

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

0124
NEPR

Received:

Nov 12, 2021

3:19 PM

IN RE:

THE IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED RESOURCE
PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Motion submitting
Information Related to Phase III of the
Tranche I RFP in Compliance with
November 8 Resolution and Order

**MOTION SUBMITTING COPIES OF COMMUNICATIONS TO PROPONENTS
SELECTED TO PROCEED TO PHASE III RELATED TO THE TRANCHE I RFP**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority, through its counsel of record, and respectfully submits and prays as follows:

1. On November 8, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (the “Energy Bureau”) issued a Resolution and Order in the captioned case (the “November 8 Order”) in which it addressed PREPA’s non-compliance with the Energy Bureau’s orders concerning submission of pricing information per technology group regarding the Tranche 1 RFP.

2. As part of the November 8 Order, the Energy Bureau ordered PREPA to:

- (i) on or before November 12, 2021, submit the results of Selection of Proposals for Phase III with the pricing evaluation per technology group required by the Energy Bureau together with copies of any communications to proponents selected to proceed to Phase III; and
- (ii) on or before December 1, 2021, complete Phase III and submit to the Energy Bureau for its evaluation and approval the corresponding draft Power Purchase and Operation Agreements.

3. In response to those directives, on November 9, 2021, PREPA filed “*Motion Submitting Pricing Information Per Technology Group Regarding the Tranche 1 RFP and Request to Lift Imposition of Sanctions*” (the “Motion to Lift Sanctions”). In the November 9 submittal, PREPA, among other things, informed the Energy Bureau that it understood it had complied with the submittal of the pricing information per technology group regarding the Tranche 1 RFP and thus requested the lift of sanctions imposed. Notwithstanding, PREPA submitted, under seal, the results of Selection of Proposals for Phase III with the pricing evaluation per technology group, as requested.

4. Pending to submit were the communications to proponents related to Phase III. Accordingly, and in compliance with the November 8 Order, PREPA hereby submits copies of any communications to proponents selected to proceed to Phase III. Attachment A.

5. Given that the requested copies of communications to proponents selected to proceed to Phase III are currently part of the ongoing deliberative process for the Tranche 1 RFP they are confidential in nature and must remain under seal.

6. In general, the documents in possession of a corporation like PREPA are presumed public. However, access to public information is not absolute and there are various exemptions for access to public information.¹ These exceptions are:

(1) **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.²

¹ *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59, 82 (2017) (emphasis added).

² *Id.* at 83.

7. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, 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[.]”³ “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.”⁴ 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.”⁵ “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.”⁶

8. In the exercise of its powers the Energy Bureau and PREPA approved Regulation 8815 which has force of law.⁷ Pursuant to Section 4.2 of Regulation 8815, communications between the Energy Bureau and PREPA shall be maintained confidential while the administrative competitive procurement process is ongoing. Also, a participant in a request for proposals process may request the confidential treatment of all or a portion of the information submitted as part of an RFP.

³ *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 L.P.R.A. §§ 1051-1056 (“Act 57”) at Art. 6.15.

⁴ *Id.* at Art. 6.15 (a).

⁵ *Id.* at Art. 6.15 (c).

⁶ *Id.* at Art. 6.15 (d).

⁷ *Id.* at Art. 6.3 (b); *see also Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, as amended, 22 L.P.R.A §§ 191-240 (“Act83”) at Sec. 5 (“The regulations so adopted shall have the force of law once the provisions of Act No. 38-2017, the *Government of Puerto Rico Uniform Administrative Procedure Act*, are complied with.”)

9. Lastly, PREPA adopted the *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*.⁸ Pursuant to Regulation 6285, documents including information related to the evaluation of offers or requests for bids are confidential while the evaluation, adjudication and award processes are still ongoing.⁹

10. Pursuant to the above, PREPA respectfully requests confidential treatment of the copies of any communications to proponents selected to proceed to Phase III as these are part of the ongoing deliberative process for the Tranche 1 RFP which has yet to be awarded.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Energy Bureau 1) find PREPA in compliance with the November 8 Order in relation to the submittal of the communications to proponents selected to proceed to Phase III, and 2) grant confidential treatment to the documents in Attachment A as these are currently part of a deliberative process within PREPA.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of November 2021.

⁸ PREPA, *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*, No. 6285 (Jan. 10, 2001) (“Regulation 6285”).

⁹ *Id.* at Sec. V, ¶ 13.

s/ Maralíz Vázquez-Marrero
Maralíz Vázquez-Marrero
TSPR 16,187
mvazquez@diazvaz.law

s/ Katuska Bolaños
Katuska Bolaños
TSPR 18,888
kbolanos@diazvaz.law

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.
290 Jesús T. Piñero Ave.
Oriental Tower, Suite 803
San Juan, PR 00918
Tel.: (787) 395-7133
Fax. (787) 497-9664

CERTIFICATE OF SERVICE

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at margarita.mercado@us.dlapiper.com and laura.rozas@us.dlapiper.com.

In San Juan, Puerto Rico, this 12th day of November 2021.

s/ Maraliz Vázquez Marrero
Maraliz Vázquez Marrero

Attachment A

Communications to proponents selected to proceed to Phase III

<https://diazvaz->

my.sharepoint.com/:f:/g/personal/mvazquez_diazvaz_law/EknPXBrCMiVEjSr3pDVpQA4BnjBX9zofpCYpBvKqnZsIog?e=T0zMkv