

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

NEPR Received: Sep 20, 2023 8:09 PM
--

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 Proposed
Amendment to AI-1-P PPOA

MOTION TO SUBMIT PROPOSED AMENDMENT TO AI-1-P PPOA

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. PREPA has received a proposal for an amendment request to the PPOA signed with the project identified as AI-1-P for a price increase that would increase the base rate to \$0.1469/kWh with a 2% annual escalator. This project noted that current market conditions and unforeseen construction requirements significantly impacted the rate of return for the project, causing a higher base rate to be proposed. This proposal would represent a fourth amendment to the AI-1-P PPOA.

9. PREPA does not support the proposed amendment at this point in the process, especially for the reasons predicated by the proponent, which were foreseeable and their responsibility¹. Notwithstanding, PREPA requested the proponent to submit a detailed draft of the proposed amendment with the corresponding supporting documents. For transparency and recognizing that PREPA has the responsibility to inform the Energy Bureau of any changes in negotiations, PREPA herein submits for the Energy Bureau's evaluation the proposed amendment to the AI-1-P project as Annex A.

10. Annex A includes communications between PREPA and the Proponent, price justification and the proposed redline for the draft amendment of the PPOA. It should be noted, that the termination date for the AI-1-P project is currently scheduled for September 30, 2023. In case the Energy Bureau requires further information on PREPA's position or to discuss the proposed

¹ For example, high insurance and engineering costs due to flood zone, should have been a known condition since the site was selected.

amendment, PREPA states its availability to participate in a meeting to discuss this matter with the Energy Bureau.

11. 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).

12. 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 has specifically requested be maintained in a confidential manner. Accordingly, PREPA respectfully requests 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, **EVALUATE** the draft proposed amendment, and **ACCEPT** PREPA’s position to not move forward with a fourth amendment of project AI-1-P. In the alternative, PREPA is available for a meeting with the Energy Bureau to further discuss this matter.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of September 2023.

/s Maralíz Vázquez-Marrero
Maralíz Vázquez-Marrero
TSPR 16,187
mvazquez@diazvaz.law

/s Joannely Marrero Cruz
Joannely Marrero Cruz
TSPR 20,014

jmarrero@diazvaz.law

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.

290 Jesús T. Piñero Ave.
Oriental Tower, Suite 803
San Juan, PR 00918
Tel.: (787) 395-7133
Fax. (787) 497-9664

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 20th day of September 2023.

/s Joannely Marrero Cruz
Joannely Marrero Cruz

Annex A
[Submitted Underseal]