

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

**NEPR**

**Received:**

**Sep 22, 2023**

**9:22 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 in Compliance  
with the September 15 Resolution and Order

**MOTION IN COMPLIANCE WITH THE SEPTEMBER 15  
RESOLUTION AND 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 April 4, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* ("April 4 Order") through which it ordered PREPA to require Tranche 1 proponents to use the most recent interconnection costs estimates, provided by LUMA<sup>1</sup>, to present their Best and Final Offer ("BFO").
2. Through the April 4 Order, the Energy Bureau also determined that any Interconnection Cost Price Discrepancies between the interconnection costs used to determine the BFO and the final interconnection costs, as established by LUMA through the interconnection RFP ("Final Interconnection Costs") **would not be assumed** by the proponents. Additionally, the Energy Bureau determined that any price decrease would be noted and the BFO reduced.
3. Furthermore, the Energy Bureau also determined that any delay of the Commercial Operation Date ("COD"), not caused by the proponent, would be properly addressed by the Energy Bureau, assuring that any delay in the completion of interconnection works shall not be adjudicated

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<sup>1</sup> LUMA Energy, LLC, and LUMA Energy ServCo, LLC, (collectively, "LUMA").

against the Resource Provider in achieving the COD in the required 24-months from the Closing Date.

4. Thereafter, on September 15, 2023, the Energy Bureau issued a *Resolution and Order* ("September 15 Order") whereby the Energy Bureau took administrative notice and incorporated into these proceedings, a letter issued by the Financial Oversight and Management Board for Puerto Rico ("FOMB") on September 14, 2023. Through its letter, the FOMB approved certain amendments to the Power Purchase and Operation Agreements ("PPOAs") for the Tranche 1 projects.

5. The September 15 Order also directed PREPA to file a report on or within five business days (i.e. Today, September 22, 2023). Through the report PREPA must:

- (i) CONFIRM the receipt of the Final Interconnection Costs for each Tranche 1 project provided by LUMA;
- (ii) INCLUDE as attachments of the foregoing report, copies of the documents submitted by LUMA regarding the Final Interconnection Costs;
- (iii) INCLUDE a table comparing, for each project, the interconnection costs estimates used by the proponents for the execution of the PPOA and the Final Interconnection Costs. The table shall indicate whether there is a decrease or increase regarding the Final Interconnection Costs;
- (iv) INDICATE the Interconnection Cost Price Discrepancy not to be assumed by the Tranche 1 proponents, as per the April 4 Order and a detailed explanation of the interconnection cost discrepancies. The interconnection costs for each project shall only include the costs of the works necessary for the interconnection of that project and reasonable oversight costs; and
- (v) INDICATE any BFO reduction, in the case of a decrease in the interconnection costs.

September 15 Order at p. 1-2

6. Upon receiving the September 15 Order, representatives from PREPA legal and operations met internally and also held a meeting with LUMA representatives to discuss the available information and compliance with the order.

7. Item (i) of the September 15 Order, requires PREPA to confirm the receipt of the “Final Interconnection Costs for each Tranche 1 project provided by LUMA”. In compliance with the above, PREPA herein confirms receipt of what LUMA has defined as “Total Interconnection Cost including LUMA Works Estimate”. Also, item (ii) directed PREPA to submit as attachments copies of the documents submitted by LUMA regarding the Final Interconnection Cost. PREPA herein submits as Annex A the Interconnection data for Tranche I received from LUMA on September 18, 2023, to comply with the September 15 Order.

8. After a revision of Annex A, PREPA is unable to categorically confirm the values used are the final interconnection costs, since the table that LUMA submitted to PREPA identifies the costs as “Total Interconnection Cost including LUMA Works Estimate(\$)”. Therefore, PREPA requires a breakdown and further information from LUMA to really understand what’s included in the costs provided.

9. Notwithstanding, in response to item (iii) to the September 15 Order item PREPA submits, as Annex B, an excel table with the Interconnection Costs for Tranche I. The table includes the project tag, resource provider, project name, interconnection substation (point of contact), size of project in MW, type of technology, voltage, the initial interconnection cost estimate, the latest or current interconnection cost estimate, and the percentage variance between both. It should be noted that for the reasons listed above, PREPA identified in Annex B the interconnection costs received from LUMA as the “Latest Interconnection Cost Estimate”.

10. Regarding item (iv), PREPA respectfully submits to the Energy Bureau that the party with the responsive information to this request is LUMA. LUMA is the only party that knows the interconnection costs and can provide a narrative that details and explains any discrepancies. PREPA informed LUMA of this during the referenced meeting and the parties agreed that PREPA

would refer the Energy Bureau to direct item (iv) to be answered by LUMA. Thus, without further information, PREPA is unable to provide a detailed explanation of the interconnection cost discrepancies.

11. Lastly, in response to item (v) of the September 15 Order, since all the final costs exceed the original estimates, PREPA did not request or receive BFO reductions from the proponents.

12. Given that the information contained in Annex A and Annex B are 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 and LUMA to be maintained in a confidential manner, PREPA hereby requests that the information in **Annexes A and B** 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).

13. 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)<sup>2</sup>. Regulation 8815 includes language in Art. 10.2 which 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 Annexes A and B comprises business and trade secrets that LUMA has specifically requested be maintained in a confidential manner. Accordingly, PREPA respectfully requests that the Energy Bureau find these documents and information confidential and thus order them to be maintained under seal.

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of this Motion and **FIND** PREPA in compliance with the September 15 Order and **GRANT** confidential treatment to annexes A and B

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<sup>2</sup> 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.”)

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 22<sup>nd</sup> day of September 2023.

/s Maralíz Vázquez-Marrero

Maralíz Vázquez-Marrero

TSPR 16,187

[mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law)

/s Joannely Marrero Cruz

Joannely Marrero Cruz

TSPR 20,014

[jmarrero@diazvaz.law](mailto: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](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com).

In San Juan, Puerto Rico, on this 22<sup>nd</sup> day of September 2023.

*/s Joannely Marrero Cruz*  
Joannely Marrero Cruz

Annex A and Annex B  
[Submitted Underseal]