

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

NEPR

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IN RE: AMENDMENT TO POWER
PURCHASE OPERATING AGREEMENT
BETWEEN PREPA AND ORIANA
ENERGY, LLC

CASE NO.: [NEPR-AP-2023-0006](#)

**PETITION FOR APPROVAL OF EIGHTH AMENDMENT TO POWER PURCHASE
OPERATING AGREEMENT BETWEEN THE PUERTO RICO ELECTRIC POWER AUTHORITY
AND ORIANA ENERGY, LLC**

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. Oriana Energy, LLC ("Oriana") owns a solar energy generation facility with a nameplate capacity of 45 MW (the Existing Facility), which was developed pursuant to the terms of the Power Purchase and Operating Agreement ("PPOA") and currently sells energy to PREPA in accordance with it. The PPOA allowed Oriana to develop a facility with maximum output up to 50MW, with the option to increase the existing facility's capacity by an amount not exceeding 10 MW ("the Option"), as stated in Section 2.3 of the PPOA. When combining the Option with the unused capacity (5MW) allowed under the original terms of the PPOA, Oriana currently has the right to increase the capacity of its facility by 15 MW for a maximum output of 60MW.

2. On March 25th, 2021, Amendment 6 to the PPOA between PREPA and Oriana was executed. It was agreed therein, among other things, that 1) the parties would exercise the Expansion Option of 10MW no later than December 31st, 2022; 2) with respect to Definitions and Interpretation, the new purchase price begins in \$0.100 per kWh, escalated by two percent on annual basis, not exceeding \$0.141 per kWh until the Contract Term; and 3) a New Section 9.9 to Article 9 would be added, establishing that PREPA is responsible to perform and pay the cost associated of a new interconnection study, if required, for the Expansion Option, and shall reimburse Oriana for all the costs related to any required upgrades of the Interconnection Facilities.
3. On December 29th, 2022, Amendment 7 to the PPOA was executed to extend the deadline to exercise the Expansion Option until December 31st, 2023, and a deadline for substantial completion, no later than the same date.
4. The feasibility of the Expansion remains subject to multiple factors, including Oriana's ability to obtain financing. On November 6th, 2023, Oriana requested a six-month extension to the due date to exercise the option to develop the Expansion until June 30th, 2024. This extension would give Oriana additional time to evaluate financial alternatives for the Expansion.
5. On November 15th, 2023, PREPA's Governing Board approved and authorized, subject to the review and approval of the PREB and the FOMB,

the six-month extension to the due date to exercise the option to develop the Expansion; ie. until June 30th, 2024.

6. Pursuant to the above, PREPA hereby submits the Proposed Amended PPOA for the PREB's evaluation and approval. See Annex A.
7. Given that the information contained in Annex A is part of a deliberative process, incorporates trade or business secrets that are deemed confidential according to applicable law, and has 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).

8. 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 Annex A comprises business and trade secrets which Proponents have specifically requested be maintained in a confidential manner.

9. Accordingly, PREPA respectfully requests that the Energy Bureau find that these documents and information are to be considered 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 Proposed Amendment for PPOA, and **GRANT** PREPA's petition for confidentiality **ORDERING** that the document included as Annex A be kept under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of December 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>.

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ANNEX A

(Under seal)