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**GOBIERNO DE PUERTO RICO**  
**JUNTA REGLAMENTADORA DE SERVICIOS PÚBLICOS**  
**NEGOCIADO DE ENERGÍA DE PUERTO RICO**

IN RE: IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN	CASO NÚM. NEPR-MI-2020-0012  SOBRE: DETERMINATIONS FOR SUBSET OF TRANCHE I SOLAR PV PROJECTS
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**MOCION SOLICITANDO PARTICIPAR EN PRIMER TRANCHE DE PROYECTOS**

AL NEGOCIADO:

Comparece Windmar Renewable Energy, Inc. (“Windmar”) por conducto del abogado que suscribe y muy respetuosamente expone, alega y solicita:

El día 25 de mayo de 2023, el Negociado de Energía de Puerto Rico emitió Resolución y Orden que concluye:

“[i] **APPROVES** the Third Amendment to the **five (5) PPOAs** identified as: AD-1-P; AE-1-P; AQ-1-P; AI-1-P; and AK-1-P for a total of **315.1 MW** of Solar PV utility scale nameplate capacity.”

“[ii] **AUTHORIZES** PREPA to continue negotiating with Service Providers of projects identified as: **I-1-P** and AS-1-P, to achieve terms and conditions consistent with the guidance provided in Part II and ATTACHMENT B of this Resolution and Order.”

“[III] **GRANTS** an extension to achieve a closing date, until June 30, 2023, to all remaining PPOAs which automatic termination date expires before June 30, 2023. The PPOAs with automatic termination date that presently expire on a date beyond June 30, 2023, shall maintain such date<sup>1</sup>.”

Los fundamentos que la propia Resolución establece para conceder las enmiendas que aumenta el costo de energía para proyectos de renovables a gran escala son:

“On March 31, 2023, PREPA filed a document titled *Motion Requesting Approval of Amendments and Informing on Status of*

<sup>1</sup> Resolution and Order en el Caso Núm. NEPR-MI-2020-0012: In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan, en la pág. 5 (25 de mayo de 2023).

*Project Development Timeline for Tranche 1 Utility Scale Project Agreements* (“March 31 Motion”). Through the March 31 Motion, PREPA indicated that the Service Providers of the 18 Executed PPOA’s were requesting extensions of deadlines in the PPOAs to achieve a Closing Date. PREPA further stated that the Resource Providers’ requests were justified and reasonable given that they had material concerns regarding timelines and pricing because the Closing Date triggers the twenty-four (24) months clock to achieve the Commercial Operational Date (“COD”). The March 31 Motion included documentation (filed under seal) attesting to increased project costs relative to the information used to originally submit bids for the Tranche #1 RFP.”

...

“PPOAs Third Amendment Proposed Pricing Terms

The Energy Bureau reviewed thoroughly the explanations and documents included in PREPA’s March 31 Motion, April 19 Motion, April 26 Motion, and April 28 Motion. Notably, the proposed Third Amendments and the Annex A and Annex B information from the April 28 Motion include specific proposed changes to the seven (7) PPOAs pricing terms, reflecting asserted supply chain and related inflationary pressures causing the real costs of the projects to increase beyond the levels seen in the executed PPOAs approved by the Energy Bureau initially in February 2022 and subsequently in September 2022.”

“The September 2022 Resolution included a summary of the Tranche #1 Solar PV Project parameters as Appendix A. The portfolio weighted Nominal LCOE for the approved eighteen (18) projects was \$108.1/MWh, and the associated Real LCOE (\$2021) was \$85.4/MWh. An updated (from 2%/year) inflation rate of 3.9%/year was used for the 2022 and 2023 periods, and an inflation rate of 2% was used for all other years to compute the updated Real price term in Appendix A of the September 2022 Resolution.”

...

“Based on public and reliable information, the Energy Bureau acknowledges the real cost increases that have occurred across the renewable energy industry. The most recent Lazard LCOE report from April 2023 indicates that “the average LCOE [far unsubsidized utility-scale solar PV] has increased for the first time in the history of our studies.” The high end of projected solar PV costs in 2023 in the Lazard report is more than twice as high as the 2021 value (an increase from \$41/MWh to \$96/MWh), and while the Lazard publication does not directly reflect specific Puerto Rico circumstances it reflects the broader industry cost pressures for utility-scale Solar PV resources. The Energy Bureau also recognizes that core PCE8 inflation has increased even beyond the 3.9%/year assumed for the 2022 and 2023 periods in the September 2022 Resolution computation of

updated Real LCOE for the Solar PV projects. Other metrics for inflation that could have a greater impact on the price pressures in the solar PV industry are higher than core PCE, such as the producer price index or PPI.”

“The Energy Bureau reiterates the point made in the June 13 Resolution that the costs for energy and capacity from competing gas-fired resources are now significantly higher than the costs considered in the IRP process, against which the Solar PV costs were originally compared. Capital costs for both combined cycle and combustion turbine resources are higher, and fuel costs for energy production in Puerto Rico also remain higher than projected in the Approved IRP. The significant benefits of avoiding energy production from existing resources remain even at the higher market costs seen in the certain PPOAs proposed Third Amendments.”

“The Energy Bureau has independently confirmed the LCOE values presented by PREPA for the seven (7) utility-scale solar PV projects in the April 26 Motion. Based on a not unreasonable increase to the real costs of a portfolio consisting of six (6) out of the seven (7) projects, and guided by real cost increases in the industry for solar PV utility-scale projects, the Energy Bureau DETERMINES that the proposed price amendments to six (6) projects identified in Annex A of this Resolution and Order reflect a reasonable cost for Puerto Rico ratepayers and is in line with the Modified Action Plan of the IRP. The determination on the reasonableness of the PPOAs’ cost increase encompasses the following six (6) projects: AD-1-P; AE-1-P; 1-1-P; AQ-1-P; AI-1-P; and AK-1-P. Regarding the project identified as AS-1-P the Energy Bureau DETERMINES that, based on the conditions established in Section 2.3(c) of the proposed Third Amendment, the Service Provider did not submit a credible BAFO. Instead, the Service Provider seems to be guessing on PREB’s and FOMB’s course of action regarding its purportedly final pricing proposal. Given the foregoing, the Energy Bureau cannot assess at this time the reasonableness of the price increase proposed regarding the project identified as AS-1-P.<sup>2</sup>”

De otra parte, el Negociado deniega tres de las enmiendas propuestas basándose

en:

“For the project identified as I-1-P, the Service Provider proposes to include a condition that to certain extent requires PREPA to award in favor of the Service Provider (and/or its affiliates) additional Tranche #1 RFP projects that are still under negotiation between the Service Provider (and/or its affiliates) and PREP A. Such a condition is neither acceptable nor consistent with the terms of the Tranche #1 RFP. Each project was initially submitted and evaluated independently as part of the Tranche #1 RFP, therefore, the projects shall also be evaluated independently at this stage.

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<sup>2</sup> *Id.*, en las págs. 1-3 (citas internas omitidas).

To the extent that the condition is included in the PPOA, the proposed Third Amendment is DENIED, without prejudice.”

“For the project identified as AS-1-P, the Service Provider proposes to include a condition that to certain extent requires PREPA to award in favor of a Service Provider’s affiliate a project under consideration in Tranche #2 RFP. Such a condition is neither acceptable nor consistent with the terms of the Tranche #1 and Tranche #2 RFPs. Each project must be evaluated independently as part of the corresponding competitive process in which it is participating.”

“The Third Amendment for the project identified as AS-1-P also suggests that the Service Provider has not secured control over the site (land) required for the development of the proposed project. Specifically, the Service Provider proposes in the Third Amendment to find an alternate location for the development of the facility if PREB and FOMB approve a capacity increase requested for the proposed project.<sup>3</sup>”

Dado el contexto que indica la Resolución y Orden del 25 de mayo de 2023, la parte compareciente, obrando bajo los preceptos de la buena fe contractual aplicable a la fase precontractual o de negociación que dispone nuestro ordenamiento, optó por no participar del Primer Tranche. Entendíamos, al igual que entiende este Foro al presente, que el precio predeterminado como máximo y el término para comenzar la operación comercial no eran congruentes con las prácticas aceptadas en la industria y mercado real. Reiteramos —como indicamos entonces— que cualquier comerciante informado hubiera previsto que dichas condiciones imposibilitarían el cumplimiento.

Precisamente, la parte compareciente informó a la AEE que los términos contractuales preliminares no eran viables dado las ya claras tendencias inflacionarias en el mercado, producto entre otras cosas, por la inflación mundial por el COVID, la inestabilidad política en el este de Europa —particularmente, la invasión a Ucrania en

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<sup>3</sup> *Id.*, en la pág. 4.

febrero de 2022—, los problemas de la pandemia y los problemas de líneas de suministros de productos y materiales.

El Negociado y la AEE también rechazaron Sistema PV + BESS una capacidad de 1MW de 24/7 interconectado a 13kW “feeders” y con capacidad 24/7 250kW a 4kW “feeders”. Windmar estaba entonces —como al presente— lista a contratar sistemas en Culebra, Sabana Seca, Coto Laurel, Martínó, el Barrio Indio en Guayanilla y en Guayama. La capacidad agregada de fotovoltaicos ronda los 25 MW.

Por tanto, el compareciente interesa cotizar bajo las nuevas condiciones adoptadas por este Foro. En la alternativa, solicitamos que el Negociado se exprese en cuanto a lo requerido de manera fundada para que se nutra el expediente administrativo. De esta manera, el compareciente pudiese acudir a los Tribunales a impugnar las adjudicaciones que alteran sustancialmente las condiciones iniciales del RFP.<sup>4</sup>

Como señaló el propio Negociado el 2 de febrero de 2022:

“In evaluating a proposal for an agreement between electric power service companies, the Energy Bureau must ensure that the proposed power purchase agreements are consistent with the energy public policy established by Act 17-2019, and the IRP Order. Agreements that are inconsistent with the IRP Order shall not be approved. The Energy Bureau must ensure that the charges and fees that will be paid the independent energy producer are just, reasonable, and protect public interest and public finances. The Energy Bureau should determine that parameters related to profit margin and price escalators are based on industry costs and profitability benchmarks, given the nature of the proposed projects. The Energy Bureau should also ensure that the interconnection of the proposed projects will not jeopardize that reliability and safety of the electric system<sup>5</sup>.”

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<sup>4</sup> Véanse Secs. 3.1, 3.18 y 4.5, *Ley de Procedimiento Administrativo Uniforme*, Ley 38-2017, 3 LPRA §§ 9641, 9658 y 9675.

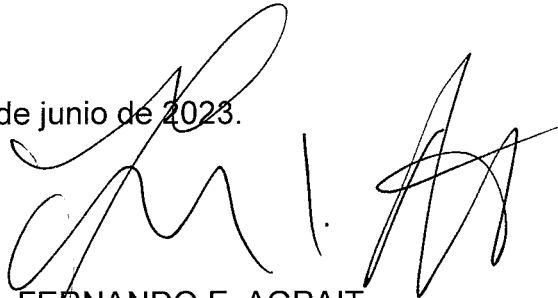
<sup>5</sup> *Resolution and Order* en el Caso Núm. NEPR-MI-2020-0012: In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan, en la pág. 4 (2 de febrero de 2022) (Citando al Art. 6.32 (d), (g) y (f), *Ley de Transformación y ALIVIO Energético*, Ley 57-2014, 22 LPRA § 1054ff.

Los números que indicó el Negociado entonces estaban fuera de la realidad del mercado y su clara tendencia alcista.

POR TODO LO CUAL, se solicita que este Honorable Foro permita a la parte compareciente continuar con el Tranche conforme a los nuevos números y condiciones adoptadas en la Resolución y Orden de 25 de mayo de 2023.

CERTIFICO: Haber enviado copia fiel y exacta de este escrito por correo electrónico a [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com); [ana.rodriguezrivera@us.dlapiper.com](mailto:ana.rodriguezrivera@us.dlapiper.com); [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); [Jaime.elkoury@promesa.gov](mailto:Jaime.elkoury@promesa.gov); [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com); [brannen@genera-services.com](mailto:brannen@genera-services.com); [kbolanos@genera-services.com](mailto:kbolanos@genera-services.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com) and [mvarez@diazvaz.law](mailto:mvarez@diazvaz.law).

En San Juan, Puerto Rico, a 16 de junio de 2023.



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