

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

NEPR

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IN RE: THE IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED RESOURCE
PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

**MOTION TO SUBMIT ADDITIONAL ENERGY STORAGE SERVICE AGREEMENTS (ESSAS)
FOR THE ENERGY BUREAU'S APPROVAL**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

1. On August 24, 2020, the Puerto Rico Energy Bureau (Energy Bureau) entered a Final Resolution and Order related to the PREPA Integrated Resource Plan (IRP) under Case No. CEPR-AP-2018-0001, through which it approved in part and rejected in part PREPA's proposed IRP. As part of the IRP Final Resolution and Order, the Energy Bureau ordered the adoption and implementation of a Modified Action Plan, which contains specific directives and requirements, including the formulation of a Renewable Generation Resource and Battery Energy Storage Resource Procurement Plan.

2. In accordance with the Modified Action Plan, the Energy Bureau ordered PREPA to file a Procurement Plan and develop competitive solicitation processes for the procurement of new renewable generation resources and

battery energy storage resources in support of, among other things, meeting Act 17 targets for renewable energy installations.

3. On February 22, 2021, PREPA launched Tranche 1 RFP 112648 for the procurement of 1,000 MW of renewable generation resources and at least 500 MW of battery energy storage resources, consistent with the Energy Bureau and the Financial Oversight and Management Board for Puerto Rico (FOMB) guidance.

4. On April 28, 2022, PREPA recommended to the Puerto Rico Energy Bureau of the Public Service Regulatory Board (Energy Bureau) the approval of four (4) utility-scale Battery Energy Storage System (BESS) projects totaling 240 MW of capacity with a 4-hour duration and a 17 MW Virtual Power Plant (VPP) project. The April 28 Informative Motion also contained information on six (6) additional utility-scale BESS resource proposals totaling 275 MW and a 150 MW VPP proposal. Furthermore, PREPA explained to the Energy Bureau its rationale for recommending the four utility-scale BESS projects and one of the two proposed VPPs and its rationale for not recommending the remaining six utility-scale BESS projects and the other VPP.

5. On June 13, 2022, the Energy Bureau issued a Resolution and Order ("June 13, 2022, Order") approving nine (9) 4-hour duration utility-scale BESS projects totaling 490 MW and one (1) 17 MW VPP project. In the June 13, 2022, Order, the Energy Bureau authorized PREPA to finalize its negotiations with the proponents to contract additional utility-scale BESS projects (250 MW out of the

490 MW) beyond those initially recommended by PREPA in furtherance of Puerto Rico's urgent needs to:

- i) Reliably integrate increasing amounts of renewable energy resources onto its system and avoid potential curtailment of renewable resource output (solar PV or wind),
- ii) Support the reliability and resiliency of the electric power grid with flexible, dispatchable capacity resources that provide energy, operating reserve, and transmission grid security attributes and
- iii) Reduce local air pollution by not delaying the planned retirement of the oldest and most polluting of PREPA's existing fossil-fueled power plants

6. PREPA executed energy storage services agreements (ESSAs) for two (2) of the nine (9) approved projects in August 2022. Finalization of negotiations and execution of agreements with proponents of the remaining projects were impacted by the same issues that impacted the "closing" of the power purchase and operating agreements for solar projects and the two executed ESSAs. These included (i) completion of interconnection studies (November 2022), (ii) LUMA's "second interconnection policy change" which had many of these projects moving to sectionalizers that proponents would construct, required proponents to engage with their construction contractors and assess costs, and required negotiation of modifications to the draft ESSAs in late 2022, (iii) LUMA's "third interconnection policy change" in January 2023, which switched back to LUMA-constructed interconnection works at PREPA substations and introduced the need for additional cost considerations and ESSA modifications, (iv) macroeconomic, global supply chain and interest rate issues of which the Energy Bureau has been informed, along with capacity increases and interconnection

reassessments to mitigate these, (v) lack of clarity resulting from delays in LUMA's EPC process, eventually ordered by the Energy Bureau to be completed in July 2023, and the timing implications of that process for project portfolios, and (vi) lack of clarity on LUMA's interconnection agreement and related requirements to move projects forward.

7. On May 12, 2023, with the Energy Bureau's support on the issues described above, PREPA was able to submit three additional ESSAs totaling 150 MW of capacity with a 4-hour duration before the Energy Bureau. PREPA further indicated that it remains in negotiation with two (2) remaining BESS project Service Providers to submit those ESSAs once an agreement is reached. On June 30, 2023, the Energy Bureau issued a Resolution and Order approving the ESSAs submitted by PREPA on May 12, 2023.

8. PREPA continued to work with Resource Providers, and after considerable effort to resolve the issues mentioned above, PREPA herein submits two additional ESSAs, as Annex A and B. These two Resource Providers submitted proposals in response to the RFP on June 18, 2021. Following the submission and evaluation of all proposals, PREPA selected them as preferred bidders, among others.

9. Given that the information contained in Annex A and Annex B is part of a deliberative process, incorporates trade or business secrets that are deemed confidential according to applicable law, and have been requested by Resource Providers to be maintained in a confidential manner, PREPA hereby

requests that the information in Annex A and Annex B be maintained confidential. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act* provides that “any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such[.]” Act 57 at Art. 6.15. “If the Energy [Bureau], after the appropriate evaluation, believes such information should be protected, it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.* at Art. 6.15 (a). If the Energy Bureau determines that the information is confidential, “the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements.” *Id.* at Art. 6.15 (c). “The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.” *Id.* at Art. 6.15 (d).

10. In the exercise of its powers, the PREB and PREPA approved Regulation 8815, which has force of law. *Id.* at Art. 6.3 (b). Regulation 8815 includes language in Art. 10.2 which protects confidential information in those competitive bidding processes contemplated in the regulation. In its pertinent part, it states that “[o]nce the Contract has been executed, the Authority shall make public the report of the Project Committee which shall contain the

information related to the procurement, evaluation, scoring, selection and negotiation process, and the information contained in the Proposal as required by law, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise ordered by a court order, in each case, if the Authority determines that the protection of such information is appropriate.” As stated before, the information provided by Proponents in the BFO's comprises business and trade secrets which Proponents have specifically requested be maintained in a confidential manner. Accordingly, PREPA respectfully request that the Energy Bureau find that these documents and information are confidential and thus order they be maintained under seal.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the PREB take **NOTICE** of the present Motion, **APPROVE** the ESSAs included as Annex A and B, and **GRANT** PREPA's petition for confidentiality **ORDERING** that the documents included as Annex A and B be kept under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of May 2024.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and courtesy copies were sent via e-mail to LUMA Energy, LLC through its counsels of record at

margarita.mercado@us.dlapiper.com, julian.angladapagan@us.dlapiper.com,
laura.rozas@dlapiper.com, uahaira.delarosa@us.dlapiper.com and to Genera
PR, LLC through its counsels of record at jfr@sbgblaw.com, alopez@sbgblaw.com.

GONZÁLEZ & MARTÍNEZ

1509 López Landrón
Seventh Floor
San Juan, PR 00911-1933
Tel.: (787) 274-7404

s/ Alexis G. Rivera Medina

Alexis G. Rivera-Medina

TSPR No.: 18,747

E-mail: arivera@gmlex.net

Annex A
(submitted under seal)

Annex B
(submitted under seal)