

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

**NEPR**

**Received:**

**Nov 30, 2023**

**9:01 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

**MOTION FOR PARTIAL RECONSIDERATION OF THE RESOLUTION AND ORDER DATED  
NOVEMBER 29, 2023**

**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<sup>nd</sup>, 2022, the Energy Bureau of the Public Service Regulatory Board ("PREB" or "Energy Bureau") 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<sup>th</sup>, 2022 (the "June 30<sup>th</sup> PPOAs"), and the remainder by the end of August 2022 (the "August PPOAs").

2. On June 13<sup>th</sup>, 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 its June 13<sup>th</sup>, 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<sup>th</sup>, 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<sup>th</sup>, 2023, a fourth amendment to the PPOA and ESSA was executed to extend, among other things, the Conditions Subsequent Deadline, as defined in the amendment, to November 30<sup>th</sup>, 2023.

4. On November 15<sup>th</sup>, 2023, PREPA's Governing Board during an extraordinary meeting, authorized a Fifth Amendment for the Salinas' PPOA and ESSA ("Fifth Amendment") to update the location of the interconnection point from Aguirre 115kv switchyard to Ciro One Sectionalizer.

5. PREPA's Governing Board, very much aware of its obligations to the Energy Bureau and FOMB, specifically ordered that its approval of the Fifth Amendment be submitted, in turn, for the approval of the Puerto Rico Energy Bureau and the Financial Oversight and Management Board<sup>1</sup>. Given the proximity of the end date of the waiver (November 30<sup>th</sup>, 2023), PREPA decided to submit the amendment to both regulatory boards simultaneously.

6. Two days later, on November 17<sup>th</sup>, 2023, and in compliance with the Governing Board's *Order*, PREPA sent out the approval request to the FOMB but, by happenstance, did not send out the approval request to the FOMB. Specifically, due to a clerical mistake on the part of PREPA, the FOMB was the

---

<sup>1</sup> See Exhibit 1

only party notified, albeit orders from the Governing Board that the Energy Bureau be notified as well.

7. It is not until the FOMB responds to the requested Fifth Amendment on November 28<sup>th</sup>, 2023, that PREPA became aware of its inadvertent mistake.

8. As such, PREPA immediately filed on that same day, November 28<sup>th</sup>, an urgent motion before the PREB requesting that the proposed Fifth Amendment be reviewed and approved. In said motion, PREPA explained the reasons and justifications for the Fifth Amendment as well as the fact that the FOMB had already reviewed, and granted its approval.

9. On November 29<sup>th</sup>, 2023, the PREB diligently issued a *Resolution and Order* where, among other things, it approved the Fifth Amendment. Notwithstanding, it also imposed a five thousand dollars (\$5,000.00) fine upon PREPA which is the object of this motion for reconsideration.

10. Specifically, the Energy Bureau reasoned that the imposed sanction was warranted since PREPA had been previously warned<sup>2</sup> “that it shall not execute future amendments to agreements with independent power producers without **first** obtaining the approval of the Energy Bureau and, to the extent applicable, the FOMB...”. In other words, the Energy Bureau's entire premise for imposing the economic sanction is predicated on the assumption that 1) the Fifth Amendment had already been executed and 2) PREPA had an obligation to **first**

---

<sup>2</sup> The previous warning is in regard to a *Resolution and Order* from the PREB dated September 27<sup>th</sup>, 2023 (the “September 27<sup>th</sup> Resolution”)

notify the PREB and, thereafter, notify the FOMB. It is respectfully submitted that the PREB's interpretation and conclusion is not consistent with its September 27<sup>th</sup> Resolution, nor warranted as there was no intention on behalf of PREPA to disregard the Energy Bureau's authority or orders.

11. At the outset, and as a matter of fact, the Fifth Amendment had not been executed at the time the request for approval was made to both the PREB and the FOMB. In other words, and consistent with PREPA's rigorous policy of full compliance, cooperation, and transparency, it was *prior to the execution of the Fifth Amendment*, that PREPA sought the permission and approval of both the Energy Bureau and the FOMB.

12. Second, the text of the September 27<sup>th</sup> Resolution does not establish a specific order that PREPA must follow at the time that it seeks approval for future amendments to agreements with independent power producers from the PREB or FOMB.

13. The PREB's September 27<sup>th</sup> Resolution is clear, unambiguous and leaves no room for interpretation:

PREPA shall not execute future amendments to agreements with independent power producers without first obtaining the approval of the Energy Bureau and, to the extent applicable, the FOMB, under the advice that they may be declared null and void.

14. PREPA's only obligation under the September 27<sup>th</sup> Resolution is to seek prior approval from the Energy Bureau and from the FOMB, **in no particular fashion, form, or order**, before executing any future amendments to agreements with independent power producers. No distinction is made between the Energy

Bureau and the FOMB, much less any priority that PREPA should give one entity over the other at the time that it seeks their prior approval.

15. Third, and as previously stated, PREPA had no intention whatsoever to exclude the Energy Bureau from the approval process. PREPA has the utmost compromise to fully comply with all resolutions and orders entered, and it has never willfully disregarded the orders and resolutions of the PREB. Moreover, PREPA is fully committed to complying with and achieving this Government's Public Policy regarding renewable energy.

16. In this particular instance, it was due to an unfortunate clerical mistake that the Energy Bureau was not notified at the same time as the FOMB. By no means is PREPA purporting to challenge the PREB's authority. This is further substantiated when considering that PREPA's very own Governing Board, on November 15<sup>th</sup>, expressly ordered that *both* regulatory bodies be notified prior to the Fifth Amendment's execution.

17. PREPA apologizes to the Energy Bureau for any confusion that the November 28<sup>th</sup>, 2023, motion may have set into play. It was always PREPA's intention to notify all parties, at the same time, and PREPA absolutely recognizes the PREB's authority to approve all amendments to contracts with independent power producers prior to their execution.

18. PREPA submits that the process for the approval of the proposed Fifth Amendment was carried out during a short period of time, considering that the expiration of the agreements was November 30<sup>th</sup>, 2023, and its overzealousness

to get it approved precipitated, by mistake and inadvertence, that the proposed amendments not be submitted simultaneously for approval to the FOMB and the PREB.

19. In sum, PREPA respectfully urges this Energy Bureau to reconsider its determination of the sanction imposed upon PREPA. The facts demonstrate that PREPA has always acknowledged the PREB's authority to approve any agreement prior to being executed as mandated by law. Any error and/or delay in submitting the Fifth Amendments to the PREB was not made with the intention of disregarding its mandate. PREPA's intent at all times was to request the approval of both the FOMB and the Energy Bureau at the same time, in full compliance with the September 27<sup>th</sup> Resolution.

20. To that end, the Fifth Amendment was never executed prior to this Bureau's approval and, even though the requests for approval were unfortunately not notified simultaneously, they were submitted with the purpose of informing, justifying and requesting that they be approved before their execution. All of this, with the clear purpose of observing and conforming to the PREB's instructions per its September 27<sup>th</sup> Resolution.

21. PREPA has taken all measures to ensure that all future amendments to agreements with independent power producers be notified simultaneously to the Energy Bureau and, to the extent applicable, the FOMB.

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the PREB take **NOTICE** of the present Motion, **RECONSIDER** its November 29<sup>th</sup> Order

regarding the sanction imposed upon PREPA and **SET ASIDE** the \$5,000.00 fine.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 30<sup>th</sup> 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](mailto:margarita.mercado@us.dlapiper.com).

**GONZÁLEZ & MARTÍNEZ**

1509 López Landrón  
Seventh Floor  
San Juan, PR 00911-1933  
Tel.: (787) 274-7404

**s/ Alexis G. Rivera Medina**

**Alexis G. Rivera-Medina**

TSPR No.: 18,747

E-mail: [arivera@gmlex.net](mailto:arivera@gmlex.net)

**s/ Mirelis Valle Cancel**

**Mirelis Valle-Cancel**

TSPR No.: 21,115

E-mail: [mvalle@gmlex.net](mailto:mvalle@gmlex.net)

**Exhibit 1**



## RESOLUTION 5104

### APPROVAL OF AMENDMENTS TO RENEWABLE ENERGY POWER PURCHASE OPERATING AGREEMENT (PPOA) AND ENERGY STORAGE SERVICES AGREEMENT (ESSA) – CLEAN FLEXIBLE ENERGY, LLC SALINAS, TRANCHE 1

- WHEREAS: The Puerto Rico Electric Power Authority (PREPA) is a public corporation and an instrumentality of the Government of Puerto Rico created by Act No. 83 of May 2, 1941, as amended (Act No. 83). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. In addition, it provides a service based on affordable, fair, reasonable, and non-discriminatory cost that is consistent with environmental protection, non-profit, focused on citizen participation, and its clients.
- WHEREAS: Act No. 83 authorizes PREPA, in the management of its purposes, to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers.
- WHEREAS: On August 26, 2022, PREPA and Clean Flexible Energy, LLC (Clean Flexible Energy) entered and signed the Power Purchase and Operating Agreement 2023-P00054 (PPOA) for the Salinas Solar Project and the Energy Storage Services Agreement 2023-P00053 (ESSA) for the Salinas Battery Project. *msj*
- WHEREAS: On July 10, 2023, was executed the fourth amendment of the PPOA and ESSA, to allow, among other changes, the Conditions Subsequent Deadline until November 30, 2023.
- WHEREAS: On October 27, 2023, PREPA received a letter from Clean Flexible Energy notifying the change of location of the interconnection point from Aguirre 115 kV switchyard to Ciro One Sectionalizer for the Salinas PPOA and ESSA projects, and potentially increasing the capacity of the Jobos and Salinas ESSA's.
- WHEREAS: The Aguirre 115 kV switchyard is saturated with high voltage load. The interconnection of additional external loads will jeopardize the reliability of 900 megawatts of power generation from Aguirre Units 1 and 2.



WHEREAS: After discussions between PREPA and Clean Flexible Energy team, it was mutually agreed to proceed with the fifth amendment for the Salinas' PPOA and ESSA to reflect the new location of the interconnection point and to consider the ESSA's increase of capacity as a next step after the compliance of the Conditions Subsequent.

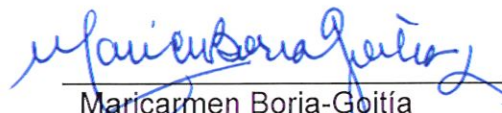
WHEREAS: PREPA must refer all contract changes for the approval of the Puerto Rico Energy Bureau (PREB) and the Financial Oversight and Management Board for Puerto Rico (FOMB).

WHEREAS: The Legal Affairs Directorate performed the legal evaluation of the request and from the legal standpoint, has no objection to the approval of the fifth amendment to the PPOA and ESSA, but stated that the same is subject to the approval of the PREB and the FOMB.

THEREFORE: In accordance with Act 83, PREPA's Governing Board resolves to approve and authorize:

1. The fifth amendment to the Clean Flexible Energy, LLC PPOA 2023-P00054 and ESSA 2023-P00053 to update the location of the Interconnection Point and allowing more time to comply with the Conditions Subsequent until December 20, 2023.
2. The submission of the fifth amendment of the Clean Flexible Energy, LLC PPOA 2023-P00054 and ESSA 2023-P00053 to the Puerto Rico Energy Bureau, the Financial Oversight and Management Board for Puerto Rico and other stakeholders as required by law for their respective approvals.
3. Following such approvals, the finalization and execution of the fifth amendment for the Clean Flexible Energy, LLC PPOA 2023-P00054 and ESSA 2023-P00053 by PREPA's Executive Director.

Approved in San Juan, Puerto Rico, on the 15<sup>th</sup> day of November, two thousand twenty-three.

  
\_\_\_\_\_  
Maricarmen Boria-Goitía  
Corporate Secretary