

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

**NEPR**

**Received:**

**Oct 30, 2024**

**11:30 AM**

**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 IN COMPLIANCE WITH THE RESOLUTION AND ORDER DATED OCTOBER 3<sup>RD</sup>,  
2024**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

**COMES NOW** the Puerto Rico Electric Power Authority ("PREPA"), through its counsel of record, and respectfully submits and prays as follows:

1. On August 26, 2022, PREPA and Clean Flexible Energy, LLC ("Clean Flexible") signed two Energy Storage Service Agreements ("ESSAs") for 100 MW (four-hour duration, 400 MWh) energy storage projects to be developed in Salinas ("Salinas ESSAs") and Guayama ("Jobos ESSA"). Both, the Salinas ESSA and the Jobos ESSA have been amended several times.

2. On the same date, PREPA and Clean Flexible also signed two Power Purchase and Operating Agreements ("PPOAs") for solar photovoltaic energy projects to be developed in Salinas ("Salinas PPOA") and Guayama ("Jobos PPOA"). Both agreements have similarly been amended multiple times. The Salinas PPOA includes a capacity of 80 MW, while the Jobos PPOA includes a capacity of 120 MW.

3. On April 16<sup>th</sup>, 2024, PREPA submitted a Proposed Fifth Amendment for the Jobos Battery Project and a Proposed Sixth Amendment for the Salinas

Battery Project to the Energy Bureau for review and approval. The proposed amendments concern an increase in the capacity of the battery projects.

4. Subsequently, on May 31<sup>st</sup>, 2024, PREPA requested the Energy Bureau's evaluation and approval of (1) the Sixth Amendment for the Jobos Battery Project, (2) the Seventh Amendment for the Salinas Battery Project, (3) the Sixth Amendment for the Salinas PPOA, and (4) the Seventh Amendment for the Jobos PPOA. These proposed amendments form part of the financing process between Clean Flexible and the Department of Energy's Loan Program Office (LPO).

5. Following several procedural developments, on October 3<sup>rd</sup>, 2024, the Energy Bureau issued a Resolution and Order approving, subject to specified modifications, the proposed amendments to the Jobos ESSA and Salinas ESSA. The Energy Bureau also approved the proposed amendments to the Jobos PPOA and Salinas PPOA. Furthermore, the Energy Bureau ordered PREPA to submit the revised versions of the Salinas and Jobos ESSAs and PPOAs at least fifteen (15) days before their proposed execution date.

6. In compliance with the Energy Bureau's order, PREPA submits herewith the revised versions of the Salinas and Jobos ESSAs. See Exhibits A and B. Additionally, PREPA includes redline versions of the revised documents as ordered by the Energy Bureau. See Exhibit C.

7. Given that the information contained in Exhibits A, B, and C are part of a deliberative process, incorporates trade or business secrets that are deemed

confidential according to applicable law to be maintained in a confidential manner, PREPA requests that Exhibits A, B, and C be kept confidential until the execution of the proposed amendments if approved by the FOMB.

8. 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).

9. 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.”

10. As previously stated, the proposed amendments include information that is part of an ongoing negotiation process and incorporates trade or business secrets, 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**, for the reasons stated above, PREPA respectfully requests that the PREB take **NOTICE** of the present Motion, **DEEM** PREPA in compliance with the October 3, 2024, Resolution and Order, and **GRANT** PREPA's petition for confidentiality, **ORDERING** that the documents included as Exhibits A, B and C, be kept under seal.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 29<sup>th</sup> day of October 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](mailto:margarita.mercado@us.dlapiper.com), [julian.angladapagan@us.dlapiper.com](mailto:julian.angladapagan@us.dlapiper.com), [laura.rozas@dlapiper.com](mailto:laura.rozas@dlapiper.com), [yahaira.delarosa@us.dlapiper.com](mailto:yahaira.delarosa@us.dlapiper.com) and to Genera PR, LLC through its counsels of record at [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com), [alopez@sbgblaw.com](mailto: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](mailto:arivera@gmlex.net)