

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

**NEPR**

**Received:**

**Dec 7, 2023**

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

**CASE NO.:** [NEPR-AP-2023-0007](#)

**PETITION FOR APPROVAL OF SEVENTH AMENDMENT TO POWER PURCHASE  
OPERATING AGREEMENT BETWEEN THE PUERTO RICO ELECTRIC POWER AUTHORITY  
AND HORIZON 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. Horizon Energy, LLC ("Horizon") owns a solar energy generation facility with a nominal capacity of 10 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. Section 2.3 of the PPOA provides Horizon with the option to increase the capacity of the existing facility by an amount not to exceed 10 MW (the Option) for a total permitted output of 20 MW.
2. On January 29, 2021, Amendment 5 to the PPOA between PREPA and Horizon was executed. It was agreed, among other things, that 1) the parties would exercise the Expansion Option of 10MW not later than December 31<sup>st</sup>, 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) adds a New Section 9.7 to Article 9, 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 Horizon for all the costs related to any required upgrades of the Interconnection Facilities.

3. On December 29, 2022, Amendment 6 to the PPOA was executed to extend the deadline to exercise the Expansion Option until December 31<sup>st</sup>, 2023, and a deadline for substantial completion not later than December 31, 2024.
4. Horizon owns a solar energy generation facility with a nominal capacity of 10 MW (the Existing Facility), which was developed pursuant to the terms of the PPOA and currently sells energy to PREPA in accordance with it. Section 2.3 of the PPOA provides Horizon with the option to increase the capacity of the existing facility by an amount not to exceed 10 MW (the Option) for a total permitted output of 20 MW.
5. The feasibility of the Expansion remains subject to multiple factors, including, but not limited to, Horizon's ability to obtain financing. On November 6<sup>th</sup>, 2023, Horizon requested a six-month extension to the due date to exercise the option to develop the Expansion until June 30, 2024. This extension would give Horizon additional time to evaluate financial alternatives for the Expansion.

6. On November 15<sup>th</sup>, 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 30<sup>th</sup>, 2024.
7. Pursuant to the above, PREPA hereby submits the Proposed Amended PPOA for the PREB's evaluation and approval. See Annex A.
8. 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).

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

10. 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 7<sup>th</sup> 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)