

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

NEPR

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

CASE NO.: NEPR-MI-2020-0012

**MOTION TO SUBMIT THE REPORT OF THE SELECTION COMMITTEE'S
EVALUATION OF THE TRANCHE 2 RENEWABLE ENERGY AND ENERGY
STORAGE SOLICITATION**

TO THE HONORABLE ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal representation and, very respectfully, informs and requests 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 ("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 ("Tranche 1 RFP") to procure 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. Following the Tranche 1 RFP issuance, PREPA received bids and completed initial evaluations. On June 20, 2022, the Tranche 1 RFP Evaluation Committee completed a Memorandum regarding the Recommendation of Approval of Certain Contracts for Renewable Energy and Energy Storage Resources, Tranche 1 RFP. On June 23, 2023, PREPA's Governing Board approved and authorized the finalization and execution of the negotiated PPOAs and ESSAs in accordance with the Tranche 1 RFP Evaluation Committee.

5. On October 29, 2021, the Energy Bureau issued a Resolution and Order ("October 29 Resolution") in which it determined to conduct the Tranche 2 RFP using an Independent Coordinator ("PREB-IC"). On January 27, 2022, the Energy Bureau informed the appointment of the PREB-IC and established its responsibilities and duties.

6. In response to the Energy Bureau's determination to conduct the Tranche 2 RFP process through the PREB-IC, the Puerto Rico Public-Private Partnership Authority ("P3 Authority") withdrew PREPA's authorization to perform

the Tranche 2 RFP process and recommended the creation of a Selection Committee for the evaluation and selection of proposal.

7. On June 9, 2022, the Energy Bureau issued another Resolution and Order to create the Selection Committee recommended by the P3 Authority. This Committee consists of six members, to wit: (1) the Executive Director of the P3 Authority or their delegate, (2) one (1) officer of PREPA directly involved with the RFP process or its delegate, (3) one (1) member of PREPA's Governing Board, appointed by the Governor, (4) two (2) officials from other government entities with relevant experience, chosen by the Energy Bureau, and (5) one (1) representative from LUMA Energy, LLC with knowledge/experience in similar transactions.

8. Furthermore, the Energy Bureau resolved that the PREB-IC will carry out the Tranche 2 RFP bid evaluation process, and once said evaluation was complete, the PREB-IC would submit its input and recommendations to the Selection Committee. Thereafter, the Selection Committee would prepare a report, including the reasons for selecting the chosen proponents, a description of the procedure followed for the selection, comparisons between the proponents and the rankings obtained, and all other information pertinent to the followed procedure and the evaluation conducted. The report would then be presented to the Energy Bureau for the final determination on selecting the most favorable proposals.

9. With regards to PREPA's responsibilities and duties concerning the RFP Process, the Energy Bureau indicated in the June 9, 2022, Resolution, among other

things, that PREPA must “[e]xecute the corresponding PPOA’s (upon the timely completion of the approvals by the PREPA Governing Board) based on the results of the final PREB determination on the bid evaluation and selection process by the PREB-IC and the Selection Committee.”

10. On May 31, 2024, the Selection Committee submitted the Tranche 2 Renewable Energy and Energy Storage Solicitation Evaluation Report to PREPA’s Governing Board (“Selection Committee’s Evaluation Report”). The Selection Committee included a draft of the PPOA and ESSA in its report for review and approval by the Energy Bureau and the Financial Oversight and Management Board for Puerto Rico.

11. On June 10, 2024, PREPA’s Governing Board approved the submission of the Selection Committee’s Evaluation Report.

12. Pursuant to the above, PREPA is submitting the Selection Committee’s Evaluation Report of Tranche 2 Renewable Energy with its attachments for the final determination by PREB on the bid evaluation and selection process. See Exhibit A.

13. PREPA respectfully requests that Exhibit A be kept confidential during the ongoing administrative competitive procurement process, as it contains information that is part of a deliberative process and includes trade or business secrets that are considered confidential under applicable law.

14. 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).

15. 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."

16. Pursuant to the above, PREPA respectfully requests confidential treatment of Exhibit A as part of the ongoing deliberative process for the Tranche 2 RFP, which has yet to be awarded.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau **TAKES NOTICE** of the above and **GRANT** PREPA's petition for confidentiality, **ORDERING** that the documents included as Exhibit A be kept under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 18th day of June 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, yahaira.delarosa@us.dlapiper.com and to Genera PR, LLC through its counsels of record at jfr@sbgblaw.com, alopez@sbgblaw.com.

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Exhibit A

Confidential