

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

<b>NEPR</b>  <b>Received:</b>  <b>Jun 30, 2022</b>  <b>11:43 AM</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:** Motion to Submit Execution  
Copies of PPOAs in Compliance with the April  
27 and June 13 Orders, Request for Additional  
Time to Submit Certain PPOAs and  
Memorandum of Law Requesting Confidential  
Treatment of PPOAs and Exhibits

**MOTION TO SUBMIT EXECUTION COPIES OF PPOAS IN COMPLIANCE WITH  
THE APRIL 27 AND JUNE 13 ORDERS, REQUEST FOR ADDITIONAL TIME TO  
SUBMIT CERTAIN PPOAS AND MEMORANDUM OF  
LAW REQUESTING CONFIDENTIAL TREATMENT OF PPOAS AND EXHIBITS**

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:

1. On August 24, 2020, the Energy Bureau of the Public Service Regulatory Board of Puerto Rico (the “Energy Bureau”) issued the IRP Final Order concerning PREPA’s Integrated Resource Plan (“IRP”). The IRP Final Order places significant renewable energy production requirements on PREPA, including a requirement that, by 2025, PREPA source at least 40% of the energy production connected to PREPA’s transmission and distribution system (the “T&D System”) from renewable energy generation.

2. The IRP Final Order set forth and approved a Modified Preferred Resource Plan that included a plan for six (6) tranches of procurement of renewable energy and battery storage resources. To guide the procurement, the Energy Bureau established a schedule for acquiring minimum quantities of renewable and energy storage resources through Request for Proposals (“RFP”) processes.

Specifically, the Energy Bureau required PREPA to seek to procure 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 in the first RFP tranche (“Tranche 1”). *Id.*, p. 268, ¶ 860.<sup>1</sup>

3. In compliance with the above, on October 23, 2020, PREPA submitted the first version of a draft procurement plan, which PREPA subsequently amended in compliance with the Energy Bureau’s directives. After the review<sup>2</sup> of the procurement plan by the Energy Bureau and other procedural incidents, on January 26, 2021, the Energy Bureau issued a Resolution and Order (“January 26 Resolution”) through which, among other things, it ordered PREPA to issue the RFP for Tranche 1 as soon as possible.

4. On February 22, 2021, PREPA issued *Request for Proposals 112648 for Renewable Energy Generation and Energy Storage Resources Tranche 1 of 6* (“Tranche 1 RFP”), soliciting proposals for renewable energy, energy storage, and virtual power plant resources.

5. After numerous procedural incidents and the finalization of various Tranche 1 RFP-related milestones, on December 16, 2021, PREPA submitted to the Energy Bureau a document titled *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* (“December 16 Motion”). Through the December 16 Motion, PREPA identified fifteen (15) solar PV projects totaling 732.7 MW as candidates for the execution of agreements and submitted draft template power purchase and operating agreements (“PPOAs”) for those projects.

6. On December 23, 2021, PREPA submitted a document titled *Supplemental Motion Submitting PV Renewable Energy Draft Power Purchase and Operating Agreements (PPOAs) As*

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<sup>1</sup> *Id.*

<sup>2</sup> See Resolution and Order, *In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, December 8, 2020. See, also, Resolution and Order, *In Re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, January 5, 2021.

*Well As Energy Storage Service Agreements (ESSAs) As Part of PREPA's Tranche 1 Renewable Generation and Energy Storage Resources RFP For Energy Bureau Evaluation and Approval* (“December 23 Motion”).

7. In the December 23 Motion, PREPA submitted three additional bespoke power purchase agreements, bringing the total to 18 submitted PPOAs (the “Bespoke PPOAs”), and three bespoke contracts for energy storage resources (each, a “Bespoke ESSA”) totaling 220 MW. The combined solar PV resource procurements for which PREPA sought authorization was at that point approximately 844 MW.<sup>3</sup>

8. On February 2, 2022, the Energy Bureau issued a Resolution and Order determining that the eighteen (18) solar PV projects submitted by PREPA were in alignment with the Modified Action Plan (the “February 2 Resolution”). It accordingly approved the Bespoke PPOAs having aggregate capacity of approximately 844 MW. Still, the February 2 Resolution stated that pending evaluation of additional information, the Energy Bureau would issue a final determination regarding the projects.

9. After further procedural events, clarifications, and requests for information, on April 27, 2022, the Energy Bureau issued a further Resolution and Order addressing the execution of PPOAs it had previously approved (the “April 27 Resolution”). Through the April 27 Resolution, the Energy Bureau, among other things, ordered PREPA to file the execution copies of the 18 authorized PPOAs by June 30, 2022.

10. On April 28, 2022, PREPA submitted to the Energy Bureau a document titled *Memorandum of Law in Support of Request for Confidential Treatment of Attachment A and as Attachment A (under seal) to that a document titled Informative Motion and Responses to Resolution and Order*

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<sup>3</sup> Number can vary slightly due to rounding. Total of 18 projects without rounding came to 845.385 MW.

*Issued on April 11, 2022 (the “April 28 Motion”).*

11. The April 28 Motion requested the Energy Bureau’s approval of four (4) utility-scale battery energy storage (“BESS”) projects totaling 240 MW of capacity with a 4-hour discharge duration, and a 17 MW virtual power plant (“VPP”) project. The April 28 Informative Motion also contained information on six (6) additional utility-scale BESS resource proposals totaling 275 MW and a 150 MW VPP proposal.

12. On June 13, 2022, the Energy Bureau entered a *Resolution and Order* (the “June 13 Order”) whereby the Energy Bureau approved PREPA’s request to finalize its negotiations with the proponents of the recommended four utility-scale battery storage resource projects (240 MW total), and one VPP provider (17 MW total), as set out in PREPA’s April 28 Motion, and further restated the April 27 Resolution deadline ordering PREPA to submit the execution copies of the PPOAs on or before June 30, 2022, this time specifying that the filing be made by noon.

13. In conformity with the April 27 Resolution, PREPA has been working with LUMA to secure estimates of the cost of installing interconnection facilities and network upgrades required to integrate each proposed Energy Resource with the Transmission System. These estimates required LUMA to complete Interconnection Studies for each project and to determine in each case what interconnection and network upgrade facilities would be necessary. On May 31, 2022, LUMA provided to PREPA and the Energy Bureau a “System Impact & Facility Study Report” in which it shared the results of its Interconnection Studies and its estimates of the costs of interconnecting and integrating each renewable generation resource and the three (3) submitted energy storage resources with the Transmission System. On the basis of LUMA’s estimates, PREPA and its advisors calculated the impact on the price proposed in each Bespoke PPOA or Bespoke ESSA of including interconnection costs estimated for each generation resource and two (2) of the energy storage

resources, rather than the interconnection costs the Proponents had originally assumed. To accommodate the substantial additional costs of interconnecting individual projects which LUMA has estimated, and with the approval of its Governing Board, PREPA revised its target Levelized Cost of Energy (“LCOE”) upward from 10.5 cents per kWh by a non-material amount to a level which PREPA considers consistent with LCOE target guidance it has received from the Energy Bureau and which would have allowed all projects (prior to additional requests for price increases) to proceed.

14. On June 13, 2022, through a Resolution and Order issued in Case No. NEPR-MI-2020-0012, the Energy Bureau directed LUMA to proceed with the Transmission System network upgrades which it had identified in its System Impact & Facility Study Report, and to fund the costs of these network upgrades from its Non-Federally Funded Capital Budget. The Energy Bureau further directed LUMA to develop and file a plan for seeking to obtain federal funding for the cost of these upgrades. Because the Energy Bureau has determined that the costs of network upgrades required to integrate individual Energy Resources should be funded by LUMA (potentially subject to reimbursement should federal funding be available), rather than by individual Proponents, PREPA has included in the revised prices reflected in in each Bespoke PPOA or Bespoke ESSA only the costs of interconnecting the covered Energy Resource with the Transmission System. The results of these calculations are reflected in the pricing provisions of each of the Bespoke PPOAs being presented to the Energy Bureau with this Motion.

15. On June 16, 2022, PREPA’s Tranche 1 RFP Evaluation Committee recommended to PREPA management the approval of fifteen (15) Bespoke PPOAs and two (2) Bespoke ESSAs for execution (these PPOAs and ESSAs, “Category 1” contracts) and the conditional approval of three (3) PPOAs (“Category 2” contracts), subject to the completion of supplemental Interconnection

Studies resulting in pricing comparable to the pricing reflected in the Category 1 PPOAs. PREPA management communicated its support for these recommendations to the PREPA Governing Board on the same date.

16. By Resolution No. 4990, PREPA's Governing Board approved (i) the finalization and execution of the Category 1 PPOAs and ESSAs, (ii) the conditional approval for execution of the Category 2 PPOAs satisfying the pricing criteria summarized above, and (iii) the submission of the executed PPOAs and ESSAs to the Energy Bureau as required by the June 13 Order.

17. Since receiving the Governing Board's authorization, PREPA and its advisors have been diligently seeking to address with individual Proponents a variety of issues relevant to the finalization of draft Bespoke PPOAs and Bespoke ESSAs and to confirm their satisfaction of specific signing conditions. Among these issues are several relating to contract pricing, including in particular the impacts of inflation and supply chain disruptions on project cost estimates made nearly a year ago. PREPA has included in confidential **Exhibits B, C, D and E** of this motion communications from Proponents which explain the big picture challenges relating to pricing that the Proponents face.

18. In addition, a number of Proponents have taken issue with what they consider the unexpectedly high estimates of interconnection costs which LUMA has provided. Proponents report that estimates have come in high both in the sense of how much LUMA has estimated specific tasks to cost as well as what types of tasks the estimates include. As an example of the latter, LUMA and PREPA had communicated to Proponents that LUMA would take responsibility for all works relating to the PREPA substations, but Proponents unexpectedly found that LUMA had included estimated costs of land acquisition for substation works in the Proponents' scopes and costs.

19. Most Proponents have also noted that uncertainty around the final interconnection costs further contributes to a challenging environment for their projects. They have pointed to the need to continue interconnection studies for the additional six (6) BESS projects, which may have a cascading impact on the amounts Proponents will owe for works related to shared substations as well as the potential for additional costs for the related studies, and the lack of clarity around charges imposed by the Interconnection Agreement, as areas of particular concern.

20. Proponents have sought to mitigate these issues in different ways. Several Proponents have sought from PREPA clarifications of pricing-related provisions, and others have sought to modify their pricing proposals to address these issues. Proponents have, for example, sought modifications that would allow for adjustments if interconnection costs end up being higher than LUMA has estimated. PREPA has attempted to accommodate these Proponents where possible, while observing the threshold LCOE guidance the Energy Bureau has provided and operating within the mandate provided by PREPA's Governing Board.

21. Some Proponents have sought to postpone signing a final and binding agreement until they have time to discuss and gain visibility into key areas of uncertainty, including interconnection scope, roles/responsibilities vis-à-vis LUMA, and Interconnection Agreement terms. PREPA has included a confidential sample of such communications in **Exhibit D**. Some of these same Proponents have also indicated that they are not prepared as of the date of this Motion to execute PPOAs incorporating the price terms they originally proposed. In the case of one of these Proponents, which is the sponsor of four (4) solar PV projects and two (2) integrated battery energy storage projects, it appears from correspondence PREPA received on June 29, 2022, that there may be a basis on which PREPA and this Proponent could come to terms as to pricing and other issues the Proponent has raised if the parties are afforded additional time to review, analyze and negotiate

proposals and counterproposals that are currently on the table. The Proponent's communication (attached as confidential **Exhibit E**) makes clear that PREPA will achieve the best pricing for Puerto Rico by concluding its portfolio of PPOAs and ESSAs at the same time (allowing economies of scale and removing the risk presented by uncertainty around the BESS projects) rather than executing the PPOAs first, followed by execution of the more recently approved ESSAs. As matters stand today, however, while this Proponent has signed versions of the PPOA, demonstrating its good faith intent to proceed, it is not prepared to execute PPOAs pertaining to projects having aggregate capacity of 245.91 MW at pricing that meets the mandate of PREPA's Governing Board. Accordingly, PREPA has not included these PPOAs with this Motion, but believes it is in the best interest of ratepayers to permit the finalization of these PPOAs together with the ESSAs for this Proponent's solar + storage projects.

22. Another Proponent, sponsor of a proposal for a 60 MW solar PV facility, has proposed to increase its contract price to a level well beyond the LCOE threshold PREPA has applied consistent with Energy Bureau and PREPA Governing Board guidance. PREPA is not prepared to execute a PPOA with this Proponent on the proposed terms. The Proponent would like the Energy Bureau to review and consider the challenges facing Proponents, as PREPA has communicated in this Motion. It is possible, in PREPA's view, that this Proponent may be persuaded to reduce its price to an acceptable level with further dialogue; this will require some additional time. Today, however, this Proponent and PREPA are not in a position to execute a PPOA.

23. Consequently, as a result of a need for additional discussions around price or interconnection issues, PPOAs for five (5) solar PV projects (two (2) with integrated storage) having aggregate capacity of 305.91 MW that PREPA has been authorized to execute are not



included with this Motion. PREPA respectfully requests that the Energy Bureau grant it additional time to conclude, execute and submit PPOAs covering these projects, as discussed below.

24. In a different vein, some Proponents have faced challenges meeting the requirements for concluding PPOAs by the Energy Bureau's deadline. One Proponent group sponsoring a 38.7 MW solar PV project , as well as an integrated BESS project and a standalone BESS project, has failed to provide evidence of financial capability as required by the RFP after changes to its consortium caused information that it initially provided to meet RFP criteria to no longer apply. Although PREPA has afforded this Proponent multiple opportunities to correct the deficiencies in its submissions, this Proponent has failed to establish that it has in place the unrestricted financial resources and access to capital required to advance its projects. Because this Proponent has failed to satisfy fundamental conditions established in the RFP, PREPA cannot execute the PPOA for the solar PV at this time. Another Proponent group proposing a 25 MW project has provided a signature page for a PPOA, but has not submitted basic information necessary to complete the PPOA, and has not satisfied the signing conditions. Accordingly, PPOAs for a total of 63.7 MW of renewable generation capacity that were originally approved for execution are not being submitted with this Motion.

25. A final group of Proponents, which includes three (3) solar PV projects proposed in Tranche 1 (the "Category 2" PPOAs described in Paragraph 15), encountered issues with Federal Emergency Management Agency-designated flood zones, and related regulations which can reach beyond the borders of such flood zones, that drove up the interconnection costs related to their projects. Once becoming aware of this issue, PREPA agreed that it would be appropriate for the Category 2 Proponents to vary the location (within reasonable limits) and design of their interconnection facilities to reduce flood zone mitigation costs. All three of these Category 2

projects require supplemental Interconnection Studies to be performed, and their Proponents have agreed to bear the cost of such studies. One of these Category 2 Proponents has received the results of its studies and executed its PPOA. This PPOA is being submitted with this Motion. The Proponent of two (2) of these Category 2 projects does not yet have the results of these supplemental studies or know what its costs of interconnection may be. Neither it nor PREPA are therefore in a position to execute these two PPOAs, which cover projects having aggregate capacity of 45.675 MW. These two Category 2 PPOAs are therefore not included with this Motion.

26. PREPA and the second Category 2 Proponent will require some time following LUMA's delivery of the results of the supplemental interconnection studies required in respect of these projects to establish revised pricing and, if terms can be agreed, to execute and submit PPOAs. Accordingly, on the assumption that the Proponent of these two flood zone projects will ultimately agree to execute PPOAs reflecting the updated (*i.e.*, lower) interconnection costs, PREPA proposes to submit executed PPOAs covering the Category 2 flood zone projects within twenty-one (21) days of the date on which LUMA delivers the results of its supplemental Interconnection Studies to the Category 2 Proponents and PREPA. PREPA respectfully requests that the Energy Bureau grant it this additional time to conclude and submit PPOAs covering these two projects.

27. For the reasons given in the preceding Paragraphs 17 through 26, PREPA is submitting with this Motion PPOAs covering solar PV projects that in the aggregate will provide 430.1 MW of generating capacity. For the reasons given in Paragraphs 21 through 25, PREPA is not submitting PPOAs covering projects having aggregate capacity of 415.285 MW at this time. PREPA anticipates that, if the Energy Bureau affords it additional time to address concerns that have precluded three (3) Proponents from executing PPOAs for a total of seven (7) projects, it may be able to submit PPOAs covering between 245 MW and 352 MW of capacity beyond the 430.1

MW covered by the PPOAs being submitted with this Motion.

28. In the interest of maximizing the amount of capacity it secures through Tranche 1, PREPA respectfully requests that the Energy Bureau grant it an additional period of two (2) weeks, or until July 15, 2022, to complete the negotiation and execution of PPOAs with the Proponents described in Paragraph 23, should the parties come to agreement, and to submit those PPOAs to the Energy Bureau. For the reasons summarized in Paragraph 25, PREPA respectfully requests leave to submit executed PPOAs covering the two (2) Category 2 flood zone projects described in that Paragraph within twenty-one (21) days of the date on which LUMA delivers the results of its supplemental interconnection studies to the Proponents and PREPA. PREPA submits that having this additional time to address Proponent concerns and to permit the submission of all legally required documentation should enable it to increase, perhaps significantly, the amount of renewable generation and energy storage capacity it contracts to procure through Tranche 1, a result that would be in the public interest. PREPA recognizes the need to exercise caution in these discussions so as not to agree to material compromises in the PPOAs that disadvantage those Proponents which have already signed versus those which are permitted additional time.

29. As described above, PREPA herewith submits as **Exhibit A** execution copies of PPOAs which Proponents and PREPA were in a position to execute prior to the date and time at which this Motion was required by the June 13 Order to be filed. These PPOAs, under applicable law and regulation, are confidential until the adjudication and award process is final. PREPA also submits in **Exhibits B, C, D, and E** communications from Proponents relating to contract pricing and related terms as well as topics that remain under negotiation with certain of the Proponents. PREPA hereby requests the Energy Bureau to determine that the documents included as **Exhibits B, C, D, and E** to this Motion are confidential and thus, shall remain under seal.

30. Applicable laws and regulations support the confidentiality request herein made. 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’ under 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.

31. 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).

32. In exercising its powers, the Energy Bureau and PREPA approved Regulation 8815, which has the 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 remain confidential while the administrative competitive procurement process is ongoing.

33. Lastly, PREPA adopted the *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 on evaluating offers or bids requests, are confidential while the evaluation, adjudication, and award processes are still ongoing. *Id.* at Sec. V, ¶ 13.

34. As stated above, the documents included in **Exhibit A** include execution copies of PPOAs, while **Exhibits B, C, D** and **E** include offers, communications and documents exchanged under an ongoing process, all of which, under applicable law and regulation, are confidential until the adjudication and award process of Tranche 1 is final.

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau note PREPA’s compliance with the April 27 and June 13 Orders, determine that the execution copies of the PPOAs contained in **Exhibit A** are confidential, and enter an order directing the Clerk of the Energy Bureau to maintain the responses under seal. PREPA further respectfully requests that the Energy Bureau grant it (i) an additional period of two (2) weeks, or until July 15, 2022, to complete the negotiation and execution of PPOAs with the Proponents described in Paragraph 23 and to submit those PPOAs to the Energy Bureau, and (ii) leave to

submit executed PPOAs covering the Category 2 flood zone projects described in Paragraph 25 within twenty-one (21) days of the date on which LUMA delivers the results of its supplemental Interconnection Studies relating to these projects to the Proponents and PREPA. Finally, because **Exhibits B, C, D and E** include offers, communications and documents exchanged during an ongoing procurement process, PREPA respectfully requests that the information contained in **Exhibits B, C, D and E** be treated as confidential and be maintained under seal until the adjudication and award process of Tranche 1 is completed.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 30<sup>th</sup> day of June 2022.

/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, on this 30<sup>th</sup> day of June 2022.

**Exhibit A**

*Submitted under seal*



**Exhibit B**

*Submitted under seal*

**Exhibit C**

*Submitted under seal*

**Exhibit D**

*Submitted under seal*

**Exhibit E**

*Submitted under seal*