



GOVERNMENT OF PUERTO RICO

Puerto Rico Electric Power Authority
Governing Board

RESOLUTION 4775 APPROVAL OF SELECT PPOA TERMINATION AND REJECTION

- WHEREAS: The Puerto Rico Electric Power Authority (PREPA) is a public corporation and an instrumentality of the Government of Puerto Rico created by 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 83 authorizes PREPA to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers.
- WHEREAS: PREPA is party to sixty-five (65) different Power Purchase and Operating Agreements, master service agreements and related agreements, negotiations of which began in 2008, with execution occurring between 2011 and 2013; and of these sixty-five (65), approximately thirty-six (36), as further identified in Annex A, cover projects or potential projects that are non-operational and “non-shovel ready” (“**PPOAs**”) – meaning that the project has not reached an advanced enough stage of development to be considered ready for construction to begin in the near term.
- WHEREAS: On July 2, 2017, PREPA commenced proceedings under Title III of the Puerto Rico Oversight, Management and Economic Stability Act (“**PROMESA**”) before the District Court for the District of Puerto Rico (the “**PROMESA Court**”), which is being administered under Case No. 17-4780 (LTS); under PROMESA, PREPA, subject to the court’s approval, may assume or reject any executory contract, such as a PPOA.
- WHEREAS: When an executory contract is rejected under PROMESA, the contract will be deemed breached as of the day prior to PREPA’s Title III petition date and counterparties will have a right to file a claim for rejection damages, including for (i) the amount that would have been due to them under the PPOA or (ii) the amount of any other damages for which their PPOA may provide.



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WHEREAS: The prices agreed under these PPOAs are above current market prices, often by more than 40%, with uncapped escalation and charges for renewable energy credits; and PREPA management has determined in its business judgment that rejecting (through a filing with the PROMESA Court) and terminating (through contractual mechanisms) these contracts would provide forward cost savings to PREPA for the value of the contracts.

WHEREAS: Given the potential claims available to PPOA counterparties in the PROMESA rejection process, and the failure of the counterparties to the PPOAs to meet certain contractual obligations (including completing the project by specified milestones), PREPA is also seeking, in parallel with the PROMESA rejection process, to exercise contractual rights to terminate these PPOAs without liability for damages, which action may result in reduced liabilities to PREPA without material delays to the rejection process.

WHEREAS: PREPA now intends to seek approval from the Financial Oversight and Management Board ("**FOMB**") and Puerto Rico Energy Bureau ("**PREB**") for the rejection and termination process described above.

WHEREAS: PREPA's Governing Board deems the rejection and termination of the PPOAs, as further described in the memorandum from Fernando Padilla to José Ortiz dated March 25, 2020, to be in the best interest of PREPA and its revitalization and transformation process.

WHEREAS: PREPA is also in the process of finalizing the negotiations with the shovel-ready projects, as per the study conducted by an independent third party. However, some of the proponents of these projects have not been responsive to PREPA's approaches and requests. As such, the Governing Board has determined to set a deadline of April 30, 2020, for the shovel-ready projects to finalize the negotiations. If said projects fail to meet this deadline, they will be deemed rejected and terminated.

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

1. Approve (i) the rejection and termination of the PPOAs, including all related master services agreements or other agreements with non-shovel ready, non-operating projects, (ii) the submission of the rejection and termination of such PPOAs and related agreements to the FOMB and PREB for approval, and (iii) the execution of such ancillary documentation and the taking of such other action as may be reasonably necessary to implement the rejection and termination of the PPOAs and related agreements in accordance with the above.

2. Projects by developers which have been consummated with PREPA and meet the deadline of April 30, 2020 should proceed. All other projects are rejected and terminated, but are encouraged to participate in future Requests for Proposals (RFPs) for renewables. Management is instructed to approach the operational projects to achieve a 10% reduction and report to the Governing Board in April 2020, so that the Governing Board can determine whether to accept or reject these projects.

Approved in San Juan, Puerto Rico, on the twenty fifth day of March, two thousand twenty.



Eduardo Arosemena-Muñoz
Secretary of the Board