

**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

URGENT MOTION TO SUBMIT AMENDED PPOA AND ESSA

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico 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 Public Service Regulatory Board ("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. On June 13, 2022, the Energy Bureau issued a *Resolution and Order* approving nine (9) 4-hour duration utility-scale Battery Energy Storage System (BESS) projects totaling 490 MW and one (1) 17 MW VPP project. In the June 13, 2022, Order, the Energy Bureau authorized PREPA to finalize its negotiations with the proponents to contract additional utility-scale BESS

projects (250 MW out of the 490 MW) beyond those initially recommended by PREPA.

3. On August 26, 2022, PREPA entered and signed a PPOA for the Salinas Solar Project and an Energy Storage Services Agreement (ESSA) for the Salinas Battery Project. On July 10, 2023, the fourth amendment of the PPOA and ESSA was executed to amend, among others, the Conditions Subsequent Deadline, as defined in the amendment, to November 30, 2023.
4. On October 27, 2023, PREPA received a petition to change the location of the interconnection point from Aguirre 115kv switchyard to Ciro One Sectionalizer for the Salinas PPOA and ESSA projects.
5. After carefully analyzing the request, PREPA agreed to proceed with a fifth amendment for the Salinas' PPOA and ESSA to reflect the new location of the interconnection point. The main reason for agreeing to the request was that the Aguirre 115 kv switchyard is saturated with high voltage load, and the interconnection of additional external loads would jeopardize the reliability of 900 megawatts of power generation from Aguirre Units 1 and 2.
6. On November 28, 2023, the Financial Oversight and Management Board of Puerto Rico (FOMB) reviewed the proposed amendments. It concluded that the "Proposed Amendment does not contemplate a material change to the contract, insofar as the term, scope and the maximum payable amount remain the same. As such, no further action is needed from the Oversight Board at this point, and you may proceed."

7. Pursuant to the above, PREPA hereby submits the fifth amendment for the Salinas PPOA and ESSA for the PREB evaluation and approval. See Annex A and B.
8. Given that the information contained in Annex A and Annex B is part of a deliberative process, incorporates trade or business secrets that are deemed confidential according 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 and Annex 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).

9. In the exercise of its powers, the PREB and PREPA approved Regulation 8815, which has force of law. *Id.* at Art. 6.3 (b). 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 provided by Proponents in the BFO’s comprises business and trade secrets which Proponents 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 PREB take **NOTICE** of the present Motion, **APPROVE** the fifth amendment for the Salinas PPOA and ESSA, and **GRANT** PREPA's petition for confidentiality **ORDERING** that the documents included as Annex A and B be kept under seal.

RESPECTFULLY SUBMITTED.

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

CERTIFICATE OF SERVICE: We hereby certify that this document was filed 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 was sent via e-mail to LUMA through its legal representatives at margarita.mercado@us.dlapiper.com.

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