

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

NEPR

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IN RE: Solicitud de Aprobación de Enmienda a Contrato de Compraventa de Energía Renovable entre la Autoridad de Energía Eléctrica y XZERTA-TEC SOLAR I, LLC

CASE NO.: NEPR-AP-2021-0002

SUBJECT: INFORMATIVE MOTION

INFORMATIVE MOTION

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW Xzerta-Tec Solar I, LLC (“XZERTA”), through its counsel of record, and respectfully submits and prays as follows:

1. On April 4, 2025 Xzerta-Tec Solar presented an Informative Motion and Request for Authorization which is pending before the Puerto Rico Energy Bureau (PREB).
2. Through this informative motion Xzerta would like to detail the main events of material breach, issues and disputes that have impacted the progress of the design and execution of the project:
 - a. On February 7, 2022, LUMA submitted a request for payment to Xzerta to evaluate the design, products and to perform the interconnection study. Xzerta provided numerous clarifications on several occasions that the PPOA established that PREPA was responsible to perform the interconnection study and evaluation.
 - b. By July 11, 2022, Xzerta submitted to LUMA several products data sheets, the preliminary design and the dynamic study via RFIs for approval to proceed with the interconnection study. LUMA responded via email and in meetings that they were not going to perform any evaluation of the design nor commence the interconnection study until Xzerta released the requested payment.
 - c. On August 9, 2022, Xzerta submitted an updated preliminary design based on changes requested by LUMA.

- d. After several attempts to resolve this issue, Xzerta transmitted LUMA a notice of dispute via email on September 15, 2022, regarding the dispute related to the cost for the interconnection study and the delays impacting the project.
- e. On September 27, 2022, PREPA held a meeting with all affected parties to resolve the dispute regarding the 1st interconnection study. No resolution was reached during the meeting. Meanwhile, PREPA directed Sargent & Lundy on October 31, 2022, to execute the interconnection study. Still at this point the Conditional Permit for Easement Usage was not approved. Issue that became another dispute item necessary for the design completion.
- f. On February 21, 2023, PREPA and LUMA issued the Interconnection Study prepared by Sargent & Lundy (“S&L”). The study was made considering having a portion of the 115KV transmission line underground as requested by LUMA without prior approval or discussion with either PREPA or Xzerta. Due to the lack of constructability and non-compliance with PREPA design codes, Xzerta requested to properly modify the preliminary design to the original approach of having the transmission line fully aerial as agreed under the PPOA. It is for this reason that LUMA requested to redo the interconnection study and have Xzerta bearing the cost. The second study became another dispute item.
- g. Meanwhile, LUMA also requires having in place a new interconnection agreement with Xzerta when the PPOA already had interconnection language included. This issue became a dispute item affecting the progression of the project.
- h. After several attempts to reach a resolution for all the items above, LUMA and Xzerta submitted motions elevating the dispute items to PREB. LUMA submitted a motion on November 6, 2023, accepting proceeding with the 2nd interconnection study. Xzerta submitted two motions, one on June 30, 2023, notifying the delays

and requesting an extension of time and the other one on November 22, 2023 in pursuing obtaining a resolution for all technical and commercial issues.

- i. PREB directed all affected parties prompting to reach a resolution to all identified disputes to avoid further delays under the motion, Resolution and Order, transmitted on April 15, 2024.
 - j. On April 29, 2024, LUMA released the revised Interconnection Study approving the new design of transmission line to be its entirety aerial. Notwithstanding, the final design has been impacted by the aforementioned disputes and additional design changes requested by LUMA during the negotiations of the conditional permit and the LGIA. The conditional permit and the LUMA interconnection agreement disputes were still in negotiations.
 - k. On November 20th, 2024, the Conditional Permit of the Easement with PREPA/LUMA was executed.
 - l. On January 27, 2025, LUMA and Xzerta reached an agreement for the terms and conditions of LUMA's Interconnection Agreement (LGIA) and it was registered with Office of the Comptroller on February 13, 2025. It was also resolved with LUMA the terms and responsibilities of PREPA's Interconnection Facility Construction and provision of materials.
3. As the Energy Bureau may realize from the Monthly Reports submitted, the implementation of the Project has given rise to complex technical and contractual issues, none of which fall exclusively within the purview or control of a single party to the contract, namely PREPA, Xzerta, or LUMA. In particular, additional confusion stemmed from the fact that the model PPOA applicable to this project differs in material respects from the PPOAs most recently adopted in RFP Tranches 1 through 4. Some of the issues that contributed to delays may, under certain circumstances, even be considered force majeure events. Notwithstanding these challenges, the parties have acted in good faith

throughout the process and have successfully reached amicable and reasonable resolutions. As a result, the parties are now positioned to commence the implementation phase of the project, which will contribute approximately 60 MW of generation capacity to the grid in the near future.

4. In a meeting held on April 25, 2025 with stakeholders including the Energy Zar Josué Colón, Jaime Umpierre (from PREPA) and consultants from Ankura and Jorge San Miguel, Jaime Umpierre stated that PREPA was ready to issue the FNTF as requested by Xzerta, in fact they have a draft ready for execution. He continue to say, that PREPA is only waiting for the PREB to resolve the motion filed by Xzerta on April 4, 2025 requesting authorization.
5. It is worth mentioning that the parties to the PPOA and LUMA as representative for PREPA, following the order of the PREB in this matter, worked to solve the disputes that had been risen and successfully did. Also, according to section 4.5 of the PPOA PREPA shall not have any authority to voluntarily grant any extension of time for the period allocated for completion without the prior written approval of the PREB.
6. Furthermore, we make use of this opportunity to notify the PREB that on May 6, 2025 Xzerta-Tec Solar and the Puerto Rico Department of Housing executed the CDBG-DR ELECTRICITY GRANT AGREEMENT.
7. In light of these circumstances, and as detailed in the Monthly Reports, the delays experienced are, in our view, either justified or excusable. Xzerta hereby reiterates it requests that the Energy Bureau authorized PREPA to provide Xzerta with a Full Notice to Proceed (FNTF) or a Conditional FNTF before or by June 30, 2025, the latest date calculated as the new Guaranteed Final Notice to Proceed (GFNP) based on the definitions and requirements of Article 4.4, 4.5 and 9.4 of Xzerta's PPOA.
8. Once the above is approved, we reiterate Xzerta will immediately move forward with the required submittals for the FNTF and construction mobilization.

9. Finally the experience gained through this process has yielded valuable lessons for all parties involved, which will enable more efficient and timely resolution of similar matters in future projects. Accordingly, if all other applicable conditions have been satisfied, the Energy Bureau may consider directing PREPA to proceed with issuing the corresponding Notice to Proceed.

WHEREFORE, for the reasons stated above, if all other applicable conditions have been satisfied, the Puerto Rico Energy Bureau may consider to **AUTHORIZE PREPA** to proceed with issuing the corresponding Final Notice to Proceed.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of May 2025.

/s María Elisa Martínez Avilés
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CERTIFICATE OF SERVICE

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to both PREPA and LUMA through its project designees.

In San Juan, Puerto Rico, on this 14th day of May 2025.