

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

**NEPR**

**Received:**

**Jun 17, 2020**

**1:22 PM**

IN RE: CERTIFICATE OF ENERGY  
COMPLIANCE

CASE NO. **NEPR-AP-2020-002**

SUBJECT: Submission of Documents;  
Request for Confidential Treatment in  
Accordance with Act 29, 57, and 120

**PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY'S MOTION  
SUBMITTING DOCUMENTS AND REQUESTING CONFIDENTIAL TREATMENT**

**COMES NOW** the Puerto Rico Public-Private Partnerships Authority (the "P3 Authority") and pursuant to Act 29-2009, 27 P.R. Laws Ann. §2601 *et seq.* ("Act 29"), Act 57-2014, 22 P.R. Laws. Ann. §1051 *et seq.* ("Act 57"), and Act 120-2018, 22 P.R. Laws. Ann. §1111 *et seq.* ("Act 120") (each as amended), respectfully submits:

1. The P3 Authority is submitting with this Motion a Memorandum addressing certain specific items regarding the Preliminary Contract,<sup>1</sup> as well as an amendment to the Preliminary Contract further clarifying that no provision under such contract is meant to restrict or limit in any way the rights, responsibilities or authority granted to PREB under the applicable laws and regulations. The Memorandum and its attachment merely clarify issues already addressed in the P3 Authority's original submission.
2. The P3 Authority respectfully requests that the PREB take into consideration the Memorandum and its attachment in considering and issuing the Certificate of Energy Compliance required under Act 120.

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<sup>1</sup> Capitalized terms not otherwise defined have the definition set forth in Act 120 and/or in the P3 Authority's Request dated May 18, 2020.

3. Furthermore, the P3 Authority requests that the PREB maintain the documents confidential until the execution of the Transformation Contract. The request for confidential treatment is made pursuant to PREB's laws and regulation providing for protection of information and documents that are privileged or declared confidential pursuant to the provisions of law or regulation. See Art. 6.15 of Act 57; see also, as persuasive authority, Art. 1.15 of Regulation 8701 of PREB.
4. As explained in the "Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment of Documents Submitted to PREB" filed by the P3 Authority on May 18, 2020,<sup>2</sup> the Preliminary Contract (which includes the amendment submitted with the Memorandum) must be kept confidential until its execution, at which time non-confidential portions of the same will be disclosed. See section 9 of Act 29, made applicable to this proceeding through section 4 of Act 120, 22 Laws P.R. Ann. §1114; "Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contract and Sale Contracts for the Transformation of the Electric System under Act no. 120-2018" (the Act 120 Regulation), Art. 5.1(a)(ii)(6) and Art. 11.2; see also Art. 4.5(n) and 4.7(b)(iii)(3) of the same regulation (further reinforcing the confidential treatment of documents concerning proposals and negotiations, at least until the execution of the contract with the selected proponent). The Memorandum included as an exhibit to this motion must also remain confidential at least until the execution of the contract, at which time information and documents not otherwise confidential related to the transaction will be disclosed, in accordance with Act 29 and the Act 120 Regulation. Such Memorandum includes information as to the selected proponent, information related to or

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<sup>2</sup> To avoid needless repetition, the P3 Authority hereby incorporates by reference the arguments made in such request in connection with confidentiality; such arguments apply equally to the submissions made herewith.

arising out of the negotiation process with the selected proponent, and relating to terms and conditions of the Preliminary Contract, all of which must remain confidential while the evaluation and negotiation process remains open. As previously explained, such process remains open until the Preliminary Contract is approved at all required levels (which includes several approvals that must be sought *after* the issuance of the Certificate of Energy Compliance) and the Transformation Contract is executed. See Act 120 Regulation, Art. 5.1(iii), 5.1(iv).

5. Although the full legal arguments for granting confidentiality treatment to the Memorandum and amendment to contract submitted herewith are included in the preceding paragraphs and in the “Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment of Documents Submitted to PREB” filed by the P3 Authority on May 18, 2020, which we incorporate by reference, the chart below references the two confidential documents submitted herewith and summarizes the reasons for granting confidential treatment:

<b>Document</b>	<b>Pages in which Confidential Information Is Found</b>	<b>Date of Filing</b>	<b>Summary of Legal Basis for Confidentiality Protection</b>	<b>Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality</b>
Memorandum (Ex. 1 PREB Confidential)	PREB-00631 - PREB-00632	June 9, 2020	Art. 9(i) Act 29 provides for confidentiality of documents and information regarding P3 process until execution of the Transformation Contract. Art. 5.1(a)(ii)(6) of the Act 120 Regulation provides for confidentiality of all proposals, evaluations,	The Memorandum discusses several provisions of the Preliminary Contract and, as such, is subject to the same confidentiality provisions that govern the Preliminary Contract.

			discussions, and negotiations until execution of the Transformation Contract, at which time the P3 Authority may disclose non-confidential information and documents. See also Art. 11.2 of the Act 120 Regulation.	
Pages of the Preliminary Contract with Amendments (attached to <b>Ex. 1</b> PREB Confidential)	PREB-00633 through PREB-00644	June 9, 2020	See above.	The Preliminary Contract reflects the proposal by the Selected Proponent and the result of the negotiations between the Partnership Committee and the Selected Proponent as of the date of filing. It is not an executed contract and does not put an end to the P3 process. Thus, the evaluation, selection and negotiation process may not be deemed concluded..

**WHEREFORE**, the P3 Authority respectfully requests that PREB take notice of the documents submitted with this Motion and **GRANT** the request for confidentiality.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 17th day of June 2020.

**IT IS HEREBY CERTIFIED** that on this same date, we electronically filed the foregoing with PREB through its filing system at <http://www.radicacion.energia.pr.gov>.

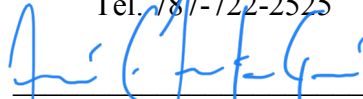
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