

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

NEPR

Received:

Jun 30, 2023

9:42 AM

IN RE: NOTICE OF DELAY
(XZETA-TEC SOLAR I, LLC)

CASE NO.:

SUBJECT: Notice of Delay and Authorization Request to extent terms of the Renewable Energy Power Purchase and Operation Agreement with the Puerto Rico Electric Power Authority Contract 2013-P00042E

MOTION REQUESTING AUTHORIZATION

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW Xzerta-Tec Solar I, LLC (“XZERTA”), through its counsel of record, and respectfully submits and prays as follows:

1. During Fiscal Year 2019 and 2020 the Puerto Rico Electric Power Authority (“PREPA”) and Xzerta-Tec Solar I, LLC undertook renegotiation of their Power Purchase and Operation Agreement and Master Power Purchase and Operation Agreement.
2. On Date the Financial Oversight & Management Board for Puerto Rico (“FOMB”) authorized PREPA
3. On September 4, 2020, the Puerto Rico Energy Bureau (“PREB”) issued an Order and Resolution approving the PPOA between PREPA and XZERTA.¹
4. On March 1, 2021, the FOMB authorized PREPA via letter to execute the PPOA of XZERTA.

¹ See, PREB Order and Resolution, IN RE: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacional (Xzerta-Tec Solar I, LLC), Case No. NEPR-AP-2020-0003, September 4, 2020, detailing the procedural track of the PPOA, the energy price structure and interconnection.

5. On June 4, 2021, PREPA and XZERTA executed an Amended and Restated Power Purchase and Operation Agreement that included PREB's recommendations and modifications.
6. On June 1, 2021, LUMA commenced the transition period to operate and administer the Transmission and Distribution of the PREPA Grid.
7. On December 8, 2021, the Honorable Laura Taylor Swain entered an Order Authorizing PREPA's Assumption of the XZERTA's PPOA.²
8. On May 3, 2022, the Puerto Rico Planning Board certified the Xzerta-Tec Hatillo Solar Farm as a Strategic Project under ACT 19-2017.³
9. On October 19, 2022, the PREB certified XZERTA as an Energy Producer.⁴
10. On February 21, 2023, PREPA and LUMA issued the Interconnection Study prepared by Sargent & Lundy ("S&L").
11. XZERTA had previously notified both PREPA and PREB of delayed issues as part of the Monthly Reports that are required to be submitted to the PREB.
12. In compliance with Article 4.1, XZERTA is hereby notifying PREB as it has notified PREPA, that as of today there is no final resolution for the request of designing and performing the interconnection of the new Xzerta 42100 115 KV Transmission Line as aerial instead of underground as originally proposed by LUMA in violation of PREPA design codes for a 115KV Transmission Line, where underground installation are only

² See United States District Court – District of Puerto Rico Docket Entry No. 2558 in Case No. 17-4780, Order Approving PREPA's Assumption of Power Purchase Agreements, December 8, 2021.

³ See Planning Board Strategic Project Certification PE-2022-05-004, May 3, 2022.

⁴ See PREB Order and Resolution, In Re: Electric Service Company Certification Request, Case No.: NEPR-CT-2022-0001, October 19, 2022.

allowed in areas that are overpopulated limiting the aerial space and prohibits partial underground installation.

13. The request was immediately made after XZERTA evaluated the S&L and LUMA interconnection studies released on February 21, 2023, and determined that the proposed underground installation was not feasible nor in compliance with PREPA Design codes. A prompt resolution is necessary to allow the finalization of the overall detailed design and to request the design acceptance by LUMA and PREPA.
14. Moreover, it is imperative to understand that the project execution has been severely delayed due to several commercial and contractual issues that arise from LUMA's interpretation of the PPOA, consequently, surpassing the 240 days from the assumption date (12/2021) to achieve the FULL NOTICE TO PROCEED DATE (FNTP) as stated on the definitions of the PPOA.
15. This delay, considered as a force majeure, was initially notified on September 15, 2022, to LUMA and PREPA via email helping to expedite the assignment of the interconnection study to a Consultant Technical Expert (CTE) and to have this CTE quickly complete the interconnection study. It has also been consistently included in the Monthly Reports to the PREB.
16. Notwithstanding the completion of the study and Xzerta's attempts to have a final resolution for the design and commercial issue that emerge from the interconnection study, LUMA has not yet confirmed acceptance of Xzerta's proposed aerial interconnection, which was already validated by PREPA.
17. In addition, the commercial issue regarding the responsible party for the construction of the PREPA interconnection and the increased cost to the cap as defined by Article 4.6, have

not been resolved. Both events have further delayed the completion of the submittals and subsequently, delayed the procurement of materials and the release of contracts, pushing out the FNTF date, Guaranteed Interconnection Date and Guaranteed Commercial Operation Date.

18. Therefore, XZERTA is hereby officially requesting PREB and PREPA an extension of time, approximately an additional 120 business days for FNTF, as required by Article 4.5 of our PPOA. XZERTA also notifies that this delay could have a financial impact due to the implications of the actual inflation factors affecting the procurement of materials.

19. Although XZERTA has continuously and consistently continued to advance the project design and procurement, and has obtained a construction permit notification for the 60MW Renewable Energy Plant, the acceptance of the final interconnection design and transmission line as proposed and the commercial issues relating to the possible amendments to the PPOA being introduced by LUMA in the Draft Interconnection Agreement recently submitted to XZERTA will also impact the project implementation timeline.

WHEREFORE, for the reasons stated above, XZERTA respectfully **REQUESTS** the Puerto Rico Energy Bureau to **TAKE NOTICE** of the above and to **AUTHORIZE PREPA** to grant the additional time requested and to **ORDER LUMA** to promptly evaluate and issue a determination regarding the proposed revised interconnection design.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30th day of June 2023.

/s María Elisa Martínez Avilés
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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 both PREPA and LUMA through its project designees.

In San Juan, Puerto Rico, on this 30th day of June 2023.