

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

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

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Request for Information in relation to request of amendments of Clean Flexible Energy, LLC ESSAs and PPOAs.

RESOLUTION AND ORDER

On August 26, 2022, the Puerto Rico Power Authority ("PREPA") and Clean Flexible Energy, LLC ("Clean Flexible") signed two Energy Storage Service Agreements ("ESSAs") for 100 MW, four-hour duration energy storage projects to be developed in Salinas¹ and Guayama², referred to as the "Salinas ESSA" and the "Jobos ESSA." Both the Salinas ESSA³ and the Jobos ESSA⁴ have been amended several times. On August 26, 2022, PREPA and Clean Flexible also signed two Power Purchase and Operating Agreements ("PPOAs") for solar photovoltaic energy projects to be developed in Salinas⁵ and Guayama⁶, referred to as the "Salinas PPOA" and the "Jobos PPOA." Both agreements also have been amended several times. The Salinas PPOA⁷ includes a capacity of 80 MW, while the Jobos PPOA⁸ includes a capacity of 120 MW.

On April 16, 2024, PREPA submitted a document titled *Motion to Submit Amendments for Two Executed ESSAs* ("April 16 Motion") to the Energy Bureau of the Puerto Rico Public Service Regulatory Board (the "Energy Bureau"). In this motion, PREPA states that it received a formal request from Clean Flexible to increase the capacity of the Salinas Battery Storage Project from 100 MW to 175 MW and the Jobos Battery Storage Project from 100 MW to 110 MW.⁹ They stated that LUMA¹⁰ confirmed the Jobos Battery Storage Project interconnection facilities could accommodate an additional 10 MW of battery storage and that the Ciro Sectionalizer Interconnection Point to be used in connection with the Salinas Battery Storage Project could accommodate an additional 75 MW of battery storage capacity

¹ Hereinafter the *Salinas Battery Storage Project*.

² Hereinafter the *Jobos Battery Storage Project*.

³ The Salinas ESSA was amended on March 17, 2023 ("Salinas ESSA First Amendment"), June 15, 2023 ("Salinas ESSA Second Amendment"), June 30, 2023 ("Salinas ESSA Third Amendment"), July 10, 2023 ("Salinas ESSA Fourth Amendment"), and November 30, 2023 ("Salinas ESSA Fifth Amendment"). Unless otherwise stated, the Salinas ESSA, as amended by the first to fifth amendments, is collectively referred to as the "Salinas ESSA".

⁴ The Jobos ESSA was amended on March 17, 2023 ("Jobos ESSA First Amendment"), June 15, 2023 ("Jobos ESSA Second Amendment"), June 30, 2023 ("Jobos ESSA Third Amendment"), and July 10, 2023 ("Jobos ESSA Fourth Amendment"). Unless otherwise stated, the Jobos ESSA, as amended by the first to fourth amendments, is collectively referred to as the "Jobos ESSA".

⁵ Hereinafter the *Salinas Solar PV Project*.

⁶ Hereinafter the *Jobos Solar PV Project*.

⁷ The Salinas PPOA was amended on March 17, 2023 ("Salinas PPOA First Amendment"), June 15, 2023 ("Salinas PPOA Second Amendment"), June 30, 2023 ("Salinas PPOA Third Amendment"), July 10, 2023 ("Salinas PPOA Fourth Amendment"), and November 30, 2023 ("Salinas PPOA Fifth Amendment"). Unless otherwise stated, the Salinas PPOA, as amended by the first to fifth amendments, is collectively referred to as the "Salinas PPOA".

⁸ The Jobos PPOA was amended on March 17, 2023 ("Jobos PPOA First Amendment"), June 15, 2023 ("Jobos PPOA Second Amendment"), June 30, 2023 ("Jobos PPOA Third Amendment"), and July 10, 2023 ("Jobos PPOA Fourth Amendment"). Unless otherwise stated, the Jobos PPOA, as amended by the first to fourth amendments, is collectively referred to as the "Jobos PPOA".

⁹ April 16 Motion, p. 2.

¹⁰ LUMA Energy LLC and LUMA Energy ServCo LLC (jointly referred as, "LUMA").



with minimal or no network upgrades, pending further studies and associated costs.¹¹ According to PREPA, the proposed amendments result in an increase in the monthly payments due to the higher dispatch capacity of the batteries.¹² However, all other terms and conditions of both PPOAs and previous amendments remain unchanged.¹³ PREPA requested amendments to the Salinas ESSA and the Jobos ESSA to increase the projects' capacity, but did not provide its evaluation, analysis, or any supporting documents.

On May 31, 2024, PREPA presented before the Energy Bureau a document titled *Motion to Submit Amendments for the Review and Approval of Clean Flexible Energy, LLC's PPOAs and ESSAs by the Energy Bureau* ("May 31 Motion"). In the May 31 Motion, PREPA requested additional amendments to the Jobos ESSA, Salinas ESSA, Salinas PPOA, and Jobos PPOA. PREPA argues that these amendments are necessary to incorporate contractual terms relevant to the proposed financing of the projects through the Department of Energy Loan Program Office ("DOE-LPO").¹⁴ According to PREPA, the amendments include the proposed distribution of benefits (*contracted rate reductions*) resulting from the DOE-LPO financing.¹⁵ Specifically, PREPA asserts that the proposed amendments will result in total energy cost savings of \$5/MWh for the PPOAs and \$0.50/kW-month savings in the ESSAs.¹⁶ PREPA claims that the total savings between the original and new costs included in the proposed amendments is approximately 5.77% for all projects combined.¹⁷ Once again, PREPA did not provide its evaluation, analysis, or any supporting documents for the requested amendments.

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The Energy Bureau is evaluating the submitted information and has identified the need for further clarification and additional details. Consequently, the Energy Bureau hereby **ORDERS** PREPA to submit a response to the *Request for Information*, as outlined in **Attachment A** to this Resolution and Order, no later than ten (10) days of the notification of this Resolution and Order.

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The Energy Bureau reminds PREPA that, pursuant to Article 6.32(a) of Act 57-2014, it is responsible for submitting and justifying the approval of all agreements (or amendments to agreements) negotiated between PREPA and independent power producers. Therefore, once negotiations with the Resource Providers are completed and an agreement is reached, PREPA must submit the proposed amended PPOA for the Energy Bureau's evaluation and approval, along with a detailed explanation of the analysis and evaluation conducted to justify its recommendation. This submission must include, without limitation, all necessary supporting documentation, an explanation of the provisions of the agreements subject to modifications, and, when applicable, a redlined version of the document.

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The Energy Bureau **WARNS** PREPA that:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of

¹¹ April 16 Motion, p. 2.

¹² *Id.*

¹³ *Id.*

¹⁴ May 31 Motion, p. 2.

¹⁵ *Id.*

¹⁶ *Id.*, p. 3.

¹⁷ *Id.*



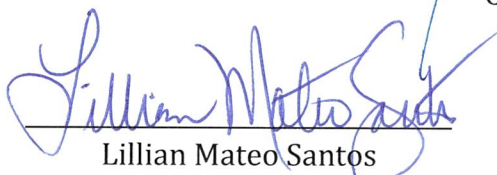
not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and

- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000) at the discretion of the Energy Bureau.

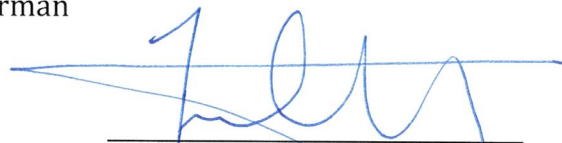
Be it notified and published.



Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

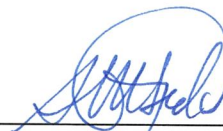


Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 27, 2024. I also certify that on June 27, 2024, a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; mvalle@gmlex.net; laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com; and I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, on June 27, 2024.



Sonia Seda Gaztambide
Clerk



ATTACHMENT A

Capacity Increase Requests (April 16 Motion)

1. For both, the Salinas Battery Storage Project and the Jobos Battery Storage Project, provide a redline version of the ESSA that incorporate the proposed capacity increase-related amendments, comparing it with the most recently amended version of the ESSA.
2. The ESSAs must include the proposed capacity increase. For both, the Salinas Battery Storage Project and the Jobos Battery Storage Project clarify if PREPA intends for the Proposed Sixth Amendment to the ESSA be considered as amended and restated ESSA. If so, provide a document that reflects this request, along with the corresponding redlined version of the ESSA showing the proposed amendments.
3. The compensation to be paid by PREPA for each ESSA has not been reduced to reflect the economies of scale that typically accompany capacity increases. For both the Salinas Battery Storage Project and the Jobos Battery Storage Project, provide the following information:
 - (a) an explanation of why the rates charged to PREPA have not been reduced considering the increased capacity;
 - (b) any analyses or studies conducted that support maintaining the current compensation rate structure despite the capacity increase. If such studies have not been prepared, please explain why;
 - (c) detailed financial models or calculations that demonstrate the expected economies of scale with the proposed capacity increase;
 - (d) an explanation of how these economies of scale are being utilized or redistributed, if not through rate reductions;
 - (e) a cost-benefit analysis of the proposed capacity increase, including the financial and operational impacts on PREPA and its customers; and
 - (f) any projections or forecasts related to operational efficiency and cost savings resulting from the increased capacity.
4. Provide detailed documentation or correspondence from Clean Flexible and LUMA confirming that the Jobos Battery Storage Project interconnection facilities can accommodate an additional 10 MW of battery storage.
5. Provide detailed documentation or correspondence from Clean Flexible and LUMA regarding the Ciro Sectionalizer Interconnection Point's ability to accommodate an additional 75 MW of battery storage capacity for the Salinas Battery Storage Project, including any conditions or limitations noted.
6. Submit any studies or preliminary reports conducted that assess the need for network upgrades to support the additional capacity for both projects. Include any cost estimates or detailed breakdowns of the anticipated expenses related to these potential network upgrades.
7. Explain whether the proposed amendment to the ESSAs stipulates that Clean Flexible will cover any additional costs for network upgrades resulting from the proposed increased capacity.
8. Explain whether the proposed amendment to the ESSAs stipulates that Clean Flexible will cover any additional costs for PREPA Interconnection Facilities resulting from the proposed increased capacity.



9. Provide a detailed explanation and supporting analysis for the increase in monthly payments resulting from the higher dispatch capacity of the batteries for each project. Include financial models or calculations that demonstrate how the increased capacity translates into higher payments, accounting for the existing rate structures and any projected economies of scale.
10. Please provide a detailed explanation of whether the proposed capacity increase-related amendments to the ESSAs will delay the Commercial Operational Date of either project.
11. Indicate whether the increased-capacity ESSA projects or substantially similar projects have been submitted as independent projects in Tranche #2 and/or Tranche #3 Request for Proposals (RFP) processes.

Financing-Related Proposed Amendments (May 31 Motion)

12. For each ESSA and PPOA, and considering each project's specific financing structure, interest rates, and anticipated loan terms (without DOE-LPO financing), please explain what portion of the compensation under the ESSA or the PPOA is attributed to finance costs. Submit analyses, studies, calculations, and work papers that support the response to this request.
13. For each ESSA and PPOA, and considering each project's specific financing structure, interest rates, and anticipated loan terms with DOE-LPO financing, please explain what portion of the compensation under the ESSA or the PPOA is attributed to finance costs. Submit analyses, studies, calculations, and work papers that support the response to this request.
14. For each ESSA and PPOA, please provide a detailed explanation of the basis for the proposed compensation reductions of \$5/MWh for the PPOAs and \$0.50/kW-month for the ESSAs. Include specific details on how these figures were calculated. Submit analyses, studies, calculations, and work papers that support the proposed rate reductions.
15. Through a Resolution and Order dated June 30, 2023, the Energy Bureau authorized an increase in the compensation for Clean Flexible's ESSAs and PPOAs. Please explain the original reasons for the increased ESSA and PPOA compensation, particularly focusing on the portion of the increase that was attributed to financing costs. Provide analyses, calculations, studies, and work papers that were used to justify the original rate increase. Specifically, break down the increase to show the exact amount or percentage that was attributed to financing costs, along with supporting documentation.
16. Clarify how the proposed financing through the DOE-LPO is expected to impact the overall project costs and compensation. Provide a detailed breakdown of the benefits distribution (*contracted rate reductions*) resulting from the DOE-LPO financing.
17. Submit a cost-benefit analysis that compares the original and new costs included in the proposed amendments. Highlight the total savings of approximately 5.77% for all projects combined, as claimed by PREPA. Include financial models or calculations that demonstrate how the DOE-LPO financing contributes to these savings.
18. Provide any internal evaluations, analyses, or supporting documents that PREPA has conducted regarding the requested amendments and the proposed compensation reductions. If such evaluations or analyses have not been conducted, please explain why.

