

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

NEPR

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IN RE: ENMIENDAS A CONTRATO DE
COMPRAVENTA DE ENERGÍA:
PROYECTO NO-OPERACIONAL
(XZETA-TEC SOLAR I, LLC)

CASE NO.: NEPR-AP-2021-0002

SUBJECT: XZERTA’s Reply to Informative Motion, Request to Complete Evaluation of Revised Interconnection Design, and Request for Determination Regarding Payment for Additional Study

INFORMATIVE MOTION

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW XZERTA-Tec Solar I, LLC (“XZERTA”), through its counsel of record, and respectfully submits and prays as follows:

1. On November 6, 2023 LUMA Energy ServCo, LLC and LUMA Energy, LLC “collectively “LUMA”) filed an informative motion before this Puerto Rico Energy Bureau (“Energy Bureau” through which LUMA provides certain information and in synthesis requests the Bureau to grant them an additional time of 45 days to conduct a new interconnection study and that a determination be made in regards to the payment of said revised study submitting that the developer in this case XZERTA-Tec Solar I, LLC bear the cost.
2. Some of the information is incorrect and some of the information requires clarification for the Commissioners to have a full of understanding of the issue being addressed, as well we take the opportunity to shade light over other issues that are also related to the interconnection and changes being proposed by LUMA.

3. On October 6 the Energy Bureau issued a Resolution and Order¹ granting XZERTA as follow: “The Energy Bureau AUTHORIZES PREPA to grant XZERTA an additional 120 business days from the date the Request was filed to achieve FNTF”. On its Motion, LUMA erroneously states that the 120 business days are from July 30, 2023, when the correct date is June 30, 2023.
4. While it is true that LUMA express that they wanted to perform a new interconnection study, what LUMA fails to include on its motion is that the modification of the underground portion of the design on the initial interconnection study was proposed by LUMA to Sargent and Lundy during the interconnection study without any notification or discussions with XZERTA or PREPA in violation of PREPA’s design codes for a 115KV Transmission Line, where underground installation is only allowed in areas that are overpopulated limiting the aerial space and prohibits partial underground installation.
5. The design submitted by XZERTA for the interconnection study as well as the One Line Diagram and interconnection proposed and made part of the Power Purchase and Operation Agreement (“PPOA”) does not mention underground. Further it is our contention that a new interconnection study is not required as the proposed design modification provided by XZERTA as an accommodation to LUMA’s requests, does not change the overall design of the components nor the equipment, the change consist in making the connection aerial in compliance with PREPA’s codes.
6. Our PPOA clearly states that it is the Owner, or in this case the Owner’s representative who will deliver the Interconnection Study. We are not requiring a new one, but if a new one is required by LUMA and according to our PPOA, it should be bear by LUMA,

¹ See, PReB Order and Resolution, IN RE: Enmiendas a Contratos de Compraventa de Energía Renovable: Proyectos No-Operacional (Xzerta-Tec Solar I, LLC), Case No. NEPR-AP-2020-0002, October 6, 2023.

especially since the issue arises from a modification introduced by them without a notification to us as the developers.

7. Further, LUMA has expressed that they want to construct the owner's interconnection facility. According to the terms of the PPOA, it is the responsibility of the developer to construct the owner's interconnection facility and transfer it to the owner or in this case Luma as its representative.
8. In addition, LUMA has been discussing a draft of an interconnection agreement with XZERTA, although XZERTA's position has been and continues to be that the PPOA contains all the terms of the interconnection and does not requires a separate interconnection agreement, we are willing and have so expressed to LUMA to execute a separate interconnection agreement as long as the Interconnection Agreement does not changes, modifies, amends and/or impacts the terms and conditions included in the PPOA which cannot be amended by LUMA on its own.
9. In the case that PREPA of PREB decides to allow LUMA to perform the construction of the Owner's Interconnection Facility then XZERTA shall have the right to perform the project management over LUMA or its contractor to ensure there is control and management of costs. Moreover, all payments to LUMA will be made based upon progression of the project and LUMA will be responsible for providing invoices with detailed information related to labor costs or any miscellaneous cost. XZERTA will not agree to provide any advance payment as LUMA suggested in the meeting of July 29th. Furthermore, XZERTA shall maintain the right to provide the materials as stipulated by PPOA.

10. If this Honorable Energy Bureau determines that it will grant 45 days to LUMA to perform a new Interconnection Study, which we insist it is not required, it will not be enough if LUMA say the expectation to finish the procurement of the contract is in 45 days, because then the study would not begin until the services of Sargent and Lundy are engaged. Therefore, respectfully any such time should be extended as well to XZERTA in addition to achieve FNTTP.
11. XZERTA expected to achieve FNTTP and begin construction of the project before the end of the year, however understanding that we are already in the middle of November and December is a very difficult month in Puerto Rico due to the holidays, we humbly request that the Bureau takes the above into account.
12. Finally, the latest estimate performed by S&L for the construction of the PREPA interconnection is about \$6M. Final estimated price including LUMA costs for project management is about \$9M. The clause cap as established in section 4.6 of the PPOA is set to \$3.2M based on the cost of construction estimated at the time by Sargent and Lundy. It is for this reason that XZERTA is hereby requesting PREB to increase this cap to \$6M to accommodate all costs associated with the high rates, inflation factor on materials and escalations fees. Assuming that XZERTA as per his PPOA is allowed to make the construction. In the alternative, if the PREB determines that LUMA shall make the construction that the cap be increase to \$11M to allow for LUMA's increase costs. XZERTA has all alone tried to maintain the lowest cost possible as we understand that these are government funds.
13. Xzerta is hereby notifying PREB and PREPA that this delay will have a financial impact due to the implications of the actual inflation factors affecting future procurement of

materials. Therefore, Xzerta is hereby requesting PREB and PREPA to amend the contract to add the following changes:

- a. PPOA escalator increase to 2% as approved on PREB Resolution of May 11, 2021, for Xzerta PPOA Resolution and Assumption Order; and
- b. Inclusion of the terms and conditions as required by the Department of Energy, including an update to Article 22.12 for Dispute Resolution.

WHEREFORE, for the reasons stated above, XZERTA respectfully **REQUESTS** the Puerto Rico Energy Bureau to **TAKE NOTICE** of the above and either grant the additional time requested by LUMA and **ORDER LUMA** to perform and pay the new Interconnection Study or **ORDER LUMA** to finish evaluating the design based on the current approved Interconnection Study. **ORDER LUMA** to cease and desist from trying to amend the terms of the PPOA particularly in regard to the construction of the Interconnection Facility and **GRANTS** XZERTA's request to increase the cap established in section 4.6 of PPOA and the inflation factor.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 22nd day of November 2023.

/s María Elisa Martínez Avilés
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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 both PREPA and LUMA through its project designees.

In San Juan, Puerto Rico, on this 22nd day of November 2023.