

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

**IN RE:** IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN

**CASE NO.:** NEPR-MI-2020-0012

**SUBJECT:** Resolution and Order regarding various motions.

**RESOLUTION AND ORDER**

On June 13, 2022, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("June 13 Resolution") through which it ordered the Puerto Rico Electric Power Authority ("PREPA") to finish negotiations on nine (9) 4-hour duration utility-scale Battery Energy Storage System ("BESS") projects totaling 490 MW of capacity and one (1) 17 MW Virtual Power Plant ("VPP") project.

On September 1, 2022, the Energy Bureau issued a Resolution and Order 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 on August 26, 2022. The Energy Bureau noted that it had yet to receive a filing from PREPA pertaining the remaining seven (7) BESS projects totaling 290 MW. Of those projects, one (1) (AZ-1-E) was included in LUMA's initial interconnection study process. The remaining six (6) projects were presumed to have been undergoing interconnection study.

Based on the time LUMA indicated it needed for the completion of the interconnection study for six additional battery energy storage contracts authorized for final approval in the June 13 Resolution, on December 19, 2022 ("December 19 Resolution"), the Energy Bureau ordered LUMA<sup>1</sup> to file before the Energy Bureau within ten (10) business days a status update on the updated interconnection studies including the six (6) referenced BESS projects. The Energy Bureau also ordered PREPA to file a status update on the contract negotiation process for the seven BESS projects within ten (10) business days.

On December 22, 2022 ("December 22 Motion"), LUMA filed before the Energy Bureau a document titled *Informative Motion Regarding Interconnection Studies for Tranche 1 Approved BESS Projects and Request for Confidential Treatment*, through which it informed that it had completed the Final Interconnection Study Reports for the remaining six (6) approved BESS Projects and submitted said reports as Exhibit 1 of the motion.<sup>2</sup> In addition, LUMA indicated that while the six (6) additional BESS resources did not create additional Network Upgrade requirements or costs, the distribution of the Network Upgrade costs among resources had changed.<sup>3</sup> Also, on January 9, 2023 ("January 9 Motion"), LUMA filed another motion through which it submitted the information on the Modeling Description relating to the interconnection studies of all approved Tranche 1 projects, including the Six Approved BESS projects.<sup>4</sup>

On January 3, 2023 ("January 3 Motion"), PREPA provided status updates on contract negotiations with BESS Projects, in compliance with the December 19 Resolution.

On February 28, 2023, PREPA filed before the Energy Bureau a document titled *Informative Motion Update on LUMA Interconnection Studies Policy Change, Amendment to Closing Date, T1 Project Permitting Process and Request for Order Directing LUMA to Take Specified Actions*

<sup>1</sup> LUMA Energy, LLC and LUMA ServCo, LLC (collectively, "LUMA").

<sup>2</sup> December 22 Motion, p. 5, ¶ 10.

<sup>3</sup> *Id.*

<sup>4</sup> Exhibit 1 of the January 9 Motion.



to *Minimize Further Delays* ("February 28 Motion"). In its February 28 Motion, PREPA informed that it had received communications from proponents regarding additional delays caused by governmental entities related to the project permitting process at the Puerto Rico and federal levels.<sup>5</sup> According to PREPA, said delays could jeopardize the already extended Closing Date to comply with the conditions precedent in the signed Power Purchase and Operating Agreements and the Energy Storage Service Agreements.<sup>6</sup>

As for pricing, PREPA stated that it had followed the guidance given by the Energy Bureau to not entertain price increases and to communicate that any further changes to the Tranche 1 agreements would require substantial evidence.<sup>7</sup> Hence, PREPA stated that some proponents had provided said evidence and that PREPA would submit it before the Energy Bureau soon.<sup>8</sup>

PREPA also indicated that it had been informed by LUMA's RFP committee of a third change in policy for the PREPA Interconnection Facilities, which reverted to the allocation of responsibility outlined in the First Policy Change.<sup>9</sup> PREPA further stated that it had not been formally advised by LUMA in writing of the Third Policy Change nor of the timeline effects on the Tranche 1 projects that will result.<sup>10</sup> PREPA alleged, LUMA's RFP committee orally informed PREPA of the expected publication of LUMA's RFP for EPC contractors in mid-March and a tentative expectation of RFP completion in July 2023.<sup>11</sup>

PREPA maintained that the closing [Closing Date] of the Tranche 1 projects contracts cannot occur until after the completion of LUMA's Tranche 1 interconnection works RFP process.<sup>12</sup> According to PREPA, this is because the timelines to construct the PREPA Interconnection Facilities and the solar projects run from the Closing Date in line with the Energy Bureau's order to allow no more than 24 months to construct the project and achieve Commercial Operation.<sup>13</sup> PREPA noted that the executed Tranche 1 contracts provide a maximum of 18 months to complete the interconnection works, so the interconnection works are available in time for testing and commissioning of the projects before the deadline for Commercial Operation.<sup>14</sup>

PREPA anticipates that all projects for which LUMA has interconnection responsibility under the Third Policy Change will need extension of the period to close [Closing Date] and likely claim delay liquidated damages from PREPA if LUMA fails to complete its responsibilities within the contracted timeline.<sup>15</sup>

PREPA requested assistance from the Energy Bureau as follows: (i) direct LUMA to submit the letter or motion explaining the Third Policy Change; (ii) allow PREPA to authorize further extensions to the time to close the Tranche 1 contracts to accommodate LUMA's interconnection works RFP process; (iii) direct LUMA to send PREPA the transmission works EPC timeline by March 3, 2023 to afford PREPA sufficient time to communicate with Tranche

<sup>5</sup> February 28 Motion, pp. 2 -3, ¶ 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, p. 3, ¶ 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, p. 5, ¶ 12.

<sup>10</sup> *Id.*, ¶ 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, p. 6, ¶ 16.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, p. 7, ¶ 17.



1 proponents on a plan for making any changes to deadlines or documents that may be required; (iv) direct LUMA to support Resource Providers in acquiring land to be transferred to PREPA for PREPA substations; and (v) issue an order reminding LUMA that the Energy Bureau has ordered it to pay for System Upgrades associated with the interconnection and integration of all Tranche 1 projects.<sup>16</sup>

Through this Resolution and Order, the Energy Bureau **TAKES NOTICE** of the December 22 Motion and January 9 Motions filed by LUMA, as well as the January 3 Motion and February 28 Motion filed by PREPA.

Upon review of the February 28 Motion, the Energy Bureau **DETERMINES** that:

(a) At this moment it will not authorize further modifications to Section 2.3 of the signed Agreements<sup>17</sup> regarding the Closing Date. The parties to the Agreements shall abide by the current applicable terms, that is, (i) cause the Closing Date to occur not later than one hundred and eighty (180) days after PREPA's execution of the Agreement, and (ii) the automatic termination of the Agreement if the Closing Date does not occur within three hundred (300) days after the Agreement Date.

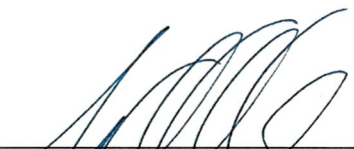
(b) The execution of PREPA's Interconnection Facilities Works shall be in accordance with the terms and conditions included in each applicable Agreement. That is, if the Agreement provides for PREPA's Interconnection Facilities Works to be built by the Service Provider, the latter must build them and, if on the contrary, the Agreement provides for the PREPA's Interconnection Facilities Works to be built by LUMA, the latter must build them. The Energy Bureau clarifies that LUMA's policies regarding the construction of PREPA's Interconnection Facilities Works shall not affect the terms and conditions of the signed Agreements.


(c) To the extent applicable, LUMA shall complete the RFP process for the PREPA's Interconnection Facilities Works on or before July 1, 2023. The Energy Bureau further **ORDERS LUMA on or before March 17** to provide PREPA the timeline for the completion of the PREPA's Interconnection Facilities Works.

(d) In order to avoid additional delays to the Tranche 1 projects and considering the protection of the public interest, the Energy Bureau **ENCOURAGES** the parties to evaluate any pending Condition Precedent that may be waived to achieve the Closing Date within the timeframe established in the Agreements.


(e) **PREPA shall** inform the Energy Bureau within **five (5) business days** of the notification of this Resolution and Order, the projects that have a signed *Conditions Precedent Certificate*, confirming the satisfaction or waiver of the Conditions Precedent applicable to each party.

Be it notified and published.

  
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Edison Avilés Deliz  
Chairman

  
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Sylvia B. Ugarte Araujo  
Associate Commissioner

  
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Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
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Antonio Torres Miranda  
Associate Commissioner

<sup>16</sup> *Id.*, pp. 8 - 9, ¶ 20.

<sup>17</sup> Except as otherwise provided, capitalized terms used but not otherwise defined in this Resolution and Order have the meaning ascribed to them in the signed PPOAs.



## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on March 10, 2023. Associate Commissioner Lillian Mateo Santos did not intervene. I also certify that on March 10, 2023, a copy of this Resolution and Order was notified by electronic mail to the following: [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com), [ana.rodriguezrivera@us.dlapiper.com](mailto:ana.rodriguezrivera@us.dlapiper.com); and [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law). I also certify that today, March 10, 2023, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today March 10, 2023.



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Sonia Seda Gaztambide  
Clerk