

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



IN RE: REQUEST FOR PROPOSAL FOR  
TEMPORARY EMERGENCY GENERATION

CASE NO.: NEPR-AP-2020-0001

SUBJECT: Request for Approval of Request  
for Proposals for Temporary Emergency  
Generation.

**RESOLUTION AND ORDER**

On February 12, 2020, the Puerto Rico Electric Power Authority ("PREPA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation* ("February 12 Filing"). The February 12 Filing included the following three (3) attachments: **Exhibit A: PREPA'S Chief Executive Order Recommendation Letter**, **Exhibit B: Request for Proposals Temporary Emergency Generation February 12, 2020 Confidential Draft** ("Proposed RFP"), and **Exhibit C: Business Case Assessment, Temporary Emergency Generation Capacity** ("Business Case Assessment").

The Proposed RFP, in turn, included the following documents: **Appendix A: Sites for Temporary Generation**, **Appendix B: Low Sulfur Fuel (diesel) Specifications**, **Appendix C: GT Protection Requirements**, **Appendix D: Act 2-2018 Sworn Statement Anti-Corruption Code**, **Appendix E: PREPA Bid Bond form**, **Exhibit A: Contract Draft**<sup>1</sup>; **Exhibit B: PREPA's RFP Guide**.<sup>2</sup> PREPA requested the Energy Bureau to treat the Proposed RFP and its attachments, as well as the Business Case as confidential documents.<sup>3</sup>

On February 25, 2020, PREPA submitted a document titled *Supplement to Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation* ("February 25 Filing"). The February 25 Filing included the following documents:

<sup>1</sup> The proposed contract is titled: *Lease and Operating Agreement relating to the emergency installation, lease and operation of dual-fuel fired, dispatchable power generation technology, located at [•], Puerto Rico as part of PREPA's Temporary Generation Program*. ("Proposed Dual-Fuel Units LOA").

<sup>2</sup> GUÍA PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVÉS DE SOLICITUD DE PROPUESTAS (*Request for Proposals*), 2016.

<sup>3</sup> See Memorandum of Law Requesting Confidential Treatment for Certain Exhibits Attached to the Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation, February 12, 2020 ("February 12 Memorandum"). Note, however, that PREPA did not submit a redacted copy of the foregoing documents with the February 12 Memorandum as required by the August 31, 2016 Resolution on Case No. CEPR-MI-2016-0009, *In re: Policy on Management of Confidential Information in Procedures before the Commission*, at p. 2 ("August 31, 2016 Resolution").



**Exhibit A:** *Lease and Operating Agreement*<sup>4</sup>, **Exhibit B:** *Load Forecast vs Generation Availability, Generation Availability/Outage Schedule, Updated 24 Sep 2020*, **Exhibit C:** *Load Forecast vs Generation Availability, Generation Availability without Costa Sur, January to December 2020* (the "Forecast") and, **Exhibit D:** *Puerto Rico Power Authority Generation Directorate Costa Sur Recovery Project Rev. 2/21/2020* ("Generation Directorate Report"). PREPA also requested the Energy Bureau to treat Exhibits A and D of the February 25 Filing as confidential documents.<sup>5</sup>

On March 3, 2020, the Energy Bureau issued a Resolution and Order ("March 3 Resolution and Order") through which it approved the Proposed RFP and granted PREPA's request for confidential designation and treatment with regard to the following documents: (a) the Proposed RFP and its attachments, (b) the Business Case Assessment, (c) the Proposed Renewable Energy Units LOA<sup>6</sup> and, (d) the Generation Directorate Report<sup>7</sup>, pursuant to the provisions of Article 6.15 of Act 57-2014.

The approval of the Proposed RFP is subject to PREPA's compliance with twelve (12) conditions.<sup>8</sup> Condition #11 specifically states that five (5) days **prior to the publication of the RFP**, PREPA shall submit to the Energy Bureau an updated version of the Proposed RFP covering the modifications established through the March 3 Resolution and Order.<sup>9</sup>

On March 5, 2020, in compliance with Condition #11 of the March 3 Resolution and Order, PREPA submitted a document titled *Motion to Submit Revised Proposed RFP Documents* ("March 5 Filing"). The March 5 Filing included the following documents: **Exhibit A:** *Request for Proposals, RFP 102750, Temporary Emergency Generation, March 5, 2020*

<sup>4</sup> *Lease and Operating Agreement relating to the emergency installation, lease and operation of [renewable energy] generation and battery energy storage technology, located at [•], Puerto Rico as part of PREPA's Temporary Generation Program* ("Proposed Renewable Energy Units LOA").

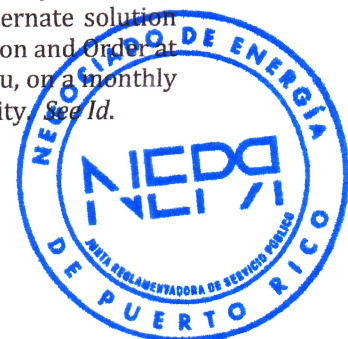
<sup>5</sup> *See Memorandum of Law Requesting Confidential Treatment for Certain Exhibits Attached to the Supplement to Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation* ("February 25 Memorandum"). Note, however, that PREPA did not submit a redacted copy of the foregoing documents, as required by the August 31, 2016 Resolution.

<sup>6</sup> Exhibit A of the February 25 Filing.

<sup>7</sup> Exhibit D of the February 25 Filing.

<sup>8</sup> *See* March 3 Resolution and Order at pp. 14-15.

<sup>9</sup> Among others, the Energy Bureau ordered, that before executing any LOA, but not later than **April 1, 2020**, PREPA shall provide to the Energy Bureau: (a) the final report assessing the damages of the Costa Sur Facility and (b) a detailed plan describing the proposed actions to be taken regarding the Costa Sur Facility, including, but not limited to, plans to repair or replace the Costa Sur Facility as well as any other alternate solution proposed by PREPA to substitute Costa Sur Facility base load generation. *See* March 3 Resolution and Order at pp. 14-15. Moreover, beginning on **March 31, 2020**, PREPA shall submit to the Energy Bureau, on a monthly basis, a Progress and Status Report on PREPA's response to the damages to the Costa Sur Facility. *See Id.*





*Confidential Draft* ("Revised Proposed RFP")<sup>10</sup>, **Exhibit B**: Revised Proposed Dual-Fuel Units LOA<sup>11</sup>, and **Exhibit C**: Revised Proposed Renewable Energy Units LOA.<sup>12</sup>

PREPA requested the Energy Bureau to designate and treat the Revised Proposed RFP and its attachments as confidential documents on the grounds that (i) they are part of the administrative competitive procurement process and shall be maintained confidential since such process has not concluded and (ii) that the documents include trade secrets and/or proprietary information.<sup>13</sup> In support of its arguments PREPA cited the provisions of Act 80-2011, Article 6.15 of Act 57-2014, and Regulation 8543, and made reference to the arguments presented in the February 12 Memorandum.<sup>14</sup>

On March 31, 2020, PREPA filed a document titled *Motion to Inform* in which PREPA enclosed an Attachment titled *Costa Sur Damage Assessment and Repairs Project Status Report* dated March 31, 2020 ("March 31 Compliance Filing"). Finally, on April 1, 2020, PREPA filed a document titled *Motion to Submit Reports Assessing Damages* ("April 1 Compliance Filing"). The April 1 Compliance Filing contained certain reports regarding the inspections conducted at the Costa Sur Site. The Energy Bureau is currently evaluating the March 31 Compliance Filing and the April 1 Compliance Filing in order to determine if they meet the requirements of the March 3 Resolution.

It is important to note that, Act 57-2014 establishes several proceedings to protect information that is deemed privileged or confidential. It allows any person who is required to submit information to the Energy Bureau that believes that such information is privileged or in need of confidential protection, to request the Energy Bureau such treatment. Under the provisions of Act 57-2014, the Energy Bureau shall afford protection to privileged or confidential information after an evaluation of such information.<sup>15</sup>

<sup>10</sup> The Revised Proposed RFP does not include the attachments, except for the Revised Proposed Dual-Fuel Units LOA and the Revised Proposed Renewable Energy Units LOA, which were identified as Exhibits B and C, respectively, on the March 5 Filing.

<sup>11</sup> *Lease and Operating Agreement relating to the emergency installation, lease and operation of dual-fuel fired, dispatchable power generation technology, located at [•], Puerto Rico as part of PREPA's Temporary Generation Program* ("Revised Proposed Dual-Fuel Units LOA").

<sup>12</sup> *Lease and Operating Agreement relating to the emergency installation, lease and operation of [renewable energy] generation and battery energy storage technology, located at [•], Puerto Rico as part of PREPA's Temporary Generation Program* ("Revised Proposed Renewable Energy Units LOA").

<sup>13</sup> See *Memorandum of Law Requesting Confidential Treatment to the Exhibits Attached to the Motion to Submit Revised Proposed RFP Documents* ("March 5 Memorandum"). Note, however, that PREPA did not submit to the Energy Bureau a redacted copy of the foregoing documents with the March 5 Memorandum as required by the August 31 Resolution.

<sup>14</sup> *Id.* at p. 2.

<sup>15</sup> See Act 57-2014, Article 6.15.



To that effect, Section 1.15 of Regulation 8543<sup>16</sup> allows a person that must submit information to the Energy Bureau to request the protection of the information that is privileged or confidential. Moreover, Article 10.2 of Regulation 8815 establishes that during an RFP process, proprietary and trade secret information will be protected from disclosure, except as required by law or court order.<sup>17</sup>

As expressed by the Energy Bureau in the March 3 Resolution and Order, during an RFP evaluation process, the communications between the Energy Bureau and PREPA shall be maintained confidential while the administrative competitive procurement process is ongoing.<sup>18</sup> Furthermore, PREPA may also request the Energy Bureau to grant confidential protection to information that is privileged or confidential, and that belongs to PREPA or to a Proponent. For example, information protected as privileged or confidential includes, but is not limited to, costs and profitability information.<sup>19</sup> It is well established that the protection of confidential or privileged information remains a duty of both PREPA and the Energy Bureau.

Although some of the information designated as confidential under an ongoing RFP process may be disclosed once the contract is executed, some information, particularly the one that has been granted a protection for being privileged, proprietary or trade secrets, must remain as such.<sup>20</sup> The confidential protection under those circumstances survives the conclusion of the RFP proceeding. Particularly, information that has been regarded as proprietary or privileged must remain as such and it is PREPA's obligation to maintain it as confidential since the right to protect the privileged information belongs to the Proponent.<sup>21</sup>

After the conclusion of an RFP process, PREPA shall determine whether or not information and materials provided by a Proponent are confidential, according to Article 10.2 of Regulation 8815. Therefore, as established in both, the legislation and the regulations applicable to the privileged or confidential information that is submitted to the Energy Bureau, both the Energy Bureau and PREPA have the obligation to preserve the confidentiality and privilege.

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<sup>16</sup> *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, December 18, 2014.

<sup>17</sup> See Regulation 8815, Article 10.2.

<sup>18</sup> See Article 4.2, Regulation 8815; (“[t]hese communications shall be maintained confidential while the administrative competitive procurement process is ongoing”) and March 3 Resolution and Order at pp. 12-13.

<sup>19</sup> See Article 7.1(d), Regulation 8815.

<sup>20</sup> See Article 10.2 of Regulation 8815.

<sup>21</sup> See Article 10.2 of Regulation 8815.





Upon examining the arguments presented by PREPA in the March 5 Memorandum, the applicable law and the procedural requirements established by the Energy Bureau, the Energy Bureau **GRANTS** confidential designation and treatment for the Revised RFP and its attachments.

Notwithstanding the foregoing, the Energy Bureau **ORDERS** PREPA to, within five (5) days from the notification of this Order:

- (a) Submit a redacted copy of (i) the Proposed RFP with Appendixes A, B, C, D, and E and their corresponding Exhibits; (ii) Exhibits A, B, and C of the February 25 Filing; and (iii) the Revised RFP with all Appendixes and their corresponding Exhibits and Exhibits B and C of the March 5 Filing.<sup>22</sup>
- (b) Upload copies of the documents described in item (a) above in a conspicuous area of its website for easy access by the general public; and
- (c) File a motion before the Energy Bureau certifying its compliance with item (b) above.

The Energy Bureau **REMINDS** PREPA its obligation to comply with Conditions #6 to #9 of the March 3 Resolution and Order. Moreover, Energy Bureau **WARNS** PREPA that noncompliance with any provision of this Order, may result in the imposition fines of up to twenty five thousand dollars (\$25,000) in accordance with Act 57-2014 and the applicable Energy Bureau's regulations or any other appropriate administrative actions, as deemed appropriate by the Energy Bureau.

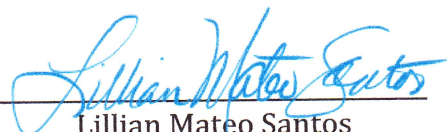
Be it notified and published.



Edison Avilés Deliz  
Chairman



Ángel R. Rivera de la Cruz  
Associate Commissioner

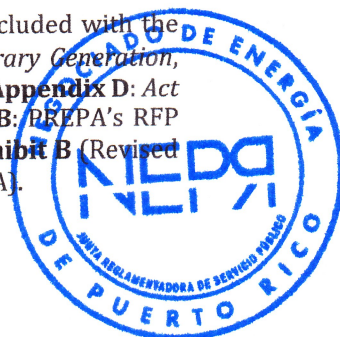


Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner

<sup>22</sup> For the purpose of this Order, the attachments of the Revised Proposed RFP are those included with the Proposed RFP (February 12 Filing) and identified as follows: **Appendix A:** Sites for Temporary Generation, **Appendix B:** Low Sulfur Fuel (diesel) Specifications, **Appendix C:** GT Protection Requirements, **Appendix D:** Act 2-2018 Sworn Statement Anti-Corruption Code, **Appendix E:** PREPA Bid Bond form, **Exhibit B:** PREPA's RFP Guide. It also includes those submitted with the March 5 Filing and identified as follows: **Exhibit B** (Revised Proposed Dual-Fuel Units LOA) and **Exhibit C** (Revised Proposed Renewable Energy Units LOA).

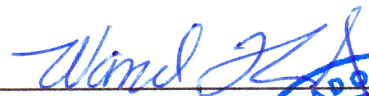




## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on April 10, 2020. I also certify that on April 10, 2020 a copy of this Resolution and Order was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aepr.com, c-aquino@prepa.com, and kbolanos@diazvaz.law. I also certify that today, April 10, 2020, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today April 10, 2020.

  
Wanda I. Cordero Morales  
Clerk

