

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

NEPR

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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: Informative Motion and Request
for Extension to Comply with the August 24
Order

**INFORMATIVE MOTION AND REQUEST FOR EXTENSION TO COMPLY
WITH THE AUGUST 24 ORDER**

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 Puerto Rico 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 (the “June 30 PPOAs”) and the remainder by the end of August 2022 (the “August PPOAs”).
2. 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, and for the August PPOAs at various dates from May to June 2023.

3. Thereafter, on April 24, 2023, after multiple procedural events, 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 alleged 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.

4. Furthermore, on May 25, 2023, the Energy Bureau entered a *Resolution and Order* making various determinations related to a subset of the Tranche 1 Solar PV Projects (“May 25 Order”).

5. Through the May 25 Order, in what is pertinent to this motion, the Energy Bureau also granted 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 dates that presently expire on a date beyond June 30, 2023, shall maintain such date.

6. On June 15, 2023, PREPA in compliance with the directives in the May 25 Order, as well as the representations made by PREPA in the May 12 Motion submitted to the Energy Bureau, amendments for the two (2) remaining August PPOAs, the two (2) Executed ESSAs, as well as the two (2) June 30 PPOAs that the Energy Bureau previously rejected (i.e., I-1-P and AS-1-P).

7. In response, on June 30, 2023, the Energy Bureau issued a *Resolution and Order* (“June 30 Order”) making various determinations related to a subset of the Tranche 1 Projects and in response to PREPA’s July 15 Motion. Among other matters, the Energy Bureau made the following determinations:

(i) APPROVES the three (3) ESSAs for projects identified as: L-3-E, M-3-E, and H-3-E, for 150 MW of 4-hour duration battery energy storage nameplate capacity.

(ii) APPROVES the Third Amendments to two (2) ESSAs for projects identified as: A-2-E, and C-2-E, for 200 MW of 4-hour duration batter energy storage nameplate capacity.

(iii) APPROVES amendments to six (6) PPOAs for projects identified as: W-3-P, AT-1-P, I-1-P, and C-1-P, for 515 MW of Solar PV utility scale nameplate capacity.

(iv) GRANTS and extension until July 10, 2023 to sign the PPOAs and ESSAs, and, thus, to achieve closing date, to all the projects identified in paragraphs (i), (ii) and (iii) above.

(v) DENIES PREPA's request for authorization to amend the PPOAs for the projects identified as: AB-1-P and N-1-P.

8. On July 31, 2023, PREPA submitted for the Energy Bureau's review and approval of the fifth amendment to the Esmeralda Solar Power Purchase and Operating Agreement executed on July 31, 2023, to allow an extension of thirty (30) days, until August 31, 2023, to achieve Closing Date and stay the automatic termination provision ("July 31 Motion").

9. On August 16, 2023, the Energy Bureau issued a *Resolution and Order*, whereby it granted PREPA ten (10) days to specify the reasons that justify an extension until August 31, 2023 to achieve Closing Date (i.e., changes in price, levelized cost of energy, MW capacity, among others). The Energy Bureau further stated that, upon review of the reasons provided by PREPA, it would determine if approval of the fifth amendment to the Esmeralda Solar Power Purchase and Operating Agreement was appropriate ("August 16 Order"). The Energy Bureau also warned PREPA that requests for approving contracts and amendments were to be submitted before the execution of such contract or amendment.

10. On August 22, 2023, PREPA filed a document titled *Motion to Submit N-I-P Proponent Best and Final Offer Information* ("August 22 Motion"). In the August 22 Motion, PREPA submitted, the proponent's Best and Final Offer ("BFO"), as received by PREPA.

11. On August 24, 2023, the Energy Bureau issued a Resolution and Order ("August 24 Order"). Through the August 24 Order, the Energy Bureau took notice of the August 22 Motion

and ordered PREPA to within two (2) business days (i.e. today, August 28, 2023), state its position on the three (3) updated price conditions in Annex A of the August 22 Motion. Regarding the second condition described, the Energy Bureau ordered PREPA to provide a detailed explanation as to why it should be allowed, when such a condition has not been presented by other proponents in the contracts already approved by the Energy Bureau.

12. PREPA respectfully informs the Energy Bureau in compliance with the August 16 Order the reason for requesting the extension to stay the automatic termination provision, was that PREPA was still in communication and negotiations with proponents to receive the BFO, which included a potential capacity increase to the N-1-P project.

13. In regard to the August 24 Order, PREPA respectfully requests the Energy Bureau for an extension of time to provide its position and a detailed explanation of the price and the second condition described as part of Annex A to the August 22 Motion. PREPA's HoldCo officials have been working diligently on continuing the Tranche I process internally and establishing communication with all proponents, as well as attending the Energy Bureau's Resolution and Orders. However, it should be noted by the Energy Bureau that the officials who worked on this matter, prior to Genera-PR, LLC ("Genera") commencement date and the completion of PREPA's reorganization, are no longer PREPA employees and due to the uncertainty of the employee roster and positions that came down to the last minute no proper transition of work scopes was established.

14. Furthermore, PREPA has not been able to retain the services of its consultants Sargent and Lundy Puerto Rico LLC ("S&L") and King and Spalding LLP ("K&S") due to the ever-changing requirements of the contract revision process by the Financial Oversight and Management Board for Puerto Rico ("Oversight Board" or "FOMB") and the limited approved budget for FY2024,

which has caused PREPA to re-asses and amend professional services contract amounts in order for works to be preliminarily continued. For this reason, on August 24, 2023, PREPA requested the Energy Bureau's review and approval of the amended contracts with S&L and K&S by filing a document titled *Motion to Submit Two Urgent Contracts in Compliance with the Energy Bureau's Orders Necessary to Comply with the Tranche 1 Implementation* in Case No. NEPR-MI-2021-0004.

15. PREPA respectfully requests the Energy Bureau to grant an extension of time of ten (10) days, until September 7, 2023, to inform any further details in compliance with the August 24 Order, and also to allow PREPA to further amend the Closing date of the N-1-P project in order to stay the automatic termination clause that currently expires on August 31, 2023, this until PREPA can retain its technical advisors and execute the contracts required to continue with all the tasks that correspond to the Tranche I process including the regulatory requirements before this Honorable Energy Bureau.¹

16. This request is made in good faith, due to the above-mentioned difficulties and with no intent to delay the Energy Bureau's adjudication on the pending matters and important compliance with the renewable energy law mandates undertaking in this docket.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of this Informative Motion, and **GRANT** the Request for Extension to allow PREPA to further amend the Completion date and to comply with the August 24 Order herein requested.

¹ After the Energy Bureau's approval PREPA has to re-submit the contracts for FOMB approval. The culmination of the approval process is outside of PREPA's control.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of August 2023.

/s Maralíz Vázquez-Marrero

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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 28th day of August 2023.

/s Joannely Marrero Cruz
Joannely Marrero Cruz