

**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

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

**MOTION IN PARTIAL COMPLIANCE WITH THE JUNE 27TH ORDER AND REQUEST FOR
EXTENSION OF TIME TO COMPLY**

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 26th, 2022, PREPA entered and signed two (2) Energy Storage Service Agreements ("ESSAs"). The first ESSA being for the Salinas Battery Project (ESSA 2023-P00053) and the second ESSA for the Jobos Battery Project (ESSA 2023-P00052), both with a capacity of 100MW and four (4) hour duration. Subsequently, both ESSAs have been amended on various occasions.

2. On December 1st, 2023, PREPA received formal requests to increase the capacity of the Salinas and Jobos Battery Projects to a maximum of 175MW and 100MW, respectively. The developer was responsible for any additional costs incurred to achieve these increases.

3. The requested amendments and support information were submitted by PREPA to the Energy Bureau of Puerto Rico Public Service Regulatory Board's

(the "Energy Bureau") evaluation on April 16th, 2024, in a document titled *Motion to Submit Amendments for Two Executed ESSAs* ("April 16 Motion").

4. On May 31, 2024, PREPA presented 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* to comply with the financing requirements of the Department of Energy's Loan Program Office ("LPO"). As part of the financing requirements, amendments to the PPOAs and ESSAs are necessary to incorporate contractual terms relevant to financing, such as the proposed distribution of benefits (contracted rate reductions) resulting from the LPO financing.

5. To complete their evaluation, through a *Resolution and Order* issued and notified on June 27th, 2024 ("June 27 Order"), the Energy Bureau ordered PREPA to submit a response to a *Request for Information* that was attached to the aforementioned order by July 8th, 2024.

6. In partial compliance with the June 27 Order, PREPA hereby submits as **Exhibit A** to this Motion the answers to questions 1-2, 3(a)-3(d), 4-8, 10, and 12-18 of the *Request for Information* of the June 27 Order. These answers, provided by the Independent Power Producer, refer to the relevant supporting documentation that is also included with this Motion.

7. Pursuant to the above, PREPA hereby submits for the Energy Bureau's evaluation the following supporting documentation to Exhibit A:

- **Exhibit A-01** - ESSA Jobos - Fifth Amendment (Capacity Expansion)
(PREPA Counsel Draft 3-22-24)

- **Exhibit A-02** - ESSA Salinas - Sixth Amendment (Capacity Expansion)
(PREPA Counsel Draft 3-22-24)
- **Exhibit A-03** - Redline - Salinas ESSA - Conformed Copy (1-18-24) and
Salinas ESSA - Sixth Amendment (PREPA Counsel Draft 3-22-24)
- **Exhibit A-04** - Redline - Jobos ESSA - Conformed Copy (1-18-24) and
Jobos ESSA - Conformed Copy (showing Expansion Amendments 3-
22-24)
- **Exhibit A-05** - 20230410_CFE_BAFO_Solar + Storage_exctd
- **Exhibit A-06** - Interconnection Studies Report Summary_A-2-E Jobos
BESS IC
- **Exhibit A-07** - Invoice 122 Jobos BES Increase Capacity (revised)
- **Exhibit A-08** - Interconnection Studies Report Summary_C-2-E Salinas
BESS IC
- **Exhibit A-09** - Invoice 123 Salinas BESS Increase Capacity Two Options
(revised)
- **Exhibit A-10** - 20231027_CFE-PREPA_Capacity Increase-Sectionalizer
- **Exhibit A-11** - 20231204_CFE-PREPA_Capacity IncreaseREV rev
- **Exhibit A-12** - 20240229_CFE-PREPA-LUMA_Network Upgrade Costs
Request
- **Exhibit A-13** - CFE-PREPA - Capacity Increase 1_12_2024
- **Exhibit A-14** - Invoice 154 Salinas Solar & BESS - Salinas Sectionalizer
Interconnection Studies

- **Exhibit A-15** - Invoice 154 Rev 1 Salinas Solar & BESS - Salinas Sectionalizer Interconnection Studies (updated)
- **Exhibit A-16** - 240325 Marahu_Profit Sharing Analysis vPREPA vS
- **Exhibit A-17** - PREPA - Supplemental Letter on Price Sharing_LPO 4_26_2024

8. Responses to questions 3(e), 3(f), 9, and 11 of the Request for Information from the June 27 Order will be provided by PREPA. However, PREPA's consulting contract with Sargent and Lundy expired on June 30, 2024, and currently, PREPA lacks the technical support necessary to provide the answers to these questions. As this Honorable Bureau is aware, following the transformation, PREPA does not have the required technical personnel, making it essential to re-engage Sargent and Lundy. PREPA is diligently working to complete the government's procedure for the new contract with Sargent and Lundy to renew their work and provide the technical support needed to address the remaining questions and comply with all information requested by the June 27 Order. At present, PREPA is awaiting the approval of the contract by the Puerto Rico Office of Management and Budget ("OGP" by its Spanish acronym).

9. In light of the foregoing, PREPA hereby respectfully requests an extension of twenty (20) days **until July 28th, 2024**, to fully comply with the June 27 Order by providing the answers to questions 3(e), 3(f), 9 and 11 of the *Request for Information*.

10. Given that the information contained in Exhibits A, A-01, A-02, A-03, A-04, A-05, A-05.1, A-06, A-07, A-08, A-09, A-10, A-11, A-12, A-13, A-14, A-15, A-16,

A-17 and A-17.1 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 Exhibits A, A-01, A-02, A-03, A-04, A-05, A-05.1, A-06, A-07, A-08, A-09, A-10, A-11, A-12, A-13, A-14, A-15, A-16, A-17 and A-17.1 be kept confidential until the execution of the proposed amendments if approved by the Energy Bureau and the Financial Oversight and Management Board for Puerto Rico's ("FOMB").

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, PREPA respectfully requests the Energy Bureau to: (1) take **NOTICE** of the present Motion; (2) **ACCEPT** answers to questions 1-2, 3(a)-3(d), 4-8, 10 and 12-18 of the *Request for Information* of the June 27 Order; (3) **GRANT** PREPA's petition for confidentiality, **ORDERING** that the documents included as Exhibits A, A-01, A-02, A-03, A-04, A-05, A-05.1, A-06, A-07, A-08, A-09, A-10, A-11, A-12, A-13, A-14, A-15, A-16, A-17 and A-17.1 be kept under seal; and (4) **GRANT** the requested extension of **twenty (20) days, until July 28th, 2024**, to provide answers to questions 3(e), 3(f), 9 and 11 of the *Request for Information* and therefore, fully comply with the June 27 Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 8th day of July 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
(submitted under seal)