

**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: Renewable Energy Generation and Energy Storage Resource Procurement Plan – Second Tranche Projects Approval

RESOLUTION AND ORDER

I. Introduction

On October 29, 2021 the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“October 29 Resolution”) through which determine to conduct the Tranche 2 RFP¹ using an Independent Coordinator (“Energy Bureau-IC”).

The Puerto Rico Public-Private Partnership Authority (“P3A”) withdrew the Puerto Rico Electric Power Authority (“PREPA”) authorization to conduct the Tranche 2 RFP process and recommended the creation of a Selection Committee for evaluation and selection of proposals. On June 9, 2022 the Energy Bureau issued a Resolution and Order, among other actions, through which it created the Selection Committee recommended by the P3A (“June 9 Resolution”).

On June 18, 2024, PREPA filed 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”). As part of the June 18 Motion, PREPA included the following documents as *Exhibit A* and requested confidential treatment for them:

1. *Report of Selection Committee to PREPA Governing Board Evaluation of and Selection of Tranche 2 Proposals in Response to RFP No. NEPR-0001* dated May 31, 2024 (“Selection Committee’s Report”):

Appendix A: Power Purchase and Operating Agreement between Puerto Rico Electric Power Authority and [Service Provider A] (“PPOA Service Provider A”);²

Appendix B: Power Purchase and Operating Agreement between Puerto Rico Electric Power Authority and [Service Provider B] (“PPOA Service Provider B”);³ and

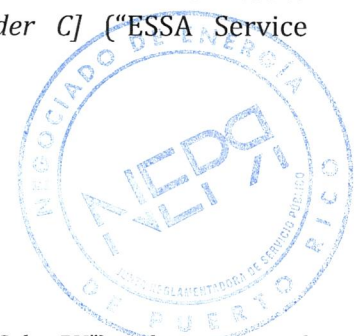
Appendix C: Energy Storage Services Agreement between Puerto Rico Electric Power Authority and [Service Provider C] (“ESSA Service Provider C”).⁴

¹ Request for Proposal.

² The PPOA Service Provider A pertains to a solar photovoltaic energy system (“Solar PV”) with a capacity of 20 MW.

³ The PPOA Service Provider B pertains to a Solar PV energy system with a capacity of 40 MW.

⁴ The ESSA Service Provider C pertains to a standalone Battery Energy Storage System (“BESS”) with a capacity of 60 MW (240 MWh or its equivalent). The PPOA Service Provider A, the PPOA Service Provider B and the ESSA Service Provider C are collectively referred to as the “Contracts”.



Resolution 5148, Approval to Submit the Selection Committee's Evaluation Report of the Tranche 2 Renewable Energy and Energy Storage to the Puerto Rico Energy Bureau ("Resolution 5148");


Project 194-01: [Service Provider C] BESS Tranche 2 Interconnection Studies, January 31, 2024 ("Service Provider C Interconnection Studies");


Project 425-01: [Service Provider A] Tranche 2 Interconnection Studies, January 31, 2024 ("Service Provider A Interconnection Studies");

Project 367-01: [Service Provider] Tranche 2 Interconnection Studies, January 26, 2024 ("Service Provider B Interconnection Studies").

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 Rico 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.

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

B. Criteria for the Evaluation of Power Purchase Agreements

Article 1.11(b) of Act No. 17-2019⁵ stipulates that any power purchase agreement, or any amendment to, or extension of, a power purchase agreement awarded before the approval of Act No. 57-2014⁶ between PREPA, and any independent power producer shall be executed pursuant to Article 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. Additionally, 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.

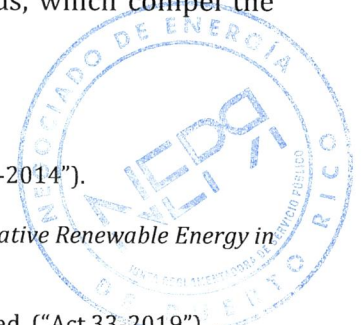
 Act-17-2019 adopted as public policy the reduction in dependence on fossil fuels, aiming to eradicate energy generation based on coal, petroleum derivatives, and gas. Specifically, Act 17-2019 modified the Renewable Energy Portfolio standards established in Act No. 82-2010⁷. This amendment increased 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. 33-2019⁸ established the goal of twenty percent (20%) for the year 2022. Power Purchase Agreements shall be awarded considering the goals and mandates established in the Renewable Portfolio Standards, which compel the

⁵ Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

⁶ Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

⁷ Known as *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*, as amended ("Act 82-2010").

⁸ Known as the *Climate Change Mitigation, Adaptation, and Resilience Law*, as amended, ("Act 33-2019").



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, such as PREPA and AES-PR. It reiterates the Energy Bureau's authority to adopt the 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 (b) expressly states that any extension of, or amendment to, a power purchase agreement executed before the approval of Act 57-2014 shall comply with the Puerto Rico Energy Public Policy Act and shall be subject to the approval of the Energy Bureau.

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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; (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 83 and Act 17-2019.

and

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 Integrated Resources Plan ("IRP") approved. The Energy Bureau shall approve no contract that is inconsistent with the IRP, especially regarding the renewable energy, distributed generation, conservation, and efficiency goals established in both the 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 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.

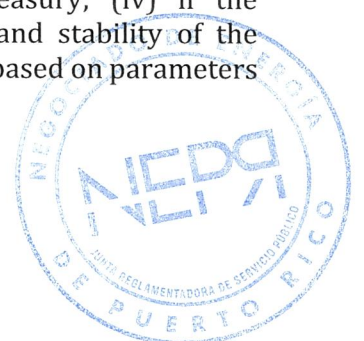
The Energy Bureau shall also make sure tariffs, duties, rents, or charges paid to independent power producers are fair and reasonable and protect the public interest and the treasury. Likewise, the transmission and distribution grid interconnection tariff, including construction charges, transmission 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 affect customers.

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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 features of the project make a "Supplementary Study" or a technical evaluation unnecessary.

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Therefore, in evaluating the Contracts, the Energy Bureau must primarily determine: (i) whether the proposal is consistent with the approved IRP; (ii) whether the proposal is consistent with Puerto Rico's public energy 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 two power purchase agreements and an energy storage agreement agreed upon after the enactment of Act 57-2014. The Contracts are subject to evaluation under Article 6.32 of Act 57-2014, and if they are applicable.

III. Discussion and Findings

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The Energy Bureau has comprehensively reviewed the Selection Committee Report, including its detailed reasons for recommending the approval of the Contracts. Particular attention was given to the reasonableness of the proposed prices, ensuring they are competitive and aligned with industry standards. The Energy Bureau has examined the interconnection studies, which provide support for the reliable and safe integration of the proposed net electrical output into Puerto Rico's electric grid. These studies confirm that integration will not compromise the stability or reliability of the grid, which is paramount for maintaining uninterrupted service to consumers.

The terms and conditions outlined in the Contracts have been scrutinized and found to follow the Puerto Rico Electric Public Policy and the Approved IRP.⁹ This alignment makes sure the Contracts not only contribute to the island's energy needs but also support the broader goals of sustainability, resilience, and affordability. Based on these findings, the Energy Bureau approves the Contracts, recognizing them as an important step forward in the ongoing transformation and modernization of Puerto Rico's energy infrastructure.¹⁰

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Following the evaluation and approval of the Contracts 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 Contracts until the FOMB's approval is obtained, as they may be declared null and void without it.

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.¹¹ 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".¹² 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."¹³

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⁹ *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").* 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.*

¹⁰ The ESSA Service Provider C agreement must be revised to eliminate all references to the *Monthly Variable Payment*, as this payment is not included under the terms of the agreement. Specifically, PREPA shall: (i) delete the definitions of "Monthly Variable Payment" or "MVP" and "Variable O&M Price Inflation" or "VOMPI" from Section 1.1 (Definitions); (ii) delete Sections 3 and 4 of Appendix F (Compensation); (iii) renumber as appropriate the definitions and formulas in Appendix F (Compensation); (iv) renumber accordingly the definitions of "Facility Availability" or "FA," "Facility Availability Adjustment" or "FAA," and "Monthly Contract Capability" or "MCC" in Section 1.1 (Definitions); (v) remove the reference to the *Monthly Variable Payment* in Section 10(a); and (vi) make any other necessary modifications to eliminate references to the *Monthly Variable Payment*.

¹¹ Section 6.15 of Act 57-2014.

¹² *Id.*

¹³ *Id.* (Emphasis added).



After a review of PREPA's arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to *Exhibit A* of the June 18 Motion.

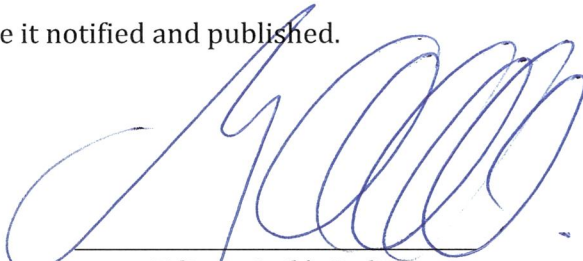
V. Conclusion

For all the above, the Energy Bureau approves the Contracts.

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.


Edison Avilés Deliz
Chairman


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 agreed on August 26, 2024. Associate Commissioner Lillian Mateo Santos did not intervene. Also certify that on August 26, 2024, I have proceeded with the filing of this Resolution and Order and was notified by email to arivera@gmlex.net; mvalle@gmlex.net; laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com; julian.anglada@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; jfr@sbgblaw.com; alopez@sbgblaw.com.

I sign in San Juan, Puerto Rico, today, August 26, 2024.


Sonia Seda Gaztambide
Clerk

