

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

IN RE: ACCELERATED EVALUATION OF RENEWABLE ENERGY AND ENERGY STORAGE PROJECT PROPOSALS TO SECURE FEDERAL INVESTMENT TAX CREDITS (ITCs)

CASE NO.: NEPR-MI-2025-0005

SUBJECT: Resolution and Order regarding Proponent No. 3 Proposed Contracts Modifications

RESOLUTION AND ORDER

I. Relevant Background

On March 26, 2026, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* ("March 26 Resolution") approving the Proponent No. 1 Proposed Contract,¹ Proponent No. 2 Proposed Contract,² Proponent No. 3 Proposed ESSAs³ and Proponent No. 3 Proposed PPOAs,⁴ (unless otherwise provided, they are collectively referred to as the "Contracts"). The Contracts were approved subject to the modifications in Part III(3) of the March 26 Resolution, which shall be implemented before the execution of the Contracts, while recognizing that additional modifications or adjustments, including those suggested by Proponent No. 3, may subsequently be agreed upon between PREPA and Proponent No. 3 to improve the financing prospects of the projects.

On April 7, 2026, Proponent No. 3 filed an *Informative Motion* requesting that the Energy Bureau direct PREPA and Proponent No. 3 to meet to address the mandates of the March 26 Resolution ("Proponent No. 3 April 7 Motion"). In support thereof, Proponent No. 3 stated that it had sent correspondence to PREPA requesting a meeting, but PREPA had not responded. On the same date, PREPA filed a response to the Proponent No. 3 April 7 Motion, informing the Energy Bureau of the status of the negotiations process with Proponent No. 3 and requesting that the motion be deemed premature ("PREPA April 7 Motion"). PREPA stated that it had informed Proponent No. 3 that its recommendation was for all parties to first complete the exchange of compliant draft contractual provisions. PREPA further stated that a meeting should be scheduled only if material outstanding issues remain after review of the revised draft documents ("PREPA April 7 Communication"). As part of PREPA April 7 Communication, PREPA included a proposed revision of Proponent No. 3's Contracts.

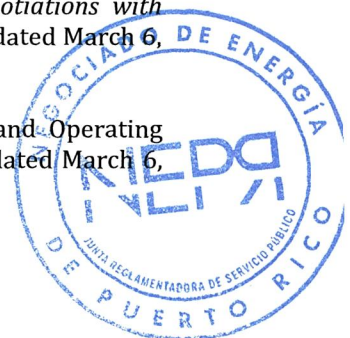
On April 9, 2026, Proponent No. 3 filed a motion requesting that the Energy Bureau establish a timeframe applicable to PREPA and all proponents, not to exceed April 30, 2026, within which the parties must complete the negotiations ("Proponent No. 3 April 9 Motion"). In addition, on April 24, 2026, Proponent No. 3 filed an *Informative Motion* ("Proponent No. 3 April 24 Motion") informing that, on April 15, 2026, it had submitted to PREPA a letter

¹ The contract approved by the Energy Bureau was the one submitted by Puerto Rico Electric Power Authority ("PREPA") through its filing titled *Informative Motion Regarding Updated Negotiations with Proponent 1 and Memorandum of Law in Support of Request for Confidential Treatment*, dated March 9, 2026 ("Proponent No. 1 Proposed Contract").

² The contract approved by the Energy Bureau was the one submitted by PREPA through its filing titled *Informative Motion Regarding Negotiations with Proponents 1 and 2, and Memorandum of Law in Support of Request for Confidential Treatment*, dated February 27, 2026 ("Proponent No. 2 Proposed Contract").

³ The contracts approved by the Energy Bureau was the eleventh (11) Energy Storage Services Agreement ("ESSA") submitted by PREPA through its filing titled *Informative Motion Regarding Negotiations with Proponents 1 and 3, and Memorandum of Law in Support of Request for Confidential Treatment*, dated March 6, 2026 ("Proponent No. 3 Proposed ESSAs").

⁴ The contracts approved by the Energy Bureau was the eleventh (11) Power Purchase and Operating Agreement ("PPOA") submitted by Proponent 3 through its filing titled *Informative Motion*, dated March 6, 2026 ("Proponent No. 3 Proposed PPOAs").



outlining certain proposed revisions and actions to be incorporated in Proponent's 3 Contracts ("Proponent No. 3 April 15 Letter"). The motion further stated that, on April 17, 2026, PREPA sent a communication recommending that the ongoing contract review be limited to the matters identified in the March 26 Resolution and providing draft contracts for Proponents No. 3's review ("PREPA April 17 Communication"). Proponent No. 3 also indicated that, on April 20, 2026, it submitted an additional letter to PREPA enclosing draft agreements containing proposed contractual revisions, while reserving the right to propose further revisions at a later stage ("Proponent No. 3 April 20 Letter"). Additionally, Proponent No. 3 stated that, on April 23, 2026, it submitted a follow up letter to PREPA enclosing draft agreements reflecting the previously proposed contract revisions, together with additional modifications intended to address the synergies arising from the anticipated "hybrid operation" of the projects ("Proponent No. 3 April 23 Letter"). On the same date, the Energy Bureau issued a Resolution and Order directing PREPA to submit all communications and its attachments referenced in the Proponent No. 3 April 24 Motion, as well as any responses that PREPA has issued in connection therewith ("April 24 Resolution").

On April 27, 2026, PREPA submitted the communications exchanged with Proponent No. 3 concerning ongoing negotiations ("April 27 Motion"). PREPA indicated that it agreed to implement certain Energy Bureau directed changes, such as a uniform 210-day termination period and alternative compensation structures tied to financing conditions. However, it argued that several additional proposals from Proponent No. 3 exceeded the scope of authorized modifications and should be considered only in future amendments after the agreements are executed. PREPA also noted that it was still reviewing multiple rounds of proposed revisions and, at this stage, preliminarily disagreed with several changes because they could alter risk allocation, undermine procurement consistency and enforcement mechanisms, and potentially increase costs to ratepayers. As part of the April 27 Motion, PREPA included the following files and folders and requested confidential treatment for each of them:

- Folder containing attachments to the PREPA April 7 Communication;
- Folder containing attachments to the PREPA April 17 Communication;
- Folder containing attachments to the Proponent No. 3 April 20 Letter ("Proposed Contracts Modifications");
- Folder containing attachments to the Proponent No. 3 April 23 Letter; and
- File containing communications exchanged between Proponent No. 3 and PREPA.

In the April 27 Motion, PREPA further requested that the Energy Bureau provide guidance or make such determinations as it deems appropriate regarding the disposition of the unresolved contractual issues arising from deviations from the previously approved contract forms.

II. Discussion and Analysis

The Energy Bureau is not responsible for negotiating the contractual terms and conditions of the Contracts, which remains the responsibility of the contracting parties. Nevertheless, where appropriate and to further the public interest, the Energy Bureau may provide guidance, recommendations, or proposed language intended to assist the Parties in resolving specific contractual discrepancies and facilitating the execution and implementation of the Contracts. The Energy Bureau addresses below certain contractual matters and proposed modifications presented by PREPA and Proponent No. 3.

A. Modifications to Section 2.3(b) of Proponent No. 3's ESSAs and PPOAs

In the March 26 Resolution, the Energy Bureau required that the automatic contract termination provision in Section 2.3(b) of Proponent No. 3 Proposed ESSAs and Proponent No. 3 Proposed PPOAs be modified to establish a uniform period of two hundred ten (210) days for automatic termination if Closing has not occurred.



Through the PREPA April 7 Communication, PREPA informed Proponent No. 3 of including a revision establishing a two hundred ten (210) day period for automatic termination, as ordered by the Energy Bureau.⁵ Notwithstanding this, in Proponent No. 3 April 15 Letter, Proponent No. 3 introduced additional qualifying language and exceptions to this provision.⁶

The Energy Bureau understands Proponent No. 3's position to be that the automatic termination of the Contracts upon the expiration of a specified Closing deadline could, under certain circumstances, result in the termination of projects that continue to make substantial progress toward Closing, including regarding financing and the satisfaction of material Conditions Precedent. This may create the perception of increased commercial, development, and financing risk, thereby adversely affecting the overall financing prospects of the projects. PREPA has asserted a legitimate interest in preserving the concept of automatic termination as an important contractual protection designed to promote timely progress toward Closing and provide certainty regarding the Parties' obligations.

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The Energy Bureau further recognizes, as a matter of energy public policy and public interest, despite the positions advanced by the Parties, the critical importance of the timely development and implementation of the projects in supporting the reliability, resilience, and ongoing transformation of Puerto Rico's electric system. Among other considerations, the Energy Bureau recognizes the urgent need to incorporate additional generation resources to support system reliability and operational stability, reduce the risk of supply deficiencies and service interruptions, and facilitate the continued modernization of Puerto Rico's electric system.⁷ The Energy Bureau further recognizes the importance of advancing the deployment of renewable energy resources and energy storage technologies to further the renewable energy objectives and public policy requirements established under applicable Puerto Rico law.⁸

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Based on the foregoing considerations and the public interest concerns discussed above, the Energy Bureau determines that certain additional modifications and qualifications to Section 2.3(b) are appropriate to preserve the purpose of the automatic termination provision while providing a reasonable degree of contractual certainty and flexibility when substantial progress toward Closing is being achieved. Notably, the Energy Bureau finds it appropriate to incorporate additional language requiring the Parties to act reasonably and in good faith in connection with requests for reasonable extensions of the Closing Date, while also establishing a limited review mechanism before the Energy Bureau in the event of disputes regarding such extensions. These modifications appropriately balance the preservation of PREPA's contractual protections with the need to provide sufficient commercial certainty and financing stability for the projects, without adopting the broader or more open-ended provisions proposed by Proponent No. 3 that could introduce unnecessary contractual uncertainty or complexity. The Energy Bureau recommends the following language for Section 2.3(b) of the Proponent No. 3 ESSAs and Proponent No. 3 PPOAs:

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If the Closing Date does not occur for any reason within two hundred ten (210) Days after the Agreement Date, then, without limiting Section 15.2 (No Discharge of Obligations), this Agreement shall automatically terminate at midnight on such Day, provided that upon termination of this Agreement in accordance with this paragraph (b) of this Section 2.3, neither Party shall incur any liability to the other Party, and PREPA shall return the Proposal Security to the Resource Provider, unless Resource Provider has breached any of the Agreement Date Obligations in a material way and failed to cure such breach within ten (10) Business Days of the occurrence of such breach, in which case PREPA shall have the right to draw on the full face amount of the Proposal

⁵ See April 27 Motion, file containing communications exchanged between Proponent No. 3 and PREPA, p. 4-5.

⁶ See *Id.*, p. 7-8.

⁷ See, in general, *LUMA's Resource Adequacy Interim Study for Summer 2025*, filed in *In Re: LUMA Resource Adequacy Study*, Case No. NEPR-MI-2022-0002, *Motion to Submit Interim Update for Summer 2025 of LUMA's Fiscal Year 2025 Resource Adequacy Study*, March 24, 2025.

⁸ See, in general, *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*, as amended ("Act 82-2010").

Security and, subject to this Agreement including, without limitation, the Exceptions, Resource Provider's liability shall be limited to the face value thereof.

Notwithstanding the foregoing, the Parties acknowledge that delays relating to permitting, interconnection, financing markets, supply chain constraints, or other matters affecting the satisfaction of material Conditions Precedent may affect the timing of Closing. Accordingly, the Parties shall act reasonably and in good faith in connection with any request for a reasonable extension of the Closing Date for purposes of avoiding the automatic termination contemplated under this Section, and PREPA shall not unreasonably withhold, condition, or delay its agreement to such extension where Resource Provider demonstrates, through reasonable supporting documentation, that Closing is actively progressing and reasonably expected to occur within a commercially reasonable period, including, without limitation, in connection with permitting, interconnection, the closing of construction financing, supply chain constraints, or the satisfaction of material Conditions Precedent.

In the event the Parties are unable to reach agreement regarding a requested extension of the Closing Date under this Section, and Resource Provider requests review prior to the automatic termination of this Agreement pursuant to this Section, the matter shall be submitted to the PREB solely for purposes of determining the reasonableness of the requested extension under the circumstances presented. During the pendency of such review, the automatic termination contemplated under this Section shall be tolled pending determination by the PREB. The Parties expressly acknowledge and agree that the determination of the PREB regarding such requested extension shall be final and binding upon the Parties.

The Parties may mutually agree to modify Section 2.3(b) to establish such language as they deem most appropriate, provided that the agreed-upon language reasonably reflects and is consistent with the intent and considerations set forth by the Energy Bureau herein. Nevertheless, in the event the Parties are unable to reach agreement regarding the relevant provision, they are strongly encouraged to utilize the language suggested by the Energy Bureau.

B. Modifications to Appendix F (Compensation), Base Rate of Proponent No. 3's PPOAs

In the March 26 Resolution, the Energy Bureau required that Appendix F of Proponent No. 3's PPOAs be modified to incorporate the alternative pricing structure proposed by Proponent No. 3 if the contemplated financing through the U.S. Department of Energy Loan Programs Office ("DOE-LPO") is obtained.⁹ Accordingly, PREPA requested that Proponent No. 3 submit a proposed amendment to Appendix F to establish the alternative compensation structure and incorporate it into the contractual documents.¹⁰ Proponent No. 3 submitted a proposed amendment to Appendix F of Proponent No. 3 PPOAs.¹¹

The proposed amendment provides for a specific \$/MWh reduction to the Base Rate upon the successful closing of qualifying DOE-LPO financing on or before September 1, 2026. The proposed reduction would be applied using the same "weighted-average basis relative to the portfolio of affiliated projects that participated in the RFP."¹² PREPA expressed agreement with the proposed pricing adjustment mechanism, however, objected to conditioning the applicability of the proposed reduction upon the achievement of financing by a specified

⁹ For purposes of this Resolution and Order, references to DOE-LPO shall be understood to refer to the U.S. Department of Energy Office of Energy Dominance Financing Program ("DOE-EDFP"), as currently designated.

¹⁰ See April 27 Motion, file containing communications exchanged between Proponent No. 3 and PREPA, p. 4-5.

¹¹ See *Id.*, p. 8.

¹² See April 27 Motion, folder containing attachments to the Proponent No. 3 April 20 Letter, proposed PPOA agreement, Appendix F(3).



date.¹³ PREPA maintains that the proposed deadline should be removed to preserve contractual flexibility and avoid the introduction of a fixed milestone not contemplated by the Energy Bureau.¹⁴ PREPA further contends that the adjustment mechanism should instead be triggered by the relevant financing closing events. In response, Proponent No. 3 expressed that “incorporating a language provision [establishing a deadline] is key to the feasibility of implementing the proposed adjustment.”¹⁵

While Proponent No. 3 did not expressly identify the factors underlying the proposed September 1, 2026, deadline, the Energy Bureau reasonably infers from including such deadline and Proponent No. 3’s statement regarding the feasibility of the proposed adjustment that the timing of the financing may have implications for the economic assumptions supporting the proposed reduction. Such considerations may include factors commonly associated with delayed financing or project development, including inflationary effects, increased capital expenditures, and other changes in project economics that could affect the appropriateness of the reduction if financing is obtained later.

To address the Parties’ disagreement regarding the proposed September 1, 2026 deadline, the Energy Bureau proposes the inclusion of an additional provision clarifying that, if the contemplated DOE-LPO financing is obtained after such date, the Parties shall evaluate in good faith the extent to which delays in obtaining financing have affected the economic assumptions underlying the proposed reduction and shall negotiate an adjustment to the amount of the reduction that is reasonably commensurate with such impacts. This approach appropriately balances the interests advanced by both Parties by preserving the possibility of a price reduction in recognition of the benefits associated with obtaining DOE-LPO financing, while also recognizing that delays in achieving such financing may affect the economic assumptions upon which the originally proposed reduction was based. The proposed reduction is not automatically forfeited solely due to the passage of the specified date, nor is the full reduction automatically preserved despite subsequent economic developments, thereby allowing the adjustment to reasonably reflect the circumstances existing at the time financing is ultimately obtained.

As the Energy Bureau has noted elsewhere, each contract awarded to Proponent No. 3 constitutes a separate and independent agreement and must contain its own project-specific terms, conditions, and pricing provisions.¹⁶ Accordingly, the Energy Bureau finds that references to a “weighted average” pricing methodology or to a “portfolio of affiliated projects” are not appropriate to establish or adjust the compensation payable under each individual PPOA. Any adjustment to the Base Rate must be determined on a contract-by-contract basis and by reference to the pricing applicable to the specific project governed by the relevant PPOA. The language set forth below reflects this distinction.

The Energy Bureau further notes that the proposed language does not specify the applicable Base Rate for the First Agreement Year, nor does it reflect the annual escalator applicable during the Term of the PPOAs. Such provisions should be expressly incorporated into the compensation language. In addition, Section 9.6 contemplates two categories of Base Rate adjustments. While the proposed language addresses the adjustment mechanism contemplated under Section 9.6(b) in connection with financing obtained through the DOE-LPO program, Section 9.6(a) separately provides for a potential adjustment in connection with PREPA’s emergence from Bankruptcy. Therefore, the proposed language should also reflect the potential applicability of the adjustment contemplated under Section 9.6(a). These clarifications, together with the modifications discussed above, are incorporated into the language set forth below.

Proponents No. 3 PPOAs, Appendix F(Compensation)

¹³ See *Id.*, p. 14.

¹⁴ See *Id.*

¹⁵ See April 27 Motion, folder containing attachments to the Proponent No. 3 April 20 Letter, Proponent No. 3 April 20 Letter, p. 2.

¹⁶ See March 26 Resolution, p. 6 and 12-13.



3. *Base Rate*

During the Term, the tariff (the "Base Rate") shall equal:

- a. *[\$[First Agreement Year Base Rate]/MWh, representing an amount to compensate Resource Provider for the Product and other costs of the Project (including the PREPA Interconnection Facilities Works), escalated by [Proposed Percent] percent (___%) (the "Escalator") at the commencement of each Agreement Year following the first Agreement Year, provided that the amount shall be reduced by \$[Proposed Reduction]/MWh in the event Resource Provider achieves successful closing of financing from the U.S. Department of Energy Office of Energy Dominance Financing prior to September 1, 2026, and further subject to any additional adjustment pursuant to Section 9.6 (a) in connection with PREPA's emergence from Bankruptcy.*

In the event Resource Provider achieves successful closing of financing from the U.S. Department of Energy Office of Energy Dominance Financing after September 1, 2026, the Parties shall evaluate in good faith the extent to which inflationary effects, increased capital expenditures, financing costs, schedule impacts, or other commercially reasonable factors attributable to such delay affect the economic benefits associated with such financing, and the amount of such \$[Proposed Reduction]/MWh reduction shall be adjusted by mutual agreement in a manner reasonably commensurate with such impacts.

Consistent with the approach discussed above, the Parties may mutually agree upon such language as they deem appropriate, if it reasonably reflects the intent and considerations set forth herein. Absent agreement, the Parties are strongly encouraged to consider and utilize the language suggested by the Energy Bureau.

C. *Modifications to Appendix F (Compensation), Base Rate of Proponent No. 3's ESSAs*

The Energy Bureau notes that the compensation structure established under Proponent No. 3 ESSAs contemplates a Capability Payment Price ("CPP") based on a specified dollar-per-MW-month amount (\$/MW-month) for the first Agreement Year, subject to a fixed annual escalator throughout the Term of the applicable ESSA. The Energy Bureau suggests that Appendix F (Compensation) of Proponent No. 3 ESSAs includes a table reflecting the applicable CPP for each Agreement Year during the twenty (20)-year term, as adjusted under the applicable annual escalator.

The Energy Bureau further notes that, for Proponent No. 3's ESSAs, no revised Best and Final Offer pricing was submitted because the initially submitted pricing proposal had been accepted and, therefore, no additional pricing proposal was submitted.¹⁷ Notwithstanding the foregoing, the Energy Bureau also notes that Section 9.6 of the approved Proponent No. 3 ESSAs expressly contemplates potential future adjustments to the compensation structure under specified circumstances.¹⁸ Section 9.6(a) provides that, upon PREPA's Emergence from Bankruptcy, the Parties shall implement an adjustment to the CPP established in Appendix F (Compensation).¹⁹ Likewise, Section 9.6(b) contemplates a potential adjustment if the applicable project achieves financing through the DOE-LPO program.

¹⁷ See PREPA March 15 Motion, Exhibit II.

¹⁸ See *Id.*

¹⁹ See *Id.*



Therefore, although no specific reduction or adjustment associated with such DOE-LPO financing has been incorporated into the compensation structure, the Parties shall remain subject to the adjustment mechanism contemplated under Section 9.6(b), and, if such financing is obtained, the Parties shall negotiate in good faith an appropriate adjustment to the compensation structure consistent with the terms and intent of Proponents No. 3's ESSAs.

The Energy Bureau recommends the following language for Section 2 (Monthly Fixed Payment) of Proponent No. 3's ESSAs:

2. Monthly Fixed Payment

For each Billing Period "n", the Parties shall calculate the monthly fixed payment for such Billing Period (the "Monthly Fixed Payment" or "MFP_n") as follows:

$$MFP_n = CPP \times MCC_n \times FAA_n \times PRA_n$$

where:

CPP = Capability Payment Price for such Billing Period, which in each Agreement Year shall equal the amount set out in the column captioned "CPP (\$/MW-Month of MCC)" that corresponds to such year:

Agreement Year	CPP (\$/MW-Month of MCC)
[1]	[•]
[2]	[•] [Escalated Amount]
...	...

provided that the values set out in the column captioned "CPP (\$/MW-Month of MCC)" shall be reduced, in the event of any Resource Provider refinancing (which Resource Provider may carry out in its sole discretion) following PREPA's emergence from the PREPA Bankruptcy or otherwise, to account for any savings accruing to Resource Provider from such refinancing in the following proportions: (i) for Resource Provider, sixty percent (60%), and (ii) for PREPA, forty percent (40%), calculated as percentages of the amount which equals the sum of (A) the difference between (1) the net present value of debt service obligations before the refinancing, and (2) the net present value of debt service obligations immediately upon the occurrence of the refinancing, in each case at a discount rate equal to the interest rate on outstanding senior debt owed to Project Lenders at the time of such refinancing, and (B) any net proceeds of such refinancing; and further subject to any additional adjustment contemplated under Section 9.6(b) in the event Resource Provider obtains financing through the DOE-LPO;

MCC_n = Monthly Contract Capability for such Billing Period as adjusted in accordance with Section **Error! Reference source not found.** (Error! Reference source not found.) of this Appendix;

FAA_n = Facility Availability Adjustment for such Billing Period, determined pursuant to Section **Error! Reference source not found.**



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PRA_n = *PREPA Risk Adjustment for such Billing Period, determined pursuant to Section Error! Reference source not found. (Error! Reference source not found.) of this Appendix.*

Consistent with the approach discussed above, the Parties may mutually agree upon such language as they deem appropriate, if it reasonably reflects the intent and considerations set forth herein. Absent agreement, the Parties are strongly encouraged to consider and utilize the language suggested by the Energy Bureau.

D. Modifications to Appendix F (Compensation), Base Rate Adjustment for Actual Cost of PREPA Interconnection Facilities (ESSAs and PPOAs)

Consistent with prior generation resource procurement processes reviewed by the Energy Bureau, the compensation and pricing structures contemplated under the PPOAs and ESSAs assume that the Resource Provider shall bear the costs associated with the interconnection of its project, including costs incurred on both the project side and the PREPA side of the Point of Interconnection, including the PREPA Interconnection Facilities. Specifically, the Accelerated Process RFP envisioned that proposals assume a PREPA Interconnection Facilities cost of \$20 million. In line with this requirement, the model contract provides that, if the actual PREPA Interconnection Facilities cost exceeds \$20 million, the resource provider may terminate the contract without further obligation. Conversely, if the actual PREPA Interconnection Facilities cost is less than \$20 million, the contract requires that the contract price for the resource be adjusted downward by an amount equal to the difference between \$20 million and the actual PREPA Interconnection Facilities cost, such that the resource provider's total payments over the term of the contract are reduced by that same equivalent amount.²⁰

Proponent No. 3 proposes eliminating the foregoing adjustment mechanism and revising the agreements to reflect the actual interconnection costs estimated for each project based upon existing interconnection studies prepared by LUMA and/or estimates provided by Proponent No. 3. According to Proponent No. 3, the current adjustment mechanism introduces uncertainty in future interconnection costs and the resulting contract price adjustments, which adversely affects the financing prospects of the projects.

Proponent No. 3's proposed modification appears to reflect an approach under which the proposed contract prices for each project incorporate the full interconnection costs to be borne by the Resource Provider, including the costs associated with the PREPA Interconnection Facilities, rather than relying on the \$20 million interconnection cost assumption contemplated in the model contract. This interpretation is consistent with other information in the record. The Energy Bureau notes that although detailed interconnection studies and cost estimates were not submitted as part of the proposals, the Energy Bureau has observed that, for Proponent No. 3, the record includes certain indicative estimates of PREPA Interconnection Facilities costs, including estimates prepared by LUMA at an earlier stage and internal estimates prepared by Proponent No. 3. Such estimates, in certain instances, suggest PREPA Interconnection Facilities costs below the \$20 million assumption contemplated in the Accelerated Process RFP. Thus, to the extent that the proposed prices incorporate PREPA Interconnection Facilities costs below the \$20 million level, application of the downward adjustment mechanism in Appendix F (Compensation) of the contracts could result in compensation levels that render Proponent No. 3's projects economically unfeasible. This is because the contractual adjustment mechanism presumes that the proposed prices were developed using the \$20 million benchmark; thus, if lower interconnection costs were already embedded in the proposed prices, the required

²⁰ See, with respect to Proponent No. 3's PPOAs, Item 4 of Appendix F (Compensation), and, with respect to Proponent No. 3's ESSAs, Item 8 of Appendix F (Compensation).



downward adjustment would effectively reduce compensation below the level assumed by Proponent No. 3, potentially resulting in a material shortfall.²¹

Based on the foregoing analysis, the Energy Bureau understands that the contract prices proposed by Proponent No. 3 already reflect the interconnection costs assumed for each individual project and, therefore, **FINDS** it reasonable to eliminate the downward adjustment mechanism in Item 4 of Appendix F of the Proponent No. 3 PPOAs and Item 8 of Appendix F of the Proponent No. 3 ESSAs. This determination is predicated upon the understanding that, for each project, the applicable Contract Price fully reflects all interconnection costs to be assumed by the Proponent No. 3, including the costs associated with the PREPA Interconnection Facilities, despite the basis upon which such costs may be estimated or determined, whether through the Proponent No. 3's internal analyses, LUMA's interconnection studies, subsequent updates thereto, or actual costs incurred. Any increase, variance, or discrepancy between the interconnection costs reflected in the applicable Contract Price and the final interconnection costs associated with the project shall be borne solely and exclusively by Proponent No. 3.

E. Modifications to Appendix B (PREPA Signing Conditions) (ESSAs and PPOAs)

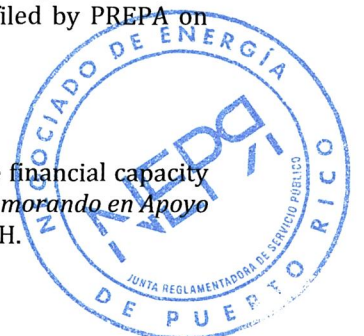
Appendix B, PREPA Signing Conditions, Item 1(k), of each of Proponent No. 3's PPOAs and ESSAs requires evidence demonstrating that Proponent No. 3 possesses the financial capacity to provide equity equal to at least (i) thirty percent (30%) of the projected costs to develop the Facility and (ii) the projected cost of the PREPA Interconnection Facilities Work, by the date on which it is expected to first draw funds under the applicable project financing documents. Proponent No. 3 proposes to eliminate this requirement. In support of its proposed deletion, Proponent No. 3 asserts that the payment guarantee, payment guarantee cross-default provisions, evidence of equity requirement, signing condition, and related provisions are excessive and duplicative of the performance security requirement, are inconsistent with prevailing U.S market standards, and therefore should be removed.²²

Based on the present record, the Energy Bureau is not persuaded that eliminating this requirement is warranted. The requirement serves as an important safeguard intended to provide reasonable assurance that Proponent No. 3 possesses the financial capacity to contribute the required equity financing and support the development of the projects, including the costs associated with the PREPA Interconnection Facilities Work. The Energy Bureau finds that some demonstration of financial capacity should remain a contractual requirement. However, the Energy Bureau further finds that the requirement is more appropriately addressed as a Condition Precedent to Closing rather than as a PREPA Signing Condition. The Energy Bureau affords significant weight to PREPA's prior determination, made as part of its evaluation and selection process, that Proponent No. 3 satisfied the applicable financial qualification requirements.²³ The final financing structure, equity commitments, lender requirements, and related financing arrangements are typically established and documented preceding Closing. The Energy Bureau **DETERMINES** that the requirement shall be retained but relocated to Appendix C as a Condition Precedent to Closing, where compliance may be demonstrated based upon the financing structure and commitments in effect at the time of Closing. The foregoing should not be construed to permit Proponent No. 3 to defer all efforts relating to the demonstration of its financial

²¹ See, in general, Proponent No. 3 Proposed Contracts, Appendix H (Compensation), Section 8. Additionally, although this matter was addressed at a high level, the Energy Bureau notes that, as part of the process of proposing modifications to the contracts, Proponent No. 3 and PREPA engaged in a limited exchange regarding Section 8 of Appendix F (Compensation), which appears to suggest that the proposed prices may have been based on PREPA Interconnection Facilities cost assumptions below the \$20 million benchmark, potentially in an effort to provide the most competitive offer possible. See *Informative Motion Regarding Negotiations with Proponent 3 and Memorandum of Law in Support of Request for Confidential Treatment* filed by PREPA on February 20, 2026, Proponent No. 3 Redline Contract, p. 107.

²² See Proponent No. 3 April 15 Letter, p. 4.

²³ PREPA stated in the Evaluation Criteria Form that Proponent No. 3's projects satisfy the financial capacity criteria. See *Moción en Cumplimiento de Resolución y Orden de 26 de septiembre de 2025 y Memorando en Apoyo a Solicitud de Confidencialidad* filed by PREPA on November 13, 2025, Annex 1, Attachment H.



capacity until the Closing Date. As contemplated by Section 2.3 of the PPOAs and ESSAs, following execution of the contracts, the Parties are expected to proceed diligently and in good faith with the activities, due diligence, and actions to satisfy the Conditions Precedent and facilitate the timely achievement of Closing. To the extent that information about the availability of equity commitments, financing arrangements, or other evidence of financial capacity becomes available before Closing, it would be prudent for Proponent No. 3 to inform PREPA on a continuing basis. Such disclosures may assist PREPA in monitoring the progress of the projects and provide additional assurance regarding Proponent No. 3's ability to secure the financing to successfully develop and implement the projects.

F. *Additional Modifications*

As the Energy Bureau previously recognized, the negotiation and refinement of the commercial terms of the contracts are matters that principally rest with the Parties. Consistent with their contractual obligations, the Parties are expected to continue working diligently and in good faith to address issues that may arise during project development and financing. The Energy Bureau, however, retains the authority to review and intervene, when appropriate and within its jurisdiction, to ensure that the resulting agreements and any modifications thereto remain just, reasonable, and consistent with the public interest.

The Energy Bureau notes that Proponent No. 3 has submitted additional proposed modifications to Proponent No. 3's ESSAs and Proponents No. 3's PPOAs. Consistent with the determinations in the March 26 Resolution, and without undertaking a comprehensive evaluation of each such modification in the present proceeding, the Energy Bureau reiterates that certain modifications intended to facilitate financing or enhance the financeability of the projects may warrant further consideration by the Parties through the contractual negotiation process. The Energy Bureau again encourages the Parties to continue engaging in good-faith discussions regarding such modifications where necessary to facilitate financing and project development, provided that any resulting modifications remain consistent with the public interest, do not adversely affect ratepayers, and do not result in increased costs to PREPA or ratepayers.²⁴ To the extent any such modifications fall within the Energy Bureau's jurisdiction or require its approval, the Parties may submit them for consideration under the applicable procedures.

III. **Confidential Designation and Treatment**

Act 57-2014²⁵ 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.²⁶ Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information provided that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected".²⁷ 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."²⁸

²⁴ For the avoidance of doubt, nothing in this Resolution and Order shall be construed as a determination by the Energy Bureau approving, rejecting, or otherwise adjudicating any proposed modification submitted by Proponent No. 3 that is not expressly addressed herein. The fact that the Energy Bureau has evaluated and provided guidance or recommendations with respect to certain proposed modifications should not be interpreted as a determination regarding any other proposed modifications submitted by Proponent No. 3. Such modifications have not been comprehensively evaluated in this proceeding, and the Energy Bureau reserves all rights to consider, evaluate, approve, reject, or otherwise address any such modifications in a future proceeding, if and when properly presented for consideration.

²⁵ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

²⁶ Section 6.15 of Act 57-2014.

²⁷ *Id.*

²⁸ *Id.* (Emphasis added).



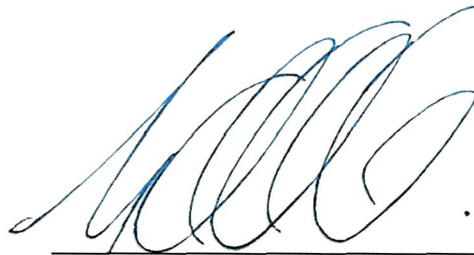
Upon review of PREPA's arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to Exhibits included as part of the PREPA April 27 Motion and May 13 Motion.

IV. Conclusion

For these reasons, the Energy Bureau **DIRECTS** PREPA and Proponent No. 3 to consider and implement revisions to the Proponent No. 3 PPOAs and ESSAs consistent with the guidance, determinations, and criteria in Part II of this Resolution and Order within ten (10) days of this notification. Any revised contractual language resulting from such efforts shall be submitted to the Energy Bureau within fifteen (15) days of completing such revised contractual language for the sole purpose of completing the Energy Bureau's files since approval of such agreed revision is not required as long as they stay within the guidelines presented above.

The Energy Bureau **WARNS** PREPA that noncompliance with this Resolution and Order, may carry the imposition of fines and administrative sanctions under Art. 6.36 of Act 57-2014.

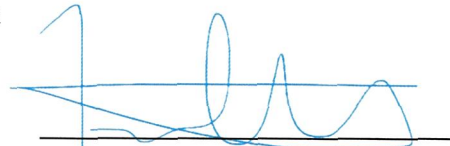
Be it notified and published.



Edison Avilés Deliz
Chairman



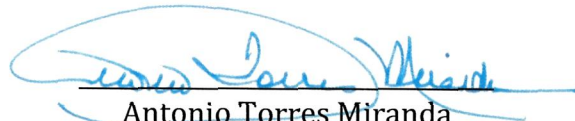
Lillian Mateo Santos
Associate Commissioner



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 May 22, 2026. I also certify that on May 22, 2026 a copy of this Resolution and Order was notified by electronic mail to the following: alexis.rivera@prepa.pr.gov; nzayas@gmlex.net; mvalle@gmlex.net; rcruzfranqui@gmlex.net; ysantiago@picoadvisors.com. I also certify that on May 22, 2026, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, on May 22, 2026.



Wanda I. Cordero Morales
Interim Clerk

