

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 HORIZON ENERGY, LLC **CASE NO.:** NEPR-AP-2023-0007

**MOTION IN COMPLIANCE WITH THE DECEMBER 13<sup>th</sup>, 2023  
RESOLUTION AND ORDER**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

**COMES NOW** the Puerto Rico Electric Power Authority (“PREPA”), through its counsel of record, and respectfully submits and prays as follows:

1. On December 7<sup>th</sup>, 2023, PREPA filed a *Petition for Approval of Seventh Amendment to Power Purchase Operating Agreement Between the Puerto Rico Electric Power Authority and Horizon Energy, LLC* (“Proposed Amendment”) before the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“PREB”).

2. On December 13<sup>th</sup>, 2023, the PREB issued a *Resolution and Order* (“December 13<sup>th</sup> Order”) directing PREPA to file a redacted version of the Proposed Amendment.

3. PREPA very respectfully submits that the need for confidential treatment of the Proposed Amendment has ceased because the negotiations between the parties have concluded, and the Proposed Amendment, as approved by PREPA’s Governing Board, subject to the PREB approval, does not

contain confidential information. The Proposed Amendment only seeks a six-month extension of the due date to exercise the option to develop the expansion, as defined in the *Power Purchase Operating Agreement*. All remaining clauses, terms, conditions, specifications, stipulations, and requirements established in the original *Power Purchase Operating Agreement* were left unaltered and continue to be in full force.

4. As such, the Proposed Amendment does not need to be redacted.

5. In light of the foregoing and in compliance with the December 13<sup>th</sup> Order, PREPA hereby submits the unredacted version of the proposed amendment as **Exhibit A**.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau to take **NOTICE** of the foregoing and deem the December 13<sup>th</sup> Order as complied with by PREPA.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, on the 18<sup>th</sup> day of December 2023.

**GONZÁLEZ & MARTÍNEZ**

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AMENDMENT NO. 7 TO THE  
RENEWABLE POWER PURCHASE AND OPERATING AGREEMENT BETWEEN  
HORIZON ENERGY, LLC AND  
THE PUERTO RICO ELECTRIC POWER AUTHORITY

APPEAR

AS FIRST PARTY: Puerto Rico Electric Power Authority, hereinafter referred to as PREPA, a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act 83 of May 2, 1941, as amended, represented in this act by its Executive Director, engineer Josue A. Colón Ortiz, of legal age, married, and resident of Caguas, Puerto Rico.

AS SECOND PARTY: HORIZON Energy, LLC, hereinafter referred to as HORIZON with its principal office at El Caribe Office Building, 53 Palmeras St. Suite 701, San Juan, Puerto Rico 00901, represented by its President and CEO, Leslie L. Hufstetler Oquendo, of legal age, single, and resident of San Juan, who is duly authorized to execute this Amendment on behalf of HORIZON as certified by Written Consent of the Sole Member dated [DATE TO BE INSERTED].

WITNESSETH

In consideration of the mutual covenants hereinafter stated, the Parties agree themselves, their personal representatives, and successors as follows:

STATE

WHEREAS, the parties entered into a certain Renewable Power Purchase and Operating Agreement, dated October 15, 2010, as amended by: Amendment No. 1 dated November 21, 2011, Amendment No. 2 dated February 23, 2012, Amendment No. 3, dated May 19, 2014, Amendment No. 4 dated June 5, 2015, Amendment No. 5 dated, January 29, 2021 and Amendment No. 6 dated December 29, 2022 (collectively, the “*Agreement*”), for the development, financing, construction, operation and maintenance of a 10 MW photovoltaic solar energy system (the “*Facility*”) in Salinas, Puerto Rico;

WHEREAS, according to Section 2.3 of the Agreement, HORIZON has the option to increase the capacity of the Facility by an amount not to exceed 10 MW (the “*Expansion*”). In order to exercise the option, HORIZON has to deliver a written notice to PREPA no later than December 31, 2023.

WHEREAS, in order to allow HORIZON to continue conversations with potential lenders for the appropriate structure for financing, the parties desire to amend the Agreement to extend the deadline to exercise the option to increase the capacity of the facility until June 30, 2024 and the date for substantial completion of the Expansion Project (as defined in the Agreement) if HORIZON exercise the Expansion Option.

NOW THEREFORE, the Parties hereby agree as follows:

1. Article 2, Section 2.3 of the Agreement is hereby amended to read as follows:

“Subject to the terms and conditions set forth herein, HORIZON shall have the option to increase the Capacity of the Facility by an amount not to exceed the Expansion Capacity (the “*Expansion Option*”). HORIZON shall have the right to exercise the Expansion Option by delivering written notice of such exercise to PREPA no later than June 30, 2024. The Expansion Option may be exercised In whole or In part with respect to a portion of the Expansion Capacity; and in the case of the latter, HORIZON shall still have the right to exercise the Expansion Option with respect to the remainder of the Expansion Capacity on or before the deadline established in the immediately preceding sentence. Such written notice shall include (a) the anticipated increase in Capacity (not to exceed the Expansion Capacity), and (b) the expected timeline for obtaining Permits and completing construction of the Expansion Project (including the Expansion Project COD). As the following information becomes applicable and available, HORIZON shall also provide PREPA, upon request; information identifying the contractor or contractors once engaged by HORIZON to perform the primary engineering, procurement, and construction services for the Expansion Project, and updated drawings, performance models, and any information reasonably required for PREPA to update (if necessary) its interconnection study in respect of any upgrades necessary to interconnect the Expansion Project and PREPA’s system. HORIZON shall submit to PREPA a progress report in a form reasonably satisfactory to PREPA by the fifth (5<sup>th</sup>) Business Day of every two (2) Months until the Expansion Project COD and any material changes to the timeline for obtaining Permits and completing construction of the Expansion Project. If HORIZON exercises the Expansion Option, HORIZON shall substantially complete the Expansion Project no later than June 30, 2025, as such date may be extended by a Force Majeure event, Pending Permits or a Legal Challenge or any delay caused by any act or omission of PREPA.”

All other clauses, terms, and conditions, specifications, stipulations, insurances, and requirements established In the Agreement remain unaltered and fully enforceable.

2. **Representations and Warranties of each Party.**

a. PREPA hereby represents and warrants to HORIZON: (i) the execution and delivery by PREPA of this Amendment, and the Amendment itself, have been duly authorized by PREPA’s Governing Board and any other applicable PREPA governing body in accordance with applicable law, and (A) do not and will not require any additional internal or external consent or approval, (B) do not and will not violate any provision of Act No. 83 of May 2, 1941, as amended, or its regulations, or any material indenture, contract or agreement to which it is a party or by which its properties may be bound; and (ii) this Amendment is a legal, valid, and binding obligation of PREPA, enforceable against PREPA in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.

b. HORIZON hereby represents and warrants to PREPA: (i) the execution, delivery, and performance by HORIZON of this Amendment have been duly authorized, and do not

and will not (A) require any additional internal consent or approval of HORIZON, or (B) violate any provision of HORIZON'S certificate of formation or operating agreement, or any material indenture, contract or agreement to which is a party or by which it or its properties may be bound, or any law, ordinance, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect; and (ii) this Amendment is a legal, valid and binding obligation of HORIZON, enforceable against HORIZON in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.

3. **Ratification.** Except as expressly amended hereby, the Agreement is hereby ratified and confirmed in all respects.

4. **No Implied Waiver.** This Amendment shall be limited precisely as written and shall not be deemed to be a consent granted pursuant to, or a waiver or modification of, any other term or condition of the Agreement, whether or not known to the Parties, or to prejudice any other right or rights which the Agreement may now have or have in the future.

5. **Counterparts.** This Amendment may be executed in multiple original or facsimile counterparts, each of which shall be deemed an original and shall be binding upon the Party who executed the same, but all of such counterparts shall constitute the same Amendment.

6. **Governing Law.** This Amendment shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America. The Parties herein agree that all Disputes arising hereunder shall be resolved pursuant to Section 22.12 of the Agreement.

7. **Novation:** HORIZON and PREPA expressly agree that no amendment which could be made to the Agreement and this Amendment, during its term, shall be understood as a Contractual Novation, unless both Parties agree to the contrary, specifically and in writing. The previous provision shall be equally applicable in such other cases where PREPA gives the HORIZON a time extension for the compliance of any of its obligations under the Agreement or where PREPA dispenses the claim or demand of any of its credits or rights under the Agreement.

8. **Capitalized Terms.** Unless otherwise stated, capitalized terms used in this Amendment which are not defined in this Amendment have the meaning given in the Agreement.

9. This Amendment shall be effective and will come into force upon its signature by the parties.

This is the agreement between the appearing Parties under this Seventh Amendment and so is hereby ratified.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Parties hereto have agreed to execute this Seventh Amendment in San Juan, Puerto Rico, on this \_\_\_\_ day of December, 2023.

**PUERTO RICO ELECTRIC POWER  
AUTHORITY**

**HORIZON ENERGY, LLC**

**By: \_\_\_\_\_  
Executive Director**

**By: \_\_\_\_\_  
President & CEO**