

**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 to Supplement PREPA's
April 28 Motion in Compliance with
the April 24, 2023, Resolution and Order

**MOTION TO SUPPLEMENT PREPA'S APRIL 28 MOTION IN COMPLIANCE WITH
THE APRIL 24, 2023, RESOLUTION AND ORDER**

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 February 2, 2022, the Energy Bureau of the Public Service Regulatory Board ("Energy Bureau" or "PREB") approved eighteen (18) power purchase and operating agreements ("PPOAs") for the Solar PV projects for Tranche 1 that were signed between June and August 2022 ("Executed PPOAs"). Out of the eighteen (18) Executed PPOAs, nine (9) PPOAs were signed on June 30, 2022 ("June 30 PPOAs"). As per Section 2.3(b) of the Executed PPOAs the date to achieve closing before triggering the automatic termination of the June 30 PPOAs was February 25, 2023. However, the Energy Bureau authorized PREPA to grant a sixty (60) day extension for the automatic termination provided in the referenced Section 2.3 of the Executed PPOAs. Hence, the termination dates for the June 30 PPOAs were established as April 26, 2023.
2. After extensive procedural events, on April 17, 2023, the Energy Bureau issued a *Resolution and Order* ("April 17 Order") determining that in order for the Energy Bureau to

consider authorizing any extension to the Closing Date of the June 30 PPOAs, PREPA had to submit the Best and Final Offer (“BFO”) of each proponent by April 19, 2023.

3. On April 19, 2023, PREPA proceeded to submit a document titled *Motion in Compliance with Order Regarding Submittal of Proponent's Best and Final Offers Information* (“April 19 Motion”), through which PREPA informed the Energy Bureau that it had been working diligently with the Resource Provider parties to the June 30 PPOAs to meet the Closing Date deadline and allow some of the projects to move forward.

4. The April 19 Motion also included information on the levelized cost of energy (“LCOE”) and levelized cost of storage (“LCOS”) for solar PV and battery energy storage projects previously approved by the Energy Bureau as aligned with the Modified Action Plan.

5. Thereafter, on April 24, 2023, the Energy Bureau issued a *Resolution and Order* (“April 24 Order”) in which it granted an extension of the automatic termination date of the June 30 PPOAs until May 31, 2023.

6. In the April 24 Order, the Energy Bureau also directed PREPA to provide, no later than Friday April 28, 2023, further supporting information on the LCOE and LCOS as follows:

Provide further supporting information on the LCOE and LCOS values presented in its Annex B [of the April 19 Motion] for these nine projects, and for the other projects contained in the Annex B listing. PREPA must provide in an Excel spreadsheet format file with formulas intact its computation of the LCOE and LCOS inclusive of the input parameters of the BFO contained in Annex A.

April 24 Order p. 2.

7. In compliance with the April 24 Order, on April 28, 2023, PREPA submitted a motion titled *Motion in Compliance with the April 24 Order* (“April 28 Motion”). In the April 28 Motion, PREPA provided the Energy Bureau with supporting information on the LCOE and LCOS values.

8. Notwithstanding, PREPA has received further information from a Resource Provider on the LCOE and LCOS values for their projects for the Energy Bureau's review and evaluation. PREPA herein moves the Energy Bureau to receive the information included as Annex A as a supplement to the April 28 Motion. *See, Annex A.*

9. Given that the information contained in Annex A is part of a deliberative process, incorporates trade or business secrets that are deemed confidential pursuant to applicable law and have been requested by Resource Providers to be maintained in a confidential manner, PREPA hereby requests that the information in **Annex A** be maintained confidential. 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).

10. 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)¹. Regulation 8815 includes language in Art. 10.2 which protects confidential information in those competitive bidding processes 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 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.”. Accordingly, PREPA respectfully request that the Energy Bureau find that these documents and information are confidential and thus order they be maintained under seal.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of this Motion, **ACCEPT** Annex A as a supplement to the April 28 Motion and **GRANT** PREPA’s petition for confidentiality ordering that the documents included Annex A should be kept under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2nd day of May 2023.

/s Maralíz Vázquez-Marrero
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/s Joannely Marrero Cruz
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¹ 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.”)

TSPR 20,014

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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 2nd day of May 2023.

/s Joannely Marrero Cruz
Joannely Marrero Cruz

Annex A
[Submitted Under Seal]