

**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 of Amendments of Clean Flexible Energy, LLC ESSAs and PPOAs.

RESOLUTION AND ORDER

On August 26, 2022, the Puerto Rico Electric Power Authority ("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 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 ("Energy Bureau"). In this motion, PREPA states it received a formal request from Clean Flexible to increase the capacity of the Salinas BESS Project from 100 MW (400 MWh or equivalent) to 175 MW (700 MWh or equivalent) and the Jobos BESS Project from 100 MW (400 MWh or equivalent) to 110 MW (440 MWh or equivalent).⁹

On May 31, 2024, PREPA filed 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"). Along with the May 31 Motion, PREPA presented as

¹ Hereinafter the *Salinas BESS Project*.

² Hereinafter the *Jobos BESS 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.

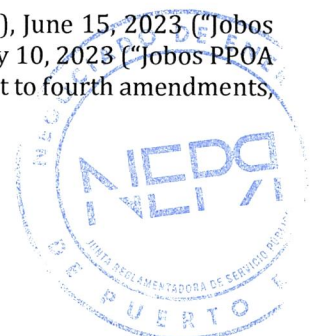


Exhibit A, a Proposed Fifth Amendment to the Jobos ESSA;¹⁰ as Exhibit B, a Proposed Sixth Amendment to the Salinas ESSA;¹¹ as Exhibit C, the Proposed Sixth Amendment to the Salinas PPOA;¹² and as Exhibit D, the Proposed Fifth Amendment to the Jobos PPOA.¹³ Also, PREPA requests that the Exhibits A, B, C, and D be designated as confidential. In the May 31 Motion, PREPA requested additional amendments to the Jobos ESSA and Salinas ESSA. PREPA also requested amendments to the Salinas PPOA and Jobos PPOA. 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”).¹⁴

On September 4, 2024, the Energy Bureau issued a Resolution and Order (“September 4 Resolution”) approving the (i) Proposed Fifth Amendment to the Jobos ESSA-LPO Requirements, (ii) Proposed Sixth Amendment to the Salinas ESSA-LPO Requirements, (iii) Proposed Sixth Amendment Salinas PPOA-LPO, and Proposed Sixth Amendment Jobos PPOA-LPO, collectively referred to as “LPO-Amended Contracts”.¹⁵

On September 26, 2024, PREPA filed a document titled *Motion to Submit Revised Amendments for ESSAs and PPOAs of Clean Flexible Energy LLC for Review and Approval by the Energy Bureau* (“September 26 Motion”). According to PREPA, while the LPO-Amended Contracts approved in the September 4 Resolution were awaiting FOMB’s¹⁶ approval, further modifications occurred, resulting in additional price reductions in four contracts.¹⁷ In the September 26 Motion, PREPA submitted revised versions of the Jobos and Salinas PPOAs and ESSAs, identified: Annex A, a Proposed Sixth Amendment Jobos ESSA;¹⁸ Annex B, a Proposed Seventh Amendment Salinas ESSA;¹⁹ Annex C, the Proposed Seventh Amendment Salinas PPOA;²⁰ and Annex D, the Proposed Sixth Amendment Jobos PPOA.²¹ PREPA also requested that Annexes A, B, C, and D be designated as confidential.

On October 3, 2024, the Energy Bureau issued a Resolution and Order (“October 3 Resolution”) approving, subject to specified modifications, the proposed amendments to the Jobos ESSA and Salinas ESSA; and approved the proposed amendments to the Jobos PPOA

¹⁰ See *Proposed Amendment No. 5 to the Energy Storage Service Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Fifth Amendment Jobos ESSA-LPO Requirements”).

¹¹ See *Proposed Amendment No. 6 to the Energy Storage Service Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Sixth Amendment Salinas ESSA-LPO Requirements”).

¹² See *Proposed Amendment No. 6 to the Power Purchase and Operating Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Sixth Amendment Salinas PPOA-LPO Requirements”).

¹³ See *Proposed Amendment No. 5 to the Power Purchase and Operating Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Fifth Amendment Jobos PPOA-LPO Requirements”).

¹⁴ May 31 Motion, p. 2.

¹⁵ Additionally, the Energy Bureau granted confidential designation and treatment to Exhibit A of the May 31 Motion and Exhibit A of the July 8 Motion.

¹⁶ Financial Oversight and Management Board for Puerto Rico (“FOMB”).

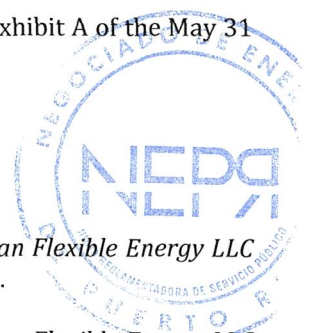
¹⁷ See September 26 Motion, pp. 2-3.

¹⁸ See *Proposed Amendment No. 6 to the Energy Storage Service Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Sixth Amendment Jobos ESSA”).

¹⁹ See *Proposed Amendment No. 7 to the Energy Storage Service Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Seventh Amendment Salinas ESSA”).

²⁰ See *Proposed Amendment No. 7 to the Power Purchase and Operating Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Seventh Amendment Salinas PPOA”).

²¹ See *Proposed Amendment No. 6 to the Power Purchase and Operating Agreement between Clean Flexible Energy LLC and the Puerto Rico Electric Power Authority* (“Proposed Sixth Amendment Jobos PPOA”).



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and Salinas PPOA. Also, the Energy Bureau ordered PREPA to submit revised versions of the Jobos ESSA, Salinas ESSA and PPOAs at least fifteen (15) days before their proposed execution date.

On October 30, 2024, PREPA filed a document titled *Motion in Compliance with the Resolution and Order dated October 3rd, 2024* ("October 30 Motion"). In this filing, PREPA submitted revised versions of the proposed amendments and the revised Salinas ESSA and Jobos ESSA ("Revised Salinas and Jobos ESSA"). PREPA included also redlined versions of the revised proposed amendments. However, PREPA did not submit a redlined version of the Revised Salinas and Jobos ESSA.

On November 6, 2024, the Energy Bureau issued a *Resolution and Order* ("November 6 Resolution") ordering PREPA to submit the redlined versions of the Salinas ESSA and Jobos ESSA, in compliance with the October 3 Resolution, and a Word version of the updated contracts.

On November 12, 2024, PREPA filed a document titled *Motion in Compliance with the Resolution and Order dated November 6th, 2024* ("November 12 Motion"). In this filing, PREPA submitted the redline versions and Word versions of the Revised Salinas and Jobos ESSA.

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The Energy Bureau has reviewed the Revised Salinas and Jobos ESSA, included in the October 30 Motion, as the redlined versions and Word versions submitted in the November 12 Motion. Both contracts include the modifications requested by the Energy Bureau. Based on this review of the Revised Salinas Jobos ESSA, the Energy Bureau **APPROVES** the revised contracts.

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Despite the foregoing, to ensure consistent interpretation and implementation, the Energy Bureau provides guidance on certain provisions of the Revised Salinas ESSA. The Revised Salinas ESSA adds further provisions regarding cost responsibilities. Section 3.3 of the Revised Salinas ESSA outlines that CIRO One Salinas is primarily responsible for the PREPA Interconnection Facilities Works, and Clean Flexible must reimburse CIRO One Salinas for their portion of the costs ("CIRO Reimbursement Amount")²². The compensation mechanism under the Revised Salinas ESSA specifies that if the original interconnection Estimated Cost exceed the CIRO Reimbursement Amount, the CPPIF (Compensation for PREPA Payment Interconnection Facilities) will be adjusted downward in proportion to the ratio of the CIRO Reimbursement Amount to the originally Estimated Cost.²³ The Revised Salinas ESSA states that PREPA will bear no additional costs, liabilities (except those arising from a PREPA Risk Event), or delays related to the PREPA Interconnection Facilities or System Upgrades associated only with the Project Phase Two capacity increase from 100 MW to 175 MW.²⁴ The interconnection cost recovery component of the monthly payment (CPPIF) will not be increased as a result of this capacity expansion.²⁵ However, Section 3.3 also states that if the CIRO Reimbursement Amount, along with other reasonable and documented costs directly related to the interconnection works, exceeds the Estimated Cost, the excess costs will not be recoverable through the Interconnection Cost Recovery Component. Instead, PREPA must collaborate in good faith with the Resource Provider, the T&D Operator, FOMB, PREB, and other relevant governmental authorities to establish a mechanism for compensating the Resource Provider for such excess costs.

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The Energy Bureau observes that Section 3.3 of the Revised Salinas ESSA may create ambiguity in the mechanism for price adjustments and excess cost compensation. Therefore,

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²² See Revised Salinas ESSA, p. 34.

²³ See Revised Salinas ESSA, Appendix F, p. 115.

²⁴ See Amendment No. 7 to the Salinas ESSA, Section C.

²⁵ *Id.*



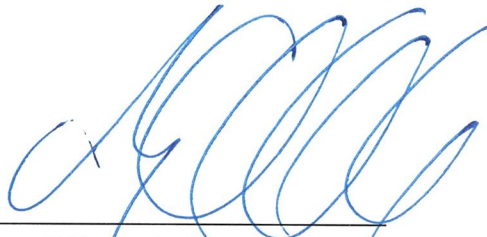
while Section 3.3 may allow certain additional compensation²⁶ if the CIRO Reimbursement Amount increases, no adjustment of any kind will be allowed if such an increase is attributable to the capacity expansion authorized under the Revised Salinas ESSA.

Following the evaluation and approval of the Revised Salinas and Jobos ESSA 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 Revised Salinas and Jobos ESSA until the FOMB's approval is obtained, as they may be declared null and void without it.

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 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.

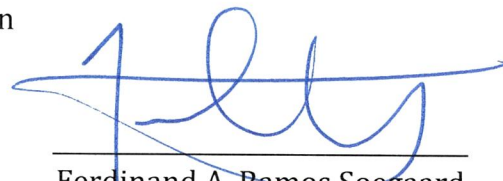
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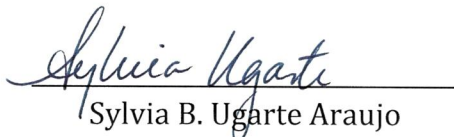
Edison Avilés Deliz
Chairman



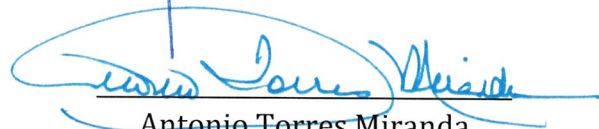
Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



Antonio Torres Miranda
Associate Commissioner



²⁶ Subject, among other conditions, to the approval of the Energy Bureau. The Energy Bureau further emphasizes that, in approving these provisions, it strongly relied on the Resource Provider's representation that the use of CIRO's facilities for the alternative interconnection would result in substantial cost savings for the benefit of ratepayers.

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on December 5, 2024. Also certify that on December 5, 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, December 5, 2024.





Sonia Seda Gaztambide
Clerk