

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

**NEPR**

**Received:**

**Feb 9, 2021**

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**IN RE:** IMPLEMENTATION OF THE  
PUERTO RICO ELECTRIC POWER  
AUTHORITY INTEGRATED RESOURCE  
PLAN AND MODIFIED ACTION PLAN

**CASE NO.:** NEPR-MI-2020-0012

**SUBJECT:** Draft Procurement Plan

**MOTION IN COMPLIANCE WITH ORDER SUBMITTING LIST OF PROJECTS  
PREPA WILL POTENTIALLY CHOOSE TO ACQUIRE 150 MW OF RENEWABLE  
ENERGY**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (“PREPA”) through the undersigned legal representation and respectfully submits and requests as follows:

1. On February 3, 2021, the Puerto Rico Energy Bureau for the Public Service Regulatory Board (“Energy Bureau”) entered Resolution and Order (“Order”) in response to PREPA’s “*Motion Submitting Letter from the Financial Oversight & Management Board for Puerto Rico Regarding Procurement Plan and Renewables RFP Recommendations*” (“Motion Submitting the Oversight Board’s Letter”) in which PREPA informed the Energy Bureau that it would incorporate comments and recommendations suggested by the Oversight Board’s from letter sent on January 29, 2021.
2. In said motion, PREPA cited precedent in relation to the Non-Operational Amended & Restated Power Purchase Operating Agreements (“PPOA”) submitted for approval by the Energy Bureau, Cases Nos. NEPR-AP-2020-003 to NEPR-AP-2020-0018. The citation was in reference to a discussion on the applicable process with the Financial Oversight & Management Board for Puerto Rico (“Oversight Board”) related to the approval of PPOA contracts.

3. In response, the Energy Bureau ordered PREPA, to submit, on or before February 9, 2021 the following:

A list of the renewable energy projects PREPA will choose to acquire 150 MW from amongst the 16 proposed projects for which PREPA had requested and later withdrew petitions for the Energy Bureau's approval to execute the corresponding Power Purchase and Operation Agreements ("PPOAs"). Said list shall be submitted by PREPA on or before February 9, 2021. PREPA shall include in its filing a timeline for the filing of the draft PPOAs for the Energy Bureau's evaluation and approval.

4. In compliance with the February 3, 2021 Order, PREPA 1) hereby submits, as Exhibit A, a draft list of the projects PREPA will potentially choose to acquire 150 MW of renewable energy and 2) informs the Energy Bureau that it should be filing the draft PPOA's for the Energy Bureau's evaluation and approval in the next few weeks.
5. On February 3, 2021, PREPA sent the Oversight Board recommendations for potential projects to acquire 150 MW of renewable energy and draft contracts. On February 5, 2021, the Oversight Board sent PREPA a request for information ("RFI") regarding the projects. Currently PREPA is in the process of gathering the information from the proponents to adequately respond to the RFI. Barring unexpected circumstances in this process, PREPA expects to submit the PPOA's for approval with the Energy Bureau in the next few weeks, as soon as it receives Oversight Board approval of the projects.
6. Additionally, PREPA requests that Exhibit A be treated as confidential as it is part of PREPA's still ongoing deliberative process. The project list is currently a working document which is not yet final and is still being deliberated within PREPA and with the Oversight Board for a final determination.
7. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act No. 57 of 2014, as amended ("Act 57-2014"), provides that "any person who is required to submit

information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such[.]”<sup>1</sup> “If the Energy [Bureau], after the appropriate evaluation, believes such information should be protected, it 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.”<sup>2</sup> If the Energy Bureau determines that the information is confidential, “the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements.”<sup>3</sup> “The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.”<sup>4</sup>

8. Exhibit A includes a draft list that is not yet final and is being used to deliberate on managements’ decisions and is therefore considered privileged.<sup>5</sup>
9. Access to public information is not absolute and there are various exemptions for the access of public information.<sup>6</sup> These exemptions are:

(a) a law so declares; (2) the communication is protected by one of the evidentiary privileges that the citizens may invoke; (3) revealing the information may injure the fundamental rights of third parties; (4) it deals with the identity of a confidante and (5) it is ‘official information’ pursuant to Rule 514 of Evidence, 2009, 32 LPRA Ap. VI (formerly Rule 31 of Evidence 32 LPRA for. Ap. IV). *Colon Cabrera v. Caribbean Petroleum, supra.*<sup>7</sup>

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<sup>1</sup> 9 L.P.R.A § 1054n.

<sup>2</sup> *Id.* at § 1054n(a).

<sup>3</sup> *Id.* at § 1054n(c).

<sup>4</sup> *Id.* at § 1054n(d).

<sup>5</sup> See Exhibit B of the Motion.

<sup>6</sup> *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59, 82 (2017).

<sup>7</sup> *Id.* at 83.

10. A claim of confidentiality on the part of the government can prosper when the information is considered official privileged information, among others. *Colon Cabrera v. Caribbean Petroleum, supra*; *Santiago v. Bobb y El Mundo, Inc.*, 117 DPR 153 (1986). Rule 514 of Evidence, *supra*, establishes the privilege of official information in our system.<sup>8</sup> Among the fundamental categories of privileged official information is the one used by public officers during the deliberative process related to the ongoing development of public policy.<sup>9</sup>
11. Restricting the access to information used during the deliberative process “protects “against *premature disclosure* of proposed policies and decisions before they have been finally formulated or adopted.”<sup>10</sup>
12. PREPA’s Regulation No. 6285 from January 10, 2001, known as *Regulation for the Document Administration Program of the Electric Power Authority* (“Regulation 6285”)<sup>11</sup>, regulates PREPA’s administration of documents and defines which categories of documents are considered confidential. Pursuant to Regulation 6285, information related to the deliberative process used to implement public policy is confidential.<sup>12</sup>
13. Pursuant to the above, PREPA requests Exhibit A to be classified as Confidential as it is part of PREPA’s still ongoing deliberative process, the information on it is not final, and includes deliberations that are still in progress. Therefore, the content in the draft complies with the exception of the public information confidentiality according to the Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act No. 57 of

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 86.

<sup>10</sup> *Id.* at 87.

<sup>11</sup> Duly recorded in the Puerto Rico Department of State on January 11, 2011.

<sup>12</sup> Regulation 6285, Sec. V (16).

2014, as amended (“Act 57-2014”), PREPA’s Regulation No. 6285 from January 10, 2001, known as *Regulation for the Document Administration Program of the Electric Power Authority* (“Regulation 6285”)<sup>13</sup>, and the jurisprudence of the Supreme Court of Puerto Rico<sup>14</sup>. Consequently, the Energy Bureau should maintain it under seal.<sup>15</sup>

WHEREFORE, in compliance with order, PREPA SUBMITS draft List of Potential Projects for PREPA to Acquire 150 MW of Renewable Energy, requesting that it be designated as confidential, and informs timeline for submittal of PPOA’s for Energy Bureau approval.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of February 2021.

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<sup>13</sup> Duly recorded in the Puerto Rico Department of State on January 11, 2011.

<sup>14</sup> See *Bhatia Gautier v. Gobernador*, 199 DPR 59, 83 (2017); *Colón Cabrera v. Caribbean Petroleum*, 178 DPR 582, 591 (2007), and *Santiago v. Bobb y El Mundo, Inc.*, 117 DPR 153 (1986).

<sup>15</sup> See Exhibit B of the Motion.

Exhibit A to the Motion

List of Potential Projects for PREPA to Acquire 150 MW of Renewable Energy