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

IN RE: AMENDMENT TO POWER PURCHASE OPERATING AGREEMENT BETWEEN PREPA AND AES PUERTO RICO, L.P.	**CASE NO.**: NEPR-AP-2023-0005 **SUBJECT:** Motion in Compliance with *Resolution and Order* Dated December 22, 2023 Requesting PREPA File Unredacted Proposed Amendment

MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER DATED DECEMBER 22, 2023 REQUESTING PREPA FILE UNREDACTED PROPOSED AMENDMENT

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 November 7, 2023, PREPA filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board (the "Energy Bureau") its *Petition for Approval of Third Amendment to Power Purchase Operating Agreement Between the Puerto Rico Electric Power Authority and AES Puerto Rico, L.P.* (the "Petition").

2. In order to comply with PREPA's contractual confidentiality obligations to AES Puerto Rico, L.P. ("AES-PR"), protect certain commercially sensitive information, and to preserve the deliberative process privilege until the terms of the Proposed Amendment are final, PREPA included with the Petition a confidential version of the proposed amendment ("Proposed Amendment") to that certain *Power Purchase and Operating Agreement between AES Puerto Rico, L.P. and Puerto Rico Electric Power Authority* dated October 11, 1994 (as amended or supplemented).

3. On November 13, 2023, the Energy Bureau granted confidential designation and treatment of the Proposed Amendment but requested that PREPA file by November 16, 2023 a (i) redacted version of the Proposed Amendment; and (ii) table listing by number each redacted item and its justification for such redaction.

4. In compliance with the Energy Bureau's November 13, 2023 *Resolution and Order*, on November 16, 2023, PREPA filed a largely unredacted Proposed Amendment with a table summarizing the reasons for redacting certain information in compliance with the Energy Bureau's order.

5. On December 22, 2023, the Energy Bureau issued a *Resolution and Order* stating that it had received several petitions from the public seeking access to an unredacted version of the Proposed Amendment and directing PREPA to evaluate the possibility of fully disclosing the document.

6. PREPA has no objection to fully disclosing the Proposed Amendment because PREPA supports and agrees with the Energy Bureau's desire for a transparent process. PREPA is committed to maintaining transparency and accountability in its operations and agreements. PREPA has requested and received AES-PR's consent under its non-disclosure agreement to file the Proposed Amendment without redactions.

7. Therefore, PREPA hereby submits the unredacted Proposed Amendment as **Exhibit A**. As anticipated in the technical conference, certain changes to the Proposed Amendment are required as a result of the delay in the timeline for approvals and closing of the transaction, as well as changes required by the Financial Oversight & Management Board for

Puerto Rico. The changes from the November 16 version are shown in the blackline attached as **Exhibit B**.

8. In addition, the December 22, 2023 *Resolution and Order* requires PREPA to respond to a Fourth Request for Information no later than January 9, 2024, by 5:00 p.m. To date, PREPA and AES-PR have provided the Energy Bureau with information regarding the Proposed Amendment during a November 21, 2023 technical hearing and in four (4) written submissions dated November 20, November 30, December 7, and December 15, 2023 (the "Prior Responses") in response to the Energy Bureau's prior requests for information.

9. PREPA has made every effort to fully and completely respond to the Energy Bureau's requests for information, much of which depends on PREPA receiving information from AES-PR to complete the submission. AES-PR believes that much of the information requested in the Fourth Request for Information is already contained in the Prior Responses. Therefore, a virtual meeting between the consultants for PREPA, AES-PR, and the Energy Bureau would be most helpful to review the information already provided and to clarify what, if any, additional information would facilitate the Energy Bureau's review and approval. PREPA therefore requests that the Energy Bureau allow and direct its consultants to meet virtually with PREPA's and AES-PR's consultants in advance of the January 9 deadline. PREPA will persist in its diligent efforts and will provide a response to the Fourth Request for Information no later than January 9, 2024, by 5:00 p.m.

WHEREFORE, PREPA respectfully requests that the Energy Bureau take notice of PREPA's response and (i) deem PREPA to have complied with the Energy Bureau's December 22, 2023 *Resolution and Order*'s directive related to the public filing of the Proposed Amendment

and (ii) authorize its consultants to meet virtually with PREPA's and AES-PR's consultants, in advance of the January 9 deadline.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 29th day of December, 2023.

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s/Alexis G. Rivera-Medina
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CERTIFICATE OF SERVICE

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at https://radicacion.energia.pr.gov/login.

In San Juan, Puerto Rico, on the 29th day of December, 2023.

s/Alexis G. Rivera-Medina
Alexis G. Rivera-Medina

Exhibit A

Unredacted Proposed Amendment

THIRD AMENDMENT
TO THE POWER PURCHASE
AND OPERATING AGREEMENT

This Third Amendment to the Power Purchase and Operating Agreement (this "Amendment"), dated [●], 2023, is by and between AES PUERTO RICO, L.P. (the "Operator"), a Delaware limited partnership and authorized to do business in Puerto Rico, represented in this act by Jesus Bolinaga, President of its general partner, AES Puerto Rico Inc., of legal age, married, and resident of Guaynabo, Puerto Rico who is duly authorized to sign this Agreement on its behalf, as certified by written resolutions dated October 24, 2023, and the PUERTO RICO ELECTRIC POWER AUTHORITY ("PREPA" and together with Operator, the "Parties"), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of May 2, 1941, represented in this act by its Executive Director, Josué A. Colón Ortiz, of legal age, married, and resident of Caguas, Puerto Rico, who is legally authorized to sign this Agreement on its behalf pursuant to Resolution 5099.

RECITALS

WHEREAS, Operator and PREPA are parties to that certain Power Purchase and Operating Agreement, dated October 11, 1994, by and between Operator and PREPA as amended by that certain First Amendment to the Power Purchase and Operating Agreement, dated as of November 16, 1999, and that certain Second Amendment to Power Purchase and Operating Agreement, dated as of July 17, 2015 (as so amended, the "Existing PPOA"), for the sale of energy and capacity to PREPA from a 454.3 megawatt ("MW") Qualifying Facility consisting of two circulating fluidized bed ("CFB") boilers, two steam turbine generators and its respective Interconnection Facilities in the vicinity of Guayama, Puerto Rico, as more fully defined in the Existing PPOA (the "Facility");

WHEREAS, it is the Government of Puerto Rico's (the "Government") public policy to allow for the integration and dissemination of renewable energy sources, including reducing and eventually eliminating electric power generation from fossil fuels by orderly and gradually integrating alternative renewable energy generation capacity while safeguarding the stability of the Electrical System and maximizing renewable energy resources in the short-, medium-, and long-term.

WHEREAS, Article 4.11 of Puerto Rico Act 17-2019, adds a new Article 2.13 to Act 82-2010, as amended, that provides as follows:

"Article 2.13." Prohibition Against the Use of Coal

> "As part of the public policy of the Government of Puerto Rico to eliminate our reliance on fossil fuels, the award of new contracts and/or the granting of permits to establish power plants that generate energy from coal and its derivatives is hereby prohibited. Likewise, no permits or amendments to contracts existing as of the approval of the Puerto Rico Energy Public Policy Act may authorize or consider coal burning as a power generation source after January 1, 2028.

However, for purposes of eliminating the use of coal by January 1, 2028, the existing coal-fired power capacity may be replaced by power generation capacity from other sources that are compliant with the Puerto Rico Energy Public Policy Act by extending contracts and/or renewing existing permits based on the new generation source. The replacement of the generating capacity from other energy sources shall be authorized by the Bureau and result in the total elimination of coal use after January 1, 2028."

WHEREAS, it is also a Government key public policy priority to ensure the Facility's environmental compliance and to reduce the amount of any coal combustion residuals ("CCR") and/or CCR based product (combustion waste, by-product, manufactured aggregate or Agremax) that is stored in or be disposed of anywhere in the Commonwealth of Puerto Rico or its neighboring waters;

WHEREAS, under Article 6.6 of the Existing PPOA, the Operator warrants that any combustion waste or by-product produced by the operation of the Facility that cannot be used for beneficial commercial uses will not be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of one hundred and eighty (180) Days and that it will not be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters, except as provided or authorized by any applicable environmental law, rule, resolution, regulation or ordinances;

WHEREAS, subsequent to Operator and PREPA entering into the Existing PPOA and Operator making the above warranty in Article 6.6, Puerto Rico enacted, among other things, Act 5-2020, and, as a result, there is no longer any applicable environmental law, rule, resolution, regulation or ordinance that would permit CCR and/or CCR based product (combustion waste, by-product, manufactured aggregate or Agremax) to be stored anywhere in Puerto Rico for a period in excess of one hundred and eighty (180) Days or be disposed of anywhere in Puerto Rico or its neighboring waters, and the Operator has paid the increased costs in order to comply with law, without compensation;

WHEREAS, the Operator has defaulted in payment of its bonds (the "Bonds") issued pursuant to the Trust Agreement, dated as of May 15, 2000, by and among Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority ("AFICA"), as issuer, Bankers Trust Company (succeeded in interest by Deutsche Bank Trust Company Americas and UMB Bank, N.A.), as bond trustee (the "Trust Agreement").

WHEREAS, the Parties intend to maintain operational and economic stability and environmental compliance at the Facility pending its retirement, expedite the removal of CCR and/or CCR based product (combustion waste, by-product, manufactured aggregate or Agremax) at the Facility, accelerate Puerto Rico's transition to renewables and meet the targets and deadlines established under Act 17-2019, and support and enhance Puerto Rico's transition to larger amounts of renewable energy sources and battery storage, in parallel with the ongoing renewable energy procurement processes being led by the Puerto Rico Energy Bureau (PREB) established under the approved Integrated Resource Plan, while ensuring the availability of dependable and cost-efficient baseload generation;

WHEREAS, consistent with the Parties' intent to expedite the coal to green transition and guarantee environmental policy compliance while ensuring the availability of cost-efficient generation as the Government reaches its renewable targets, the Operator and PREPA agreed to make certain amendments to the Existing PPOA and PREPA and Operator have entered into this Amendment in order to effectuate such amendments as set forth herein (the Existing PPOA, as amended by this Amendment, the "PPOA");

WHEREAS, the Operator has also entered into that certain Restructuring Support Agreement, dated November 1, 2023, by and among the Operator, certain beneficial holders of the Bonds and other parties thereto (the "RSA"), setting forth terms of a restructuring of Operator's debt to provide for the sustainability of the Facility for the remainder of the term of the PPOA and to allow for the transition to renewable sources of energy;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Existing PPOA.

2. Amendments to Existing PPOA.

(a) Article 1 of the Existing PPOA is hereby amended by adding each of the following new defined terms, where alphabetically appropriate:

"Bridge Notes" means that certain series of Bridge Notes issued by Operator as contemplated by the RSA.

"Cash Equivalents" means:

(i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(ii) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from a Credit Rating Agency;

(iii) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000;

(iv) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(v) money market funds that (a) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (b) are rated AAA and Aaa (or equivalent rating) by at least two Credit Rating Agencies and (c) have portfolio assets of at least five million dollars ($5,000,000,000).

"Consolidated Cash Balance" means, at any time, the aggregate amount of unrestricted cash and Cash Equivalents, in each case, held or owned by (whether directly or indirectly), credited to the account of, or otherwise reflected as an asset on the balance sheet of, Operator (other than (i) any cash against which Operator has issued checks or has initiated wires or ACH transfers in order to pay (or will issue checks or initiate wires or ACH transfers in order to pay such amounts within seven (7) business days) and (ii) any amounts held as cash collateral as required pursuant to contractual obligations with third parties).

"Credit Rating Agency" means a nationally recognized credit rating agency that evaluates the financial condition of issuers of debt instruments and then assigns a rating that reflects its assessment of the issuer's ability to make debt payments.

"Excess Cash" means on any Measurement Date, 100% of any Consolidated Cash Balance in excess of ten million dollars ($10,000,000) plus any cash against which Issuer has issued checks or has initiated wires or ACH transfers in order to pay (or will issue checks or initiate wires or ACH transfers in order to pay such amounts within seven (7) business days).

"Green Energy Commitment" has the meaning set forth in Section 6.24.

"Green PPOA" has the meaning set forth in Section 6.24.

"Green Transition Stabilization Payment" has the meaning set forth in Section 11.1(b)(10).

"Measurement Date" means April 1, 2024 and, thereafter, the date that is the first business day of each calendar quarter, provided that if there is a scheduled interest payment on such date, the Measurement Date will mean such time immediately after such interest is paid on such date.

"Preferred Shares" means that certain series of preferred shares issued by AES Guayama Holdings B.V. as contemplated by the RSA.

"Reserve" has the meaning set forth in Section 19.7(b).

"Restructured Facility Debt" means the aggregate amount of principal, accrued interest, and other amounts owing under the Bridge Notes and the Senior Bonds, and liquidation value and accrued dividends, and other amounts owing under the Preferred Shares.

"RSA" means that certain Restructuring Support Agreement dated as of November 1, 2023 by and among Operator and the other parties thereto.

"Senior Bonds" means those Senior Bonds as contemplated by the RSA.

"Third Amendment Effective Date" has the meaning given to such term in that certain Third Amendment to the Power Purchase and Operating Agreement, dated [●], 2023, by and between Operator and PREPA.

(b) Article 1 of the Existing PPOA is hereby further amended to revise the following preexisting defined terms as follows:

"Capacity Purchase Price": the word "and" after "Demand Charge" shall be deleted and replaced with a comma, and the phrase ", and the Green Transition Stabilization Payment" shall be inserted after the word "kilowatt".

"Capital Improvement Debt": the phrase "; provided, however, that for purposes of Sections 15.2(a), (b), and (c), 15.9 Capital Improvement Debt shall only include the Cost of a Capital Improvements incurred after the Third Amendment Effective Date" shall be inserted before the period.

"Facility Debt": everything after the phrase "except that for the purposes of" shall be deleted and replaced with "Sections 11.1 (b) and 25.13 of the Agreement, it shall be amortized in accordance with the quarterly amortization schedule in Exhibit M and except that for purposes of "Debt Service Coverage Ratio," "Excess Financing Amount", "Interest", "Total Debt Service Coverage" and "Total Debt Service Coverage Ratio" and Sections 6.8(f), 15.2(a), 15.2(b), 15.2(c), 15.7 (only the first instance therein), 19.10 and 20.1, after the Third Amendment Effective Date "Facility Debt" shall mean the "Restructured Facility Debt", and for purposes of Sections 15.1(e) and (f), after the Third Amendment Effective Date "Facility Debt" shall mean the "Restructured Facility Debt" or the "Facility Debt". "Facility Debt" or "Restructured Facility Debt" do not include Excess Financing Amount, Capital Improvement Debt or Capital Improvement Equity."

(c) Section 3.1 of the Existing PPOA is hereby amended by replacing the Operator's notice information with the following language:

"If to the Operator to:
AES Puerto Rico, L.P.
P.O. Box 1890
Guayama, Puerto Rico 00785
Attn: Jesus Bolinaga and Karen Ortiz

with a copy via e-mail to: aescorplegalnotices@aes.com

With a copy to:
Sidley Austin LLP

1000 Louisiana Street, Suite 5900
Houston, Texas 77002
Attention: Duston McFaul and Maegan Quejada
Email: dmcfaul@sidley.com; mquejada@sidley.com

(d) Section 6.6 of the Existing PPOA is hereby amended by adding the following language after the period:

"Applicable law no longer permits CCR and/or CCR based product to be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of one hundred and eighty (180) Days or to be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters. Operator shall (i) use commercially reasonable efforts to accelerate the reduction of CCR and CCR-based products stored at the Agremax Staging Area of the Facility to below 60 thousand metric tons by December 31, 2026 and (ii) thereafter, use commercially reasonable efforts to keep below 60 thousand metric tons of CCR and CCR-based products stored at the Agremax Staging Area of the Facility for the remaining Term."

(e) Section 6.8(g) of the Existing PPOA is hereby amended by replacing the existing language with "[Reserved]."

(f) Section 6.19 of the Existing PPOA is hereby amended by adding the following sentences after the period:

"Operator shall ensure that the Facility is in compliance with applicable federal and Commonwealth environmental laws and regulations as of the end of the Term, as certified by a third party consulting expert mutually acceptable to Operator and PREPA. As part of such environmental compliance, the Operator shall ensure that the Facility is properly cleaned, decommissioned, and secured at the end of the Term to the extent the Facility is not repurposed."

(g) The following new Section 6.23 shall be added to Article 6:

"6.23 Operator shall provide to PREPA copies of (i) environmental compliance data regarding the period starting January 1, 2022 through the Third Amendment Effective Date collected by the Facility under federal and Commonwealth law, or otherwise as part of the Facility's operations and practices, including data collected under the federal Clean Air Act, Clean Water Act, Safe Drinking Water Act, the Resource Conservation and Recovery Act, and analogous Commonwealth statutes and regulations, and (ii) all monitoring data, including ground water or surface water and reports associated with such monitoring data, including the ground monitoring well network installed at the Facility under federal CCR rules. Operator agrees to timely provide PREPA any such environmental data, studies, reports that are generated after the Third Amended Effective Date and through the Term. Additionally, Operator shall share to PREPA copies of any studies commissioned by Operator, including but not limited to any studies commissioned in connection with any sale of the Facility or transfer of operation or ownership of the Facility, if any."

(h) The following new Section 6.24 shall be added to Article 6:

"6.24 Green Energy Commitment – With an objective of accelerating Puerto Rico's transition to green generation and in compliance with Puerto Rico Act 17-2019, Operator and PREPA shall negotiate in good faith definitive renewables power purchase and operating agreements (each a "Green PPOA"), and related documentation, that incorporates the terms set forth in Exhibit O hereto (the "Green Energy Commitment"). The Operator and PREPA agree that Operator may sever and assign all or part of its rights and obligations with respect to the Green Energy Commitment (and any Green PPOA) to any affiliate of Operator qualified to operate a renewable project of this type."

(i) The first sentence of the second paragraph of Section 7.3 of the Existing PPOA is hereby amended by replacing everything after the word "be" with the following language: "(a) 9,800 BTU per net kWh and (b) on or after January 1, 2024, 11,000 BTU per net kWh; provided, that for purposes of calculating the Maximum Monthly Fuel Requirement, the FCDF shall remain 9,800 BTU per net kWh."

(j) The following new Section 8.12 shall be added to Article 8:

"Identity of Operator – Operator shall, upon any transfer of the Facility, negotiate in good faith a new operations and maintenance agreement with the new owners, such that Operator or an affiliate of AES Corp. shall remain the operator of the Facility through the end of the Term of the PPOA unless PREPA consents to a different operator of the Facility, such consent not to be unreasonably withheld or delayed, and such operator is authorized by the Puerto Rico Energy Bureau."

(k) Section 11.1(b) of the Existing PPOA is hereby amended by replacing the "and" in between prongs (i) and (ii) with a comma after the words "Demand Charge." Section 11.1(b) of the Existing PPOA is hereby further amended by adding "and (iii) the Green Transition Stabilization Payment," after "the Fixed Operation and Maintenance Charge,".

(l) The following new Section 11.1(b)(10) shall be added to Article 11:

"11.1(b)(10) Green Transition Stabilization Payment – For the month in which the Third Amendment Effective Date occurs Operator shall be paid a Green Transition Stabilization Payment equal to [$5,241,441].[1] For the period commencing on January 1, 2024 and continuing until November 30, 2024, Operator shall be paid a Green Transition Stabilization Payment equal to $8.00/per kilowatt of Dependable Capacity per Month. For the period commencing on December 1, 2024 and continuing for the remainder of the Term, Operator shall be paid a Green Transition Stabilization Payment equal to $1.75 per kilowatt of Dependable Capacity per Month. The Green Transition Stabilization Payment shall not be subject to any EAF downward adjustment."

[1] **NOTE TO ENERGY BUREAU**: Amount is based effectiveness post-December 1, 2023, but prior to January 1, 2024. Further changes will be required based on the final effective date of Third Amendment.

(m) Section 11.2(b) of the Existing PPOA is hereby amended by adding the following paragraph at the end of such section:

"Notwithstanding anything to the contrary herein, for the purposes of calculating the EAF for any Billing Period commencing on or after October 1, 2023, the Equivalent Derated Hours for each Billing Period in the period commencing on October 1, 2022 and ending on September 30, 2023 shall deemed to be zero (0) and each of the Period Hours and Available Hours for each Billing Period in the period commencing on October 1, 2022 and ending on September 30, 2023 shall deemed to be the actual total hours in the applicable month(s)."

(n) Section 11.3 of the Existing PPOA is hereby amended by replacing (i) "forty-seven (47) Days" with "thirty (30) Days" and (ii) "forty-eighth (48th) Day" with "thirty-first (31st) Day".

(o) Section 14.2 of the Existing PPOA is hereby deleted and replaced in its entirety by the following:

"14.2 Each of the Operator and PREPA shall be liable for all foreseeable damages suffered by the other as a necessary consequence of the Operator or PREPA's respective negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 19, as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Section 14.3 below. If PREPA permanently ceases to perform its obligations under or terminates this Agreement prior to the end of the Term (other than pursuant to Article 18) and any Bridge Notes or Senior Bonds remain outstanding, Operator's damages shall be the amounts required: (i) for the orderly shutdown of the Facility and its operations; (ii) to fund the Reserve; and (iii) to repay all amounts due under the Bridge Notes and the Senior Bonds, in each case net of the Facility's Cash, deposits and prepaid expenses before the payment of any dividends or equity return."

(p) Section 15.2(a) of the Existing PPOA is hereby amended to remove the word "all" before "Capital Improvement Debt."

(q) Section 15.2(b) of the Existing PPOA is hereby amended by:

(i) replacing the comma after "(w) Facility Debt" with the word "and";

(ii) deleting the word "all" before "Capital Improvement Debt"; and

(iii) deleting the remainder of the sentence after "Capital Improvement Debt".

(r) Section 15.2(c) of the Existing PPOA is hereby amended by:

(i) replacing the comma after "(i) Facility Debt" with the word "and";

(ii) deleting the word "all" before "Capital Improvement Debt";

(iii) deleting the remainder of the sentence after "Capital Improvement Debt".

(s) Section 19.7 of the Existing PPOA is hereby deleted and replaced in its entirety by the following:

"(a) Commencing on the Third Amendment Effective Date, Operator shall deposit into an account (the "Reserve") an amount equal to fifty percent (50%) Excess Cash within five (5) business days after the Measurement Date, until such transfers into the Reserve total twenty-five million dollars ($25,000,000), pursuant to an escrow agreement mutually acceptable to Operator and PREPA. Commencing on the Third Amendment Effective Date, Operator shall no longer be required to provide any letter or letters of credit or other security to PREPA except for the Reserve set forth in this Section 19.7.

(b) PREPA may draw on the Reserve required under Section 19.7(a) above to offset any damages PREPA may be entitled to under this Agreement upon Operator's breach of Agreement under Section 19.1(iv) or 19.1(v) which is not cured within the applicable period set forth in Section 19.3, provided that PREPA either obtains the agreement of Operator to the level of damages or obtains a judgment from a Court of Competent Jurisdiction specifying the level of damages. If PREPA reasonably determines that the Reserve would otherwise expire or cease to exist prior to such agreement or judgment, PREPA may draw on the Reserve in an amount equal to PREPA's claim of damages, provided that PREPA places the drawn amounts in a bank reasonably acceptable to Operator until the appropriate amount of damages is determined. Following such determination, PREPA may draw from the Reserve and retain amounts equal to the amount of damages determined to be due to PREPA. Drawing under the Reserve shall not be the exclusive remedy available to PREPA. In addition, the Reserve shall be available at the end of the Term of the PPOA to satisfy the obligations in Section 6.19. After satisfaction of such obligations any remaining amounts in the Reserve will be released to PREPA one hundred and eighty (180) Days after the latest to occur of: (i) expenditures necessary to bring the Facility into compliance with applicable environmental law or to satisfy claims, allegations or damages arising from or related to waste operations, material handling practices or environmental laws; (ii) completion of asset retirement and any remediation of the Facility required by applicable law; and (iii) resolution of any issues determined by an inspection of the Facility by a third party consulting expert mutually acceptable to Operator and PREPA."

(t) Section 19.8 of the Existing PPOA is hereby amended by replacing the existing language with "[Reserved.]".

(u) Section 19.9 of the Existing PPOA is hereby amended by replacing the existing language with "[Reserved.]".

(v) Section 21.1(e) of the Existing PPOA is hereby amended by deleting the period at the end of the sentence and adding the following language:

"; provided, however, PREPA (or the operator of its transmission and distribution ("T&D

System")) and the Operator shall negotiate in good faith a reduction of required percentage of replacement cost under any all risk physical damage insurance covering any period following the Third Amendment Effective Date; provided further however that PREPA (or the operator of its T&D System) shall have no obligation to negotiate until Operator provides PREPA with sufficient diligence information to assess the cost and benefit of such reduction."

(w) Article 23 of the Existing PPOA is hereby amended by replacing the first word of such article with the following language: "Except as set forth in Section 6.24, this".

(x) Exhibit O, which is attached as Exhibit 1 hereto, shall be deemed added to the PPOA as Exhibit O thereto.

3. Settlement. Operator and PREPA agree that this Amendment is entered into to resolve any and all claims and causes of action Operator may have against PREPA or the Commonwealth of Puerto Rico related to any change in law affecting the Facility enacted prior to the Third Amendment Effective Date.

4. Effectiveness. This Amendment shall be effective upon the later of the date (such date, the "Third Amendment Effective Date") that (a) Operator and PREPA (after the Puerto Rico Energy Bureau and the Financial Oversight & Management Board for Puerto Rico each approve this Amendment) shall have executed this Amendment and delivered such executed Amendment (or signature page thereto) to the other Party and (b) consummation of the Exchange (as defined in the RSA) shall have occurred.

5. Confirmation. The provisions of the PPOA, as amended by this Amendment, shall remain in full force and effect following the Third Amendment Effective Date. From and after the Third Amendment Effective Date each reference in the PPOA to "this Agreement", "hereunder", "hereof" or words of similar import shall, in each case, be deemed to be a reference to the PPOA, as amended by this Amendment.

6. Entire Agreement. THIS AMENDMENT AND THE PPOA REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

7. 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 agree to submit themselves to the appropriate administrative body having jurisdiction over the Parties and the Amendment or to a Court of Competent Jurisdiction.

8. Miscellaneous Provisions. The terms and provisions of Sections 25.1, 25.2, 25.3, 25.7, and 25.10 of the Existing PPOA are hereby incorporated by reference, and shall apply to this Amendment *mutatis mutandis* as if fully set forth herein.

9. Oversight Board Confirmation. Operator represents and warrants that the information included in the Contractor Certification Requirement, provided to the Financial Oversight & Management Board for Puerto Rico in connection with the Amendment is complete, accurate and correct, and that any misrepresentation, inaccuracy of falseness in such Certification will render the Amendment null and void and the Operator will have the obligation to reimburse immediately to PREPA any amounts, payments or benefits received under the Amendment above those required under the Existing PPOA.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, facsimile or other electronic communication shall be effective as a delivery of a manually executed counterpart of this Amendment.

[Signature pages follow.]

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment as of the date set forth above.

AES PUERTO RICO, L.P.,
By: AES Puerto Rico Inc, its general partner

By: _____
Name:
Title:

PUERTO RICO ELECTRIC POWER AUTHORITY

By: _____

Name:
Title:

Exhibit 1

Exhibit O to PPOA: Green Energy Commitment Term Sheet

Conversion of AES-PR Guayama Plant to Green Energy
Initial PPOA Amendment Term Sheet

All agreements are subject to and conditioned upon, among other things, the negotiation, execution, and delivery of the applicable transaction documents. In addition to the requisite corporate approvals of the Parties, effectiveness of any agreements are conditioned on, among other requirements, approval of the Puerto Rico Energy Bureau ("PREB") and the Financial Oversight and Management Board for Puerto Rico, while in existence (the "Oversight Board").

Objective:	**Primary Objective**: Accelerate Puerto Rico's transition to green generation by establishing additional generation through solar and battery capacity. **Secondary Objective**: Shutting down of the AES-PR Guayama coal generation plant ("Legacy Plant") prior to or by the December 31, 2027 statutory target.
Location of Green Projects:	The Legacy Plant location and/or such other site(s) as mutually agreed by the parties.
Target Placed in Service Date:	By the later of (a) December 31, 2027 and (b) the date that is 24 months after (i) securing a project site, (ii) execution of interconnection agreement(s), (iii) execution of a Green PPOA (as defined below), and (iv) acquisition of permits required by the "Oficina de Gerencia de Permisos" ("OGPE").
AES Commitment:	Approximately 300 MW of solar and/or battery storage (inclusive of Minimum Technical Requirements ("MTRs")), which shall be incremental to the projects already awarded to AES Corp. or its affiliates in Tranche I as of the date of this term sheet (200MWac solar, 200MW battery storage standalone, 90 MW of MTRs) and any submitted by and awarded to AES Corp. or its affiliates in the Tranche II process, (collectively, the "Green Projects"). AES-PR or its affiliates to undertake the necessary feasibility studies[1] (the "Studies") for the establishment of one or more projects to complement and assist in eventually replacing the Legacy Plant's generation capacity with the Green Projects, on a the date that is nine months subsequent to the date on which PREPA confirms interconnection point(s) capacity. Following the completion of the Studies, AES-PR and PREPA will negotiate an amendment to the AES-PR PPOA, in accordance with Act 17-2019, to include terms and conditions to enable the

[1] AES-PR expects the following to be required: desktop environmental & permitting assessment, preliminary wetland/habitat/communities /archeological/ topography/geotechnical/and design studies.

	construction and operation of the Green Projects, which may include one or more sites (the "Green PPOAs") and be severable and assignable to an affiliate of AES Corp. The amendment of the PPOA between PREPA and AES-PR regarding the Legacy Plant ("Initial PPOA Amendment") shall provide that these rights and commitments (the "Green Energy Commitments") shall be assignable by AES-PR to any affiliate of AES-PR, qualified to operate a project of this type.
PREPA and GPR Commitment:	PREPA and the Government of Puerto Rico ("GPR") to negotiate the Green PPOAs in good faith. PREPA and the GPR to work with the Oversight Board to leverage Title V of PROMESA to provide expedited permitting process for the Green Projects. PREPA/LUMA and the GPR to assist in development process and nominate the project as a critical project under PROMESA Title V . PREPA/LUMA (i) to support identification of substations/ interconnection points (POI) for the Green Projects and (ii) to assist defining interconnection scope of work / responsibilities between AES-PR or its affiliate and LUMA.
Green PPOA Terms:	Term: At least 25 years from the respective date of commercial operation ("COD"). Pricing: The Levelized cost of energy ("LCOE") shall be negotiated to be competitive with future tranches of Puerto Rico renewable procurement process[2]; *provided however*, in all cases pricing shall be negotiated in good faith to make certain the Green Projects are commercially/economically feasible and shall be subject to PREB and Oversight Board (while in existence) approval.
Technical Considerations:	The Green Projects shall consist of solar generation and/or battery storage facilities. If, and to the extent, the Parties mutually determine it is commercially and technically feasible and preferable to redevelop the Legacy Plant site, then Parties shall use best efforts to use the Legacy Plant site and infrastructure, including any interconnection infrastructure for the Green Projects.

[2] **NOTE TO ENERGY BUREAU:** The preceding language was revised at the Oversight Board's direction.

	Subject to identification of required land, interconnection infrastructure, and final terms and conditions of the applicable Green PPOA.
Confidentiality:	The existence of the Initial PPOA Amendment will be publicly disclosed. A confidentiality agreement to be executed between AES-PR or its assignee and PREPA governing the feasibility studies and the negotiation of the Green PPOAs.
Due Diligence Timeframes:	Final negotiation of commercial terms by December 31, 2025.

Exhibit B

Blackline of Proposed Amendment

THIRD AMENDMENT
TO THE POWER PURCHASE
AND OPERATING AGREEMENT

This Third Amendment to the Power Purchase and Operating Agreement (this "Amendment"), dated [●], 2023, is by and between AES PUERTO RICO, L.P. (the "Operator"), a Delaware limited partnership and authorized to do business in Puerto Rico, represented in this act by Jesus Bolinaga, President of its general partner, AES Puerto Rico Inc., of legal age, married, and resident of Guaynabo, Puerto Rico who is duly authorized to sign this Agreement on its behalf, as certified by written resolutions dated October 24, 2023, and the PUERTO RICO ELECTRIC POWER AUTHORITY ("PREPA" and together with Operator, the "Parties"), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of May 2, 1941, represented in this act by its Executive Director, Josué A. Colón Ortiz, of legal age, married, and resident of Caguas, Puerto Rico, who is legally authorized to sign this Agreement on its behalf pursuant to Resolution 5099.

RECITALS

WHEREAS, Operator and PREPA are parties to that certain Power Purchase and Operating Agreement, dated October 11, 1994, by and between Operator and PREPA as amended by that certain First Amendment to the Power Purchase and Operating Agreement, dated as of November 16, 1999, and that certain Second Amendment to Power Purchase and Operating Agreement, dated as of July 17, 2015 (as so amended, the "Existing PPOA"), for the sale of energy and capacity to PREPA from a 454.3 megawatt ("MW") Qualifying Facility consisting of two circulating fluidized bed ("CFB") boilers, two steam turbine generators and its respective Interconnection Facilities in the vicinity of Guayama, Puerto Rico, as more fully defined in the Existing PPOA (the "Facility");

WHEREAS, it is the Government of Puerto Rico's (the "Government") public policy to allow for the integration and dissemination of renewable energy sources, including reducing and eventually eliminating electric power generation from fossil fuels by orderly and gradually integrating alternative renewable energy generation capacity while safeguarding the stability of the Electrical System and maximizing renewable energy resources in the short-, medium-, and long-term.

WHEREAS, Article 4.11 of Puerto Rico Act 17-2019, adds a new Article 2.13 to Act 82-2010, as amended, that provides as follows:

"Article 2.13." Prohibition Against the Use of Coal

> "As part of the public policy of the Government of Puerto Rico to eliminate our reliance on fossil fuels, the award of new contracts and/or the granting of permits to establish power plants that generate energy from coal and its derivatives is hereby prohibited. Likewise, no permits or amendments to contracts existing as of the approval of the Puerto Rico Energy Public Policy Act may authorize or consider coal burning as a power generation source after January 1, 2028.

However, for purposes of eliminating the use of coal by January 1, 2028, the existing coal-fired power capacity may be replaced by power generation capacity from other sources that are compliant with the Puerto Rico Energy Public Policy Act by extending contracts and/or renewing existing permits based on the new generation source. The replacement of the generating capacity from other energy sources shall be authorized by the Bureau and result in the total elimination of coal use after January 1, 2028."

WHEREAS, it is also a Government key public policy priority to ensure the Facility's environmental compliance and to reduce the amount of any coal combustion residuals ("CCR") and/or CCR based product (combustion waste, by-product, manufactured aggregate or Agremax) that is stored in or be disposed of anywhere in the Commonwealth of Puerto Rico or its neighboring waters;

WHEREAS, under Article 6.6 of the Existing PPOA, the Operator warrants that any combustion waste or by-product produced by the operation of the Facility that cannot be used for beneficial commercial uses will not be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of one hundred and eighty (180) Days and that it will not be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters, except as provided or authorized by any applicable environmental law, rule, resolution, regulation or ordinances;

WHEREAS, subsequent to Operator and PREPA entering into the Existing PPOA and Operator making the above warranty in Article 6.6, Puerto Rico enacted, among other things, Act 5-2020, and, as a result, there is no longer any applicable environmental law, rule, resolution, regulation or ordinance that would permit CCR and/or CCR based product (combustion waste, by-product, manufactured aggregate or Agremax) to be stored anywhere in Puerto Rico for a period in excess of one hundred and eighty (180) Days or be disposed of anywhere in Puerto Rico or its neighboring waters, and the Operator has paid the increased costs in order to comply with law, without compensation;

WHEREAS, the Operator has defaulted in payment of its bonds (the "Bonds") issued pursuant to the Trust Agreement, dated as of May 15, 2000, by and among Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority ("AFICA"), as issuer, Bankers Trust Company (succeeded in interest by Deutsche Bank Trust Company Americas and UMB Bank, N.A.), as bond trustee (the "Trust Agreement").

WHEREAS, the Parties intend to maintain operational and economic stability and environmental compliance at the Facility pending its retirement, expedite the removal of CCR and/or CCR based product (combustion waste, by-product, manufactured aggregate or Agremax) at the Facility, accelerate Puerto Rico's transition to renewables and meet the targets and deadlines established under Act 17-2019, and support and enhance Puerto Rico's transition to larger amounts of renewable energy sources and battery storage, in parallel with the ongoing renewable energy procurement processes being led by the Puerto Rico Energy Bureau (PREB) established under the approved Integrated Resource Plan, while ensuring the availability of dependable and cost-efficient baseload generation;

WHEREAS, consistent with the Parties' intent to expedite the coal to green transition and guarantee environmental policy compliance while ensuring the availability of cost-efficient generation as the Government reaches its renewable targets, the Operator and PREPA agreed to make certain amendments to the Existing PPOA and PREPA and Operator have entered into this Amendment in order to effectuate such amendments as set forth herein (the Existing PPOA, as amended by this Amendment, the "PPOA");

WHEREAS, the Operator has also entered into that certain Restructuring Support Agreement, dated November 1, 2023, by and among the Operator, certain beneficial holders of the Bonds and other parties thereto (the "RSA"), setting forth terms of a restructuring of Operator's debt to provide for the sustainability of the Facility for the remainder of the term of the PPOA and to allow for the transition to renewable sources of energy;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Existing PPOA.

2. Amendments to Existing PPOA.

(a) Article 1 of the Existing PPOA is hereby amended by adding each of the following new defined terms, where alphabetically appropriate:

"Bridge Notes" means that certain series of Bridge Notes issued by Operator as contemplated by the RSA.

"Cash Equivalents" means:

(i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(ii) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from a Credit Rating Agency;

(iii) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000;

(iv) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(v) money market funds that (a) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (b) are rated AAA and Aaa (or equivalent rating) by at least two Credit Rating Agencies and (c) have portfolio assets of at least five million dollars ($5,000,000,000).

"Consolidated Cash Balance" means, at any time, the aggregate amount of unrestricted cash and Cash Equivalents, in each case, held or owned by (whether directly or indirectly), credited to the account of, or otherwise reflected as an asset on the balance sheet of, Operator (other than (i) any cash against which Operator has issued checks or has initiated wires or ACH transfers in order to pay (or will issue checks or initiate wires or ACH transfers in order to pay such amounts within seven (7) business days) and (ii) any amounts held as cash collateral as required pursuant to contractual obligations with third parties).

"Credit Rating Agency" means a nationally recognized credit rating agency that evaluates the financial condition of issuers of debt instruments and then assigns a rating that reflects its assessment of the issuer's ability to make debt payments.

"Excess Cash" means on any Measurement Date, 100% of any Consolidated Cash Balance in excess of ten million dollars ($10,000,000) plus any cash against which Issuer has issued checks or has initiated wires or ACH transfers in order to pay (or will issue checks or initiate wires or ACH transfers in order to pay such amounts within seven (7) business days).

"Green Energy Commitment" has the meaning set forth in Section 6.24.

"Green PPOA" has the meaning set forth in Section 6.24.

"Green Transition Stabilization Payment" has the meaning set forth in Section 11.1(b)(10).

"Measurement Date" means April 1, 2024 and, thereafter, the date that is the first business day of each calendar quarter, provided that if there is a scheduled interest payment on such date, the Measurement Date will mean such time immediately after such interest is paid on such date.

"Preferred Shares" means that certain series of preferred shares issued by AES Guayama Holdings B.V. as contemplated by the RSA.

"Reserve" has the meaning set forth in Section 19.7(b).

"Restructured Facility Debt" means the aggregate amount of principal, accrued interest, and other amounts owing under the Bridge Notes and the Senior Bonds, and liquidation value and accrued dividends, and other amounts owing under the Preferred Shares.

"RSA" means that certain Restructuring Support Agreement dated as of November 1, 2023 by and among Operator and the other parties thereto.

"Senior Bonds" means those Senior Bonds as contemplated by the RSA.

"Third Amendment Effective Date" has the meaning given to such term in that certain Third Amendment to the Power Purchase and Operating Agreement, dated [●], 2023, by and between Operator and PREPA.

(b) Article 1 of the Existing PPOA is hereby further amended to revise the following preexisting defined terms as follows:

"Capacity Purchase Price": the word "and" after "Demand Charge" shall be deleted and replaced with a comma, and the phrase ", and the Green Transition Stabilization Payment" shall be inserted after the word "kilowatt".

"Capital Improvement Debt": the phrase "; provided, however, that for purposes of Sections 15.2(a), (b), and (c), 15.9 Capital Improvement Debt shall only include the Cost of a Capital Improvements incurred after the Third Amendment Effective Date" shall be inserted before the period.

"Facility Debt": everything after the phrase "except that for the purposes of" shall be deleted and replaced with "Sections 11.1 (b) and 25.13 of the Agreement, it shall be amortized in accordance with the quarterly amortization schedule in Exhibit M and except that for purposes of "Debt Service Coverage Ratio," "Excess Financing Amount", "Interest", "Total Debt Service Coverage" and "Total Debt Service Coverage Ratio" and Sections 6.8(f), 15.2(a), 15.2(b), 15.2(c), 15.7 (only the first instance therein), 19.10 and 20.1, after the Third Amendment Effective Date "Facility Debt" shall mean the "Restructured Facility Debt", and for purposes of Sections 15.1(e) and (f), after the Third Amendment Effective Date "Facility Debt" shall mean the "Restructured Facility Debt" or the "Facility Debt". "Facility Debt" or "Restructured Facility Debt" do not include Excess Financing Amount, Capital Improvement Debt or Capital Improvement Equity."

(c) Section 3.1 of the Existing PPOA is hereby amended by replacing the Operator's notice information with the following language:

"If to the Operator to:
AES Puerto Rico, L.P.
P.O. Box 1890
Guayama, Puerto Rico 00785
Attn: Jesus Bolinaga and Karen Ortiz

with a copy via e-mail to: aescorplegalnotices@aes.com

With a copy to:
Sidley Austin LLP

1000 Louisiana Street, Suite 5900
Houston, Texas 77002
Attention: Duston McFaul and Maegan Quejada
Email: dmcfaul@sidley.com; mquejada@sidley.com

(d) Section 6.6 of the Existing PPOA is hereby amended by adding the following language after the period:

"Applicable law no longer permits CCR and/or CCR based product to be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of one hundred and eighty (180) Days or to be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters. Operator shall (i) use commercially reasonable efforts to accelerate the reduction of CCR and CCR-based products stored at the Agremax Staging Area of the Facility to below 60 thousand metric tons by December 31, 2026 and (ii) thereafter, use commercially reasonable efforts to keep below 60 thousand metric tons of CCR and CCR-based products stored at the Agremax Staging Area of the Facility for the remaining Term."

(e) Section 6.8(g) of the Existing PPOA is hereby amended by replacing the existing language with "[Reserved]."

(f) Section 6.19 of the Existing PPOA is hereby amended by adding the following sentences after the period:

"Operator shall ensure that the Facility is in compliance with applicable federal and Commonwealth environmental laws and regulations as of the end of the Term, as certified by a third party consulting expert mutually acceptable to Operator and PREPA. As part of such environmental compliance, the Operator shall ensure that the Facility is properly cleaned, decommissioned, and secured at the end of the Term to the extent the Facility is not repurposed."

(g) The following new Section 6.23 shall be added to Article 6:

"6.23 Operator shall provide to PREPA copies of (i) environmental compliance data regarding the period starting January 1, 2022 through the Third Amendment Effective Date collected by the Facility under federal and Commonwealth law, or otherwise as part of the Facility's operations and practices, including data collected under the federal Clean Air Act, Clean Water Act, Safe Drinking Water Act, the Resource Conservation and Recovery Act, and analogous Commonwealth statutes and regulations, and (ii) all monitoring data, including ground water or surface water and reports associated with such monitoring data, including the ground monitoring well network installed at the Facility under federal CCR rules. Operator agrees to timely provide PREPA any such environmental data, studies, reports that are generated after the Third Amended Effective Date and through the Term. Additionally, Operator shall share to PREPA copies of any studies commissioned by Operator, including but not limited to any studies commissioned in connection with any sale of the Facility or transfer of operation or ownership of the Facility, if any."

(h) The following new Section 6.24 shall be added to Article 6:

"6.24 Green Energy Commitment – With an objective of accelerating Puerto Rico's transition to green generation and in compliance with Puerto Rico Act 17-2019, Operator and PREPA shall negotiate in good faith definitive renewables power purchase and operating agreements (each a "Green PPOA"), and related documentation, that incorporates the terms set forth in Exhibit O hereto (the "Green Energy Commitment"). The Operator and PREPA agree that Operator may sever and assign all or part of its rights and obligations with respect to the Green Energy Commitment (and any Green PPOA) to any affiliate of Operator qualified to operate a renewable project of this type."

(i) The first sentence of the second paragraph of Section 7.3 of the Existing PPOA is hereby amended by replacing everything after the word "be" with the following language: "(a) 9,800 BTU per net kWh and (b) on or after ~~December~~January 1, ~~2023~~2024, 11,000 BTU per net kWh; provided, that for purposes of calculating the Maximum Monthly Fuel Requirement, the FCDF shall remain 9,800 BTU per net kWh."

(j) The following new Section 8.12 shall be added to Article 8:

"Identity of Operator – Operator shall, upon any transfer of the Facility, negotiate in good faith a new operations and maintenance agreement with the new owners, such that Operator or an affiliate of AES Corp. shall remain the operator of the Facility through the end of the Term of the PPOA unless PREPA consents to a different operator of the Facility, such consent not to be unreasonably withheld or delayed, and such operator is authorized by the Puerto Rico Energy Bureau."

(k) Section 11.1(b) of the Existing PPOA is hereby amended by replacing the "and" in between prongs (i) and (ii) with a comma after the words "Demand Charge." Section 11.1(b) of the Existing PPOA is hereby further amended by adding "and (iii) the Green Transition Stabilization Payment," after "the Fixed Operation and Maintenance Charge,".

(l) The following new Section 11.1(b)(10) shall be added to Article 11:

"11.1(b)(10) Green Transition Stabilization Payment – For the month in which the Third Amendment Effective Date occurs Operator shall be paid a Green Transition Stabilization Payment equal to [$5,241,441].[1] For the period commencing on ~~December~~January 1, ~~2023~~2024 and continuing until November 30, 2024, Operator shall be paid a Green Transition Stabilization Payment equal to $8.00/per kilowatt of Dependable Capacity per Month. For the period commencing on December 1, 2024 and continuing for the remainder of the Term, Operator shall be paid a Green Transition Stabilization Payment equal to $1.75 per kilowatt of Dependable Capacity per Month. The Green Transition Stabilization Payment shall not be subject to any EAF downward adjustment."

[1] **NOTE TO ENERGY BUREAU**: Amount is based effectiveness post-December 1, 2023, but prior to January 1, 2024. Further changes will be required based on the final effective date of Third Amendment.

(m) Section 11.2(b) of the Existing PPOA is hereby amended by adding the following paragraph at the end of such section:

"Notwithstanding anything to the contrary herein, for the purposes of calculating the EAF for any Billing Period commencing on or after October 1, 2023, the Equivalent Derated Hours for each Billing Period in the period commencing on October 1, 2022 and ending on September 30, 2023 shall deemed to be zero (0) and each of the Period Hours and Available Hours for each Billing Period in the period commencing on October 1, 2022 and ending on September 30, 2023 shall deemed to be the actual total hours in the applicable month(s)."

(n) Section 11.3 of the Existing PPOA is hereby amended by replacing (i) "forty-seven (47) Days" with "thirty (30) Days" and (ii) "forty-eighth (48th) Day" with "thirty-first (31st) Day".

(o) Section 14.2 of the Existing PPOA is hereby deleted and replaced in its entirety by the following:

"14.2 Each of the Operator and PREPA shall be liable for all foreseeable damages suffered by the other as a necessary consequence of the Operator or PREPA's respective negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 19, as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Section 14.3 below. If PREPA permanently ceases to perform its obligations under or terminates this Agreement prior to the end of the Term (other than pursuant to Article 18) and any Bridge Notes or Senior Bonds remain outstanding, Operator's damages shall be the amounts required: (i) for the orderly shutdown of the Facility and its operations; (ii) to fund the Reserve; and (iii) to repay all amounts due under the Bridge Notes and the Senior Bonds, in each case net of the Facility's Cash, deposits and prepaid expenses before the payment of any dividends or equity return."

(p) Section 15.2(a) of the Existing PPOA is hereby amended to remove the word "all" before "Capital Improvement Debt."

(q) Section 15.2(b) of the Existing PPOA is hereby amended by:

(i) replacing the comma after "(w) Facility Debt" with the word "and";

(ii) deleting the word "all" before "Capital Improvement Debt"; and

(iii) deleting the remainder of the sentence after "Capital Improvement Debt".

(r) Section 15.2(c) of the Existing PPOA is hereby amended by:

(i) replacing the comma after "(i) Facility Debt" with the word "and";

(ii) deleting the word "all" before "Capital Improvement Debt";

(iii) deleting the remainder of the sentence after "Capital Improvement Debt".

(s) Section 19.7 of the Existing PPOA is hereby deleted and replaced in its entirety by the following:

"(a) Commencing on the Third Amendment Effective Date, Operator shall deposit into an account (the "Reserve") an amount equal to fifty percent (50%) Excess Cash within five (5) business days after the Measurement Date, until such transfers into the Reserve total twenty-five million dollars ($25,000,000), pursuant to an escrow agreement mutually acceptable to Operator and PREPA. Commencing on the Third Amendment Effective Date, Operator shall no longer be required to provide any letter or letters of credit or other security to PREPA except for the Reserve set forth in this Section 19.7.

(b) PREPA may draw on the Reserve required under Section 19.7(a) above to offset any damages PREPA may be entitled to under this Agreement upon Operator's breach of Agreement under Section 19.1(iv) or 19.1(v) which is not cured within the applicable period set forth in Section 19.3, provided that PREPA either obtains the agreement of Operator to the level of damages or obtains a judgment from a Court of Competent Jurisdiction specifying the level of damages. If PREPA reasonably determines that the Reserve would otherwise expire or cease to exist prior to such agreement or judgment, PREPA may draw on the Reserve in an amount equal to PREPA's claim of damages, provided that PREPA places the drawn amounts in a bank reasonably acceptable to Operator until the appropriate amount of damages is determined. Following such determination, PREPA may draw from the Reserve and retain amounts equal to the amount of damages determined to be due to PREPA. Drawing under the Reserve shall not be the exclusive remedy available to PREPA. In addition, the Reserve shall be available at the end of the Term of the PPOA to satisfy the obligations in Section 6.19. After satisfaction of such obligations any remaining amounts in the Reserve will be released to PREPA one hundred and eighty (180) Days after the latest to occur of: (i) expenditures necessary to bring the Facility into compliance with applicable environmental law or to satisfy claims, allegations or damages arising from or related to waste operations, material handling practices or environmental laws; (ii) completion of asset retirement and any remediation of the Facility required by applicable law; and (iii) resolution of any issues determined by an inspection of the Facility by a third party consulting expert mutually acceptable to Operator and PREPA."

(t) Section 19.8 of the Existing PPOA is hereby amended by replacing the existing language with "[Reserved.]".

(u) Section 19.9 of the Existing PPOA is hereby amended by replacing the existing language with "[Reserved.]".

(v) Section 21.1(e) of the Existing PPOA is hereby amended by deleting the period at the end of the sentence and adding the following language:

"; provided, however, PREPA (or the operator of its transmission and distribution ("T&D

System")) and the Operator shall negotiate in good faith a reduction of required percentage of replacement cost under any all risk physical damage insurance covering any period following the Third Amendment Effective Date; provided further however that PREPA (or the operator of its T&D System) shall have no obligation to negotiate until Operator provides PREPA with sufficient diligence information to assess the cost and benefit of such reduction."

(w) Article 23 of the Existing PPOA is hereby amended by replacing the first word of such article with the following language: "Except as set forth in Section 6.24, this".

(x) Exhibit O, which is attached as Exhibit 1 hereto, shall be deemed added to the PPOA as Exhibit O thereto.

3. Settlement. Operator and PREPA agree that this Amendment is entered into to resolve any and all claims and causes of action Operator may have against PREPA or the Commonwealth of Puerto Rico related to any change in law affecting the Facility enacted prior to the Third Amendment Effective Date.

4. Effectiveness. This Amendment shall be effective ~~on~~upon the later of the date (such date, the "Third Amendment Effective Date") that (a) Operator and PREPA (after the Puerto Rico Energy Bureau and the Financial Oversight & Management Board for Puerto Rico each approve this Amendment) shall have executed this Amendment and delivered such executed Amendment (or signature page thereto) to the other Party and (b) consummation of the Exchange (as defined in the RSA) shall have occurred.

5. Confirmation. The provisions of the PPOA, as amended by this Amendment, shall remain in full force and effect following the Third Amendment Effective Date~~; provided however, if the transactions contemplated by the RSA are not substantially consummated by December 31, 2023, or a later date with PREPA's written consent, this Amendment shall be null and void *ab initio* and PREPA shall be entitled to recoup any excess paid above those required under the Existing PPOA~~. From and after the Third Amendment Effective Date each reference in the PPOA to "this Agreement", "hereunder", "hereof" or words of similar import shall, in each case, be deemed to be a reference to the PPOA, as amended by this Amendment.

6. Entire Agreement. THIS AMENDMENT AND THE PPOA REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

7. 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 agree to submit themselves to the appropriate administrative body having jurisdiction over the Parties and the Amendment or to a Court of Competent Jurisdiction.

8. Miscellaneous Provisions. The terms and provisions of Sections 25.1, 25.2, 25.3, 25.7, and 25.10 of the Existing PPOA are hereby incorporated by reference, and shall apply to this Amendment *mutatis mutandis* as if fully set forth herein.

9. Oversight Board Confirmation. Operator represents and warrants that the information included in the Contractor Certification Requirement, provided to the Financial Oversight & Management Board for Puerto Rico in connection with the Amendment is complete, accurate and correct, and that any misrepresentation, inaccuracy of falseness in such Certification will render the Amendment null and void and the Operator will have the obligation to reimburse immediately to PREPA any amounts, payments or benefits received under the Amendment above those required under the Existing PPOA.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, facsimile or other electronic communication shall be effective as a delivery of a manually executed counterpart of this Amendment.

[Signature pages follow.]

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment as of the date set forth above.

AES PUERTO RICO, L.P.,
By: AES Puerto Rico Inc, its general partner

By: _____
Name:
Title:

PUERTO RICO ELECTRIC POWER AUTHORITY

By: _____

Name:
Title:

Exhibit 1

Exhibit O to PPOA: Green Energy Commitment Term Sheet

Conversion of AES-PR Guayama Plant to Green Energy
Initial PPOA Amendment Term Sheet

All agreements are subject to and conditioned upon, among other things, the negotiation, execution, and delivery of the applicable transaction documents. In addition to the requisite corporate approvals of the Parties, effectiveness of any agreements are conditioned on, among other requirements, approval of the Puerto Rico Energy Bureau ("PREB") and the Financial Oversight and Management Board for Puerto Rico, while in existence (the "Oversight Board").

Objective:	**Primary Objective**: Accelerate Puerto Rico's transition to green generation by establishing additional generation through solar and battery capacity. **Secondary Objective**: Shutting down of the AES-PR Guayama coal generation plant ("Legacy Plant") prior to or by the December 31, 2027 statutory target.
Location of Green Projects:	The Legacy Plant location and/or such other site(s) as mutually agreed by the parties.
Target Placed in Service Date:	By the later of (a) December 31, 2027 and (b) the date that is 24 months after (i) securing a project site, (ii) execution of interconnection agreement(s), (iii) execution of a Green PPOA (as defined below), and (iv) acquisition of permits required by the "Oficina de Gerencia de Permisos" ("OGPE").
AES Commitment:	Approximately 300 MW of solar and/or battery storage (inclusive of Minimum Technical Requirements ("MTRs")), which shall be incremental to the projects already awarded to AES Corp. or its affiliates in Tranche I as of the date of this term sheet (200MWac solar, 200MW battery storage standalone, 90 MW of MTRs) and any submitted by and awarded to AES Corp. or its affiliates in the Tranche II process, (collectively, the "Green Projects"). AES-PR or its affiliates to undertake the necessary feasibility studies[1] (the "Studies") for the establishment of one or more projects to complement and assist in eventually replacing the Legacy Plant's generation capacity with the Green Projects, on a the date that is nine months subsequent to the date on which PREPA confirms interconnection point(s) capacity. Following the completion of the Studies, AES-PR and PREPA will negotiate an amendment to the AES-PR PPOA, in accordance

[1] ~~**Note to Draft:**~~ AES-PR expects the following to be required: desktop environmental & permitting assessment, preliminary wetland/habitat/communities /archeological/ topography/geotechnical/and design studies.

	with Act 17-2019, to include terms and conditions to enable the construction and operation of the Green Projects, which may include one or more sites (the "Green PPOAs") and be severable and assignable to an affiliate of AES Corp. The amendment of the PPOA between PREPA and AES-PR regarding the Legacy Plant ("Initial PPOA Amendment") shall provide that these rights and commitments (the "Green Energy Commitments") shall be assignable by AES-PR to any affiliate of AES-PR, qualified to operate a project of this type.
PREPA and GPR Commitment:	PREPA and the Government of Puerto Rico ("GPR") to negotiate the Green PPOAs in good faith. PREPA and the GPR to work with the Oversight Board to leverage Title V of PROMESA to provide expedited permitting process for the Green Projects. PREPA/LUMA and the GPR to assist in development process and nominate the project as a critical project under PROMESA Title V . PREPA/LUMA (i) to support identification of substations/ interconnection points (POI) for the Green Projects and (ii) to assist defining interconnection scope of work / responsibilities between AES-PR or its affiliate and LUMA.
Green PPOA Terms:	Term: At least 25 years from the respective date of commercial operation ("COD"). Pricing: The ~~Parties will use best efforts to price the~~ Levelized cost of energy ("LCOE") ~~no higher than the maximum price awarded in the most recent competitive solicitation process regarding solar, battery, and related infrastructure projects run by PREPA or its agent (including, without limitation, LUMA)~~shall be negotiated to be competitive with future tranches of Puerto Rico renewable procurement process[2]; *provided however*, in all cases pricing shall be negotiated in good faith to make certain the Green Projects are commercially/economically feasible and shall be subject to PREB and Oversight Board (while in existence) approval.
Technical Considerations:	The Green Projects shall consist of solar generation and/or battery storage facilities.

[2] **NOTE TO ENERGY BUREAU:** The preceding language was revised at the Oversight Board's direction.

	If, and to the extent, the Parties mutually determine it is commercially and technically feasible and preferable to redevelop the Legacy Plant site, then Parties shall use best efforts to use the Legacy Plant site and infrastructure, including any interconnection infrastructure for the Green Projects. Subject to identification of required land, interconnection infrastructure, and final terms and conditions of the applicable Green PPOA.
Confidentiality:	The existence of the Initial PPOA Amendment will be publicly disclosed. A confidentiality agreement to be executed between AES-PR or its assignee and PREPA governing the feasibility studies and the negotiation of the Green PPOAs.
Due Diligence Timeframes:	Final negotiation of commercial terms by December 31, 2025.