

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

**NEPR**

**Received:**

**May 31, 2024**

**12:04 PM**

**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 AMENDMENTS FOR THE REVIEW AND APPROVAL OF CLEAN  
FLEXIBLE ENERGY, LLC'S PPOAS AND ESSAS BY THE ENERGY BUREAU**

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<sup>th</sup>, 2020, the Puerto Rico Energy Bureau (Energy Bureau) issued 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.

2. 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.

3. Pursuant to 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.

4. On February 22<sup>nd</sup>, 2021, PREPA launched Tranche 1 RFP 112648 to procure 1,000 MW of renewable generation resources and at least 500 MW of battery energy storage resources, consistent with the Energy Bureau's and the Financial Oversight and Management Board for Puerto Rico's (FOMB) guidance.

5. On August 26<sup>th</sup>, 2022, PREPA and Clean Flexible Energy, LLC (CFE) entered and signed two PPOA's, to wit: 2023-P00054 for the Salinas Project, and 2023-P00055 for the Jobos Project. On that same date, PREPA and CFE entered and signed the ESSA's 2023-P00053 for the Salinas Battery Project and 2023-P00052 for the Jobos Battery Project. Each project comprised of 100MW with a duration of four hours.

6. CFE is obtaining financing from the Department of Energy's Loan Program Office (LPO). PREPA, the Puerto Rico Fiscal Agency and Financial Advisory Authority, and the Puerto Rico Public-Private Partnerships Authority have actively participated with the LPO in reviewing, discussing, and negotiating the scope of certain amendments to the PPOAs.

7. As part of the financing requirements, amendments to the PPOAs and ESSAs are necessary to incorporate the contractual terms relevant to financing. The proposed amendments include the proposed distribution of benefits (contracted rate reductions) resulting from the LPO financing.

8. The proposed amendments include total energy cost savings of \$5/MWh for the PPOAs and \$0.50/kW-month savings in the ESSAs. As such, the total savings between the original and new costs included in the proposed amendments is approximately 5.77% for all of the projects combined.

9. Pursuant to the above, PREPA hereby submits the following for the Energy Bureau's evaluation and approval: (1) the Sixth Amendment for the Jobos Battery Project<sup>1</sup> (**Annex A**), (2) Seventh Amendment for the Salinas Battery Project<sup>2</sup> (**Annex B**), (3) Sixth Amendment for the Salinas PPOA (**Annex C**), and (4) Seventh Amendment for the Jobos PPOA (**Annex D**).

10. Given that the information contained in Annexes A, B, C, and D are 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 Annex A, B, C, and D be kept confidential until the execution of the proposed amendments if approved by the Energy Bureau and the FOMB.

---

<sup>1</sup> On April 16<sup>th</sup>, 2024, PREPA submitted a Proposed Fifth Amendment for the Jobos Battery Project to the Energy Bureau for review and approval. The proposed Fifth Amendment concerns increasing the capacity of the Jobos battery project. If the Energy Bureau approves the Fifth Amendment, the hereby submitted Sixth Amendment will require an update to reflect the approved capacity increase.

<sup>2</sup> On April 16<sup>th</sup>, 2024, PREPA submitted a Proposed Sixth Amendment for the Salinas Battery Project to the Energy Bureau for review and approval. The proposed Sixth Amendment concerns increasing the capacity of the Salinas battery projects. If the Energy Bureau approves the Sixth Amendment, the hereby submitted Seventh Amendment will require an update to reflect the approved capacity increase.

11. 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 states that “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).

12. 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.”

13. As previously stated, the proposed amendments include information that is part of an ongoing negotiation process and incorporates trade or business secrets that Proponents have specifically requested be maintained in a confidential manner. Accordingly, PREPA respectfully requests that the Energy Bureau find that these documents and information are confidential and thus order that they be maintained under seal.

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

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 31<sup>st</sup> 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](mailto:margarita.mercado@us.dlapiper.com), [julian.angladapagan@us.dlapiper.com](mailto:julian.angladapagan@us.dlapiper.com), [laura.rozas@dlapiper.com](mailto:laura.rozas@dlapiper.com), [yahaira.delarosa@us.dlapiper.com](mailto:yahaira.delarosa@us.dlapiper.com) and to Genera PR, LLC through its counsels of record at [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com), [alopez@sbgblaw.com](mailto: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](mailto:arivera@gmlex.net)

**s/ Mirelis Valle Cancel**

**Mirelis Valle-Cancel**

TSPR No.: 21,115

E-mail: [mvalle@gmlex.net](mailto:mvalle@gmlex.net)