

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

NEPR

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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: Informative Motion Responding to
the Request for Status Update on Contract
Negotiations with BESS Projects

**INFORMATIVE MOTION IN COMPLIANCE WITH THE DECEMBER 19, 2022
ORDER WHICH REQUESTED A STATUS UPDATE ON CONTRACT
NEGOTIATIONS WITH BESS PROJECTS**

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. BACKGROUND

1. On August 24, 2020, the Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued the IRP Order, regarding the Integrated Resource Plan (“IRP”) of the Puerto Rico Electric Power Authority (“PREPA”). 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.

2. On December 16, 2021, PREPA filed a document titled *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* (“December 16 Motion”). In the December 16 Motion, PREPA identified fifteen (15) solar photo-voltaic (“PV”) projects totaling 732.7 MW and submitted draft bespoke power purchase and operating agreements (“PPOAs”) for those projects, for the Energy

Bureau's evaluation and approval. In the December 16 Motion, PREPA also identified three (3) Battery Energy Storage System ("BESS") resource projects (4-hour duration) totaling 220 MW, for which PREPA indicated it planned the submission of bespoke energy storage services agreements ("ESSAs") by or before December 23, 2021. PREPA included in its December 16 Motion submission, as Attachment A, a memorandum from PREPA's Tranche 1 Evaluation Committee describing the detailed evaluation approach taken to arrive at its selection of project offerings for approval.

3. On December 23, 2021, PREPA filed a document titled *Supplemental Motion Submitting PV Renewable Energy Draft Power Purchase and Operating Agreements (PPOAs) As 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"). PREPA submitted three bespoke ESSA contracts totaling 220 MW reflecting the projects identified in the December 16 Motion and submitted three solar PV bespoke contracts totaling 112.1 MW, additional to the 732.72 MW of solar PV projects submitted for authorization in the December 16 Motion. The combined solar PV resource procurements for which authorization was sought by PREPA was 844.82 MW.

4. On February 2, 2022, the Energy Bureau issued a Resolution and Order ("February 2 Resolution") authorizing eighteen (18) PV project PPOAs for PREPA to finalize its negotiations with those proponents.

5. On February 2, 2022, PREPA filed a document titled *Motion in Compliance with the January 28 Order Submitting Energy Storage Resources Information, the Next Two Projects Totaling 50 MW of Solar PV Resources and Memorandum of Law Requesting Confidential Treatment* ("February 2 Motion"). PREPA filed information regarding the six additional BESS

projects and the two projects totaling 50 MW of solar PV resources.

6. On March 1, 2022, PREPA filed a document titled *Memorandum of Law in Support of Request for Confidential Treatment of Attachment A* (“March 1 Memorandum”). The March 1 Memorandum included as Attachment A, filed under seal, a document titled *Informative Motion Regarding Status of VPP Contract Negotiations and Delays in Finalizing Form of Interconnection Agreement* (“March 1 Motion”). Through the March 1 Motion, PREPA provides an update on the status of PREPA’s discussions with the Virtual Power Plant (“VPP”) Proponents and with representatives of LUMA regarding a potentially significant delay regarding the Interconnection Agreement. The March 1 Motion includes as Exhibit A, on a confidential basis, a Bespoke GSA as it stands with one of the VPP Proponents.

7. On March 17, 2022, PREPA filed a document titled *Memorandum of Law in Support of Request for Confidential Treatment of Attachment A* (“March 17 Memorandum”). The March 17 Memorandum included as Attachment A, filed under seal, a document titled *Informative Motion Identifying Concerns Regarding Pricing and Certain Commercial Terms Offered by Tranche 1 VPP Project Proponents and Request for Confidential Meeting to Discuss Selection of Tranche 1 VPP Proposals* (“March 17 Motion”). The March 17 Motion provides an update on the status of PREPA’s discussions with the two VPP Proponents and the finalization of the GSAs.

8. On April 11, 2022, the Energy Bureau issued a Resolution and Order (“April 11 Resolution”) through which it sought to obtain additional information from PREPA and LUMA about the status of Tranche 1 resource offerings and interconnection cost considerations. In the April 11 Resolution, the Energy Bureau issued questions 1-5 for PREPA to answer and issued questions 6-7 for LUMA to answer. Both PREPA and LUMA were to respond on or before April 19, 2022.

9. On April 19, 2022, LUMA filed a document titled *Motion Submitting Partial Response and Requesting Brief Extension to Submit LUMA' Full Answers to Questions 6 and 7 in the Energy Bureau's Resolution and Order of April 11, 2022* ("April 19 Motion"). In the April 19 Motion, LUMA addressed the lack of access to certain information that PREPA provided to LUMA on April 18, 2022. Due to the short period to respond, LUMA prepared partial responses to Questions 6 and 7 and requested an extension until April 29, 2022, to submit its complete answers.

10. On April 19, 2022, PREPA filed a document titled *Motion for Extension of Time Until April 25, 2022, to Comply with Responses Required by the April 11, 2022, Resolution and Order* ("April 19 Request"), in which PREPA requested an extension until April 25, 2022, to file its responses to the April 11 Resolution.

11. On April 22, 2022, the Energy Bureau issued a Resolution and Order directing both PREPA and LUMA to file their complete responses to the April 11 Resolution on or before April 28, 2022.

12. On April 27, 2022, the Energy Bureau issued a Resolution and Order ("April 27 Resolution") through which it ordered LUMA to file the results of the final Tranche 1 technical studies by May 30, 2022 and ordered PREPA to file the execution copies of the 18 authorized PPOAs by June 30, 2022.

13. On April 28, 2022, PREPA submitted a document titled *Informative Motion and Responses to Resolution and Order Issued on April 11, 2022* ("April 28 Motion"). The April 28 Motion responded to specific Energy Bureau questions from its April 11 Resolution, provided a draft GSA for the Proponent 2 VPP (the 17 MW VPP), and described concerns and recommendations associated with the two eligible VPP proposals received. It also addressed or noted that these VPP capacity resources would be charged from on-site solar PV resources.

14. The April 28 Motion also included PREPA’s recommendation that the Energy Bureau approve its selection of four (4) utility- scale BESS projects totaling 240 MW of capacity with a 4-hour duration, and a 17 MW VPP project. The April 28 Motion also provided information on six (6) additional utility-scale BESS resource proposals totaling 275 MW and a 150 MW VPP proposal. The April 28 Motion contained PREPA’s reasoning for recommending the four utility-scale BESS projects and one of the two proposed VPPs, and its reasoning for not recommending the remaining six utility- scale BESS projects and the other VPP.

15. On May 31, 2022, LUMA filed a document titled *Motion Submitting Final Technical Interconnection Studies for Eighteen Tranche 1 Projects Required Under the Energy Bureau’s Resolution and Order of April 27, 2022, and Request for Confidential Treatment* (“May 31 Motion”). In this May 31 Motion and the associated filing documents, LUMA provided its interconnection study and cost information for eighteen (18) solar PV projects and three (3) battery energy storage system projects for Tranche 1 resources.

16. On June 13, 2022, the Energy Bureau issued a Resolution and Order (“June 13 Resolution”) authorizing PREPA to finalize negotiations on nine (9), 4-hour duration utility-scale BESS projects totaling 490 MW of capacity and one (1) 17 MW VPP, and authorizing PREPA to finalize its contract negotiations with those Tranche 1 proponent offerings. These nine (9) BESS projects were a subset of the ten (10) total BESS projects in Table 2 of PREPA’s April 28 Motion. Three (3) of these nine (9) projects were the BESS resources addressed in LUMA’s interconnection studies as submitted on May 31, 2022.

17. On July 13, 2022, LUMA submitted a document titled *Informative Motion Relating to Energy Bureau's Approval of Nine Tranche 1 BESS Projects* ("July 13 Motion") and stated in part that PREPA had requested on June 15, 2022 that LUMA conduct interconnection studies for the remaining six (6) BESS projects not considered in LUMA's initial interconnection study for the 18 solar PV and three BESS projects. LUMA completed the interconnection studies for three (3) of the nine (9) battery energy storage system projects authorized by the Energy Bureau in its June 13 Resolution as part of its initial interconnection study for the Tranche 1 solar PV projects. LUMA stated that it would take twenty (20) weeks to perform the interconnection studies for these 6 BESS projects.

18. LUMA also stated in the July 13 Motion that its interconnection study requirements for the six (6) BESS projects "do not affect the selected VPP Project since this project will connect to the distribution system".

19. On August 26, 2022, PREPA filed a document titled *Motion to Submit Remaining Executed PPOAs and BESS Contracts in Compliance with the August 15, 2022 Resolution and Order* ("August 26 Motion"). In the August 26 Motion PREPA submits the remaining four (4) executed utility-scale solar PV PPOAs for 245 MW in total (to be provided by 120 MW, 80 MW, 25 MW, and 20 MW projects) as part of Exhibit A. PREPA also submitted in Exhibit A of the August 26 Motion executed contracts for energy storage service agreements ("ESSAs") for two (2) four-hour duration utility-scale battery energy storage projects co-located with two of the solar PV projects for which PPOAs were submitted with the Motion, each storage project with a nominal rating of 100 MW and 400 MWh.

20. On September 1, 2022, the Energy Bureau issued a Resolution and Order (“September 1 Resolution”) approving the final four solar PV projects and the first two (2) BESS projects from Tranche 1 based on final execution copies of contracts for projects submitted by PREPA with its August 26 Motion.

21. On November 2, 2022, PREPA filed a document titled *Motion to Submit Draft Copy of GSA in Compliance with the June 13, 2022 Order* (“November 2 Motion”). Exhibit A to the November 2 Motion is a Grid Services Agreement (GSA) between PREPA and the proponent of a 17 MW VPP, as approved by the June 13 Resolution, consisting of an aggregate of distributed resources. Annex A to the November 2 Motion contains a listing of the key features of the GSA.

22. On December 19, 2022, the Energy Bureau issued a Resolution and Order (“December 19 Resolution”) approving the Grid Services Agreement, requesting LUMA to provide updated interconnection studies inclusive of the BESS First Tranche Projects (among other things) and ordering PREPA to file a status update on the contract negotiation process for the seven BESS projects.

II. STATUS UPDATE ON CONTRACT NEGOTIATION PROCESS FOR THE SEVEN BESS PROJECTS

23. As the Energy Bureau presumed in the December 19 Resolution, LUMA needed most of the time since the June 13 Resolution to conduct interconnection studies on six of the Tranche 1 BESS projects and to revise interconnection studies and related interconnection works for any of the other Tranche 1 solar PV or BESS projects impacted by those six projects. LUMA completed these studies (and revisions to previous studies on approved projects) and provided Final Interconnection Study Reports for the six projects in the first half of November 2022. PREPA notes that, by *Informative Motion Regarding Interconnection Studies for Tranche 1 Approved*

BESS Projects and Request for Confidential Treatment which LUMA filed in this proceeding on December 22, 2022, LUMA submitted these Final Interconnection Study Reports to the Energy Bureau with a request for confidential treatment.

24. While awaiting completion of the interconnection studies described above, PREPA prepared and distributed draft ESSAs to Proponents of all nine of the BESS projects in August 2022. PREPA prioritized signing of the first two BESS projects because those projects were co-located with, and commercially linked to, two of the Energy Bureau-mandated solar projects. PREPA also solicited ESSA comments from the Proponents of the remaining seven BESS projects and sought to clarify certain technical issues with some of them. This process continued through September 2022. Importantly, however, the draft ESSAs distributed to the Proponents placed the obligation to construct the PREPA Interconnection Facilities (e.g., PREPA's assets at and around the Interconnection Point for a project, but not system upgrades further downstream) on PREPA / LUMA. The executed PPOAs and ESSAs allocated this obligation in the same manner. The Energy Bureau will recall that PREPA had initially placed this construction obligation on Proponents in the Tranche 1 RFP, but that, upon entering the process in mid-2021, LUMA had insisted that PREPA assign LUMA responsibility for these works.

25. LUMA informed PREPA, in parallel with the discussions with BESS Proponents in August-September 2022, that LUMA now saw more benefit to all involved in having the Proponents, rather than LUMA, construct the PREPA Interconnection Facilities. PREPA facilitated meetings between LUMA and all Proponents in which LUMA encouraged the Proponents to conduct these works themselves. LUMA explained to the Proponents that, if the Proponents did not conduct these works, then the Closing Date of any executed agreements (i.e., the date when the executed agreements become fully effective) could not occur until approximately

summer 2023 (four to six months later than anticipated in the signed agreements). LUMA would need the additional time to conduct a separate RFP process to procure construction contractors for the PREPA Interconnection Facilities. LUMA also believed that Proponents should be able to perform the necessary construction works more cost effectively than LUMA, a view which PREPA shared.

26. During the period from September to October 2022, PREPA and LUMA opened the door for any Proponent willing to take over the PREPA Interconnection Facilities to do so, subject to eventual agreement to revised PPOA or ESSA terms, as applicable. By mid-October, PREPA had received preliminary indications from eight of the twelve Tranche 1 Proponents (including those with executed PPOAs and ESSAs as well as those without) that they preferred to accept LUMA's proposed change. Implementing this change requires amendments to most of the signed PPOAs and ESSAs and revisions to the ESSAs under negotiation. PREPA, in coordination with LUMA, rolled out draft amendments to the Proponents that have executed agreements in November. PREPA also prepared initial drafts of revised ESSAs for the seven new BESS projects. PREPA has not received feedback from most Proponents on these new provisions as of the date of this motion, but the limited feedback it has received does not appear problematic.

27. A second and no-less-important factor impacting finalization of the seven ESSAs has been pricing. PREPA followed a similar process for the ESSAs as the process it followed for the PPOAs in June 2022 – i.e., (i) making LUMA's interconnection studies available to BESS Proponents in November as soon as LUMA delivered the studies to PREPA and (ii) asking the BESS Proponents to factor the interconnection costs identified by those studies (and not system upgrade costs) into their ESSA pricing proposal and provide revised levelized cost of storage ("LCOS") calculations for their projects by mid-December. PREPA received the last of these LCOS calculations on

December 30, 2022. PREPA and its advisors are currently reviewing the LCOS calculations received from the BESS Proponents.

28. Multiple BESS Proponents have also identified material pricing concerns around inflation, interest rates, supply chain disruptions, etc., similar to those identified by the PPOA proponents, as well as issues with LUMA's interconnection studies (e.g., high construction oversight fees imposed by LUMA and different interconnection options). At least one Proponent has pointed to higher pricing for BESS projects available in Tranche 2 to support further increases in the pricing which Tranche 1 BESS projects offer. These Proponents have indicated that they will require additional price discussions (and, presumably, PREPA's acceptance of additional price increases) before signing ESSAs.

29. Importantly, the Financial Oversight and Management Board for Puerto Rico ("FOMB") has not yet approved the two ESSAs executed in August 2022. Given this, PREPA lacks a clear benchmark from the FOMB regarding pricing the FOMB would view as acceptable against which PREPA can evaluate any further ESSA pricing revisions. PREPA prefers to receive indications from the FOMB on acceptable LCOS levels before PREPA finalizes additional ESSAs, particularly given the uncertainty around the cost impacts of the factors mentioned above.

30. Based on the above, PREPA currently expects that it will be in a position to finalize the remaining ESSAs, as well as amendments to the executed agreements for which the Proponents accept LUMA's change in responsibility for construction of the PREPA Interconnection Facilities, by the end of February.

III. CONCLUSION

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take note of the information provided in this Informative Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of January 2023.

/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 and laura.rozas@us.dlapiper.com.

In San Juan, Puerto Rico, on this 3rd day of January 2023.

/s Maralíz Vázquez-Marrero
Maralíz Vázquez-Marrero