

**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 YFN Yabucoa Solar, LLC

**RESOLUTION AND ORDER**

**I. PROCEDURAL BACKGROUND**

On June 30, 2022, the Puerto Rico Electric Power Authority ("PREPA") and YFN Yabucoa Solar, LLC ("YFN") signed a Power Purchase Operating Agreement ("PPOA") for 32.1 MW AC solar photovoltaic energy project to be developed in Yabucoa (Yabucoa PPOA").<sup>1</sup>

On January 4, 2025, PREPA submitted a document titled *Motion to Submit an Amendment for the Review and Approval of YFN Yabucoa Solar, LLC's PPOA by the Energy Bureau* ("January 4 Motion") to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"). PREPA included a proposed amended Yabucoa PPOA ("Proposed Amended Yabucoa PPOA") that it contends incorporates the necessary provisions to enable YFN to secure financing from the Department of Energy's Loan Program Office ("DOE-LPO"). PREPA also request confidential treatment to the Proposed Amended Yabucoa PPOA.

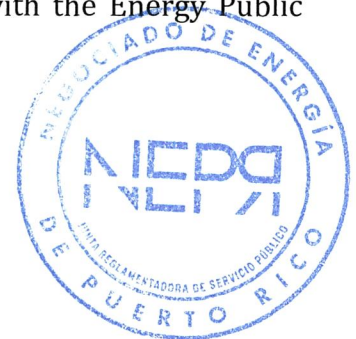
PREPA further asserts that the proposed modifications will result in energy cost savings of \$1,073,076 over the contract term, thereby achieving cost savings for ratepayers.<sup>2</sup>

**II. APPLICABLE LEGAL FRAMEWORK**

**A. Energy Bureau's Authority**

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 Rican electrical system; and (ii) establish guidelines, 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.<sup>3</sup>

The Energy Bureau has the power to establish by regulation, 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.



<sup>1</sup> The Yabucoa PPOA was amended on February 24, 2023 ("Yabucoa PPOA First Amendment"), April 26, 2023 ("Yabucoa PPOA Second Amendment") and May 31, 2023 ("Yabucoa PPOA Third Amendment"). Unless otherwise stated, the Yabucoa PPOA, as amended by the first to third amendments, is collectively referred to as the "Yabucoa PPOA".

<sup>2</sup> See January 4 Motion, p. 2.

<sup>3</sup> See, Section 6.3 of Act No. 57-2014, known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

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

Article 1.11(b) of Act No. 17-2019<sup>4</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 57-2014 between PREPA, and any independent power producer shall be executed under Section 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. Also, 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 eliminate 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>5</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 hundred percent (100%) by 2050. Similarly, Act No. 33-2019<sup>6</sup> established the goal of twenty percent (20%) for 2022. 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. It reiterates the Energy Bureau's authority to adopt 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 (a) states that the Energy Bureau will evaluate and approve all contracts between electric service companies, including independent power producers, before they are executed. This will include, but is not limited to, contracts through which an independent power producer agrees to supply energy to PREPA or the electric service company responsible for operating the T&D System. It also covers any amendments, modifications or extensions to existing contracts.

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 must comply; (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 No. 83-2010<sup>7</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 approved Integrated Resource Plan

<sup>4</sup> Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

<sup>5</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").

<sup>6</sup> Known as the *Puerto Rico Climate Change Mitigation, Adaptation, and Resiliency Act*, as amended ("Act 33-2019").

<sup>7</sup> Known as *Green Energy Incentive Act of Puerto Rico*, as amended ("Act 83-2010").





("Approved IRP").<sup>8</sup> The Energy Bureau shall approve no contract that is inconsistent with the Approved IRP, especially regarding the renewable energy, distributed generation, conservation, and efficiency goals established in both the Approved 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 that are contrary to or threaten the safe and reliable operation of the electric grid. The Energy Bureau shall not approve a contract when technical evidence demonstrates that this 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 impact customers.

Likewise, the Energy Bureau will require the electric utility company responsible for the operation of the Electric System to submit a "Supplementary Study" for the project that is the subject of the proposed contract or the corresponding technical analysis that supports the contract. If a project does not require a "Supplementary Study" to be carried out, the electric utility company responsible for the operation of the Electric System shall issue to the Energy Bureau a certification to that effect, in which it shall state the reasons the circumstances and characteristics of the project make a "Supplementary Study" or a technical evaluation unnecessary.

Therefore, in evaluating the Proposed Amendment, the Energy Bureau must primarily determine: (i) whether the proposal is consistent with the Approved IRP; (ii) whether the proposal follows Puerto Rico's energy public 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 modifications to power purchase agreements and energy storage agreements that were initially approved after the enactment of Act 57-2014. The proposed amendments are subject to evaluation under Article 6.32 of Act 57-2014, and to the extent that they are applicable.

### III. DISCUSSION AND FINDINGS

#### A. Modification of Proposed Amended Yabucoa PPOA to reduce the Resource Providers' Compensation

The Energy Bureau has comprehensively reviewed the Proposed Amended Yabucoa PPOA. However, PREPA does not explain the financing-related calculations to achieve savings and the reasonableness of the proposed price reduction. PREPA does not present any calculations to support the proposed price reduction. As the Energy Bureau stated elsewhere, PREPA, as the party responsible for direct negotiations with the Resource

<sup>8</sup> See *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"). Note that 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.





Provider, must ensure that such generalized approaches are avoided to protect the interests of ratepayers. While acknowledging that some reductions have been achieved, the Energy Bureau accepts the proposed price reduction at this time. Nevertheless, to protect the public interest, the Energy Bureau **ORDERS** PREPA to certify that its representatives and/or consultants have thoroughly evaluated YFN's financial, technical, and other relevant data regarding the proposed price reduction. They must confirm, through the certification, that to the best of their knowledge and expertise, the price reduction obtained by comparing the DOE-LPO financing terms with the original financing structure is reasonable and in the public's best interest.

The Energy Bureau has also examined the amendment which does not affect the originally approved interconnection study, which provides support for the reliable and safe integration of the proposed net electrical output into Puerto Rico's electric grid. The study confirms that integration will not compromise the stability or reliability of the grid, which is paramount for maintaining uninterrupted service to consumers.

*SMH*  
*JM*  
The terms and conditions outlined in the Proposed Amended Yabucoa PPOA have been scrutinized and found to align with the Puerto Rico Electric Public Policy and the Approved IRP, subject to the modification of certain terms and conditions discussed below. This alignment makes sure the Proposed Amended Yabucoa PPOA contribute to the island's energy needs and support the broader goals of sustainability, resilience, and affordability. Based on these findings, the Energy Bureau **APPROVES** the Proposed Amended Yabucoa PPOA, recognizing them as an important step forward in the ongoing transformation and modernization of Puerto Rico's energy infrastructure.

*AM*  
Following the evaluation and approval of the Proposed Amended Yabucoa PPOA 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 Proposed Amended Yabucoa PPOA until the FOMB's approval is obtained, as they may be declared null and void without it.

B. Modifications Required in Certain Provisions of the Proposed Amended Yabucoa PPOA

1. Section 7.2 (Curtailment for Breach) of Proposed Amended Yabucoa PPOA

*1*  
Section 7.2 of the Proposed Amended Yabucoa PPOA specifies that PREPA has the right to curtail or reduce Dispatch Notices, or disconnect the Facility, during the Supply Period if the Resource Provider incurs certain defaults as outlined therein. In such instances, the Resource Provider is explicitly not entitled to any claim for compensation or other remedies. The Resource Provider now proposes to be entitled to compensation under such circumstances, further asserting that for the first ninety (90) days of curtailment or disconnection of the Facility under Section 7.2 (Curtailment for Breach), it should be compensated for 70% of the monthly Fixed Payment.<sup>9</sup>

This proposal for additional compensation is unwarranted and undermines the original intent of Section 7.2, which seeks to hold the Resource Provider accountable for its defaults without imposing an undue financial burden on PREPA or the public. Allowing compensation in these circumstances would create a perverse incentive structure, where the Resource Provider could receive payments despite being in breach of contract. This amendment was not part of the original recommendations by the LPO-DOE to the Government of Puerto Rico and does not align with the principles of fairness and public interest that underpin the Proposed Amended Yabucoa PPOA.

This provision would also be detrimental to ratepayers, as it introduces unnecessary financial liability for PREPA, which is already operating under significant financial

<sup>9</sup> See each Proposed Amended Yabucoa PPOA, Appendix G (*Determination of Expected & Deemed NEO*), Item 5(c)(1).





constraints. By shifting the cost burden to the public without corresponding benefits, this amendment contradicts the Energy Bureau's mandate to protect the public's interest. Therefore, these provisions shall not be allowed, and the Proposed Amended Yabucoa PPOA must be modified accordingly to delete them in their entirety. The definition of "Grid System Event" must be reviewed in light of the foregoing determination and modified if necessary to reflect that no payment will be permitted in cases of curtailment due to breach. If no modification is required, the definition shall remain unchanged.

In light of the Energy Bureau's determination that Curtailment for Breach is not being compensated, the proposed modifications to Appendix G (1) and Appendix G (5) of the Proposed Amended Yabucoa PPOA shall be rejected. Additionally, any other section of the agreement referencing or enabling compensation under Curtailment for Breach conditions must also be identified and revised accordingly.

2. Section 11.3 (No Liability) of Proposed Amended Yabucoa PPOA

Section 11.3 of the Proposed Amended Yabucoa PPOA limits liability for incidental, consequential, and other indirect damages, except in cases of fraud, willful misconduct, gross negligence, or foreseeable damages explicitly identified in Sections 11.2(i) and 11.2(iii) of the Proposed Amended Yabucoa PPOA. The proposed modification seeks to remove the exception for foreseeable damages, thereby narrowing the scope of liability. This change is not acceptable, as it eliminates the ability to recover for damages explicitly contemplated and agreed upon in the Proposed Amended Yabucoa PPOA, potentially placing an undue burden on PREPA. Keeping the original provision ensures a balanced allocation of risk and preserves critical protections for PREPA, particularly in predictable and foreseeable losses inherent in energy contracts. This modification was not included in the original recommendations by the LPO-DOE to the Government of Puerto Rico.

#### 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. 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". 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>10</sup>

After reviewing PREPA's arguments and the relevant law, the Energy Bureau **GRANTS** confidential designation and treatment to the documents attached to the January 4 Motion, as detailed in **Part I** of this Resolution and Order.

#### V. CONCLUSION

The Energy Bureau:

- i. **APPROVES** the Proposed Amended Yabucoa PPOA, subject to the modifications outlined in **Part III(B)** of this Resolution and Order.
- ii. **ORDERS** PREPA to submit the certification required in Part III(A), within **ten (10) business days** of the notification of this Resolution and Order.
- iii. **ORDERS** PREPA to file, within **ten (10) business days** of the execution of the Proposed Amended Yabucoa PPOA, such executed contract and evidence that they have been filed with the Office of the Comptroller of Puerto Rico.

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



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.

Be it notified and published.

  
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Edison Avilés Deliz  
Chairman

  
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Sylvia B. Ugarte Araujo  
Associate Commissioner

  
\_\_\_\_\_  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
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Antonio Torres Miranda  
Associate Commissioner

**CERTIFICATION**

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on February 11, 2025. Associate Commissioner Lillian Mateo Santos did not intervene. I also certify that on February 11, 2025, a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; Yahaira.delarosa@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; laura.rozas@us.dlapiper.com; alopez@sbgblaw.com; jfr@sbgblaw.com, legal@genera-pr.com, regulatory@genera-pr.com, and I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, on February 11, 2025.

  
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Sonia Seda Gaztambide  
Clerk

