

**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: Motion Requesting Technical
Meeting

MOTION REQUESTING TECHNICAL MEETING

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. PREPA and the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) held a meeting on January 30, 2023, during which PREPA informed the Energy Bureau of certain matters that could affect the Tranche 1 projects including (1) the need for Closing Date extensions, (2) pricing concerns from some Proponents resulting from supply chain and inflation issues, (3) capacity increases to mitigate price increases and (4) the effect of several LUMA policy changes regarding the allocation of responsibility for the construction of Interconnection Facilities. In response, the Energy Bureau indicated it would not entertain any price increases without substantial supporting evidence and only authorized 60-day extensions of the Closing Date.

2. Thereafter, on February 28, 2023, PREPA filed *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* (“February 28 Motion”). Through the February 28 Motion, PREPA reiterated to the Energy

Bureau PREPA's concerns related to amendments to the Closing Date, T1 Project permitting process, LUMA interconnection process and pricing. As to pricing, PREPA informed the Energy Bureau that "[it] ha[d] followed the guidance given by the Energy Bureau to not entertain price increases and [had communicated to proponents] that any further changes to the Tranche 1 agreements [would] require substantial evidence." PREPA further informed the Energy Bureau that "[s]ome Proponents have started to provide this evidence, and PREPA will submit it to the Energy Bureau in due course." After explaining various situations related to the Tranche 1 process, PREPA made a second request for assistance from the Energy Bureau to allow PREPA to authorize further extensions to the time to close the Tranche 1 contracts to accommodate LUMA's interconnection works RFP process, among other things.

3. In response, on March 10, 2023, the Energy Bureau issued a *Resolution and Order* ("March 10 Order") through which, among other matters, encouraged PREPA to evaluate any pending Conditions Precedent that may be waived to achieve the Closing Date and not authorizing further modifications to Section 2.3 of the signed PPOAs "at the time."

4. On March 31, 2023, PREPA filed a *Motion Requesting Approval of Amendments and Informing on Status of Project Development Timeline for Tranche 1 Utility-Scale Projects* ("March 31 Motion"). In its March 31 Motion, PREPA generally informed the Energy Bureau about the development status of the various Tranche 1 projects, including providing substantial evidence for their requests; for a third time, requested leeway to amend the Power Purchase and Operating Agreements ("PPOAs") to allow time to address issues raised by Resource Providers prior to achieving the Closing Date under such agreements; for a third time, requested rate increases; conveyed new information gathered over that month regarding ongoing conversations with the US Department of Energy's Loan Program Office ("LPO") to support projects in Puerto Rico; and

relayed Resource Provider-proposed capacity increases, among other matters.

5. Pointedly and in furtherance of the Tranche 1 projects, PREPA requested the Energy Bureau's assistance:

- a. To permit an extension of the Closing Date for all Tranche 1 contracts no later than the end of September 2023;
- b. To issue an order permitting reasonable price increases, with guidance on acceptable pricing and approach for Tranche 1 projects;
- c. To issue an order permitting the accommodation of LPO-required amendments to Tranche 1 contracts; and
- d. To issue an order permitting capacity increases for Tranche 1 projects following completion of interconnection studies, at no additional cost to PREPA.

Items (b), (c) and (d) represented material amendments inherently needing an extension of the Closing Date to accommodate the approval processes required by law.

6. Thereafter, on April 4, 2023, the Energy Bureau issued two (2) separate *Resolution and Orders* addressing the March 31 Motion (the "April 4 Orders"). In summary, the Energy Bureau:

- a. Denied extension of the Closing Date under the PPOAs, specifically stating that the "Energy Bureau SHALL NOT grant any extension to the Closing Date and PREPA must complete these negotiations on or before the expiration of the 60-day extension provided by the Energy Bureau...";
- b. Ordered PREPA to close on any PPOAs which do not have any identified issues;
- c. Ordered PREPA to negotiate with proponents any necessary amendments to the PPOAs to appropriately address duly demonstrated and proven issues, and resubmit such amendments to the Bureau before the Closing Date;
- d. Ordered PREPA to require proponents to present – within three (3) Business Days – their "Best and Final Offer" ("BFO") based on the most recent interconnection cost estimates provided by LUMA. The Energy Bureau indicated that any price discrepancy between the interconnection costs used for the BFO and the final cost (established after LUMA conducts Requests for Proposals for the subject interconnection works), which could potentially reach tens of million in the aggregate (assuming 20% upside variability in the class 3 estimates), would not be assumed by the proponents. Any price decrease would be noted and reduced accordingly.
- e. Determined that any delays in achieving the Commercial Operation Date not caused by the Resource Provider would be addressed by the Energy Bureau, assuring that any delay in the completion of interconnection works would not be held against Resource Provider; and

f. Required PREPA to complete PPOA negotiations before the end of the 60-day extension previously granted by the Energy Bureau, namely before April 26, 2023.

7. Among other matters, the Energy Bureau noted that the March 31 Motion did not constitute a concrete petition to amend the PPOAs based on clear and convincing solutions to the alleged issues within the Levelized Cost of Energy (“LCOE”) established by the Energy Bureau which would allow the agency to analyze the petition and make an informed decision. In addition, the Energy Bureau found that the March 31 Motion presented a “laundry list of alleged ideas” that do not put the agency in a position to responsibly approve any PPOA amendments. However, the March 31 Motion was not, on its face, an attempt to request specific approval of any particular amendment; any specific agreement would, of course, need presentation to the Energy Bureau and the Financial Oversight and Management Board for Puerto Rico (“FOMB”). The March 31 Motion requested approval of a direction and guidance out of respect for the position and role of the Energy Bureau and in light of the fact that the Energy Bureau had repeatedly ordered and directed PREPA in the conduct of the RFP process, including directing PREPA on multiple occasions not to accept price increases and not to issue extensions of the Closing Date regardless of challenges faced by developers – an Energy Bureau direction which, in PREPA’s view, places at risk the entire renewable energy agenda for Puerto Rico.

8. After the issuance of the April 4 Orders, PREPA proceeded to do as ordered, requested Best and Final Offers (“BFO”) from Resource Providers and received their respective BFOs on April 10, 2023. Since then, PREPA has been diligently working with the Resource Providers on the required amendments to the PPOAs to comply with the Energy Bureau’s April 4 Orders. However, several Resource Providers have communicated to PREPA their urgent need to directly present to the Energy Bureau their project’s specific issues which have prompted their requests for

amendments to the PPOAs. In the proponents' view, these are issues that – if not properly addressed at this time – likely will result in their dropping off from Tranche 1 and, potentially, from further participation in Tranche 2 and subsequent Tranches. Leaving such matters unresolved would be tantamount to setting these projects on a path to failure.

9. It is the collective view of the Resource Providers and PREPA that if the Energy Bureau has project-specific information regarding the challenges that proponents currently face, it will be in a far better position to make informed decisions regarding the proposals that are being made to address them. In addition, the proponents would rather have the opportunity to present not only the issues, but also the proposed solutions to the Energy Bureau, and to have the Energy Bureau ask any pertinent questions and receive answers immediately. Given the time restraints, and that time is of the essence, this proposed path is better than engaging in negotiations and presenting proposed modifications to the PPOAs with PREPA that may or may not be finally accepted by the Energy Bureau.

10. PREPA shares the Energy Bureau's concerns with the success of the Tranche 1 projects. Regardless of whether the Energy Bureau chooses to acknowledge it, PREPA is doing everything in its power and control to make the Tranche 1 projects (distinct from mere agreements and closing certificates) a reality for them to come to fruition. This, for the benefit of Puerto Rico and in furtherance of the energy public policy. It is indisputable that the Tranche 1 projects are far closer to becoming a reality than any of the Tranche 2 projects whose contracts have yet to be awarded and interconnection studies have yet to be done. The withdrawal or failure of Tranche 1 proponents would not bode well for Tranche 2 or subsequent Tranches of the RFP.

11. Based on the foregoing, PREPA respectfully requests the Energy Bureau to schedule, at the earliest time its docket will permit, project-specific technical conferences to address these matters.

PREPA would propose holding such technical conferences with the Bureau and the commercial, technical, and legal teams of each of a representative sample of four to five Resource Providers from the Tranche 1 process (to be identified by PREPA if the Energy Bureau is open to the meeting), representing a large portion of the capacity in the Tranche 1 process. As anticipated above, PREPA and the proponents anticipate presenting to the Bureau the specific challenges faced by each project and the proposed solutions, and to receive and answer questions from the Bureau and its staff. PREPA further submits that the Bureau could allocate sessions of not more than one (1) hour per proponent (note there are several proponents with more than one (1) project), to allow for a robust discussion of the issues.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of this Motion and schedule, as it sees fit, **TECHNICAL MEETING** to discuss project specific issues and solutions in anticipation to the successful completion of the Tranche 1 projects.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of April 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 14th day of April 2023.

s/ Joannely Marrero Cruz
Joannely Marrero Cruz