

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

<b>NEPR</b>  <b>Received:</b>  <b>May 22, 2023</b>  <b>1:52 PM</b>
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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 LCOS in Support  
of Energy Storage Service Agreements (ESSAs)  
Presented by PREPA in its May 12 Motion

**MOTION TO SUBMIT LCOS IN SUPPORT OF ENERGY STORAGE SERVICE  
AGREEMENTS (ESSAs) PRESENTED BY PREPA IN ITS MAY 12 MOTION**

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 June 13, 2022, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau” or “PREB”) issued a *Resolution and Order* (“June 13 Order”) approving nine (9) 4-hour duration utility-scale BESS projects totaling 490 MW and one (1) 17 MW VPP project. The June 13 Order, also authorized PREPA to finalize its negotiations with the proponents to contract additional utility-scale BESS projects (250 MW out of the 490 MW) 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

June 13 Order at p. 1.

2. In August 2022, PREPA proceeded to execute energy storage services agreements (ESSAs) for two (2) of the nine (9) approved projects. The 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 (PPOAs) for solar projects and the two executed Energy Storage Service Agreements (ESSAs). Namely, (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.

3. After extensive procedural events, on May 12, 2023, PREPA filed a document titled *Motion to Submit Additional Energy Storage Service Agreements (ESSAs) for the Energy Bureau’s Evaluation and Approval* (“May 12 Motion”). Through the May 12 Motion, PREPA explained that with the Energy Bureau’s support through March and April 2023, PREPA and Resource Providers

gained clarity on the issues described above and how the Energy Bureau might permit the parties to address them. This in turn has allowed PREPA the ability to finalize and execute the additional ESSAs (as well as close executed agreements with certain amendments).

4. As a result, PREPA proceeded to submit in the May 12 Motion, for the Energy Bureau's evaluation and approval three (3) additional ESSAs totaling 150 MW of capacity with a 4-hour duration. PREPA also committed to providing the Energy Bureau with the levelized cost of storage ("LCOS") information for the three (3) agreed forms of ESSA for the Energy Bureau's evaluation.

5. PREPA herein submits the LCOS for the three ESSAs submitted to PREB through the May 12 Motion. Accordingly, PREPA submits to PREB:

a. *Solar PPOA Levelized Cost of Energy & Battery ESSA Levelized Cost of Storage Analysis. See Annex A.*

b. *Caveats on the LCOS calculations. See Annex B.*

6. Given that the information contained in annexes **A** and **B** are 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** and **Annex B** 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).

7. 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)<sup>1</sup>. 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.

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<sup>1</sup> 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.”)

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of this Motion, **APPROVE** the ESSAs included in the May 12 Motion, and **GRANT** PREPA's petition for confidentiality ordering that the documents included annexes A and B should be kept under seal.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 22<sup>nd</sup> 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](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com).

In San Juan, Puerto Rico, on this 22<sup>nd</sup> day of May 2023.

*/s Joannely Marrero Cruz*  
Joannely Marrero Cruz

Annex A  
*Solar PPOA Levelized Cost of Energy & Battery ESSA Levelized Cost of Storage Analysis*  
*[Submitted Under Seal]*

Annex B  
Caveats on the LCOS Calculations  
[*Submitted Under Seal*]