

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

**IN RE:** SOLICITUD DE APROBACIÓN DE ENMIENDA A CONTRATO DE COMPRAVENTA DE ENERGÍA RENOVABLE, XZERTA-TEC SOLAR I, LLC

**CASE NO.:** NEPR-AP-2021-0002

**SUBJECT:** Resolution and Order on Request for FNTF

**RESOLUTION AND ORDER**

**I. Procedural Background**

On May 11, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Final Resolution and Order ("May 11 Resolution") approving, subject to certain conditions, the Petition for Approval of an amendment to the Xzerta Tec Solar I, LLC ("Xzerta") power purchase agreement, filed by the Puerto Rico Electric Power Authority's ("PREPA") on March 17, 2021. On June 4, 2021, PREPA and Xzerta entered into an amended a restated power purchase agreement.<sup>1</sup> Over the past years, Xzerta and PREPA have been working on the development of the proposed renewable generation facility.

As part of the Final Resolution, the Energy Bureau ordered, among other requirements, that PREPA and Xzerta submit monthly progress reports on the status of the project (the "Monthly Progress Report"). Subsequently, on February 9, 2022, the Energy Bureau issued another Resolution and Order (the "February 9 Resolution") requiring that the Monthly Progress Reports be signed by officials from both entities and that each report specify its preparation date.

The Monthly Progress Reports include a detailed breakdown of the project's status, covering development milestones, financing progress, permitting efforts, challenges encountered, and the strategies adopted to address those challenges, among other relevant matters. Initially, PREPA and Xzerta were responsible for submitting the Monthly Project Reports. Following the assumption of operational responsibilities for the transmission and distribution system by LUMA, LUMA also began participating in the submission of the monthly reports.

The May 11 Resolution also states that PREPA may not grant extensions to the deadline for the commencement of construction or to the project's commercial operation date without prior authorization from the Energy Bureau. Any request for an extension of these deadlines must be justified by PREPA and include all relevant information and supporting documentation.<sup>2</sup>

On April 2, 2025, Xzerta filed a document titled *Informative Motion and Request for Authorization* ("April 2 Motion") before the Energy Bureau. In the April 2 Motion, Xzerta informed the Energy Bureau that all pending disputes related to its renewable energy project with PREPA and LUMA have been resolved. Xzerta also requested that the Energy Bureau authorize PREPA to issue either a Full Notice to Proceed ("FNTF") or a Conditional FNTF, no later than June 30, 2025, pursuant to Articles 4.4, 4.5, and 9.4 of the Xzerta PPOA. Xzerta did not explain the scope of what constituted the Conditional FNTF requested from PREPA.

Subsequently, on May 14, 2025, Xzerta filed another document titled *Informative Motion* ("May 14 Motion"), which provided a detailed history of the disputes, project delays, and resolutions that have occurred during the projects' development. In addition, Xzerta reported that it had executed its ER-2 Grant Agreement with the Puerto Rico Department of

<sup>1</sup> Amended and Restated Renewable Power Purchase and Operating Agreement between Puerto Rico Electric Power Authority and Xzerta Tec Solar I, LLC dated June 4, 2021 ("Xzerta PPOA").

<sup>2</sup> See Final Resolution, page 29.





Housing. The May 14 Motion also reiterated Xzerta's request for the Energy Bureau to authorize PREPA to issue an FNTF or Conditional FNTF by June 30, 2025.

On June 27, 2025 Xzerta filed yet another *Informative Motion* ("June 27 Motion"), again urging the Energy Bureau to authorize PREPA to issue the FNTF under the Xzerta PPOA. Xzerta explained that, although it had satisfied all design, permitting, technical, and interconnection requirements, and had secured a grant covering 60% of the project cost, the FNTF is still pending and is essential to achieve financial closing for the remaining 40%, finalize supplier agreements, and issue its own notice to proceed to its Engineering, Procurement, and Construction Contractor. Xzerta requested that the Energy Bureau exercise its discretion and authorize PREPA to issue the FNTF based on certain conditions. Specifically, Xzerta requests that the FNTF be based on the following conditions:

*[t]he project meets the design criteria required under the PPOA; [a]ll required permits have been approved by the Office of Permit Management (OGPe); Xzerta has secured a grant from the Puerto Rico Department of Housing covering 60% of the project cost; [t]he project satisfies the Minimum Technical Requirements (MTRs) per the Interconnection Study; [a]n Interconnection Agreement has been executed with LUMA; [and] Xzerta is prepared to submit its Operation Guarantee.*

Xzerta now seeks an extension for the issuance of the FNTF until August 31, 2025 (or later at Energy Bureau discretion).

## II. Discussion

As shown in the Monthly Progress Reports, the implementation of the Project has given rise to complex technical and contractual issues that do not fall exclusively within the purview or control of any single party to the contract, namely PREPA, Xzerta, or LUMA. Additional uncertainty has arisen from the fact that the model PPOA applicable to this Project contains material differences from the PPOAs most recently adopted in RFP Tranches 1 through 4. Certain circumstances contributing to delays may, in some instances, even qualify as force majeure events. Notwithstanding these challenges, the parties have acted in good faith and have successfully achieved amicable and reasonable resolutions. The parties are now in a position to commence the implementation phase of the Project, which is expected to contribute approximately 60 MW of generation capacity to the grid in the near future.

The Energy Bureau recognizes that, pursuant to its May 2021 Resolution, extensions of time to commence construction or achieve Commercial Operational Date ("COD") of the Project must be approved by the Energy Bureau. However, as established under the Xzerta PPOA, the Energy Bureau is not the entity that issues the FNTF under the contract. That authority resides with PREPA, which may issue such notice once the contractual conditions have been satisfied. While the Energy Bureau retains authority under the contract to approve extensions of time, which may affect the construction start date and COD, its role does not extend to the direct issuance of an FNTF.<sup>3</sup>

Ultimately, Xzerta requests that the Energy Bureau grant approval for the extensions contemplated under the PPOA, which, under its terms, require authorization by the Energy Bureau. After reviewing the motions filed by Xzerta on April 2, May 14, and June 27, as well as the relevant Monthly Progress Reports, the Energy Bureau determines that the extensions

<sup>3</sup> Article 4.5 of the Xzerta PPOA provides that either party may request an extension of time to fulfill an obligation under Article 4 if the delay is directly caused by: (a) a material breach by the other party, (b) an unreasonable delay by the other party, or (c) a Force Majeure event. The extension is valid only if the delay would not have occurred but for the triggering event, and the affected party makes best efforts to mitigate the delay. The period of extension shall be equal to the number of days during which the delaying event prevented performance. However, for extensions to the Guaranteed Commercial Operation Date or the Guaranteed FNTF Date, PREPA cannot grant an extension without the prior written approval of the Energy Bureau. Furthermore, Xzerta cannot rely on any unauthorized extension granted by PREPA.

requested are justified and therefore **APPROVES** them. Conscious of the complexities inherent in the financing process of this type of project, the Energy Bureau extends the deadline for the issuance of the FNTF until **October 15, 2025**. Should the parties deem it necessary to request an additional extension beyond that date, they must file a motion with the applicable justifications no later than ten (10) days before the expiration of the term.

In addition, Xzerta requests that the Energy Bureau authorizes PREPA to exercise its discretion to issue an FNTF consistent with the specific conditions of this Project. Xzerta represents that, to complete the remaining 40% of project financing, the lending entities require issuance of an FNTF. The Energy Bureau has evaluated the circumstances and notes that the provisions governing the FNTF under the Xzerta PPOA differ in certain respects from those recently adopted in other similar projects. The Energy Bureau concludes that, provided PREPA adopts prudent and reasonable measures to safeguard the public interest, it may exercise its discretion to issue an FNTF under the conditions set forth in Xzerta's June 27 Motion, or under conditions substantially similar thereto. Therefore, the Energy Bureau **AUTHORIZES** PREPA to issue an FNTF, incorporating such safeguards as it deems appropriate, to enable the prompt commencement of the Project while ensuring protection of the public interest.

### III. Conclusion

Based on the foregoing analysis, the Energy Bureau:

- (a) **APPROVES** the time extensions requested by Xzerta and extends the deadline for the issuance of the FNTF until **October 15, 2025**. Should the parties deem it necessary to request an additional extension beyond that date, they must file a motion with the applicable justifications no later than ten (10) days before the expiration of the term.
- (b) **AUTHORIZES** PREPA to issue an FNTF consistent with Xzerta's limitations listed in the June 27 Motion, incorporating such conditions and safeguards as it deems appropriate to enable the prompt commencement of the Project and to ensure protection of the public interest.

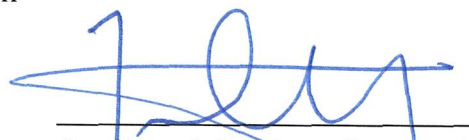
Be it notified and published.



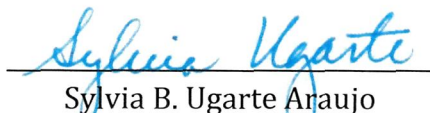
Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner



Antonio Torres Miranda  
Associate Commissioner





## CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on August 26, 2025. I also certify that on August 26, 2025 I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau, and a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; laura.rozas@us.dlapiper.com.

I sign this in San Juan, Puerto Rico, on August 26, 2025.



Sonia Seda Gaztambide  
Clerk