

**GOVERNMENT OF PUERTO RICO
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

SUBJECT: Request for Information regarding the status of renewable energy projects.

MOTION FOR APPROVAL OF PROPOSED AMENDMENT NO. 1 TO THE MARISOL POWER, LLC POWER PURCHASE AND OPERATING AGREEMENT AND MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT

TO THE HONORABLE ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal representation and respectfully informs and requests as follows:

1. On October 29, 2021, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order determining that the second tranche of the renewable energy and energy storage resource procurement process ("Tranche 2 RFP") would be conducted through an independent coordinator designated by the own Energy Bureau.

2. Subsequently, the Puerto Rico Public-Private Partnerships Authority ("P3A") recommended the creation of a selection committee to evaluate and select the proposals submitted in response to the solicitation.

3. On June 9, 2022, the Energy Bureau issued a Resolution and Order creating the selection committee recommended by P3A ("Selection Committee").

4. On May 31, 2024, the Selection Committee issued its *Report of Selection Committee to PREPA Governing Board Evaluation of and Selection of Tranche 2 Proposals in Response to RFP No. NEPR-0001* ("Selection Committee Report"). Among

other agreements, the Selection Committee Report recommended the approval of a *Power Purchase and Operating Agreement between Puerto Rico Electric Power Authority and [Service Provider B]* ("PPOA Service Provider B"), concerning a solar photovoltaic energy system with a capacity of 40 MW.

5. On June 18, 2024, PREPA filed before the Energy Bureau a document titled *Motion to Submit the Report of the Selection Committee's Evaluation of the Tranche 2 Renewable Energy and Energy Storage Solicitation* ("June 18 Motion"). Through the June 18 Motion, PREPA submitted, among other things, the Selection Committee Report and the agreements recommended therein as confidential Exhibit A. The proposed Power Purchase and Operating Agreement between PREPA and Marisol Power, LLC ("Marisol Power"), then identified as PPOA Service Provider B, was included as Appendix B to the Selection Committee Report ("PPOA").

6. PREPA also submitted Resolution 5148 of its Governing Board, titled *Approval to Submit the Selection Committee's Evaluation Report of the Tranche 2 Renewable Energy and Energy Storage to the Puerto Rico Energy Bureau*, as well as the interconnection studies corresponding to Marisol Power's proposed project, dated January 26, 2024. PREPA requested that the Energy Bureau grant confidential designation and treatment to Exhibit A of the June 18 Motion.

7. On August 26, 2024, the Energy Bureau issued a Resolution and Order approving the agreements submitted by PREPA, including the PPOA between PREPA and Marisol Power, which was then identified as "Service Provider B." In granting its approval, the Energy Bureau comprehensively reviewed the Selection Committee Report and the reasons supporting the Selection Committee's recommendations,

paying particular attention to the reasonableness and competitiveness of the proposed prices and their consistency with industry standards. The Energy Bureau also evaluated the applicable interconnection studies and determined that they supported the safe and reliable integration of the proposed net electrical output into Puerto Rico's electric grid without compromising the grid's stability or reliability. In addition, the Energy Bureau found that the terms and conditions of the agreements were consistent with Puerto Rico's public energy policy and the approved Integrated Resource Plan. The Energy Bureau also granted confidential designation and treatment to Exhibit A of the June 18 Motion.

8. After obtaining the FOMB's approval, on May 26, 2026, PREPA and Marisol Power executed the PPOA, establishing their respective rights and obligations concerning the development, financing, construction, ownership, operation, and maintenance of Marisol Power's photovoltaic solar generation facility and the sale of its net electrical output and related products to PREPA.

9. Following the execution of the PPOA, Marisol Power requested additional interconnection studies to evaluate the feasibility of increasing the project's photovoltaic generating capacity beyond the 40 MW originally contemplated under the PPOA. LUMA Energy, LLC and/or LUMA Energy ServCo, LLC (jointly, "LUMA") completed the applicable studies and determined that the project's Maximum Dispatch Limit could be increased from 40 MW to 58 MW using the existing point of interconnection and without requiring additional transmission system upgrades. LUMA further determined that any increase beyond 58 MW, up to a

maximum of 84 MW, would require the implementation of specified transmission system upgrades.

10. Based on the completed interconnection studies, Marisol Power submitted to PREPA a proposed Amendment No. 1 to the PPOA. The proposed amendment increases the project's Maximum Dispatch Limit from 40,000 kW to 58,000 kW, replaces Appendix H concerning the Facility Site, replaces Appendix K concerning the Operating Characteristics, and establishes the contractual process and conditions applicable to any future capacity increase beyond 58,000 kW ("Proposed Amendment No. 1"). The Proposed Amendment No. 1 does not modify the commercial terms of the PPOA, including the Contract Rate, payment methodology, contractual term, allocation of commercial risks, or any other material economic provision.

11. On August 21, 2026, PREPA's Governing Board adopted Resolution 5259, titled *Authorizing Amendment No. 1 to the Power Purchase and Operating Agreement Between the Puerto Rico Electric Power Authority and Marisol Power, LLC*. See **Exhibit A** - PREPA's Governing Board Resolution 5259. Through Resolution 5259, PREPA's Governing Board approved Proposed Amendment No. 1 and authorized its submission to the Energy Bureau and FOMB.

12. Resolution 5259 expressly provides that it does not authorize any future increase in the project's Maximum Dispatch Limit beyond 58 MW. Any such increase remains subject to the execution of an additional amendment required under the PPOA, completion of the applicable transmission system upgrades identified by LUMA, and receipt of all approvals required under applicable law and PREPA's

governance requirements. Resolution 5259 further authorizes PREPA's Executive Director to execute Amendment No. 1 after the required approvals have been obtained.

13. In compliance with the Energy Bureau's directives and Resolution 5259 of PREPA's Governing Board, PREPA hereby submits the proposed Amendment No. 1 to the PPOA. See **Confidential Exhibit B**- Proposed Amendment No. 1 to the Marisol Power, LLC PPOA with PREPA.

14. PREPA respectfully requests confidential treatment of **Confidential Exhibit B**. The exhibit contains ongoing deliberative materials reflecting internal opinions, assessments, recommendations and proposals exchanged as part of ongoing negotiations, covered by the deliberative-process privilege. Disclosure at this stage of **Confidential Exhibit B** would undermine the integrity of the policy-formulation process and negotiations.

15. 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).

16. 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.

17. 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.

18. In addition, Article 4(iv) of the Puerto Rico Government Open Data Act, Act 122-2019, codified at 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.

19. Below is a summary of the information for which PREPA seeks confidential treatment:

File	Summary of Legal Basis for Confidential Treatment
Confidential Exhibit B	Deliberative material

20. PREPA respectfully requests that the Energy Bureau take notice of the abovementioned and approve the request for confidential treatment of **Confidential Exhibit B.**

WHEREFORE, PREPA very respectfully requests the Energy Bureau to: (i) take **NOTICE** of the information submitted herein; (ii) **APPROVE** the Proposed Amendment No. 1 to the Marisol Power, LLC PPOA with PREPA; and (iii) **APPROVE** the request for confidential treatment of **Confidential Exhibit B**.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, September 16th, 2026.

CERTIFICATE OF FILING AND SERVICE: It is hereby certified that this document was filed with the Office of the Clerk of the Energy Bureau through its electronic filing system, available at <https://radicacion.energia.pr.gov/login>. It is further certified that a file-stamped copy of the foregoing document was served upon the parties in the above-captioned proceeding at the following email addresses: LUMA Energy, LLC and LUMA Energy ServCo, LLC, through Yahaira de la Rosa, Yahaira.delarosa@us.dlapiper.com; Katuska Bolanos Lugo, katuska.bolanos-lugo@us.dlapiper.com; Laura Rozas, laura.rozas@us.dlapiper.com; RegulatoryPREBOrders@lumapr.com; and Genera PR LLC through: Jorge Fernández Reboredo, jfr@sbgblaw.com and jfernandez@ecija.com; legal@genera-pr.com; regulatory@genera-pr.com.

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Exhibit A - PREPA's Governing Board Resolution 5259



PUERTO RICO
ELECTRIC POWER AUTHORITY

PREPA

GOVERNMENT OF PUERTO RICO

RESOLUTION 5259

AUTHORIZING AMENDMENT NO. 1 TO THE POWER PURCHASE AND OPERATING AGREEMENT BETWEEN THE PUERTO RICO ELECTRIC POWER AUTHORITY AND MARISOL POWER, LLC

- WHEREAS: The Puerto Rico Electric Power Authority (PREPA) is a public corporation and an instrumentality of the Government of Puerto Rico created by the Act 83 of May 2, 1941, as amended (Act 83). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. In addition, PREPA provides a service based on affordable, fair, reasonable and non-discriminatory cost that is consistent with environmental protection, non-profit, focused on citizen participation and its clients.
- WHEREAS: Act No. 83 authorizes PREPA to grant contracts and formalize all instruments that are necessary or convenient in the exercise of any of its powers and to properly manage its purpose.
- WHEREAS: Act 17-2019, titled "Puerto Rico Energy Public Policy Act," as amended by Act 1-2025, establishes Puerto Rico's long-term goal of achieving 100% renewable energy by 2050.
- WHEREAS: Act 82-2010, titled "Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act," as amended by Act 1-2025, establishes the Renewable Energy Portfolio with the binding goal of achieving 100% renewable energy by 2050.
- WHEREAS: In furtherance of such public policy, an Independent Coordinator conducted a competitive procurement process for renewable energy generation and energy storage resources through Request for Proposals No. NEPR-0001 – Renewable Energy Generation and Energy Storage Resources, Tranche 2, pursuant to the applicable Orders of the Puerto Rico Energy Bureau (PREB), for the purpose of procuring renewable generation projects to be interconnected to Puerto Rico's electric system.



WHEREAS: Marisol Power, LLC (Marisol Power) submitted a proposal in response to such competitive procurement process and was selected as one of the successful proponents for the development, financing, construction, ownership, operation and maintenance of a photovoltaic solar generation facility having an original nameplate capacity of forty megawatts (40 MW), together with the sale of the Net Electrical Output and related products to PREPA, in accordance with the terms and conditions of the applicable procurement process and the Power Purchase and Operating Agreement (PPOA).

WHEREAS: On May 26, 2026, PREPA and Marisol Power executed a PPOA, establishing the respective rights and obligations of the Parties with respect to the development, construction, ownership, operation and maintenance of the Marisol Power Project.

WHEREAS: Following execution of the PPOA, Marisol Power requested that additional interconnection studies be performed in order to evaluate the feasibility of increasing the photovoltaic generating capacity of the Project beyond the capacity originally contemplated under the PPOA, while maintaining the reliable operation of Puerto Rico's electric transmission system.

WHEREAS: LUMA Energy completed the applicable interconnection studies and determined that the Project may increase its Maximum Dispatch Limit from forty megawatts (40 MW) to fifty-eight megawatts (58 MW) utilizing the existing point of interconnection without requiring additional transmission system upgrades, while further concluding that any increase beyond fifty-eight megawatts (58 MW), up to a maximum of eighty-four megawatts (84 MW), would require the implementation of specific transmission system upgrades identified in such studies.

WHEREAS: Based upon the completed interconnection studies, Marisol Power submitted to PREPA a proposed Amendment No. 1 to the PPOA for PREPA's review and approval, requesting that the Agreement be amended to reflect the increased Maximum Dispatch Limit supported by LUMA's completed technical evaluation.

WHEREAS: Amendment No. 1 amends the definition of "Maximum Dispatch Limit" by increasing such limit from 40,000 kW to 58,000 kW, replaces Appendix H (Facility Site), replaces Appendix K (Operating Characteristics), and establishes the contractual process and conditions applicable to any future capacity increase beyond 58,000 kW, including the requirement that Marisol Power fund and implement the transmission system upgrades identified by LUMA and obtain PREPA's approval of any future amendment to the PPOA.



WHEREAS: The proposed Amendment No. 1 does not modify the commercial terms of the PPOA, including the Contract Rate, payment methodology, contractual term, allocation of commercial risks or any other material economic provision of the Agreement, but is limited to revising the Project's approved Maximum Dispatch Limit and updating the corresponding technical appendices to reflect the completed interconnection studies.

WHEREAS: The Legal Affairs Directorate has conducted a legal evaluation of the proposed amendment and determined that is subject to approval by the Governing Board, the Energy Bureau, and the FOMB.

THEREFORE: In accordance with Act 83, PREPA's Governing Board resolves to:

1. Approved Amendment No. 1 to the Power Purchase and Operating Agreement between the Puerto Rico Electric Power Authority and Marisol Power, LLC, substantially in the form presented to this Governing Board.
2. Authorize the submission of the proposed amendment 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.
3. Nothing contained in this Resolution shall be construed as approving any future increase in the Project's Maximum Dispatch Limit beyond fifty-eight megawatts (58 MW). Any future capacity increase shall remain subject to the execution of any additional amendment required under the PPOA, completion of the applicable transmission system upgrades identified by LUMA, and all approvals required under applicable law and PREPA governance requirements.
4. Authorize, after said approvals, execution of the amendment by PREPA's Executive Director.

Approved in San Juan, Puerto Rico, on the 21st day of August two thousand twenty-six.


Maricarmen Boria-Goffia
Corporate Secretary



*Confidential Exhibit B - Proposed Amendment No. 1 to the Marisol Power, LLC PPOA
with PREPA (filed with the Clerk of the Energy Bureau)*