

**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 Ammendments of Clean Flexible Energy, LLC ESSAs and PPOAs to meet the financing requirements of the Department of Energy's Loan Program Office ("LPO").

**RESOLUTION AND ORDER**

**I. Introduction**

On May 31, 2024, the Puerto Rico Electric Power Authority ("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* ("May 31 Motion") to comply with the financing requirements of the Department of Energy's Loan Program Office ("LPO"). In the May 31 Motion, PREPA requested additional amendments to the Jobos ESSA, Salinas ESSA, Salinas PPOA, and Jobos PPOA ("jointly reffered as, "Contracts")<sup>1</sup>. PREPA argues 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").<sup>2</sup> According to PREPA, the amendments include the proposed distribution of benefits (*contracted rate reductions*) resulting from the DOE-LPO financing.<sup>3</sup> As part of the May 31 Motion, PREPA included the following documents and requested confidential treatment for them:

1. Sixth Amendment for the Jobos ESSA Battery Project (Annex A);
2. Seventh Amendment for the Salinas ESSA Battery Project (Annex B);
3. Sixth Amendment for the Salinas PPOA (Annex C); and
4. Seventh Amendment for the Jobos PPOA (Annex D).

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.<sup>4</sup> PREPA claims that the total savings between the original and new costs in the proposed amendments is about 5.77% for all projects combined.

On June 14, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("June 14 Order"), which ordered PREPA to submit a response within five (5) days to a Request for Information ("ROI") regarding the signed Power Purchase Operating Agreements ("PPOAs") and Energy Storage Services Agreements ("ESSAs").

On June 20, 2024, PREPA requested an extension until July 10, 2024, to comply with the June 14 Order.

On June 27, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("June 27 Order") instructing PREPA to submit a response to a Request for Information outlined in Attachment A of the June 27 Order as part of the evaluation being conducted by the Energy Bureau.

<sup>1</sup> Original PPOA approved by the Energy Bureau by Resolution and Order dated February 2, 2022. Original ESSA approved by the Energy Bureau by Resolution and Order dated June 13, 2022.

<sup>2</sup> May 31 Motion, p.2

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, p.3.



On July 8, 2024, PREPA filed a document titled *Motion in Partial Compliance with the June 27 Order and Request for an Extension of Time to Comply* ("July 8 Motion"), which included partial responses to the June 27 Order and a request for additional time to provide answers to specific questions in the Request for Information. PREPA also requested that the Energy Bureau determine that the information in Exhibits A be kept confidential as they are still in a deliberative process and it incorporates trade or business secrets that the Proponent have asked to be maintained confidential.

On July 10, 2024, PREPA filed a document titled *Partial Compliance with the June 1 Order and Request for Extension of Time to Comply* ("July 10 Motion"), which included partial responses to the June 14 Order and asked for an extension of time, until July 22, 2024, to provide the answer to requirement 7 of the ROI.

On July 22, 2024, PREPA filed a document titled *Renewal of Request for Extension of Time to Comply* ("July 22 Motion") requesting an additional extension of time to provide an answer to requirement 7 for the Request for Information of the June 14 Order.

## II. Applicable Legal Framework

### A. Energy Bureau's Authority

*JAB*  
The Energy Bureau is the regulatory body responsible for overseeing and ensuring the proper execution and implementation of public policy regarding electricity service in Puerto Rico. It has the authority to (i) implement regulations and regulatory actions necessary to ensure capacity, reliability, safety, efficiency, and reasonableness in rate tariffs of the Puerto Rico electrical system; and (ii) establish, standards, practices, and processes for PREPA's procurement of energy from other electric service companies and for modernizing its power plants or energy-generating facilities.

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The Energy Bureau has the power to establish by regulation the public policy rules and standards for electric service companies. This includes oversight of any transaction, action, or omission that impacts the electrical grid and electrical infrastructure in Puerto Rico. The Energy Bureau will enforce public policy standards in alignment with the Energy Public Policy as declared by legislation.

### B. Criteria for the Evaluation of Power Purchase Agreements

*D*  
Article 1.11(b) of Act No. 17-2019<sup>5</sup> stipulates that any power purchase agreement, or any amendment to, or extension of, a power purchase agreement awarded before and after the approval of Act No. 57-2014<sup>6</sup> between PREPA, and any independent power producer shall be executed pursuant to Article 6.32 of Act 57-2014 and the regulations adopted by the Energy Bureau. To make sure such agreements have a proper and reasonable price, the parameters established by the Energy Bureau shall follow the ones normally used by the industry for such purposes, as well as any other parameter or method used to regulate revenues attributable to power purchase agreements. Additionally, Article 6.32(c) of Act 57-2014 empowers the Energy Bureau to adopt the guidelines for the evaluation and approval of energy purchase and sale contracts.

Act-17-2019 adopted as public policy the reduction in dependence on fossil fuels, aiming to eradicate energy generation based on coal, petroleum derivatives, and gas. Specifically, Act 17-2019 modified the Renewable Energy Portfolio standards established in Act No. 82-2010<sup>7</sup>. This amendment increased the requirement for energy generation from renewable sources to forty percent (40%) by 2025, sixty percent (60%) by 2040, and one

<sup>5</sup> Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

<sup>6</sup> Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

<sup>7</sup> Known as *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*, as amended ("Act 82-2010").



hundred percent (100%) by 2050. Power Purchase Agreements shall be awarded considering the goals and mandates established in the Renewable Portfolio Standards, which compel the transition from energy generation from fossil fuels to aggressively integrating renewable energy as provided in Act 82-2010.

Article 6.32 of Act 57-2014 provides a comprehensive statutory framework for the evaluation and approval of power purchase agreements, as well as other transactions involving electric power services companies, such as PREPA and Clean Flexible Energy LLC ("CFE"). It reiterates the Energy Bureau's authority to adopt the regulations and regulatory actions that govern the process of evaluation and approval of power purchase agreements and other transactions involving electric power services companies. Article 6.32 (b) expressly states that any extension of, or amendment to, a power purchase agreement executed before and after the approval of Act 57-2014 shall comply with the Puerto Rico Energy Public Policy Act and shall be subject to the approval of the Energy Bureau.

Consistent with the foregoing, Article 6.32 empowers the Energy Bureau to adopt and issue regulations that provide: (i) the standards and requirements with which the Power Purchase Agreements; (ii) the terms and conditions to be included in any power purchase agreement and interconnection agreement, including reasonable costs per kilowatt hour (kWh) per type of generation technology; (iii) the guidelines and standards established by the Energy Bureau through such regulations shall be intended to ensure compliance with the principles of Act 57-2014, Act 83-1941<sup>8</sup> and Act 17-2019.

When evaluating a power purchase agreement or proposal thereto, each contract proposal between electric utility companies, the Energy Bureau must make sure it follows the public energy policy established in Act 17-2019 and with the Integrated Resources Plan ("IRP") approved. The Energy Bureau shall approve no contract inconsistent with the IRP, especially regarding the renewable energy, distributed generation, conservation, and efficiency goals established in both the IRP and the public energy policy.

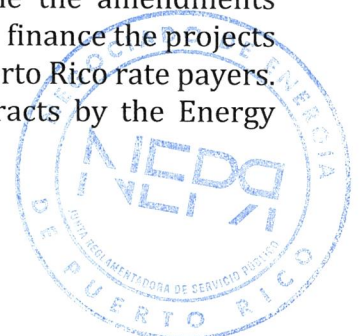
The Energy Bureau shall make sure the interconnection of any proposed project does not threaten the reliability and safety of the electric grid and shall require the removal of any terms or conditions in the proposed contract contrary to or threaten the safe and reliable operation of the electric grid. The Energy Bureau shall not approve a contract when technical evidence shows the project, or the contractual conditions of a project would undermine the reliability and security of Puerto Rico's electric grid.

The Energy Bureau shall also make sure tariffs, duties, rents, or charges paid to independent power producers are fair and reasonable and protect the public interest and the treasury. Likewise, the transmission and distribution grid interconnection tariff, including construction charges, transshipment tariffs, as well as any other requirements applicable to independent power producers or other electric utilities wishing to interconnect to the transmission and distribution system, are also fair and reasonable. In this process, the Energy Bureau must make sure the rates allow for an interconnection that does not affect the reliability of the electric service and promotes environmental protection, compliance with legal mandates, and does not adversely affect customers.

Therefore, in evaluating the Contracts, the Energy Bureau must primarily determine: (i) whether the proposal is consistent with the approved IRP; (ii) whether the proposal is consistent with Puerto Rico's public energy policy; (iii) whether the proposed fee structure is fair, reasonable, and protects the public interest and the treasury; (iv) if the interconnection of the proposed project jeopardizes the reliability and stability of the system; and (v) whether the profit parameters and price escalators are based on parameters normally used by the industry.

In this case, the Energy Bureau is considering a petition to examine the amendments required by the Department of Energy's Loan Program Office ("LPO") to finance the projects and any such savings for the original proposal shall be passed to the Puerto Rico rate payers. The amendments presented or to four (4) originally approved contracts by the Energy

<sup>8</sup> Known as *Puerto Rico Electric Power Authority Act*, as amended ("Act 83-1941").



Bureau of two (2) power purchase agreements and two (2) energy storage agreement agreed upon after the enactment of Act 57-2014. The Contracts are subject to evaluation under Article 6.32 of Act 57-2014, and if they are applicable.

### III. Discussion and Findings

The Energy Bureau has comprehensively reviewed the Contracts, including PREPA's detailed responses explaining the financing to achieve a 5.7% saving which shall be passed to benefit the ratepayers. Particular attention was given to the reasonableness of the proposed prices, ensuring they are competitive and aligned with industry standards. The Energy Bureau has examined the amendments which do not affect the originally approved interconnection studies, which provide support for the reliable and safe integration of the proposed net electrical output into Puerto Rico's electric grid. These studies confirm that integration will not compromise the stability or reliability of the grid, which is paramount for maintaining uninterrupted service to consumers.

The terms and conditions outlined in the Contracts have been scrutinized and found to follow the Puerto Rico Electric Public Policy and the Approved IRP.<sup>9</sup> This alignment makes sure the Contracts not only contribute to the island's energy needs but also support the broader goals of sustainability, resilience, and affordability. Based on these findings, the Energy Bureau approves the Contracts, recognizing them as an important step forward in the ongoing transformation and modernization of Puerto Rico's energy infrastructure.

Following the evaluation and approval of the Contracts by the Energy Bureau, PREPA must seek approval from the Financial Oversight and Management Board for Puerto Rico ("FOMB"). PREPA is advised not to execute the Contracts until the FOMB's approval is obtained, as they may be declared null and void without it.

### IV. Confidential Designation and Treatment

Act 57-2014 establishes that any person having the obligation to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.<sup>10</sup> Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information stated that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected".<sup>11</sup> In such case, the Energy Bureau "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."<sup>12</sup>

After a review of PREPA's arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to *Exhibit A* of the May 31 Motion and *Exhibit A* of the July 8 Motion.

### V. Conclusion

For all the above, the Energy Bureau **APPROVES** the Contracts.

The Energy Bureau **WARNS** PREPA that:

<sup>9</sup> *Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("Approved IRP"). Minor modifications and/or clarifications to the Approved IRP were introduced through a *Resolution and Order on Reconsiderations* issued by the Energy Bureau on December 2, 2020, in case: *In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001.

<sup>10</sup> Section 6.15 of Act 57-2014.

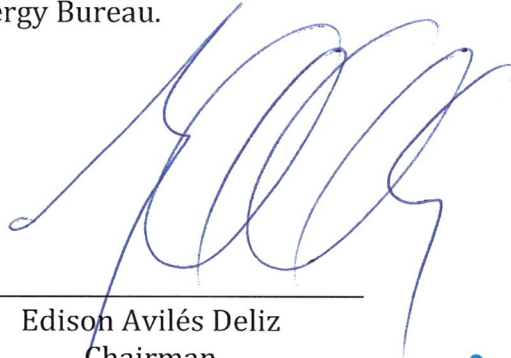
<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (Emphasis added).



- (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 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.

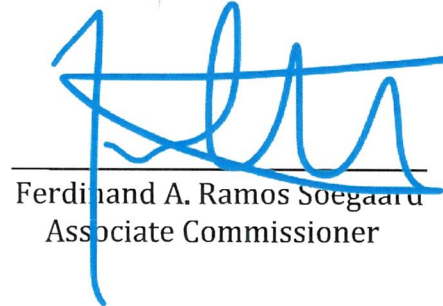
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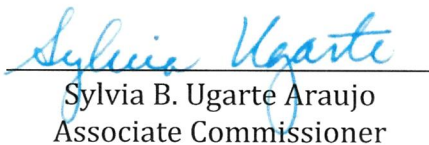
Edison Avilés Deliz  
Chairman



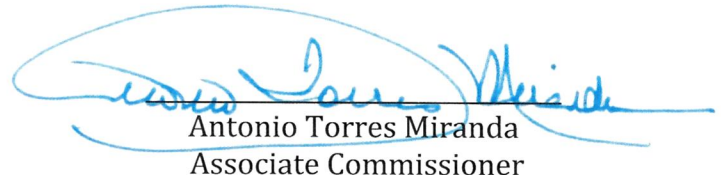
Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner



Antonio Torres Miranda  
Associate Commissioner

### CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on September 4, 2024. Also certify that on September 4, 2024, I have proceeded with the filing of this Resolution and Order and was notified by email to arivera@gmlex.net; mvalle@gmlex.net; laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; jfr@sbgblaw.com; alopez@sbgblaw.com.

I sign in San Juan, Puerto Rico, today, September 4, 2024.



Sonia Seda Gaztambide  
Clerk