

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

NEPR

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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 REVISED AMENDMENTS FOR ESSAs AND PPOAs OF CLEAN
FLEXIBLE ENERGY LLC FOR REVIEW AND APPROVAL 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, 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, approving in part and rejecting in part PREPA's proposed IRP. As part of this order, the Energy Bureau mandated the implementation of a Modified Action Plan, which included specific directives for the development of renewable generation resources and battery energy storage projects.

2. Following the Energy Bureau's directive, PREPA launched competitive procurement processes for renewable generation and energy storage resources. In line with this, PREPA executed two Power Purchase and Operating Agreements (PPOAs) and two Energy Storage Services Agreements (ESSAs) with Clean Flexible Energy, LLC (CFE) on August 26, 2022. The agreements

pertained to the Jobos and Salinas projects, with a combined capacity of 100 MW per project.

3. On April 16th, 2024, PREPA submitted proposed amendments for the ESSAs associated with the Jobos and Salinas battery storage projects to the Energy Bureau for review and approval. These amendments reflected proposed capacity expansions for both projects.

4. Subsequently, on May 31st, 2024, PREPA submitted further amendments to the Energy Bureau concerning the financing process with the U.S. Department of Energy Loan Programs Office (LPO). These amendments were approved by the Energy Bureau on September 4, 2024, and are currently awaiting approval from the Financial Oversight and Management Board for Puerto Rico (FOMB).

5. However, the April 16th, 2024, amendments for the Jobos and Salinas ESSAs are still pending review by the Energy Bureau. After further discussions with the FOMB and internal review, PREPA is now submitting revised versions of these proposed ESSA amendments, along with amendments to the PPOAs, which reflect both a capacity increase and additional price reductions for both the battery storage and renewable energy projects.

6. These Repricing Amendments include the following changes:
- a. Further pricing reductions for both the ESSAs and PPOAs, which will reduce the levelized cost of energy (LCOE) and levelized cost of storage (LCOS) for both the Jobos and Salinas projects.

b. Revised capacity expansions for both the Jobos and Salinas Battery Projects.

7. The approval of these amendments will directly benefit the people of Puerto Rico by advancing the development of renewable energy infrastructure at reduced costs. The amendments will contribute to a more resilient and reliable energy system, helping Puerto Rico achieve its renewable energy goals while lowering the financial burden on consumers through more favorable pricing.

8. 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 (**Annex A**), (2) Seventh Amendment for the Salinas Battery Project (**Annex B**), (3) Seventh Amendment for the Salinas PPOA (**Annex C**), and (4) Sixth Amendment for the Jobos PPOA (**Annex D**).

9. 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.

10. 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).

11. 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."

12. As previously stated, the proposed amendments include information that is part of an ongoing negotiation process and incorporate trade or business secrets that Proponents have specifically requested to be maintained in a confidential manner. Accordingly, PREPA respectfully requests that the Energy Bureau find these documents and information 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 26th day of September 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.

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