

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

NEPR

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IN RE: CERTIFICATE OF ENERGY
COMPLIANCE

CASE NO.

SUBJECT: Request for Issuance of
Certificate of Energy Compliance in
Accordance with Act 120; Request for
Confidential Treatment in Accordance
with Acts 29, 57 and 120.

**PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY'S REQUEST FOR
ISSUANCE OF CERTIFICATE OF ENERGY COMPLIANCE AND REQUEST FOR
CONFIDENTIAL TREATMENT**

COMES NOW the Puerto Rico Public-Private Partnerships Authority (the "P3 Authority")¹ 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:

I. INTRODUCTION

In 2018, the Government of Puerto Rico ("Government") announced its public policy of transforming Puerto Rico's electrical system with the goal of creating a modern, sustainable, reliable, efficient, cost-effective, and resilient electrical system for the people of Puerto Rico. See Statement of Motives of Act 120, pp. 3–5. The mechanism selected by the Government to enable such transformation was the collaboration of the public and private sectors via public-private partnerships ("P3s"), using the procedures established in Act 29. The goal of the legislation is to

¹ The P3 Authority is filing this on behalf of the LGA Partnership Committee, as defined herein.

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enable, through the P3 process, the sale of certain assets belonging to the Puerto Rico Electric Power Authority (“PREPA”) and/or the delegation of any of PREPA’s operations, functions, or services. Id; see also Art. 7 Act 120, 22 P.R. Laws Ann. § 1117. More recently, in April 2019, the Government again reiterated its public policy of transforming PREPA through the P3 model. See Act 17-2019 (“Act 17”).

Consistent with the Government’s public policy, the P3 Authority, in its capacity as the entity charged with implementing the public policy of Act 120 and Act 29,² started to consider and develop potential transactions for PREPA during the summer of 2018. The first PREPA Transaction³ that the P3 Authority developed was the private operation and management of Puerto Rico’s electric power transmission and distribution system (the “T&D PREPA Transaction”). In furtherance of the T&D PREPA Transaction, the board of directors of the P3 Authority (the “P3 Authority Board”) established a partnership committee⁴ (the “T&D Partnership Committee”) and charged the T&D Partnership Committee with evaluating and selecting qualified proponents, negotiating terms and conditions for an eventual Transformation Contract,⁵ and overseeing the P3 process for the T&D PREPA Transaction. That process culminated in PREPA and the P3 Authority entering into an operation and maintenance agreement with LUMA Energy LLC on June 22, 2020.

The second PREPA Transaction that the P3 Authority developed was in connection with PREPA’s legacy generation assets (the “LGA PREPA Transaction”). For that purpose, in July 2020, the P3 Authority Board established a new partnership committee (the “LGA Partnership

² See Art. 5(b) of Act 120, 22 P.R. Laws Ann. §1115(b); see also Act 29.

³ As defined in Act 120, Art. 2(l), 22 P.R. Laws Ann. §1113(m).

⁴ As defined in Act 29 and incorporated by Act 120. See Act 29, Art. 2 (g), 27 P.R. Laws Ann. §2601.

⁵ As defined in Art. 2.58 of the Regulation for the Procurement, Evaluation, Selection, Negotiation, and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act 120-2018, as amended (the “Act 120 Regulation”).

Committee”) responsible for the procurement of a P3 with PREPA for the management, operation, maintenance, management of fuel supply, and decommissioning, where applicable, of one (1) or more of the base-load generation plants and gas turbine peaking plants located throughout the island of Puerto Rico (the “Legacy Generation Assets”). Over a period of more than 24 months, the LGA Partnership Committee (i) evaluated several qualified proponents, (ii) engaged in extensive communications and negotiations with such proponents, and (iii) extensively evaluated proposals submitted with respect to the LGA PREPA Transaction. As a result of this process, the LGA Partnership Committee will recommend the LGA PREPA Transaction set forth in the draft Transformation Contract that is being submitted herewith (the “Preliminary Contract”) to the boards of directors of PREPA (“the PREPA Board”), the P3 Authority Board, and the Governor of Puerto Rico (“Governor”).

In light of this recommendation, the LGA Partnership Committee is initiating the next step in the review and approval process of the proposed LGA PREPA Transaction, namely this Puerto Rico Energy Bureau’s (“PREB’s”) review of the Preliminary Contract for the purpose of determining whether the Preliminary Contract complies with the energy public policy and regulatory framework of Puerto Rico. If PREB so determines, then PREB shall issue a Certificate of Energy Compliance⁶ as provided in Act 120. The Certificate of Energy Compliance is a prerequisite for the Preliminary Contract to be approved by the PREPA Board and the P3 Authority Board, and, thereafter, by the Governor. With this request, the LGA Partnership Committee is submitting the following confidential documents for PREB’s review, marked as Exhibit 1 PREB Confidential and Exhibit 2 PREB Confidential, respectively: (i) the Preliminary Contract and (ii)

⁶ See Act 120, Art. 5(g), 22 P.R. Laws Ann. §1115(g). If the Certificate of Compliance or a resolution denying the issuance thereof is not issued within thirty days of this filing, the PREPA transaction shall be deemed to have been approved by the PREB and it shall be understood that the Energy Compliance Certificate has been issued. 22 P.R. Laws Ann. §1115(g).

a draft report prepared by the LGA Partnership Committee, as required by Act 29, which includes the reasons for entering into a P3, the reasons for selecting the chosen proponent (the “Selected Proponent”), a description of the procedure followed, including comparisons between the Selected Proponent and the Transformation Contract recommended and other proposals presented, as well as all other information pertinent to the procedure followed and the evaluation conducted (such report, the “LGA Partnership Committee Report”).

The P3 Authority respectfully submits that the Preliminary Contract and the LGA Partnership Committee Report demonstrate that the proposed LGA PREPA Transaction complies with the energy public policy and regulatory framework of Puerto Rico and therefore respectfully requests that PREB issue the Certificate of Energy Compliance. Further, in accordance with the provisions of Act 29, Act 120, and the regulations issued thereunder, as well as the provisions of Act 57 and PREB’s own internal regulations and orders, the P3 Authority requests that PREB treat this filing, along with its exhibits and any supplemental filing or documents, as confidential until the Partnership Contract is finally executed by the Governor.⁷

II. DISCUSSION

A. The Certificate of Energy Compliance

The public policy of the Government is to use the P3 model to modernize the electrical system and ensure a financially viable, efficient, and resilient system, consistent with the economic development of Puerto Rico and for the benefit of consumers. Act 120 was specifically enacted with this in mind, to provide the legislative framework for private sector participation in the transformation of the energy sector.

⁷ To the extent the Authority submits a document that is deemed confidential for additional reasons, and that requires confidential treatment beyond the execution of the Partnership Agreement, the Authority shall explain as much to PREB and seek the appropriate relief.

In furtherance of this public policy, in December 2019, the P3 Authority began a market sounding process seeking feedback and input from market participants to determine the best approach for a viable and marketable transaction for PREPA. Based on the interest generated by the market sounding process, and after determining that a potential P3 would be consistent with Act 120 and in the public's best interest, the P3 Authority issued a Request for Qualifications ("RFQ") in connection with the LGA PREPA Transaction in the third quarter of 2020. After receiving statements of qualifications in response to the RFQ from experienced and reputable private sector parties, the LGA Partnership Committee selected eight of those parties to participate in the next phase of the P3 process, the Request for Proposals ("RFP").

The RFP was issued in late 2020. For the following 12 months, the LGA Partnership Committee oversaw (i) a robust due diligence exercise, which included access to significant information about PREPA by way of a data room, management presentations, site visits and information sessions, and (ii) extensive discussions with the qualified proponents regarding the structure and transaction documentation for the proposed LGA PREPA Transaction, including multiple opportunities for comments on the proposed transaction documentation and discussion of such comments. At the end of 2021, participants submitted proposals in response to the RFP. Following detailed review and evaluation of the proposals, and in accordance with the procedures set forth in Act 120, Act 120 Regulation, the LGA Partnership Committee voted to proceed with negotiations with the Selected Proponent. Thereafter, the LGA Partnership Committee and the Selected Proponent negotiated and finalized the terms and conditions of the Preliminary Contract.

In accordance with Act 120, once the Preliminary Contract is finalized, it must be submitted to PREB for the sole purpose of determining whether such contract complies with the energy public policy and regulatory framework of Puerto Rico. If PREB so determines, it shall

issue a Certificate of Energy Compliance within thirty days as provided in Act 120. The Certificate of Energy Compliance is a prerequisite for the evaluation and approval of the Preliminary Contract by the PREPA Board and the P3 Authority Board and, thereafter, by the Governor.

Therefore, the P3 Authority is hereby submitting for PREB's evaluation and the eventual issuance of the Certificate of Energy Compliance, the following *confidential* documents: (i) the Preliminary Contract (Exhibit 1 PREB Confidential) and (ii) the LGA Partnership Committee Report (Exhibit 2 PREB Confidential). These documents demonstrate that the Preliminary Contract is in compliance with the energy public policy and regulatory policy of Puerto Rico, including Act 120 Sections 5(f-g), 8(b), and 8(f) and Act 17 Sections 1.7 and 1.8(a). As such, the P3 Authority respectfully requests that PREB issue the Certificate of Energy Compliance.

B. The Public-Private Partnership Process Requires Confidentiality Treatment during the Period Prior to Execution of the Transformation Contract

The P3 Authority requests that both documents being submitted for review, the Preliminary Contract and the LGA Partnership Committee Report, be kept confidential by PREB in accordance with the provisions of Act 29. As more fully detailed below, this request is based on various provisions of each of Act 29, which governs the entirety of the P3 process, as well as on Act 120 and the regulations issued pursuant to both acts.

First, the detailed legal framework set forth in Act 29 includes specific rules governing the confidentiality of the P3 process and the specific timing of any disclosures regarding the process, the identity of participants and the Transformation Contract. During the evaluation, selection, and negotiation process, including all proceedings prior to the approval of the proposed partnership by the board of directors of each of the P3 Authority and the relevant public entity (here, PREPA) and by the Governor, all information relating to the P3 process, including the identity of the participants remaining in the process, the proposals submitted, and the negotiations between the

parties, must remain confidential. This information about the P3 process is only disclosed by the P3 Authority *after* the Transformation Contract is approved by the Governor and the Transformation Contract is executed by the parties. See Art. 9(g)(vi) and 9(i) of Act 29, 27 P.R. Laws Ann. §2608(g) and (i).⁸ Second, Act 29 further requires that, in commencing a P3 process, the P3 Authority must devise processes directed at (i) guaranteeing the participation of the greatest number of qualified proponents and (ii) protecting and ensuring a level playing field and fair competition among such proponents. See Act 29, Art. 9(b)(iii), 27 P.R. Laws Ann. §2608(b)(iii). Protecting and preserving the confidentiality of the proponents, their proposals, and the evaluation thereof until the execution of the Transformation Contract is essential for achieving the aforementioned goals as explained in more detail below.

Third, the confidentiality and other provisions of Act 29 were made expressly applicable to the P3 process for PREPA. Article 4 of Act 120 provides that “[*a*ll of the provisions of Act 29-2009 (including, without limitation, Article 11 of Act 29-2009) will apply to the PREPA Transactions,⁹ except unless otherwise stated in this law.” 22 P.R. Laws Ann. §1114 (Emphasis added). Further, Act 120 reiterates Article 9 of Act 29 by providing a very limited exception to the confidentiality provisions for purposes of allowing PREPA and the P3 Authority to share information with the Financial Management & Oversight Board for Puerto Rico or otherwise disclosing information as required in connection with a proceeding under the Puerto Rico Oversight, Management and Economic Stability Act. See 22 P.R. Laws Ann. §1115(g).

⁸ Note that certain information, such as trade secrets, proprietary information, or other confidential information, may be exempt from public disclosure even after approval of the partnership contract.

⁹ Defined in Act 120 as “any and all transactions carried out in accordance with the provisions of Act No. 29-2009 and this Act, whereby PREPA or the Government of Puerto Rico establishes one or more Partnerships in connection with any of PREPA’s functions, services, or facilities, or executes a Sales Contract for PREPA Assets related to electric power generation.” See Art. 2(*l*) of Act 120.

Fourth, Act 120 Regulation,¹⁰ similarly provides for the confidentiality of all information and documents submitted in connection with a P3 process prior to the execution of the Transformation Contract resulting from such process. To that end, Art. 4.5(n) of the Act 120 Regulation provides that when the P3 Authority issues a RFP, it shall include as one of the requirements for the proposals that each proponent declare that the proponent shall not communicate with any other proponent, nor shall such proponent collude with another, *or have knowledge of or compare information as to other proponents*. In addition, the P3 Authority requires that proponents sign a non-disclosure agreement prior to receiving the RFP documents to avoid disclosure by the proponents of the documents reviewed or exchanged as part of the P3 process. This requirement was applied in the context of the LGA PREPA Transaction precisely in furtherance of maintaining the necessary confidentiality during the evaluation, selection, and negotiation process.

Further, Art. 4.7(b)(iii)(3) of the Act 120 Regulation provides that proposals received for any P3 process under Act 120 and Act 29 shall not be read publicly nor shall the P3 Authority generate copies thereof. Instead, the regulation requires that during the period for selection and evaluation for proposals, “only the members of the P3 Authority, the members of the Partnership Committee or persons designated by the P3 Authority or its Executive Director may have access to the Proposals or the results of the evaluation of those proposals.” In turn, Article 5.1(ii)(vi), which addresses the review of proposals and eventual recommendation by the Partnership Committee, states that:

All Proposals, evaluations, discussions, and negotiations will be kept confidential throughout the evaluation, selection, and negotiation process in accordance with Article 9(i) of Act 29-2009, Article 6(b) of Act 120-2018 and this Regulation. Upon

¹⁰ See Art. 5(d) of Act 120, 22 P.R. Laws Ann. §1115(d), authorizing the P3 Authority to issue one or more regulations to govern PREPA transactions in particular.

the signing of the Transformation Contract, non-confidential portions of the Proposals, the Transformation Contract, the RFQ, the RFP and the Committee Report will be made available as provided in Article 9(j) of Act 29-2009 and Section 11.2 of this Regulation.

(Emphasis added.)¹¹

Thus, the applicable statutes and regulations provide for the confidentiality of the draft Transformation Contract (here, the Preliminary Contract) and the LGA Partnership Committee Report until the Transformation Contract has been executed. These statutory and regulatory confidentiality requirements are geared at protecting important interests that are key to the success of the P3 process, namely the evaluation, selection and negotiating with *as many* qualified proponents as possible through a *competitive* process. It is only through a robust and competitive process that the Government will be able to achieve the best terms for the relevant P3 and thus protect the best interests of the people of Puerto Rico.

As noted above, the confidentiality requirements serve two purposes, both of which ultimately benefit the public. First, protection of proponents' information and proposals through the execution of the Transformation Contract (and beyond that for certain items such as proprietary information and trade secrets) serves to promote that a greater number of participants engage in the P3 process because they are not concerned that their data will end up in the hands of their competitors. Greater participation in a P3 process enhances competition and provides the Government with a greater number of alternatives.

¹¹ See also Art. 11.2(d) of the Act 120 Regulation (“[o]nce the Governor and, if applicable, the Legislative Assembly, have approved the Transformation Contract, the [P3] Authority will make public the Committee Report of the relevant Partnership Committee which will contain the information related to the procurement, selection, and negotiation as well as all proposals and other information received or exchanged during the evaluation, selection and negotiation process...”) and Art. 12.3 of the P3 Authority’s “Regulation for the Procurement, Evaluation, Selection, negotiation and Award of Participatory Public-Private Partnership Contracts,” as amended (providing that the Partnership Committee Report shall be made public “[o]nce the Governor has executed the Partnership contract.”)

Second, ensuring that proponents do not have access to each other's proposals, the LGA Partnership Committee's evaluation of such proposals, or information about the negotiations between a proponent and the LGA Partnership Committee is key to preserving the LGA Partnership Committee's leverage and ability to negotiate the best terms for the P3 and ensuring the fairness of the process. Throughout the P3 process, the LGA Partnership Committee may negotiate with more than one proponent at the same time. See Art. 5.1(iii) of the Act 120 Regulation. The LGA Partnership Committee can select the most qualified proponent and negotiate improved terms to its proposal based on what other participants are prepared to offer. Even if the LGA Partnership Committee opts to negotiate with one proponent at a time, it may, "[a]t any point in time," "terminate negotiations with the Proponent and commence negotiations with the next highest ranked Propo[nent]." Art. 5.1(iv) of the Act 120 Regulation. In such cases, it is critical for the Government that the second proponent not have an unfair advantage by having had access to information related to the negotiations with the first proponent. Any process allowing for such unequal competition would discourage participation, be contrary to Act 29 and deprive the P3 Authority, the Government, and ultimately the people of Puerto Rico, of potential alternatives for the P3. In order to maintain the true competitive tension necessary for the LGA Partnership Committee to negotiate the best terms for the eventual contract, confidentiality must be preserved while there is any possibility of further negotiation with one or more proponents. See ECA General Contractors, Inc. v. Municipio Autónomo de Mayagüez, 200 D.P.R. 665, 672-673 (2018) (in the context of formal government bidding procedures explaining that confidentiality during the required stages "is an indispensable element of a fair and honest competition."). See also Puerto Rico Fast Ferries v. Autoridad de Alianzas Público Privadas, October 28, 2020 Judgment, case KLAN 202000716, available at *2020 WL 8091191* (finding that Act 29-2009

clearly, unambiguously and validly provides for the confidentiality of a preliminary or draft partnership contract, as well as all other aspects of the proposed partnership transaction file until the final Partnership Contract is signed by the Governor).

It is also worth noting that a P3 process may be of interest to publicly-traded companies. These public companies may be particularly sensitive to disclosure of their participation in a P3 process before a Transformation Contract is executed. A disclosure could potentially trigger certain filings pursuant to securities laws regarding the potential transaction and could affect the company's share price. Maintaining confidentiality of the P3 process until a Transformation Contract is executed allows public companies to participate in a P3 process without concern of material non-public information being disclosed prior to the point at which the P3 transaction has been formalized (*i.e.*, upon execution of the Transformation Contract). This increases the likelihood of public company participation in a P3 process and thus the number of potential participants, both of which are even more critical when the proposed P3 entails a highly specialized field with limited qualified market players, as is often the case with energy related matters.

In sum, the confidentiality provisions (i) promote participation by a greater number of entities in the P3 process and (ii) increase the LGA Partnership Committee's bargaining power, thereby enhancing the Government's ability to negotiate the best terms possible for a P3. This ultimately benefits the people of Puerto Rico and serves the public interest. Act 120 recognizes as much, calling upon the LGA Partnership Committee to evaluate as many qualified proponents as possible and to maximize a competitive environment, with the goal of securing a "broader, faster, and more beneficial transformation for the People of Puerto Rico". See 22 P.R. Laws Ann. §1113.

It should be noted that the requirement that all information and documents related to be P3 process be kept confidential until the execution of the relevant Transformation Contract is true of

all P3 processes that the P3 Authority manages, not just the PREPA transformation process. The P3 Authority's ability to manage these P3 processes in a uniform manner, without having one P3 process set an incorrect precedent that could affect market interest in other P3 processes, is critical to ensuring that the Government's public policy favoring P3s can be carried out effectively.

The reasons supporting the legislative decision to preserve the confidentiality of a P3 process until execution of a Transformation Contract are especially applicable in the PREPA transformation context. The Preliminary Contract agreed with the Selected Proponent is subject to review and approval by various bodies before it may be executed. If the Preliminary Contract were to be rejected by any of these bodies, confidentiality would be crucial to the P3 Authority being able to restart the P3 negotiation process with other proponents without losing its leverage and bargaining power by having the terms of the Preliminary Contract and the details of the LGA Partnership Committee Report publicly known.

Consistent with the foregoing, and as further allowed by Act 57-2014, this Bureau granted on June 9, 2020, the Authority's request for confidential designation and treatment in the May 18, 2020 *Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment of Documents Submitted to PREB*. See Case No. NEPR-AP-2020-0002. Despite certain third parties' attempts at challenging such confidentiality, the Puerto Rico Court of Appeals did not intervene with the PREB's decision. See In re Certificate Energy Compliance, September 28, 2020 Judgment issued in consolidated cases KLRA202000170 and KLRA2020000186, available at *2020 WL 687953*.¹² Furthermore, the Puerto Rico Court of Appeals has clearly and expressly held that Act 29-2009 validly provides for the confidentiality of all documents pertaining

¹² Petitioners in that case unsuccessfully sought certiorari review with the Puerto Rico Supreme Court. This PREB's decisions in that case, including with regards to confidentiality, withstood all challenges and remain unaltered.

to public-private partnership process until the Partnership Contract is signed by the Governor. See Puerto Rico Fast Ferries v. Autoridad de Alianzas Público Privadas, October 28, 2020 Judgment, case KLAN 202000716, available at *2020 WL 8091191*.

C. PREB's Laws and Regulations Provide for Protecting Confidential Documents and Information

As discussed above, Act 29, Act 120, the Act 120 Regulation and applicable case law, all require that information related to the PREPA transformation process be kept confidential until the Transformation Contract is executed. This information includes, but is not limited to, draft contract(s) such as the Preliminary Contract, as well as the LGA Partnership Committee Report, which, among other things, reflects key points of the Selected Proponent's proposal and a comparison of such proposal with that of the other proponents in the P3 process.¹³ This information must be kept confidential until the execution of the Transformation Contract, at which point the P3 Authority gives notice to the other participants in the process and discloses all relevant information about the P3 process. See Puerto Rico Fast Ferries v. Autoridad, 2020 WL 8091191. The fact that the LGA Partnership Committee must submit the Preliminary Contract and the LGA Partnership Committee Report to PREB does not change the fact that such information and documents must be kept confidential until the execution of the Transformation Contract. And, in fact, this PREB previously acknowledged the need for confidentiality under equivalent circumstances in NEPR-AP-0002.

Act 57 and the PREB's regulations and guidance provide for confidential treatment of documents that must be submitted to PREB but are otherwise privileged or entitled to confidential treatment pursuant to applicable law. See also, June 9, 2020 Resolution in NEPR-AP-2020-0002.

¹³ See Art. 2.34 of the Act 120 Regulation.

Art. 6.15 of Act 57, as amended, provides that a party that has an obligation to submit documents or information to PREB that are confidential may request that PREB treat those documents as such, limiting access thereto strictly to attorneys or external consultants who are involved in the proceedings and execute confidentiality agreements. See 22 P.R. Laws Ann. §1054.

PREB's regulations likewise provide for protection of confidential information. For example, art 1.15 of Regulation 8701 (the Amended Regulation on Certification, Annual Fees, and Operational Plans for Electric Companies in Puerto Rico) provides that a person may request confidential treatment for information that must be submitted to PREB but is "privileged or confidential pursuant to the provisions of a law or regulation". In such a case, the person must submit a motion requesting confidential treatment, identifying the specific information that is confidential, and providing a detailed explanation of the legal basis for the confidential treatment. Further, the documents in which confidential information is found should be marked as confidential (if they are submitted in paper form, they must be filed in a sealed envelope). In addition, Section 8543 (Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigative Proceedings) also provides for confidential treatment of information, provided that the person who submits the information requests such treatment in writing and provides supporting arguments.¹⁴ The P3 Authority requests that, in accordance with the PREB's provisions for protecting confidential information, the documents submitted for purposes of evaluation and the certification required by Art. 5(g) of Act 120, 22 P.R. Laws Ann. §1115(g) – both (i) the Preliminary Contract and (ii) the LGA Partnership Committee Report— be kept confidential by PREB. Such documents require confidential treatment pursuant to Act 29, Act 120, and the Act

¹⁴ These regulations are cited for reference purposes. Neither regulation addresses the particular certification required of PREB under Act 120's Art. 5(g), but they support the proposition that PREB provides for proper handling of confidential information when a request is made and supported by reference to applicable law or regulations.

120 Regulation until execution of the Transformation Contract, which in turn cannot take place until after PREB has issued the certification required by Art. 5(g) and such Preliminary Contract has further been approved by the boards of directors of PREPA and the P3 Authority, as well as by the Governor.

Although the full legal arguments in support of the confidential treatment are included in the preceding section of this memorandum, the chart below identifies the exhibits attached to this filing, for which confidential treatment is requested, along with a summary of the legal provisions that require such confidential treatment.

Document	Document Pages in which Confidential Information Is Found	Date of Filing	Summary of Legal Basis for Confidentiality Protection	Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality
Preliminary Contract (Exhibit 1 PREB Confidential)	PREB-00001 through PREB-[•]	[•], 2022	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, discussions, and negotiations until execution of the Transformation Contract, at which time the P3 Authority may disclose non-confidential information and documents. <u>See also Puerto Rico Fast Ferries, supra</u> , 2020 WL 8091191.	The Preliminary Contract reflects the proposal by the Selected Proponent and the result of the negotiations between the LGA 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.

Document	Document Pages in which Confidential Information Is Found	Date of Filing	Summary of Legal Basis for Confidentiality Protection	Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality
LGA Partnership Committee Report (Exhibit 2 PREB Confidential)	PREB-[•] through PREB-[•]	[•], 2022	See above and Art. 11.2(d) of the Act 120 Regulation, which expressly provides that the Partnership Report shall be made public by the P3 Authority <i>after</i> execution of the Transformation Contract.	The Partnership Report includes a description of the P3 process, the rationale for the selection of the Proponent, and a comparison between the proposal of the Selected Proponent with the other proposals submitted, as well as information regarding the evaluation and other pertinent information about the process. <u>See</u> Act 120 Regulation, Art. 2.34. Accordingly, it includes precisely the type of information that Act 29, Act 120 and the Act 120 Regulation require be kept confidential until after execution of the Transformation Contract. Moreover, the Act 120 Regulation, expressly require that the LGA Partnership Committee Report be kept confidential until execution of the Transformation Contract.

III. CONCLUSION

For all the foregoing reasons, the P3 Authority requests that PREB grant this request and, accordingly, (i) issue the Certificate of Energy Compliance and (ii) grant confidential treatment to this filing and its exhibits, the Preliminary Contract and the LGA Partnership Committee Report.


WHEREFORE, the P3 Authority respectfully requests that PREB **GRANT** this request and, consequently, issue the Certificate of Energy Compliance within the next thirty (30) days and treat this filing and its exhibits, along with any supplemental filing or additional document submitted by the Authority in this process, as confidential at least until the Partnership Contract is executed by the Governor.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of October 2022.

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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