

**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: Motion in Compliance
with the August 24 Order

MOTION IN COMPLIANCE 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. In compliance with the August 24 Order, PREPA herein provides its position to the updated price conditions for project N-1-P and also submits a confidential memorandum with further explanations by the proponent as Annex A.

13. In regard to the Best and Final Offer submitted by proponent N-1-P, PREPA states that it has already issued letters to all proponents in order to assess their respective interests to participate in the Department of Energy Loan Program Office (“DOE-LPO”), most should respond by September 8, 2023. It is PREPA’s position that the Tranche I renewable projects being eligible for financing through the DOE will ensure the projects achieve operation despite the increase in prices.

14. Also, pertaining to the second condition the proponent has expressed they are willing to move forward without this condition, this is favorable as PREPA does not support this condition mainly because as the Energy Bureau expressed none of the other Tranche I projects were afforded this opportunity.

15. PREPA again states the necessity for King and Spalding¹ to be retained PREPA by an amount that allows them to provide services for the FY024, for the continuance of this process. Specifically, to be able to amend the PPOAs in order to comply with the conditions set forth by the DOE-LPO, and assist PREPA on the required changes, negotiations and submittals before the Energy Bureau on this matter of utmost importance. At present and given the FOMB’s interpretation of King & Spalding’s work in relation to the budget line item, only \$100,000 has

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been assigned to this contract. This amount is not nearly enough for what is necessary for the King & Spalding firm to complete the work related to Tranche 1.

16. Given that the information contained in Annex A 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** 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).

17. 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)². Regulation 8815 includes language in Art. 10.2 which

² 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.”)

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.” As stated before, the information provided by Proponent in Annex A comprises business and trade secrets which Proponent have specifically requested be maintained in a confidential manner. 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 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.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 6th day of September 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 6th day of September 2023.

/s Joannely Marrero Cruz
Joannely Marrero Cruz

Annex A
[Submitted Underseal]