

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

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| NEPR Received: Aug 13, 2022 11:32 AM |
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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: Motion to Submit Additional
Executed PPOA in Compliance with the July 8
Resolution and Order

**MOTION TO SUBMIT ADDITIONAL EXECUTED PPOA IN COMPLIANCE
WITH JULY 8 RESOLUTION AND ORDER**

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:

1. PREPA hereby adopts by reference and reiterates the procedural background and history detailed in the “*Motion to Submit Execution Copies of PPOAs in Compliance with the April 27 and June 13 Orders, Request for Additional Time to Submit Certain PPOAs and Memorandum of Law Requesting Confidential Treatment of PPOAs and Exhibits*” filed on June 30, 2022 (“June 30 Motion”), the “*Amended Motion to Submit Confidential and Redacted Execution Copies of PPOAs*” filed on July 12, 2022 (“July 12 Motion”) and the “*Motion to Submit Additional PPOAs in Compliance with July 8 Resolution and Order*” filed on August 4, 2022 (“August 4 Motion”).

2. As stated in the August 4 Motion, PREPA has been engaged in further terms and pricing negotiations with two other PPOA proponents to further the Tranche 1 RFP targets. PREPA has continued to engage with these proponents (while ensuring fair treatment of proponents who have already signed) because it understands the need for, and desires, additional renewable energy generation capacity and views the economies of scale offered by portfolios of projects as beneficial for ratepayers. After initially indicating that it could not meet the LCOE targets, one of these

proponents has come through, and PREPA has been able to execute a PPOA with this proponent. This PPOA is hereby included as **Exhibit A** to this motion. Regarding the other proponent, PREPA is currently engaged in further negotiations involving aspects related to interconnection, pricing and BESS project issues. Accordingly, given the ongoing nature of these negotiations, the redacted information contained in **Exhibit A**, under applicable law and regulation, is confidential until the adjudication and award process of the RFP is final. Therefore, PREPA hereby requests the Energy Bureau to determine that the redacted information in the documents included as **Exhibit A** to this motion is confidential. Thus, the unredacted copies shall remain under seal.

3. PREPA submits to the Energy Bureau that the information redacted in the public versions of **Exhibit A** should be maintained confidential not only because it currently affects the deliberative process of the Tranche 1 RFP given continued negotiations with proponents but also because there is information that is considered critical energy infrastructure information (“CEII”) that cannot be disclosed to the public. To protect such confidentiality, PREPA has redacted the transmitting utility maps and diagrams schematics from the PPOAs and requests the Energy Bureau to determine that such information is CEII and thus, confidential and to maintain the public files with the redaction already provided and the unredacted versions under seal.

4. Applicable laws and regulations support the confidentiality request herein made. 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’ under 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.

5. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*¹ 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).

6. In exercising its powers, the Energy Bureau and PREPA approved Regulation 8815, which

¹ *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 L.P.R.A. §§ 1051-1056 (“Act 57”).

has the force of law. *Id.* at Art. 6.3(b); see also Act 83² 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 remain confidential while the administrative competitive procurement process is ongoing.

7. 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 on evaluating offers or bids requests, are confidential while the evaluation, adjudication, and award processes are still ongoing. *Id.* at Sec. V, ¶ 13.

22. Federal and Puerto Rico laws protect the confidentiality of CEII, the public disclosure of which may pose a security threat in that the information could be useful to a person or group planning an attack on critical infrastructure. *See, e.g.*, 18 C.F.R. § 388.113, as amended by Federal Energy Regulatory Commission (“FERC”) Order No. 683, *Critical Energy Infrastructure Information* (issued September 21, 2006); *USA Patriot Act of 2001*, § 1016, creating the *Critical Infrastructures Protection Act of 2001*, including 42 U.S.C. § 5195c(e) (defining Critical Infrastructure). FERC regulations subject such information to limitations on use and disclosure to “ensure that information deemed CEII stays out of the possession of terrorists.” 18 C.F.R. § 388.113(d)(4). *Off. of People's Counsel v. Pub. Serv. Comm'n.*, 21 A.3d 985, 991, Util. L. Rep. P 27157, 2011 WL 2473405 (D.C. App. 2011).

23. Under the Critical Infrastructures Protection Act of 2001, the term “critical infrastructure” means “systems and assets, whether physical or virtual, so vital to the United States that the

² *Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, as amended, 22 L.P.R.A §§ 191-240 (“Act 83”).

incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” 42 U.S.C. § 5195c(e). In 2006, FERC Order no. 683 amended the regulations for gaining access to CEII and simplified procedures for obtaining access to CEII without increasing the vulnerability of the energy infrastructure and ensuring that access to CEII does not facilitate acts of terrorism.

24. A utility is not required to obtain FERC or other federal government approval to designate information as CEII. For example, information required by FERC’s Annual Transmission Planning and Evaluation Report, Form No. 715 (“FERC No. 715”) is *de facto* considered CEII and is automatically afforded heightened protections. FERC No. 715 requires that any transmitting utility that operates integrated (non-radial) transmission facilities at or above 100 kV must annually submit information including but not limited to: Power Flow Base Cases, Transmitting Utility Maps and Diagrams, Transmission Planning Reliability Criteria, Transmission Planning Assessment Practices, and Evaluation of Transmission System Performance. Any utility that submits the required transmission information under FERC No. 715 does so with the knowledge that, as stated in the Form’s Instructions, FERC “considers the information collected by this report to be CEII and will treat it as such.” *See also* 18 C.F.R. § 141.300(d) relating to the Form and CEII.

25. Mainland regulators typically do not require a utility that designates material as CEII to follow any process before the federal government to make or support such a designation, and, further, the regulator, in its informed discretion, can establish limits on how information that it considers CEII can be accessed.

26. It is respectfully submitted that the transmitting utility maps and diagrams schematics in the PPOAs qualify as CEII and thus, should remain redacted. Furthermore, it is asserted that the

redactions made are the manner that least affects the public interest, transparency, and the rights of the public. *See*, Act 57-2014 at Sec. 6.15(a).

27. As stated above, the information that has been redacted from the execution copies of PPOAs attached as **Exhibit A** is confidential and, thus, under the applicable laws and regulations, and the part that is not CEII should remain confidential until the adjudication and award process of RFP Tranche 1 is final. The CEII shall remain under seal even after the finalization of the Tranche 1 process.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau **NOTE** PREPA's filing of an additional executed PPOA in compliance with the April 27, June 13 and July 8 orders, determine that the unredacted execution copy of the PPOA contained in **Exhibit A** is confidential, enter an order directing the Clerk of the Energy Bureau to maintain the unredacted copy under seal and disclose for public use the redacted copies of **Exhibit A**.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 13th day of August 2022.

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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, on this 13th day of August 2022.

Exhibit A