

**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 Submit Additional
Amended June 30 PPOAs

MOTION TO SUBMIT ADDITIONAL AMENDED JUNE 30 PPOAS

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, on January 30, 2023, 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. Therefore, the termination dates for the June 30 PPOAs were established as April 26, 2023.

2. Thereafter, on March 10, 2023, the Energy Bureau issued a *Resolution and Order* (“March 10 Order”) through which it encouraged the PREPA to evaluate any pending Conditions Precedent that could be waived to achieve the Closing Date as established.

3. In response, on March 31, 2023, PREPA submitted to PREB a document titled *Motion Requesting Approval of Amendments and Informing on Status of Project Development Timeline for Tranche 1 Utility -Scale Project Agreement* ("March 31 Motion"). Through the March 31 Motion, PREPA indicated, among other things, that the Tranche 1 PV proponents were requesting extensions of deadlines in the agreements to achieve the Closing Date. PREPA further stated that the Resource Providers' requests were justified and reasonable if they had material concerns regarding timelines and pricing because the Closing Date triggers the 24-month clock to complete the projects. For the reasons brought up by Resource Providers PREPA requested an extension to closing until September 30, 2023.

4. On April 4, 2023, the Energy Bureau, upon review of the March 31 Motion, issued two (2) Resolution and Orders ("April 4 Orders") through which it stated and ordered the following:

- 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.

5. PREPA proceeded to do as ordered and continued diligently working with the Resource Providers on the required amendments to the PPOAs to comply with the Energy Bureau's April 4 Orders. Subsequently, 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 BFO of each proponent received during the month of April 2023 by April 19, 2023.

6. In response, on April 19, 2023, PREPA submitted its *Motion in Compliance with Order Regarding Submittal of Proponent's Best and Final Offers Information* in compliance with the April 17 Order ("April 19 Motion"). The April 19 Motion 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. PREPA also informed the Energy Bureau that it had been working with the Resource Providers of the June 30 PPOAs to meet the April 26, 2023 Closing Date deadline and allow some of the projects to move forward.

7. On April 24, 2023, the Energy Bureau issued a *Resolution and Order* ("April 24 Order") in which, among other things, it found that because the parties to the Executed PPOAs alleged that they are still negotiating, an extension to the automatic termination date of the June 30 PPOAs was warranted. Therefore, the Energy Bureau authorized PREPA to extend the April 26, 2023, automatic termination date until May 31, 2023.

8. On April 26, 2023, PREPA submitted to the Energy Bureau a documents titled *Motion to Submit Amended June 30 PPOAs* ("April 26 Motion") through which PREPA notified that it had

executed amendments to the June 30 PPOAs that extended the time to achieve the Closing Date from April 26, 2023, to May 31, 2023, the referenced amendments were identified as the Second Amendments.

9. As part of the April 26 Motion, PREPA informed the Energy Bureau that while PREPA had essentially satisfied or stood ready to satisfy its conditions precedent by April 26, 2023, Resource Providers for the PPOAs stated they needed the material modifications to move forward. Notwithstanding, PREPA also informed that it had reached amendment agreements with Resource Providers for seven of the nine June 30 PPOA projects. The referenced amended PPOAs were submitted as the Third Amendments with the April 26 Motion.

10. The Third Amendments to the June 30 PPOAs would accomplish the following (i) deem the Closing Date to have occurred, (ii) convert certain conditions precedent to conditions subsequent, (iii) address pricing, timeline, capacity increases and other Resource Provider requirements to close the PPOAs, (iv) align a few, select provisions with points under discussion with the Department of Energy, and (v) for two projects, addressed a change in responsibility related to the construction of sectionalizers.

11. PREPA respectfully informs the Energy Bureau that it has continued working with Resource Providers to allow renewable energy and energy storage projects to move forward and has, since the April 26 Motion, reached amendment agreements with the Resource Provider for the two remaining June 30 PPOAs. Accordingly, PREPA submits before the Energy Bureau the Third Amendment for another two of the June 30 PPOAs (totaling nine out of nine June 30 PPOAs), generally in line with the amendments previously submitted. *See*, Annex A. PREPA will continue seeking agreements (amendments to PPOAs and ESSAs, as well as new ESSAs) with the remaining Tranche 1 projects.

12. 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).

13. 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

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.”)

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 draft Third Amendments, and **GRANT** PREPA’s petition for confidentiality ordering that the documents included as Annex A be kept under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th day of May 2023.

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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 16th day of May 2023.

/s Joannely Marrero Cruz
Joannely Marrero Cruz

Annex A

Draft Third Amendments
[Submitted Under Seal]