

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

NEPR

Received:

May 12, 2023

6:29 PM

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 Submit
Additional Energy Storage Service
Agreements (ESSAs) for the Energy
Bureau's Evaluation and Approval

**MOTION TO SUBMIT ADDITIONAL ENERGY STORAGE SERVICE AGREEMENTS
(ESSAs) FOR THE ENERGY BUREAU'S EVALUATION AND APPROVAL**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority, through its counsel of record, and respectfully submits and prays as follows:

1. On April 28, 2022, PREPA submitted to the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau" or "PREB") a document titled *Memorandum of Law in Support of Request for Confidential Treatment of Attachment A* and as Attachment A submitted under seal was a document titled *Informative Motion and Responses to Resolution and Order Issued on April 11, 2022* ("April 28 Informative Motion").
2. Through the April 28 Informative Motion PREPA recommended for approval four (4) utility-scale Battery Energy Storage System (BESS) projects totaling 240 MW of capacity with a 4-hour duration, and a 17 MW Virtual Power Plant (VPP) project. The April 28 Informative Motion also contained information on six (6) additional utility-scale BESS resource proposals totaling 275 MW and a 150 MW VPP proposal. Furthermore, in the April 28 Informative Motion PREPA's explained its rationale for recommending the four utility-scale BESS projects and one of the two proposed VPPs, and its rationale for not recommending the remaining six utility-scale BESS projects and the other VPP.

3. On June 13, 2022, the Energy Bureau issued a *Resolution and Order* (“June 13, 2022, Order”) approving nine (9) 4-hour duration utility-scale BESS projects totaling 490 MW and one (1) 17 MW VPP project. In the June 13, 2022, Order, the Energy Bureau authorized PREPA to finalize its negotiations with the proponents to contract additional utility-scale BESS projects (250 MW out of the 490 MW) beyond those initially recommended by PREPA in furtherance of Puerto Rico’s urgent needs to:

- i) Reliably integrate increasing amounts of renewable energy resources onto its system and avoid potential curtailment of renewable resource output (solar PV or wind),
- ii) Support the reliability and resiliency of the electric power grid with flexible, dispatchable capacity resources that provide energy, operating reserve, and transmission grid security attributes, and
- iii) Reduce local air pollution by not delaying the planned retirement of the oldest and most polluting of PREPA’s existing fossil-fueled power plants

April 13, 2022, Order at p. 1.

4. PREPA executed energy storage services agreements (ESSAs) for two (2) of the nine (9) approved projects in August 2022. Finalization of negotiations and execution of agreements with proponents of the remaining projects were impacted by the same issues that impacted the “closing” of the power purchase and operating agreements for solar projects and the two executed ESSAs, and of which the Energy Bureau is already well aware. These included (i) completion of interconnection studies (November 2022), (ii) LUMA’s “second interconnection policy change” which had many of these projects moving to sectionalizers that proponents would construct, required proponents to engage with their construction contractors and assess costs, and required negotiation of modifications to the draft ESSAs in late 2022, (iii) LUMA’s “third interconnection policy change” in January 2023, which switched back to LUMA-constructed interconnection works at PREPA substations and introduced the need for additional cost considerations and ESSA modifications, (iv) macroeconomic, global supply chain and interest rate issues of which the

Energy Bureau has been informed, along with capacity increases and interconnection re-assessments to mitigate these, (v) lack of clarity resulting from delays in LUMA's EPC process, eventually ordered by the Energy Bureau to be completed in July 2023, and the timing implications of that process for project portfolios, and (vi) lack of clarity on LUMA's interconnection agreement and related requirements to move projects forward. One proponent, with two (2) of the nine (9) projects, is also currently out of compliance with certain Tranche 1 RFP requirements and may be disqualified in the near future.

5. With the Energy Bureau's support through March and April 2023, PREPA and Resource Providers have gained some additional clarity on the issues described in the paragraph above and how the Energy Bureau might permit the parties to address them. This in turn has unlocked the ability to finalize and execute the additional ESSAs (as well as close executed agreements with certain amendments). Importantly, the added clarity around LUMA's path, interconnection agreement, and other matters mentioned above, has allowed Resource Providers executing ESSAs in the near term to shorten significantly the time required to reach the Closing Date from two hundred forty (240) days down to twenty (20) business days (assuming signing after approval of the ESSAs by the Energy Bureau and FOMB and likely soon after completion of LUMA's RFP process). Resource Providers are now also willing to consider most of the former conditions precedent as signing conditions, leaving only a few key items to be provided shortly after PREPA files executed agreements with the Puerto Rico Controller's office. For practical purposes, PREPA's re-negotiation of these points puts the contract timelines of the newly executed ESSAs on approximately the same path as those agreements executed in the summer of 2022.

6. As mentioned, proponents of the new BESS projects have many of the same issues as the solar / previously-signed BESS projects. PREPA has also agreed to reasonable price increases and

similar terms and conditions, versus the originally approved ESSA form, as the Energy Bureau would have seen in its evaluation of the amendments to the PPOAs submitted on April 26, 2023.

7. PREPA hereby informs the Energy Bureau that it has continued to work with Resource Providers, and after considerable effort to resolve many issues, PREPA herein submits three additional ESSAs totaling 150 MW of capacity with a 4-hour duration, as Annex A. PREPA remains in negotiations with the two (2) remaining BESS project proponents to provide additional ESSAs in the coming weeks on similar terms, and will submit those within the required time period once agreement is reached. PREPA will also submit the levelized cost of storage information for the three (3) agreed forms of ESSA next week for the Energy Bureau's evaluation.

8. 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).

9. 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, **APPROVE** the ESSAs included as Annex A and **GRANT** PREPA’s request to maintain the documents included as Annex A and under seal.

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.”)

In San Juan, Puerto Rico, this 12th day of May 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 12th day of May 2023.

/s Joannely Marrero Cruz
Joannely Marrero C

Annex A

[submitted under seal]

