

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

NEPR Received: Apr 28, 2022 7:52 PM
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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: Memorandum of Law in Support
of Request for Confidential Treatment of
Attachment A

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR
CONFIDENTIAL TREATMENT OF ATTACHMENT A**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (“**PREPA**”), through its counsel of record, and respectfully submits and prays as follows:

PREPA respectfully submits that the Informative Motion & Responses attached as Attachment A of this request (such attachment and all exhibits, the “**Responses**”) is confidential and therefore, should remain under seal until *after* PREPA awards the contracts for tranche 1 of the Request for Proposals for Renewable Energy Generation and Energy Storage Resources (“**Tranche 1 RFP**” or “**Tranche 1**”), and the Tranche 1 RFP process becomes final. The Responses discuss detailed information of ongoing negotiations, strategies to prepare documents to be negotiated and proposals that are still being considered by the PREPA Tranche 1 RFP Evaluation Committee as part of the Tranche 1 RFP process, which *is not* final. The exhibits discuss detailed information related to virtual power plant (“**VPP**”) and utility-scale battery energy storage proposals that likewise remain under evaluation by the PREPA Tranche 1 RFP Evaluation Committee as part of the Tranche 1 RFP process. Granting confidential designation to the Responses is of paramount importance to maintain the integrity of the ongoing process and negotiations.

The confidentiality request herein made is supported by applicable laws and regulations.

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

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.

Id. at 83.

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[.]” Act 57 at Art. 6.15. “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.” *Id.* at Art. 6.15(a). 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.” *Id.* at Art. 6.15(c). “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.” *Id.* at Art. 6.15(d).

In the exercise of its powers the Energy Bureau and PREPA approved Regulation 8815

which has force of law. *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 (“**Act 83**”) 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.”). 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.

Lastly, PREPA adopted the *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*, No. 6285 (Jan. 10, 2001) (“**Regulation 6285**”). 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. *Id.* at Sec. V, ¶ 13.

As stated above, the Responses discuss detailed information related to ongoing negotiations, strategies to prepare documents to be negotiated and proposals in the Tranche 1 RFP process, which, pursuant to applicable law and regulation are confidential until the adjudication and award process is final.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau to determine that the Responses are confidential and to enter an order directing the Clerk of the Energy Bureau to maintain the Responses under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of April 2022.

/s Maralíz Vázquez-Marrero

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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 28th day of April 2022.

Attachment A

(Submitted under seal)