

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

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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 Approval of
Amendments and Informing on Status of Project
Development Timeline for Tranche 1 Utility-
Scale Project Agreements

**MOTION REQUESTING APPROVAL OF AMENDMENTS AND INFORMING ON
STATUS OF PROJECT DEVELOPMENT TIMELINE FOR TRANCHE 1 UTILITY-
SCALE PROJECT AGREEMENTS**

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. Introduction and Procedural Background

1. The Puerto Rico Energy Public Policy Act¹ (“Act 17”) built upon the foundation created for integrated resource planning in Act 57-2014² and sharpened the focus on accelerated renewable energy integration, energy conservation and efficiency. In so doing, Act 17 increased the renewable energy portfolio to a minimum of twenty percent (20%) by 2022, forty percent (40%) by 2025, sixty percent (60%) by 2040 and one hundred percent (100%) by 2050 and created an energy efficiency target of thirty percent (30%) by 2040. Further, Act 17 reinforced the authority of Energy Bureau to conduct Integrated Resource Plan

¹ *Puerto Rico Energy Public Policy Act*, Act No. 17 of April 11, 2019, 22 L.P.R.A. §§ 1141-1141f (“Act 17”)

² *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 L.P.R.A. §§ 1051-1056 (“Act 57”).

(“IRP”) proceedings. This legislative mandate represents one of the highest-capacity, shortest-timeframe transitions to renewable energy attempted to date in any electricity market in the world.

2. In furtherance of the requirements of Act 17, on August 24, 2020, the Energy Bureau issued the Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan (“IRP Order”) under Case No. CEPR-AP-2018-0001.³ Through the IRP Order, the Energy Bureau approved in part and rejected in part the IRP the Puerto Rico Electric Power Authority (“PREPA”) had proposed. In place of PREPA’s preferred plan, the Energy Bureau ordered the adoption and implementation of the Modified Action Plan as set forth in the IRP Order. The IRP 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.
3. As part of the Modified Action Plan, the Energy Bureau ordered PREPA to develop a competitive solicitation process for the procurement of new renewable generation and energy storage resources in support of, among other things, achievement of Act 17 targets for renewable energy installations. *Id.*, p. 266, ¶ 859.⁴ The Energy Bureau established a schedule for the acquisition of minimum quantities of renewable resources 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)

³ *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No.: CEPR-AP-2018- 0001.

⁴ IRP Final Resolution and Order, p. 266, ¶ 859.

battery energy storage in the first RFP tranche (“Tranche 1”). *Id.*, p. 268, ¶ 860.⁵ For Tranche 2, the Energy Bureau required PREPA to procure at least 500 MW of solar PV resources (or energy-equivalent renewable resources) and at least 250 MW (1,000 MWh or equivalent) in energy storage resources (“Tranche 2”). *Id.* Tranche 1 and Tranche 2 represent two of six tranches of procurement of renewable energy and storage resources as ordered by the IRP Order and outlined in the Modified Preferred Resource Plan.

4. In compliance with the above, on October 23, 2020, PREPA submitted the first version of the draft procurement plan, which PREPA subsequently amended in compliance with the Energy Bureau’s directives. In compliance with the above, on December 22, 2020, PREPA submitted the Final Procurement Plan and the RFP for Tranche 1.
5. Thereafter, on January 7, 2021, the Energy Bureau ordered among other matters, that PREPA attend a Stakeholder Meeting to discuss the RFP documents. After the review⁶ 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.⁷
6. Notwithstanding the above, by separate communication, on January 27, 2021, the Fiscal Oversight Management Board (“FOMB”) sent a letter to PREPA with additional recommendations for Tranche 1, specifying that the incorporation of the recommendations was important for any subsequent approval by FOMB of any future power purchase and

⁵ *Id.*

⁶ 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.

⁷ 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, January 26, 2021, pp. 2-3.

operating agreement contracts (“PPOA”). PREPA proceeded to inform the Energy Bureau that it would incorporate the recommendations of the FOMB to the Procurement Plan and RFP.

7. On February 3, 2021, the Energy Bureau ordered PREPA to submit a copy of the RFP package with the modifications requested by the FOMB, on or before February 5, 2021 and on February 22, 2021, PREPA informed the Energy Bureau that it had finalized the process for publication of the Tranche 1 Renewables RFP on its website and the Power Advocate Platform, incorporating the recommendations by the FOMB and also in compliance with section 4.4 of Regulation 8815.
8. In compliance with the above, on February 22, 2021, PREPA issued Request for Proposal 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.
9. On May 27, 2021, the Energy Bureau determined that it was reasonable to extend the deadline for the submission of bids for the Tranche 1 RFP and an extension of time for PREPA to complete its evaluation of bidder submission. Therefore, the Energy Bureau granted PREPA’s request to extend the bidder response submission deadline until June 18, 2021. After multiple motions and proceedings concerning Tranche 2, PREPA on September 8, 2021, requested a deadline extension until September 20, 2021, to submit the information of the proposals selected for Tranche 1 Phase III and the price information by the technology group, since the Evaluation Committee continued to evaluate proposals.
10. On September 17, 2021, PREPA, among other matters, requested to the Energy Bureau a deadline extension, until September 28, 2021, to submit the information of the proposals

selected for Phase III to be considered in the proposal evaluation process and on September 20, 2021, PREPA submitted the proposals received from Tranche 1 that moved on to Phase III.

11. Thereafter, and after various procedural incidents and the finalization of various Tranche 1 RFP related milestones, on November 8, 2021, the Energy Bureau issued a Resolution and Order (“November 8 Order”) directing PREPA to (i) on or before November 12, 2021, submit the results of its selection of proposals for consideration in Phase III with the pricing evaluation per technology group required by the Energy Bureau together with copies of any communications to proponents selected to proceed to Phase III; and (ii) on or before December 1, 2021, complete Phase III and submit to the Energy Bureau for its evaluation and approval the corresponding draft Power Purchase and Operating Agreements. November 8 Order at pp. 5-6, Sec. II(i)(ii).
12. In compliance with the above, on November 9, 2021, PREPA submitted a report, prepared by Sargent & Lundy (“S&L”) and titled *Renewable Energy Generation and Energy Storage RFP Tranche 1, Phase III Qualitative and Pricing Evaluation* (“S&L Report”). The S&L Report included the pricing per technology group as requested by the Energy Bureau. Thereafter, on November 18, 2021, PREPA requested an extension, until December 8, 2021, to complete Phase III and submit to the Energy Bureau, for its evaluation and approval, the corresponding draft Power Purchase and Operating Agreements.
13. Notwithstanding, and as a result of the Energy Bureau’s evaluation of the S&L Report, on December 3, 2021, the Energy Bureau issued a Resolution and Order in the captioned case (“December 3 Order”) in which it established certain deadlines for the finalization of the

Tranche 1 RFP process. Likewise, the Energy Bureau ordered PREPA to revise the formulations it uses to report on Tranche 1 respondent resource costs to align with the cost parameterization methods used in the IRP which include the U.S. National Renewable Energy Laboratory (“NREL”) approach to computing a levelized cost of energy (“LCOE”) for solar PV resources, and simpler formulations of battery energy storage costs. Further, the Energy Bureau stated that “[t]he S&L Report provided by PREPA did not explain why it used a formulation that discounted the energy term in the denominator of the LCOE formula and in the denominator of the levelized cost of storage (“LCOS”) formula. The NREL approach does not discount the energy term in the denominator of the formula for levelized cost of energy.” December 3 order at pp. 1-2.

14. As a result of the above, the Energy Bureau ordered PREPA to submit updated price proposal information containing the LCOE and battery cost metrics described in the December 3 Order on or before December 8, 2021. It also extended the December 1, 2021, deadline required by the November 8 Order, and ordered PREPA to complete Phase III and submit to the Energy Bureau, for its evaluation and approval, the corresponding draft Power Purchase and Operation Agreements on or before December 17, 2021 by 1:00 p.m.
15. On December 8, 2021, PREPA submitted to the Energy Bureau, by informative motion, updated price proposal information containing recalculated LCOE and LCOS values (the “December 8 Motion”). In the December 8 Motion PREPA provided additional information intended to provide the Energy Bureau a point of reference regarding the process carried out by PREPA’s consultant, S&L, for the calculation of updated LCOE and LCOS values. The December 8 Motion included calculations of the applicable LCOE and LCOS using the IEA Methodology for calculating LCOE and LCOS, the IRP Methodology

for calculating Simplified LCOE (sLCOE) and LCOS (sLCOS), the NREL Methodology for calculating Simplified LCOE (sLCOE) and LCOS (sLCOS) and the PREB Order Methodology for calculating LCOE and LCOS. Thereafter, on December 9, 2021, the PREPA Evaluation Committee and its consultants met with the Energy Bureau Commissioners and their consultants and received feedback from the Energy Bureau regarding the appropriate formula for calculating, and the calculation of, the LCOE. With such guidance, the RFP Evaluation Committee continued its analysis of proposals and proceeded with the finalization of Phase III.

16. On December 16, 2021 PREPA submitted *Motion Submitting Draft Power Purchase and Operating Agreements Offered in Tranche 1 of PREPA's Renewable Generation and Energy Storage Resources RFP for Energy Bureau Evaluation* informing the Energy Bureau that it had successfully finalized Phase III of the Tranche 1 Renewable Energy RFP with an offer to fifteen (15) proposals for Solar PV projects that comprised a capacity of 732.7 MW. Likewise, PREPA stated that it had effectively sought contracts for energy storage resources that encompassed a capacity of 220 MW. On December 23, 2021, PREPA submitted a supplement to the December 16, 2021 motion and announced the contracting of more than 800 MW of solar renewable energy and informing the status of VPP's projects.
17. On December 28, 2021, the Energy Bureau issued *Resolution and Order* requesting that PREPA answer questions related to the LCOE and LCOS calculations and submit for the Bureau's consideration the next four (4) solar energy projects and the next six (6) battery storage projects by January 10, 2022. In response, on January 6, 2022, PREPA filed a confidential motion requesting clarification of the December 28 *Order* and requested a

confidential meeting with the Commissioners to discuss the questions included in Attachment A. Specifically, PREPA requested that the submission of four additional PV projects be reconsidered, as it had submitted an additional 112.1 MW on December 23, 2021 that the Energy Bureau had not considered when issuing its order. On January 12, 2022, PREPA filed a document titled *Motion in Compliance with the December 28 Order Submitting 167 MW of VPP Resources and Reiterating Request for Confidential Meeting and Extension of Time* reiterating the request for a confidential meeting and filed drafts of Bespoke Contracts for VPP Resources with two VPP Proponents.

18. On January 26, 2022, PREPA filed a document titled *Motion Reiterating Request for Meeting to Discuss Responses to Attachment A of the December 28 Order and Energy Storage Resources* reiterating its request for a confidential meeting to discuss the energy storage information as well as the questions in Attachment A to the December 28 Resolution and for the Energy Bureau to grant ten (10) business days after the requested meeting to submit the information required. On January 31, 2022 PREPA submitted a *Motion in Compliance with the December 28 Order Submitting 167 MW of VPP Resources and Reiterating Request for Confidential Meeting and Extension of Time*. On February 2, 2022, the Energy Bureau issued a *Resolution and Order* determining that the eighteen (18) submitted solar PV projects submitted by PREPA were in alignment with the Modified Action Plan and approved them. In addition, the Energy Bureau determined that the bespoke solar PV PPOAs associated with these eighteen (18) solar PV projects were also in alignment with the Modified Action Plan and proceeded to approve them.
19. On April 11, 2022, the Energy Bureau issued a *Resolution and Order* following up on discussions during the meeting of February 3, 2022, that included aspects of the Tranche 1

renewable energy and battery storage procurement submittals from respondents, and PREPA's evaluation of those submittals. During that meeting, PREPA indicated its willingness to provide additional information to the Energy Bureau for further discussion and to supplement certain aspects of its responses to questions filed under seal on January 31, 2022.

20. On April 27, 2022, the Energy Bureau issued a Resolution and Order regarding the February 2, 2022 Resolution approving eighteen (18) renewable energy projects and ordered PREPA to file with the Energy Bureau execution copies of the PPOAs, on or before June 30, 2022.

21. On May 31, 2022, LUMA presented a *Motion Submitting Final Technical Interconnection Studies For Eighteen Tranche 1 Projects Required under Energy Bureau's Resolution and Order of April 21, 2022 and request for Confidential Treatment*. According to LUMA, the Final Interconnection Study Report for each project included an executive summary and multiple appendices. LUMA also provided a System Impact & Facility Study Results report that included a summary and analytical detail for a "cluster study" of the system developed to determine the required transmission system network upgrades.

22. On June 13, 2022, the Energy Bureau issued a *Resolution and Order* stating that LUMA shall make the transmission system network upgrades necessary to integrate the Tranche 1 projects among other tasks, including filing a plan with the Energy Bureau within 45 days laying out a roadmap for seeking and obtaining federal funding for the transmission system network upgrades.

23. On June 16, 2022, PREPA's Tranche 1 RFP Evaluation Committee recommended to PREPA management the approval of fifteen (15) 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.

24. On June 30, 2022, PREPA submitted to the Energy Bureau a document titled *Motion to Submit Execution Copies of PPOA 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*. PREPA requested that the Energy Bureau grant it an additional period of two (2) weeks, or until July 15, 2022, to complete the negotiation regarding price or interconnection issue with the Proponents for five (5) solar PV projects.
25. On July 8, 2022, the Energy Bureau approved the June 30, 2022 contracts for nine (9) solar PV projects and granted PREPA’s request for an extension to file PPOAs for the remaining five (5) proposals. Thereafter, on August 4 and 13, 2022, PREPA presented the remaining 5 executed PPOA’s and on August 15, 2022, the Energy Bureau issued a *Resolution and Order* approving the same.
26. Subsequently, on August 26, 2022, PREPA presented a document titled *Motion to Submit Remaining Executed PPOAS and BESS Contracts in Compliance with the August 15, 2022, Resolution and Order*. Through this filing, PREPA informed the Energy Bureau that it had finalized negotiations with the remaining Tranche 1 PPOA proponents and submitted executed copies of the pending four (4) executed PPOAs for 245 MW of solar projects (120 MW, 80 MW, 25 MW, and 20 MW, respectively). PREPA also informed the Energy

Bureau that this remaining proponent had also proposed two (2) 100 MW BESS projects co-located and operationally integrated (for ITC compliance purposes) with the largest two (2) of these four (4) solar projects. On September 1, 2022, the Energy Bureau issued a *Resolution and Order* accepting PREPA's August 26, 2022 filing of the four (4) executed PPOA contracts.

27. On November 2, 2022, PREPA presented a *Motion to Submit Draft Copy of GSA in Compliance with the June 13, 2022, Order*. PREPA informed that in compliance with the June 13 Order, the RFP Evaluation Committee conducted negotiations with and reached an agreement on the form of a VPP GSA for 17 MW with SunRun PR Operations LLC, a limited liability company owned and controlled by SunRun, Inc. On December 19, 2022, the Energy Bureau issued a *Resolution and Order* among other matters approving the final GSA contract. In addition, the Energy Bureau reiterated that PREPA should finalize the negotiations with the nine (9) BESS projects totaling 490 MW as had been previously stated in the June 13 Resolution and to file a status update on the contract negotiations process. In compliance with the above, on January 3, 2023, PREPA filed an *Informative Motion in Compliance with the December 19, 2022, Order which Requested a Status Update on Contract Negotiations with BESS Projects*. PREPA used this juncture to inform the Energy Bureau of and emphasize the concerns of multiple proponents around inflation, interest rates, supply chain disruptions and issues with LUMA's interconnection studies (e.g., high construction oversight fees imposed by LUMA and different interconnection options).
28. PREPA informed the Energy Bureau that at least one Proponent had pointed to higher pricing for BESS projects available in Tranche 2 to support further increases in the pricing

with Tranche 1 BESS projects offer. This Proponent had indicated that it would require additional price discussions (and, presumably, PREPA's acceptance of additional price increases before signing ESSAs). Among other relevant information, PREPA stated, in the Informative Motion, that it expected that it would be in a position to finalize the remaining ESSAs, as well as amendments to the executed agreements for those Proponents who accepted LUMA's change in responsibility for the construction of the PREPA Interconnection Facilities, by the end of February.

29. On February 28, 2023, PREPA filed an *Informative Motion Regarding 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 to Minimize Further Delays*. PREPA among other matters, stated that it had to work through significant changes to the documentation, delays in the Tranche 1 RFP process, and impacts on bid pricing related to repeated LUMA-initiated changes. PREPA stated that the various policy changes implemented by LUMA had made it difficult to progress Tranche 1 contracts to closing. Additionally, PREPA noted, the LUMA-driven delays had prevented the closing of contracts during a period when inflation and interest rates had spiked, compounding the difficulty Proponents had faced in keeping their pricing. PREPA additionally stated to the Energy Bureau that to minimize the risk that additional changes could lead some Proponents to decline to proceed with their projects, in PREPA's view, LUMA could not make any additional policy or non-policy changes that could further delay completion of the Tranche 1 RFP process and had to find ways to support projects as expeditiously as possible. PREPA also informed the Energy Bureau that it had directed LUMA to (i) avoid any further delays to the Tranche 1 projects, including by initiating the

LUMA interconnection works RFP as quickly as possible (even if LUMA may need to amend such EPC RFP process in the future due to project modifications or cancellations), and (ii) obtain Energy Bureau authorization of the Third Policy Change to avoid further changes to the policy down the road. PREPA was adamant that the Closing Date of the Tranche 1 projects contracts could not occur until after the completion of LUMA's Tranche 1 interconnection works RFP process.

30. In response to this motion, on March 10, 2023, the Energy Bureau entered an Order which, among other things, (a) declined to authorize any time extensions to the Closing Date; (b) stated that the execution of PREPA's Interconnection Facilities Works has to be in accordance with the terms and conditions included in each applicable Agreement; (c) stated that LUMA had to complete the RFP process for the PREPA's Interconnection Facilities Works on or before July 1, 2023; and (d) encouraged the parties to waive any Conditions Precedent to achieve the Closing Date within the timeframe established in the Agreements.

31. Thereafter, on March 17, 2023, PREPA filed a *Motion in Compliance with Order and to Inform and Clarify March 10, 2023 Resolution and Order as Applicable to Sectionalizer Projects*. With the March 17 Motion, PREPA informed the Energy Bureau that none of the Resource Providers had signed the Conditions Precedent Certificates and sought to inform the regulator that after conferring with LUMA as well as Resource Providers, it had determined that the Resource Providers sponsoring those projects which required new sectionalizers as part of the interconnection work would perform the required work themselves. PREPA explained that proceeding differently would result in higher LCOEs for those Resource Providers.

II. Current State of the Tranche 1 RFP and Critical Issues

32. The Tranche 1 RFP process stands at a critical juncture. As outlined above, PREPA has raised a number of red flags identifying issues over the past few months that are coming to a head, and Resource Providers have requested amendments to the Tranche 1 RFP utility-scale contracts to address these issues prior to closing. Confidential Appendix A includes a table summarizing the PPOA amendments each Resource Provider has requested. The corresponding Exhibits to each item in the table include the evidence provided by the Resource Provider in support of its amendment request. Importantly, the table shows that all Resources Providers have one or more requests for amendment.
33. The information provided in Appendices A and B and Exhibits 1-12 is highly confidential, commercially sensitive and subject to ongoing deliberations within PREPA. Resource Providers have handed over the information based on the explicit assumption that PREPA and the Energy Bureau would hold it in confidence. We request confidentially treatment of all such information to avoid harming Resource Providers, PREPA or other tranches. We will, however, summarize the information generally in the following paragraphs.
34. Many of the Tranche 1 RFP project Proponents have requested increases to pricing. The general rationale for these requests is well understood by the PREB and PREPA. As PREPA presented to the Energy Bureau in January 2023, Resource Providers believe a reasonable price increase should be accommodated given the extraordinary circumstances suffered by the Tranche 1 RFP process in terms of inflation and interest rates – after years of renewable generation costs and rates generally heading down, they reversed direction and shot up right in time for the Tranche 1 RFP Proponents to be squeezed from two directions. The Resource Providers have requested increases to the LCOE per project over

a wide range, with average increases of approximately 26% and 21% on simple and capacity-weighted bases, respectively. To address this reality – over which none of PREPA, Proponents or the Energy Bureau has any control – the Energy Bureau could consider a flat PPOA price increase across the board or could respond to each Resource Provider’s proposal and evidence submitted, while not exceeding Tranche 2 pricing, subject to the caveat offered in the following paragraph.

35. Related to requests for price increases, PREPA understands that Resource Providers are aware of the ongoing conversations among representatives of the Department of Energy (“DOE”), PREPA and the Government of Puerto Rico that have been intended to facilitate DOE Loan Program Office (“LPO”) support for renewable energy projects in Puerto Rico. While most Tranche 1 RFP Resource Providers have indicated that they do not necessarily require DOE support to proceed with their projects, a few Tranche 1 Resource Providers have indicated that such support is necessary. All interested parties agree, however, that DOE support should reduce project financing costs, mitigate the need for price increases that Resource Providers are currently requesting, and fundamentally make projects more likely to succeed. Some developers have indicated that they may be able to forgo all or a part of their requested price increase if they can get DOE backing for their projects. For this reason, PREPA believes that DOE support for Tranche 1 RFP projects should be accommodated (including where necessary through contract amendments). The Energy Bureau should be aware that it is possible that, if DOE support is only accommodated in PPOAs resulting from future tranches, some Resource Providers may elect not to close on their Tranche 1 PPOAs and instead defer their projects to those tranches, resulting in what could be significant additional delays in commercial operation dates.

36. A number of Resource Providers have also asked for PPOA amendments permitting generating capacity increases. Generally speaking, PREPA views these requests positively (i.e., low hanging fruit) and would permit the capacity increases as a means of mitigating development cost increases and of promoting additional renewable energy and storage capacity on the island. PREPA will not, however, agree to bear the cost of incremental network upgrades or interconnection costs associated with such increases, and will need LUMA to perform studies on the additional capacity (at Resource Provider's expense). PREPA intends to proceed with these studies and corresponding amendments (where appropriate) in due course unless instructed otherwise by the Energy Bureau.
37. Most Resource Providers also request extensions of the deadline in their PPOAs to achieve their specified Closing Date. PREPA understands the Resource Providers' justification for this request and supports it as the most reasonable approach given the circumstances. "Closing" the Tranche 1 RFP contracts requires satisfying certain conditions precedent (see Appendix), which themselves require **both** Parties' cooperation. It is difficult – and probably futile – to push Resource Providers to close as long as they have material concerns about timelines or price because the Closing Date triggers the 24-month clock that Resource Providers have to complete their projects. PREPA has sent multiple requests to Resource Providers urging them to satisfy their conditions precedent as soon as possible, and has discussed with some developers the potential to waive some of their conditions precedent. The table set out in Appendix B to this Motion describes the general status of the conditions precedent across the Tranche 1 RFP utility-scale contracts. The timeline set out in Appendix C to this motion shows LUMA's expected process for finalizing its interconnection works RFP, after which the Parties can set final pricing under most of the

utility-scale agreements, i.e., one of the final conditions precedent.

38. It is important to note, as can be seen in Appendix B, that satisfying the conditions precedent is, generally speaking, not difficult. Closing the utility-scale contracts is not being held up by inability to provide, e.g., legal opinions or certain administrative certificates. The few key conditions outstanding include Resource Providers' conclusion of interconnection agreements with LUMA, paying certain amounts owed to PREPA, providing letters of credit and parent company guarantees for PREPA's benefit, and finalizing price. These steps are not logistically hard (and therefore in need of waiver), but Resource Providers will find it difficult to put additional funds at risk and start the process of closing their agreements (despite PREPA's efforts to encourage them to do so) if they have not resolved the price and timeline concerns reflected in their requests for amendments.
39. Those amendments will need PREB and FOMB approval, which itself adds a couple of months to any timeline. When considering the time LUMA needs to conduct its interconnection RFP (as shown in Appendix C), a few weeks to finalize price discussions following that RFP, the time that it typically takes to obtain sequential PREB and FOMB approval of final pricing (~60 days), and the contractual period in some contracts for closing to occur after pricing is finalized (60-75 days), a deadline of September 30, 2023, appears realistic.
40. As mentioned above and in previous motions, it is also paramount that the Energy Bureau appreciates the problems created by not having final pricing for interconnections facilities work before Proponents are expected to achieve their Closing Date. Once Proponents close their agreements, the twenty-four (24) month

timeline for project completion commences, even though the Proponents do not yet know the final cost for interconnections facilities work for which they will be responsible and must obtain financing. If Resource Providers are forced to close now without knowing the final interconnection works price and then receive the final cost at some point in July 2023 that is substantially higher than expected, compelling them to withdraw, they will lose their performance security and default. Moreover, lenders will generally not make financing available without the final numbers and absence of default risk, which in turn means that Resource Providers cannot start material construction works earlier by Closing earlier. Few if any Proponents will take this risk.

41. In sum, PREPA cannot resolve the issues underlying the Proponents' amendment requests (primarily proposing cost increases and development delays) without agreeing to amendments to the Tranche 1 RFP contracts. The restrictions placed on PREPA by Energy Bureau formal orders and informal guidance prevent PREPA from taking the action that PREPA believes is necessary to support the Tranche 1 projects. As a result, many of the Tranche 1 RFP agreements stand to expire automatically beginning in April and in the following months, as Resource Providers fail to close their agreements. The column captioned "Closing Date" of the table set out in Appendix A specifies that deadline to close for each of these projects.

42. Neither PREPA nor any other governmental entity can force Resource Providers to close on their PPOAs. PREPA, at the same time, cannot guarantee that no Resource Providers will move forward if the Energy Bureau does not authorize additional amendments. But we do believe, based on reports from Resource Providers, that refusing to authorize

additional amendments will materially reduce the number of Tranche 1 projects willing to move ahead. With latitude to agree to amendments along the lines of those described in this Motion, PREPA believes that it can salvage most, if not all, of the Tranche 1 PPOA projects. Accordingly, PREPA respectfully requests the Energy Bureau to reconsider the orders and guidance precluding further amendments (e.g., on timeline, price or others) for the Tranche 1 RFP projects and approve a holistic path forward, as described below, that would allow the Tranche 1 RFP projects to move ahead.

43. For its part, PREPA wants projects to proceed. PREPA believes we need a flexible, problem-solving approach to get projects done in Puerto Rico. Once a tranche or two of new projects have reached completion, LUMA has a standardized and proven interconnection approach, permitting agencies have streamlined their application and approval processes, PREPA emerges from bankruptcy, and markets recognize (and price in) the higher potential for success in Puerto Rico, then PREPA may be more supportive of a strict approach to contract terms. But now is not that time. They say a bird in hand is worth two in the bush. We need to take the steps necessary to help the Tranche 1 projects succeed, and drawing lines in the sand with Tranche 1 (e.g., refusing requests for *modest* price increases still at a discount to Tranche 2 pricing or extensions of time to a reasonable deadline given the reality of LUMA's processes) may hurt not only the Tranche 1 RFP process but also future tranches. It could be seen as a signal of a lack of public support and reduce the market appetite to invest in Puerto Rico.

III. Confidentiality of Proponent Information Submitted

44. As part of this motion PREPA is including information and documentation provided by Resource Providers (in the Form of Appendix A and B as well as Exhibits 1-12), which

has been requested by Resource Providers to be maintained in a confidential manner given that it incorporates trade or business secrets that are deemed confidential pursuant to applicable law. 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).

45. In the exercise of its powers the Energy Bureau and PREPA approved Regulation 8815 which has force of law. *Id.* at Art. 6.3 (b)⁸. Regulation 8815 includes language in Art. 10.2 which protects confidential information in those competitive bidding process contemplated in the regulation. In its pertinent part, it states that “[o]nce the Contract has been executed, the Authority shall make public the report of the Project Committee which shall contain

⁸ 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.”)

the information related to the procurement, evaluation, scoring, selection and negotiation process, and the information contained in the Proposal as required by law, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise ordered by a court order, in each case, if the Authority determines that the protection of such information is appropriate.” As stated before, the information provided by Proponents comprises business and trade secrets which Proponents have specifically requested be maintained in a confidential manner. Accordingly, PREPA respectfully request that the Energy Bureau find that these documents and information are confidential and thus order they be maintained under seal.

46. Lastly, given the above and in to order to ensure the success of the Tranche 1 RFP process, PREPA urgently requests assistance from the Energy Bureau as follows:

- i. An ORDER permitting extension of the Closing Date of all Tranche 1 RFP contracts no later than the end of September 2023.
- ii. An ORDER permitting reasonable price increases, with guidance on acceptable pricing and approach for Tranche 1 RFP projects.
- iii. An ORDER permitting accommodation of DOE-LPO required amendments to the Tranche 1 RFP contracts, following consultation with the Energy Bureau once such terms are known.
- iv. An ORDER permitting capacity increases of the Tranche 1 RFP projects following completion of necessary interconnection studies by LUMA and no additional costs for PREPA.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of the information provided in this Motion, **FIND** that the information and documentation in Appendix A and B as well as Exhibits 1-12 are confidential and be maintained

UNDER SEAL and **ORDER PREPA** to proceed in a manner as set out above and as it otherwise sees fit so as not to jeopardize the progress of the Tranche 1 RFP process.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31st day of March 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 31st day of March 2023.

/s Maralíz Vázquez-Marrero
Maralíz Vázquez-Marrero

Appendix A (Confidential)

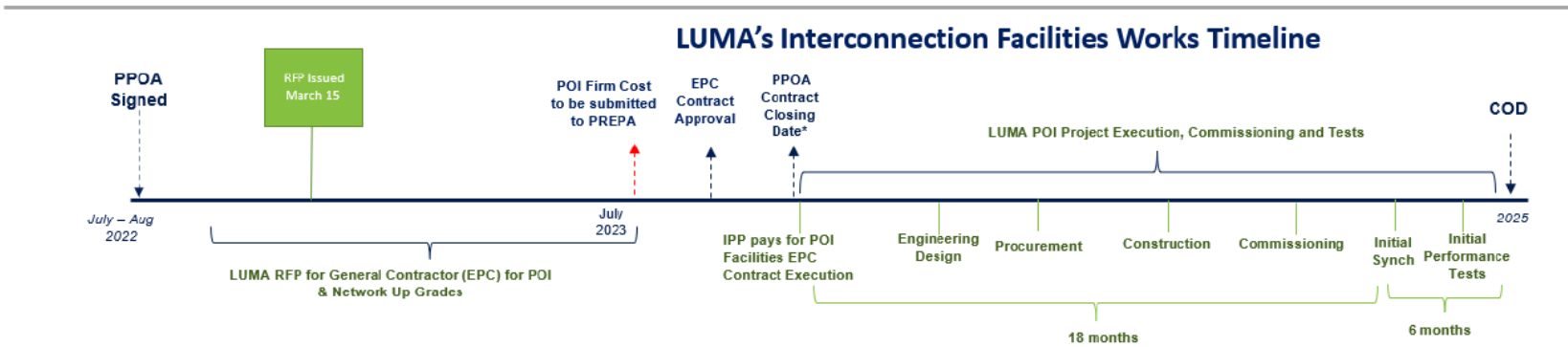
[Submitted Under Seal]

Appendix B (Confidential)

[Submitted Under Seal]

Appendix C

LUMA's Interconnection Facilities Works Timeline



*Conditions Precedent include RPs' payment of study costs, execution of Interconnection Agreement (IA), and delivery of performance security, energy yield assessment report, preliminary design, proposed relay protection scheme, and certified PSS/E model, among other steps.



Exhibit 1-12 (Confidential)

[Submitted Under Seal]