

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

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**IN RE:** REQUEST FOR CERTIFICATION  
PR Solar D1, LLC

**CASE NO.:** NEPR-CT-2021-0002

**SUBJECT:** Compliance with Resolution and  
Order of April 15, 2023

**MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER OF APRIL 15, 2023**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

Comes now PR Solar D1, LLC (“PR Solar”) through the undersigned legal counsel and respectfully states and requests as follows:

1. On March 27, 2024, PR Solar filed before the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) a *Request for Cancellation of Registration* (“March 27 Motion”) in which it requested this honorable Energy Bureau to cancel PR Solar’s registration as a certified electric service company under the Energy Bureau’s Regulation 8701<sup>1</sup>. PR Solar informed that the solar energy generation project with its single client, which was the reason to obtain the electric company certification, was cancelled and that PR Solar no longer intended to engage in the provision of electric services in Puerto Rico.

2. On April 15, 2024, the Energy Bureau issued a Resolution and Order (“April 15 Order”) in which it takes notice of the March 27 Motion and orders PR Solar to, within five (5) days from the notification of the April 15 Order, to submit evidence that its single client was notified by PR Solar

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<sup>1</sup> Amendment to Regulation No. 8618, on Certifications, Annual Fees and Operational Plans of Electric Service Providers in Puerto Rico, February 5, 2016, as amended by Regulation 9182, Amendment to Regulation No. 8701, on Certifications, Annual Fees and Operational Plans of Electric Service Providers in Puerto Rico, June 8, 2020.

about the decision of cancelling the project and evidence that LUMA Energy, LLC/LUMA Energy ServCo, LLC (“LUMA”) has been notified about the decision.

3. In compliance with the April 15 Order, PR Solar herein submits as **Exhibit 1** copy of two letters from PR Solar regarding the termination of the Solar Power Purchase Agreement between the client and PR Solar (“SPPA”) and a payment made thereunder. With respect to the notification to LUMA, PR Solar informs that it did not notify LUMA. The project never submitted an interconnection application to LUMA, given that it did not reach the stage to commence that process.

4. Pursuant to Section 6.15 of Act 57-2014<sup>2</sup>, Section 1.15 of Regulation No. 8701, and the Energy Bureau Resolution No. CEPR-2019-0006<sup>3</sup>, PR Solar hereby requests that **Exhibit 1** be maintained under seal of confidentiality. The following paragraphs 5 to 12 of this Motion contain the Memorandum of Law in support of this request.

5. Act 57-2014 provides that any person having the obligation to submit information to the Energy Bureau can request privilege or confidential treatment of the information the submitting party understands deserves such protection. Section 6.15 of Act 57-2014. Specifically, Act 57-2014 requires the Energy Bureau to provide confidential treatment to such information provided that the Energy Bureau, “after the appropriate evaluation, believes such information should be protected.” *Id.* In such case, the Energy Bureau “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.*

6. Furthermore, Section 1.15 of Regulation 8701 establishes that: “If in compliance with the provisions of this Regulation or any of [the Energy Bureau’s] orders, a person has the duty to

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<sup>2</sup> Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act.

<sup>3</sup> Energy Bureau’s Resolution on the Policy regarding Management of Confidential Information in Procedures Before the Bureau.

disclose to the [Energy Bureau] information that, to the best of their knowledge, is privileged or confidential pursuant to the provisions of a law or regulation, said person shall identify the information considered privileged, request the protection of said information before the [Energy Bureau], and state, in writing, the arguments that form the basis of the person's claim regarding the privileged or confidential nature of the information.”

7. Puerto Rico law protects trade secrets, including information that has the potential for financial or commercial value. The principal law protecting the confidentiality of trade secrets, codified in Act 80-2011, is the Industrial Trade Secret Protection Act of Puerto Rico. Act 80-2011 defines a trade secret as any information that:

[H]as a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information; and [...] [f]or which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

10 L.P.R.A. § 4133.

8. Reasonable security measures include not divulging the information to persons who are not authorized to have access to it and labelling the information as confidential, among other things. 10 L.P.R.A. § 4132.

9. Trade secrets may take a variety of forms, including “a process to manufacture, treat or preserve materials, a formula or recipe, a project or pattern to develop machinery, or simply a list of specialized clients that constitute a specific market which provides the owner with an advantage over his/her competitors.” Act 80-2011, Statement of Motives. However, these examples are not exhaustive, and the Legislature emphasized when enacting of Act 80-2011 that the broad definition of a trade secret includes “any confidential information with trade or industrial value, which its owner reasonably protects to prevent its disclosure.” *Id.* One of the reasons for this protection, is that “failure to protect

trade secrets could leave companies at the mercy of any competitor or former employee who gains knowledge of such secret, whether directly from the owner or by other means.” *Id.*

10. It must be noted that in Puerto Rico, trade secrets “do not require registration or compliance with any formalities in order to be protected.” *Id.*

11. **Exhibit 1** includes documents discussing certain terms and conditions of the SPPA executed between the client and PR Solar, including financial matters. PR Solar submitted this SPPA to the Energy Bureau under request for confidential treatment during the process to register PR Solar (*see Motion in Compliance with Resolution*, Exhibit A, filed on May 18, 2021 and *Memorandum of Law In Support of Request for Confidential Treatment* filed also filed on that date (the “Memorandum of Law”)), and the Energy Bureau granted confidential treatment thereof by Resolution and Order issued on June 24, 2021 and notified on June 30, 2021. As indicated in the Memorandum of Law, the SPPA contains sensitive and confidential information, including the financial terms of transaction, and its disclosure may place PR Solar at a competitive disadvantage; therefore the terms and conditions of the SPPA are a trade secret protected under Puerto Rico law. *See* Memorandum of Law, page 3. PR Solar also indicated that the Section 16.1 of Article 16 of the SPPA requires the parties to the SPPA to protect the Confidential Information identified in the SPPA from disclosure to third parties and, in pertinent part, provides that: “The terms of [the SPPA] (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 16.3.” *See id.* at page 4. The exceptions referenced in this provision (which in fact appear in Section 16.2<sup>4</sup>) are situations where the SPPA:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, including PREB, under Applicable Law or pursuant to a validly issued subpoena, but a receiving Party

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<sup>4</sup> The reference to Section 16.3 is evidently a cross-referencing error in the document. The correct cross-reference is Section 16.2 as can be gleaned from the context.

subject to any such requirement shall immediately notify the disclosing Party of such requirement, and shall request a protective order or other restriction on disclosure with respect to any such Confidential Information;

- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

(Emphasis added.)

12. PR Solar has taken strict measures to maintain the SPPA and any documents containing information related to the SPPA's terms and conditions confidential by not disclosing it to any persons or entities outside PR Solar or its affiliates other than under the exceptions provided in the SPPA with the implementation of the appropriate measures to maintain such information/documents confidential. Accordingly, the documents in **Exhibit 1** which discuss terms and conditions of the SPPA, including financial provisions, are also maintained in confidence. Therefore, PR Solar respectfully submits that **Exhibit 1** should be afforded the same confidential treatment as the SPPA as a protected trade secret pursuant to Act 80-2011, as well for being documents containing information subject to a confidentiality obligation.

**WHEREFORE**, PR Solar respectfully requests this honorable Energy Bureau to **take notice** of the above, **accept Exhibit 1** submitted herein, **grant** PR Solar's request for confidential treatment of **Exhibit 1**, and **deem** PR Solar in compliance with the April 15<sup>th</sup> Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 22<sup>nd</sup> day of April 2024.



**DLA Piper (Puerto Rico) LLC**  
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**Exhibit 1**

Submitted under Seal of Confidentiality