

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

<p><b>NEPR</b></p> <p><b>Received:</b></p> <p><b>May 25, 2023</b></p> <p><b>5:39 PM</b></p>
---

**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 Second  
Amendments for Two Executed PPOAs

**MOTION TO SUBMIT SECOND AMENDMENTS  
FOR TWO EXECUTED 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. After numerous procedural events, 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 informed 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.

3. On April 26, 2023, PREPA submitted to the Energy Bureau a document 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.

4. 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.

5. On May 16, 2023, PREPA filed a document titled *Motion to Submit Additional Amended June 30 PPOAs* (“May 16 Motion”), whereby PREPA respectfully informed the Energy Bureau that had continued to work with Resource Providers to allow the renewable energy and energy storage projects to move forward and since the April 26 Motion, reached amendment agreements with the Resource Provider and submitted Third Amendments for the two remaining, out of the nine June 30 PPOAs.

6. Through the May 16 Motion, PREPA also informed it would continue seeking agreements (amendments to PPOAs and ESSAs, as well as new ESSAs) with the remaining Tranche 1 projects.

7. PREPA respectfully informs the Honorable Energy Bureau that it has reached agreements with two additional Resource Providers. These Second Amendments are presented to the Energy Bureau as annexes A and B.

8. The Draft Second Amendment to the PPOA at Annex B is well within the 15-day target for submission to the Energy Bureau before PPOA expiration. This was not submitted at an earlier date by PREPA because the Resource Provider was out of compliance with the request for proposal requirements and did not respond or otherwise confirm their acceptance of the draft until yesterday, May 24, 2023. Furthermore, PREPA will not proceed with the execution of this draft amendment unless the Resource Provider is in compliance with the RFP at the time of signing.

9. Given that the information contained in annexes A and B 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** 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).

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)<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.

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of this Motion, **APPROVE** the draft Second Amendments, and **GRANT** PREPA’s petition for confidentiality ordering that the documents included as annexes A and B be kept under seal.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 25<sup>th</sup> day of May 2023.

/s Maralíz Vázquez-Marrero  
Maralíz Vázquez-Marrero  
TSPR 16,187  
mvazquez@diazvaz.law

/s Joannely Marrero Cruz  
Joannely Marrero Cruz

---

<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.”)

TSPR 20,014

[jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law)

**DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.**

290 Jesús T. Piñero Ave.

Oriental Tower, Suite 803

San Juan, PR 00918

Tel.: (787) 395-7133

Fax. (787) 497-9664

## 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 25<sup>th</sup> day of May 2023.

/s Joannely Marrero Cruz  
Joannely Marrero Cruz

Annex A

[Submitted Under Seal]

Annex B

[Submitted Under Seal]