

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

NEPR

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IN RE: IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

MOTION SUBMITTING PROPOSED DRAFT ESSA'S OF CIRO PROJECT PORTFOLIO AND CIRO SALINAS PROJECT, AND MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT

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:

A. Introduction

1. On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Final Resolution and Order related to PREPA's Integrated Resource Plan ("IRP") under Case No. CEPR-AP-2018-0001, through which it approved in part and rejected in part PREPA's proposed IRP ("IRP Final Order"). As part of the IRP Final Order, the Energy Bureau ordered the adoption and implementation of a Modified Action Plan, which contained specific directives and requirements, including the formulation of a Renewable Energy and Battery Energy Storage Resource Procurement Plan.

2. On February 22, 2021, PREPA launched its Tranche 1 RFP 112648 for the procurement of 1,000 MW of renewable generation resources and at least 500 MW of battery energy storage resources, consistent with the Energy Bureau's

and the Financial Oversight and Management Board of Puerto Rico's ("FOMB") guidance.

B. Approval of BESS Capability Payment on Increased Capacity for the CIRO Project Portfolio

3. On June 12, 2023, PREPA received a letter from CIRO Energy Group (Proponent), with a proposal to sell the excess capacity generated by its battery projects. The CIRO Project portfolio is composed of CIRO One Salinas, LLC and 2 tranche 1 Projects, CIRO Two Salinas, LLC and Guayama Solar Energy, LLC, which are in various stages of construction and development in the southern region of Puerto Rico.

4. CIRO Energy Group claims that several components, including high costs, had an overall negative impact on the viability of the project and caused, among other things, serious delays in the acquisition of equipment which have affected all renewable energy projects under development and construction in Puerto Rico and the CIRO Project Portfolio has not been the exception. Due to the impact of delays, process risks and increased costs, among other problems, CIRO Energy Group has continually sought economically viable alternatives, that would avoid a significant increase in the rates per kilowatt hour stated in the Power Purchase and Operating Agreements (PPOA's), with PREPA.

5. The Projects are designed with an expanded battery energy storage system (BESS) that would allow each facility to provide on demand discharge battery capacity and would offer much needed support to the grid during certain adverse conditions such as power outages, peak demand, etc. BESS capacity

can be reserved for use as needed, in exchange for a capacity payment. The suggested capacity payment for each installation is \$15,000.00 per megawatt per month, considering 4-hour system in each installation. The increase in BESS capacity would be the following: 25 MW in CIRO One Salinas, LLC - (Expansion), 35 MW in CIRO Two Salinas, LLC, and 25 MW in Guayama Solar Energy, LLC.

6. On October 3, 2023, PREPA's consultant (Sargent & Lundy) indicated the steps to follow if PREPA determines to buy this capacity, assuming that the three (3) projects do not need any type of additional interconnection (the energy from the batteries will be dispatched through the interconnection of the solar projects): PREPA would have to ask LUMA Energy, LLC (LUMA), what the cost would be and what is the time required (per project) to carry out the necessary studies to verify that the additional capacity of each of these projects does not require expansion to the transmission system. PREPA would inform the Proponent what the cost and time required to carry out these studies would be. The Proponent will have to decide whether he is willing to pay for these studies or not. The results of the studies will determine whether these projects can be integrated without the need for an expansion to the transmission system. If any project requires such an expansion, the cost of the expansion would probably have a negative effect on the project. If none of the projects require an expansion to the transmission system, PREPA would have to do three (3) Energy Storage Services Agreements (ESSA's) (each project requires one). The reasons why ESSA's would be necessary are the following:

- a. each solar and battery project must be able to be dispatched independently,
- b. each solar and battery project must show compliance with the minimum technical requirement (MTR), and
- c. each ESSA would have to be approved by PREPA, the Puerto Rico Energy Bureau (PREB) and the Financial Oversight and Management Board for Puerto Rico (FOMB).

7. PREPA's Legal Affairs Directorate performed the legal evaluation of the request and from the legal standpoint has no objection to the approval of the proposal, stating that the same is subject to the approval of the PREB and the FOMB.

8. Hence, on November 15 2023, and in accordance with Act 83, PREPA's Governing Board resolved to approve and authorize:¹

- a. the submission of the ESSA's to the Puerto Rico Energy Bureau, the Financial Oversight and Management Board for Puerto Rico and other stakeholders as required by law for their respective approvals,
- b. following such approvals, the finalization and execution of the ESSA's by PREPA's Executive Director,
- c. PREPA's execution of the ESSA's conditioned to LUMA's additional Interconnection Studies, and

¹ Resolution 5101

d. the execution of such ancillary documentation and carrying out such other steps as reasonably necessary to undertake the foregoing.

9. In summary, PREPA's Governing Board approved Resolution No. 5101, authorizing the additional BESS capacity through capability payments and the execution of separate Energy Storage Services Agreements (ESSA's), subject to applicable interconnection requirements and regulatory approvals.

C. Approval of Energy Storage Services Agreement for Additional 90 MW Energy Storage Capacity at CIRO One Salinas

10. On August 29, 2025, Putnam submitted a request to reactivate and expand the previously approved BESS augmentation strategy, supported by updated interconnection studies, project readiness, and prevailing market and regulatory conditions.

11. After evaluation, PREPA formally expressed its interest in and acceptance of the proposed rate structure for the addition of ninety megawatts (90 MW), consisting of a capability payment of \$25,000 per MW per month for the first six (6) years and \$21,250 per MW per month for the subsequent fourteen (14) years for CIRO One Salinas, LLC.

12. PREPA determined that the accepted rate structure aligns with PREPA's objectives of securing reliable, cost-effective, and dispatchable energy storage capacity, enhancing grid resilience, and advancing Puerto Rico's energy transition without increasing the energy rates paid by customers.

13. PREPA's Legal Affairs Directorate performed the legal evaluation of the proposed ESSA and determined that it is subject to approval by the Governing

Board, the Puerto Rico Energy Bureau, and the Financial Oversight and Management Board for Puerto Rico.

14. Hence, on February 19 2026, and in accordance with Act 83, PREPA's Governing Board resolved to approve and authorize:²

- a. the BESS capability payment structure for the addition of ninety megawatts (90 MW) of new BESS capacity at CIRO One Salinas, as accepted and recommended by PREPA,
- b. submission of the ESSA to the Puerto Rico Energy Bureau, the Financial Oversight and Management Board for Puerto Rico and other stakeholders as required by law for their respective approvals,
- c. following such approvals, the finalization and execution of the ESSA by PREPA's Executive Director,
- d. that the execution and effectiveness of the ESSA are expressly conditioned upon compliance with applicable interconnection requirements, including any additional studies required by LUMA Energy, LLC, and
- e. the execution of such ancillary documentation and carrying out such other steps as reasonably necessary to undertake the foregoing.

D. Submission of Proposed Draft ESSA's

15. Following the requisite completion of the applicable studies, PREPA began working on the corresponding draft ESSA's.

² Resolution 5219

16. Based on the foregoing, PREPA submits for the Energy Bureau's review and approval the ESSA's of the CIRO Project Portfolio and the CIRO Salinas Project. See Exhibit I.

E. Request for Confidential Treatment

17. PREPA respectfully requests confidential treatment of Exhibit I. The exhibit contain ongoing deliberative material as the parties are still in the negotiation process. Disclosure at this stage of these exhibits would undermine the integrity of the decision-making process and is, therefore, protected under the deliberative process privilege until the negotiation process concludes.

18. Although documents held by public corporations such as PREPA are generally presumed to be public, access to such documents is not absolute. The Puerto Rico Supreme Court has recognized that only documents that truly enjoy public status are subject to mandatory disclosure. Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 82 (2017); Ortiz v. Director de la Administración de los Tribunales, 152 D.P.R. 161 (2000).

19. According to Bhatia Gautier v. Gobernador, the government may validly withhold information when (i) a law so authorizes; (ii) the information is protected by evidentiary privileges; (iii) its disclosure may harm third parties' fundamental rights; (iv) it identifies a confidential source; or (v) it qualifies as "official information" under Rule 514 of Evidence. *Id.* at 83.

20. The Puerto Rico Supreme Court has expressly held that "documents that pertain to pre-decisional and deliberative processes may be shielded from

public disclosure." *Id.* at 86. This deliberative process privilege protects materials that are (i) pre-decisional—created before the agency's final determination, and (ii) deliberative—reflecting internal opinions, assessments, and recommendations critical to policy formulation.

21. In addition, Article 4(iv) of Act 122-2019, known as the *Puerto Rico Government Open Data Act*, 3 L.P.R.A. § 9894, explicitly exempts from disclosure “[i]nformation and official information related to decision-making in public policy-making processes, as recognized by case law,” including deliberative materials.

22. The Energy Bureau's *Policy on Confidential Information* (“Policy”), CEPR-MI-2016-0009, originally issued on August 31, 2016, and later amended on September 21, 2016, sets forth the procedural requirements governing requests for confidential treatment of documents submitted before the Energy Bureau. Under this framework, a party seeking confidentiality must expressly designate the information claimed to be confidential and submit a legal memorandum articulating the statutory or regulatory grounds supporting such a request, together with the evidentiary basis justifying confidential treatment. See CEPR-MI-2016-0009, Section A, as amended by Resolution dated September 16, 2016.

23. The Policy further requires that the legal memorandum is to include a detailed table identifying the specific information for which confidentiality is sought, along with a summary explaining how each item satisfies the applicable legal standard. See *Id.* ¶ 3. Below is a summary of the information for which PREPA seeks confidential treatment:

File	Summary of Legal Basis for Confidential Treatment
Exhibit I - ESSA DRAFT Agreements (4)	Deliberative material

24. PREPA respectfully requests that the aforementioned exhibit remain confidential until the ongoing evaluation process concludes and the final agreements are executed. At this stage, the proposed agreements are still drafts, subject to the Energy Bureau's review and approval.

25. PREPA further emphasizes that once the ESSA's are finalized and executed, the documents will be made publicly available in full compliance with applicable legal requirements. Thus, PREPA's request is narrowly tailored and temporary, ensuring both protection of sensitive draft information and eventual public access to the final, binding agreements.

26. In light of the aforementioned, PREPA hereby submits *Exhibit I*, the ESSA's, for the Energy Bureau's consideration and approval.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take: (1) **NOTICE** of the present Motion; (2) **GRANT** confidential treatment to *Exhibit I*; and (3) **APPROVE** the ESSA's.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 26th day of March 2026.

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 electronic mail to counsels of record at margarita.mercado@us.dlapiper.com, laura.rozas@dlapiper.com, yahaira.delarosa@us.dlapiper.com, and jfr@sbgblaw.com.

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