularly to low-income consumers.

vii) The equity principle promotes the attainment of a balanced and appropriate energy service coverage in the various regions and sectors of the Island in order ensure that the basic needs of the entire population are met."

Does the rejection approval of these contracts in secret represent a faithful implementation of these mandates?

At the PREB knows on April 11, 2019 Law 17 was approved, significantly amending Law 57.

Since the original Law 57 the legislated mandate has been Section 1.2 (o):

“(o) Transparency and citizen participation in every process related to electric power service in Puerto Rico shall be promoted;”

Section 1.2 was particularly amended in 2019 to read:

“Section 1.4.- Principles of Transparency and Accountability. (a) In accordance with the public policy established in Section 1.2 of this Act, every information, data, delivered demand, statistics, reports, plans, and documents received and/or disclosed by any of the entities created under this Act, the Authority, its successor, the transmission and distribution network Contractor, and every electric power company shall be subject to the following principles: (1) ... (b) ...”

Law 57, Section 1.2 (cc) states:

“(cc) “Citizen Participation” - Shall mean the various mechanisms that allow customers of PREPA and electric power generation companies certified in Puerto Rico to have a forum to express their concerns, make suggestions, and be included in the decision-making processes. These mechanisms shall include, but not be limited to, the request and receipt of comments, photographs, and other documents from the public, administrative meetings of PREPA where customer focus groups participate, regional meetings open to PREPA’s customers in such region, public hearings, and the establishment of vehicles that enable participation by electronic means.”

And include a Section 1.4, as cited states:

“Section 1.4.- Principles of Transparency and Accountability.

(a) In accordance with the public policy established in Section 1.2(o) of this Act, every information, data, statistics, reports, plans, and documents received and/or disclosed by any of the entities created under this Act, PREPA, and every electric power company shall be subject to the following principles:

(1) The information shall be complete, except for privileged information which shall be suppressed in accordance with the Rules of Evidence adopted by the Judicial Branch of Puerto Rico;

- (2) The disclosure of the information shall be timely;
- (3) The data shall be in a raw and detailed form, not modified. In addition to the original text of any document where such information or data appears, documents where such information is organized and shown so that it may be easily handled by persons without expertise in the disciplines addressed therein may understand them shall be published and made available to customers;
- (4) The information shall not be subject to confidentiality standards broader than those required;
- (5) The data must be machine processable;
- (6) The public may access such information electronically without the need to register or create an account, and free of charge;
- (7) Data produced by employees, officials, or contractors working for the Commonwealth of Puerto Rico shall not be subject to any copyright, patents, trademarks, or trade secret. Reasonable restrictions based on doctrines of privacy, security, and evidentiary privileges may apply; and
- (8) Such data must be available in nonproprietary format; that is to say, no one shall have exclusive control over it."

Law 17 of 2019-amplifies the right to participation of consumers in energy processes.

It is not possible to square the combined mandates of Law 57 as amended by Law 17 with PPOA contracts decisions taken in closed rooms and with "confidential" information.

Law 17 amendments to Law 57 support stronger transparency and citizen participation standards, which are not present on PREB's actions on Tranche I.

The Bureau has stated the importance of the market price, which requires full knowledge of the actions real market prices, not approval in a closed room.

On December 2, 2020, the PREB unanimously entered the final Resolution on Docket CEPR-AP-2018-0001, the IRP proceeding. This Resolution is binding on PREPA.

Among any determination previously cited, the PREB states:

a) At page 24:

"134. The Energy Bureau **CLARIFIES** that the RPS requirements, including for near-term dates (20% for 2022) will be met whether or not market prices arising from procurement processes are equal to, greater than, or less than the solar PV pricing assumptions used in the IRP for planning, either those associated with Scenario 3 or the prices associated with Scenario 4 (and the ESM Scenario).

135. Paragraph 15 of the Final Order statement that "...increased deployment solar PV and battery resources should be pursued... if market

pricing of those resources aligns with S3S2”, refers to the *difference* in total solar PV quantities and deployment schedules that would result under S3S2B versus either the ESM Scenario or S4S2B. The Energy Bureau **CLARIFIES** that Paragraph 15 **does not condition deployment of solar PV and battery resources on market prices equal to (or less than) the cost assumptions in PREPA’s filed IRP for Scenario S3S2B.** Paragraph 15 refers to the incremental quantities of solar PV in S3S2B (above that of S4S2 or ESM) which reach 1,800 MW by 2030. The early year (*i.e.*, 2021-2025) deployment schedules for solar PV and battery resources differs by relatively small amounts across the scenarios,<sup>68</sup> and reaches a 240 MW difference by 2025, as seen in the chart below. The detailed manner PREPA and the Energy Bureau will evaluate the results of competitive procurement processes for solar PV, assess the effect of PREPA’s creditworthiness status on the RFP pricing outcomes, and determine deployment quantities and schedules over the Action Plan period (through 2025) will be addressed in the Energy Bureau’s Procurement Plan proceeding.”

b) At page 25:

“136. The IRP pricing benchmarks for solar PV, battery energy storage, and potentially new gas-fired combined cycle technologies assumed PREPA was a creditworthy counterparty. However, the Energy Bureau **DETERMINES** that final market pricing will emerge from the competitive bidding process the Energy Bureau designed and PREPA is required to follow. Such competitive bidding process will take into consideration current data and conditions, which includes the fact that PREPA is still subject to the Title III process. As current conditions change, including PREPA emerging from the Title III process, the Energy Bureau expects a comparable effect on the competitive bidding process. The tranche schedule established in the Final Order for the procurement of renewable resources will capture such changes.”

c) At page 26:

“139. The Energy Bureau further elaborates that PREPA is required to use competitive market forces to procure resources at the lowest cost to ratepayers. It is essential to benchmark market prices against costs and prices seen elsewhere (and as collected by resources such as the NREL technology baseline) as part of an approach to establishing that procurement processes have been competitive. If market prices offered in response to a solicitation are unduly higher than expected (after accounting for PREPA’s creditworthiness, local factors such as the cost of interconnection, and other appropriate factors), it could be a prudent course of action for PREPA to select fewer resources than expected, and defer capacity to a future procurement within the scheduled tranches as detailed in the Final Order. Indeed, the offered prices from solar PV and storage

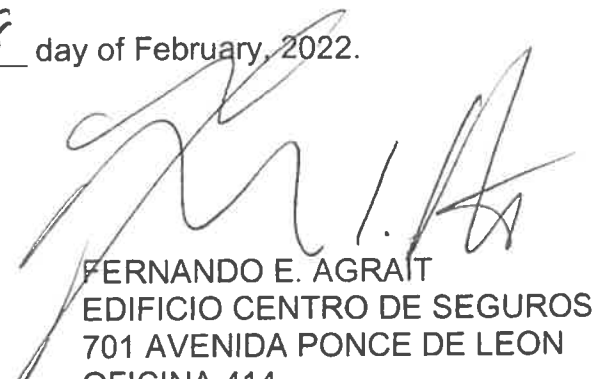
resources, and their relation to those expected from the IRP, will inform the Energy Bureau's assessment as to whether to approve fossil fuel resources to be developed at Palo Seco. It is in the interests of both PREPA's ratepayers and developers of solar PV and storage for PREPA to attract a vibrant and competitive set of proposals through its procurement processes."

We ask: How are the competition market forces going to operate if approval of the PPOA's terms are confidential? How the market is going to operate when some PPOA's terms and conditions are discussed openly and others are confidential?

WHEREFORE, it is respectfully request from the PREB to make public the terms of the approved PPOA's.

CERTIFY: I certify that on February 8, 2022 a copy of this Motion was notified by electronic mail to the following: [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com); [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com); [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law) and [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law).

In San Juan, Puerto Rico, at this 8 day of February, 2022.



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