

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

NEPR Received: Jul 31, 2023 8:02 PM
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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 Amendment to
PPOA Between Esmeralda Solar Farm and
PREPA

**MOTION TO SUBMIT AMENDMENT TO PPOA BETWEEN
ESMERALDA SOLAR FARM AND PREPA**

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 of Puerto Rico (“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”). As per Section 2.3(b) of the Executed PPOAs the date to achieve closing before triggering the automatic termination of the Esmeralda Solar Farm LLC PPOA (“Esmeralda Solar”) was March 17, 2023. Since then, PREPA has executed various amendments with Resource Providers for an extension of the automatic termination provided in the referenced Section 2.3 of the Executed PPOAs.
2. PREPA herein submits for the Energy Bureau’s review and approval amendment no. 5 to the Esmeralda Solar PPOA executed today July 31, 2023, to allow an extension of thirty (30) days, until August 31, 2023, to achieve the Closing Date and stay the automatic termination provision. This amendment was made upon the request for an extension of time by the Resource Provider.

See, Annex A.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of this Motion, and **APPROVE** amendment no. 5 of the Esmeralda Solar PPOA.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31st day of July 2023.

/s Maralíz Vázquez-Marrero

Maralíz Vázquez-Marrero

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/s Joannely Marrero Cruz

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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 31st day of July 2023.

/s Joannely Marrero Cruz
Joannely Marrero Cruz

Annex A

**AMENDMENT NO. 5
TO THE
POWER PURCHASE AND OPERATING AGREEMENT
BETWEEN
ESMERALDA SOLAR FARM LLC
AND
THE PUERTO RICO ELECTRIC POWER AUTHORITY**

This Amendment No. 5 to the Power Purchase and Operating Agreement with contract number 2023-P00043 (this “Amendment”) is entered into as of July 31, 2023 (the “Fifth Amendment Effective Date”), by and between the Puerto Rico Electric Power Authority (“PREPA”) and Esmeralda Solar Farm LLC (the “Resource Provider”). PREPA and Resource Provider are herein individually referred to as a “Party” and collectively referred to as “Parties.” All capitalized terms used in this Amendment and not otherwise defined shall have the meaning given to them in the Agreement (defined below).

RECITALS

WHEREAS, the Parties entered into that certain Power Purchase and Operating Agreement, dated August 12, 2022 (the “Agreement”), which provided two hundred forty (240) Days to reach the Closing Date;

WHEREAS, the Parties entered into that certain Amendment No. 1 to the PPOA, dated March 17, 2023 (the “First Amendment”), which provided for an additional sixty (60) Days to reach the Closing Date;

WHEREAS, the Parties entered into that certain Amendment No. 2 to the PPOA, dated June 8, 2023 (the “Second Amendment”), which provided until June 30, 2023 to reach the Closing Date;

WHEREAS, the Parties entered into that certain Amendment No. 3 to the PPOA, dated June 30, 2023 (the “Third Amendment”), which provided until July 10, 2023 to reach the Closing Date;

WHEREAS, the Parties entered into that certain Amendment No. 4 to the PPOA, dated July 10, 2023 (the “Fourth Amendment”), which provided until July 31, 2023 to reach the Closing Date; and

WHEREAS, the Parties now desire to amend certain provisions of the Agreement in accordance with the terms of this Amendment,

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

SECTION A. Amendment to allow more time to achieve the Closing Date

Section 2.3(b) of the Agreement is hereby amended and restated in its entirety to read as follows:

If either (i) the Closing Date does not occur for any reason by August 31, 2023, or (ii) PREPA notifies Resource Provider of its intention either not to (A) accept the Best and Final Offer made by Resource Provider, or (B) issue a Best Interests Determination for the Project, in each case for any reason whatsoever, then, without limiting Section 15.2 (*No Discharge of Obligations*), this Agreement shall automatically terminate at midnight on such Day, provided that upon termination of this Agreement in accordance with this paragraph (b) of this Section 2.3, (i) neither Party shall incur any liability to the other Party, and (ii) PREPA shall return the Bid Security to Resource Provider unless Resource Provider has breached any of the Agreement Date Obligations in a

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material way and failed to cure such breach within ten (10) Business Days of the occurrence of such breach, in which case PREPA shall have the right to draw on the full face amount of the Bid Security.

SECTION B. Representations and Warranties

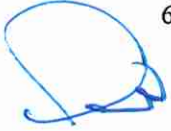
1. PREPA hereby represents and warrants to Resource Provider that: (a) the execution and delivery by PREPA of this Amendment, and the Amendment itself, (i) have been duly authorized by PREB, PREPA's Governing Board, and any other applicable PREPA governing body in accordance with applicable law, (ii) do not and will not require any additional internal or external consent or approval and (iii) do not and will not violate any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound; and (b) this Amendment is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
2. Resource Provider hereby represents and warrants to PREPA that: (a) the execution, delivery, and performance by Resource Provider of this Amendment (i) have been duly authorized, (ii) do not and will not require any additional internal consent or approval of Resource Provider and (iii) do not and will not violate any provision of Resource Provider's certificate of formation or operating agreement, or any material indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any law, ordinance, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect; and (b) this Amendment is a legal, valid and binding obligation of Resource Provider, enforceable against Resource Provider in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.

SECTION C. Miscellaneous

1. Information for Controller's Office. PREPA will charge all payments that it owes under the Agreement, as amended by this Amendment, to PREPA's budget account number 01-4042-54710-050-668-0000 and estimates that its costs under the Agreement will not exceed eight hundred ninety four million six hundred seventeen thousand one hundred sixty five dollars and twenty two cents (\$894,617,165.22). For the avoidance of doubt, the Parties have set out the expected account number and estimate of costs for informational purposes to satisfy the requirements of the Puerto Rico Controller. This paragraph does not bind the Parties or modify any other provision of the Agreement.
2. Headings. The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
3. No Implied Waiver. This Amendment shall be limited precisely as written and does not modify any provisions of the Agreement except as specifically amended above. This Amendment shall not be deemed to be a consent granted pursuant to, or a waiver or modification of, any other term or condition of the Agreement, whether or not known to the Parties, or to prejudice any other right or rights which the Agreement may now have or have in the future.
4. Counterparts. This Amendment may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

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5. Entire Agreement. The Parties intend the Agreement, as amended by this Amendment, as the final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter thereof that supersedes all prior written and oral understandings between the Parties with respect thereto.



6. Governing Law. This Amendment shall be governed by, construed, and enforced in accordance with the Laws of the Commonwealth of Puerto Rico without regard to any contrary result required under applicable conflicts of laws rules. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Article 21 (*Dispute Resolution*) of the Agreement.

[Signatures appear on the following page.]

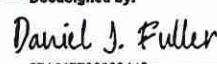
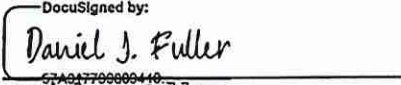
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IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed by their respective officers as of the date first above written.

PUERTO RICO ELECTRIC POWER AUTHORITY

By: 
Name: Josué A. Colón Ortiz
Title: Executive Director
Tax ID: 660-43-3747

ESMERALDA SOLAR FARM LLC

DocuSigned by:

By: 
Name: Daniel J. Fuller
Title: Manager
Tax ID: 66-0984232