

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

IN RE: CERTIFICATE OF ENERGY
COMPLIANCE

CASE NO.: NEPR-AP-2022-0001

SUBJECT: Request for Confidential
Treatment.

RESOLUTION

I. Relevant Background

On October 21, 2022, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Puerto Rico Public-Private Partnerships Authority's Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment* ("First Petition"). The First Petition included these documents: Exhibit 1: First Preliminary Contract¹ and Exhibit 2: the Report².

Through the First Petition, the P3 Authority requested the Energy Bureau to issue a Certificate of Energy Compliance³ for the First Preliminary Contract, which relates to the *Request for Proposals Puerto Rico Electric Power Thermal Generation Facilities — RFP 2020-1*, issued by the P3 Authority on November 10, 2020, pursuant to Act 120-2018,⁴ Act 17-2019⁵ and Act 29-2009,⁶ in connection to a PREPA Transaction for the delegation of the operation and maintenance functions of the LGA. The P3 Authority also requested the Energy Bureau to treat and designate the First Petition, the First Preliminary Contract, and the Report as confidential documents.⁷

On November 17, 2022, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority's Motion Submitting Documents and Requesting Confidential Treatment* ("Second Petition") through which it requested the Energy Bureau to take notice of the documents grant confidential treatment. The P3 Authority stated that it acknowledges that the filing of the Second Petition triggers a new deadline for issuing a Certificate of Energy Compliance by the Energy Bureau.⁸ The P3 Authority annexed these documents to the Second Petition: Exhibit 1: *Memorandum Regarding Comments on the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, Draft of October 21, 2022*, which includes a redline version of the Preliminary Contract with certain amendments, identified as Exhibit A ("Memorandum"), and an amended version of the First Preliminary Contract ("Second Preliminary Contract"), identified as Exhibit B.

¹ See, PUERTO RICO THERMAL GENERATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT dated as of [•], 2022, by and among THE PUERTO RICO ELECTRIC POWER AUTHORITY, PREPA GENCO, LLC as Owner, THE PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY as Administrator, and [REDACTED-CONFIDENTIAL] as Operator ("First Preliminary Contract").

² See, *Partnership Committee Report, Puerto Rico Public-Private Partnership for the Puerto Rico Electric Power Thermal Generation Facilities*, dated October 17, 2022 ("Report").

³ Except as otherwise provided, capitalized terms used but not otherwise defined in this Resolution and Order have the meaning ascribed to them in, as applicable, Act 120-2018, Act 29-2009, Act 57-2014, Act 17-2019, and the Preliminary Contract.

⁴ Known as *Puerto Rico Electric Power System Transformation Act*, as amended ("Act 120-2018").

⁵ Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

⁶ Known as *Public-Private Partnership Act*, as amended ("Act 29-2009").

⁷ See, Initial Petition, pp. 6-16.

⁸ See, Petition, p. 2, footnote 3.



On November 21, 2022, the Energy Bureau issued a Resolution (“November 21 Resolution”) through which it determined that the P3 Authority withdrew the First Preliminary Contract and through the Second Petition it requests the Energy Bureau to evaluate the Second Preliminary Contract and issue an Energy Compliance Certificate in connection therewith. However, the Energy Bureau clarified that for procedural economy, it would use all the documents submitted by the P3 Authority in the instant case to evaluate the Second Preliminary Contract, including without limitation, the Report.

On December 16, 2022, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority's Petition to Withdraw November 17th Filing and to Hold in Abeyance its Request for Issuance of Certificate of Energy Compliance, as Amended, and Requesting Further Confidential Treatment of Documents Submitted* (“December 16 Motion”), through which it requested the Energy Bureau to: (i) consider withdrawn its November 17 filing and hold in abeyance the Second Petition, and (ii) treat as confidential the December 16 Motion, all the documents submitted and any additional document that might be submitted until the execution of the Transformation Contract.⁹

On December 27, 2022, the Energy Bureau issued a Resolution (“December 27 Resolution”) through which it granted the P3 Authority's request to deem withdrawn the Second Preliminary Contract.

On December 23, 2022, the P3 Authority filed a document titled *Puerto Rico Public-Private Partnerships Authority's Motion Submitting Documents, As Amended, and requesting Confidential Treatment* (“Petition”) through which it requested the Energy Bureau to (i) resume the instant case and take into consideration the revised Preliminary Agreement (“Preliminary Contract”) attached therein as Exhibit I in considering and issuing the certificate of Energy Compliance required under Act 120-2018; and (ii) treat as confidential the Petition and all the documents submitted theretofore and any additional document that might be submitted until the execution of the Transformation Contract.

As for the P3 Authority's request for confidential treatment, through the December 16 Motion and the Petition, the P3 Authority incorporated by reference the arguments adduced in the First Petition and the Second Petition. Similarly, in its Petition the P3 Authority incorporated by reference the legal arguments in its First Petition with its request for confidential treatment. Therefore, through this Resolution the Energy Bureau analyzes such arguments and issues a determination regarding the confidentiality of the documents submitted through the First Petition, the Second Petition, and the Petition, as well as the First Petition, the Second Petition, the December 16 Motion, and the Petition.

The P3 Authority argues that the documents shall be kept confidential, as required by the legal provisions applicable to the Public-Private Partnership process. Specifically, it states that the legal framework established in Act 29-2009 provides specific rules governing the confidentiality of the P3 process and the specific timing of any disclosures regarding such process.¹⁰ The P3 Authority also argues that, in beginning a P3 process, the P3 Authority must devise processes directed at guaranteeing the participation of the greatest number of proponents, and protecting and ensuring a level playing field and fair competition among such proponents.¹¹ The P3 Authority cites Article 9 of Act 29-2009 to support the foregoing arguments.

The P3 Authority further argues that Act 29-2009 confidentiality provisions were made expressly applicable to the P3 process for PREPA in accordance with Article 4 of Act 120-

⁹ December 16 Motion, pp. 3-4.

¹⁰ See, Initial Petition, pp. 6-7.

¹¹ See, Initial Petition, p. 7.



2018, and that Act 120-2018 also reiterates Article 9 of Act 29-2009.¹² The P3 Authority avers that Act 120-2018 provides for the confidentiality of all information and documents submitted with a P3 process before the execution of the contract resulting from that process.¹³ The P3 Authority also argues that Section 4 of Regulation 9078¹⁴ supports maintaining the confidentiality during the evaluation, selection, and negotiation process.¹⁵ It argues that the confidentiality requirements serve the public interest and cites caselaw to support its argument.¹⁶ Regarding the Energy Bureau's authority to grant the P3 Authority's request, the P3 Authority asserts that Act 57-2014, Regulation 8701¹⁷ and Regulation 8543¹⁸ provide for the requested confidential treatment.¹⁹

II. Analysis

Section 9(g)(vi) of Act 29-2009 states that it is "[a]fter the Governor or the executive officer to whom he delegates has approved the Partnership Contract" that the P3 Authority shall give written notice to all other Proponents of the fact that their proposals have not been accepted, shall disclose the identity of the Proponent thus selected and indicate to the Proponents that they shall have access to the P3 Authority's record that pertains to the selection procedure and the award of the Partnership Contract. Similarly, Section 9(i) establishes that the information regarding the procedures of evaluation and selection of and negotiation with Proponents and the information submitted by the Proponents, shall be disclosed upon approval of the Partnership Contract by the Governor or the executive official onto whom he delegates, except for such information which constitutes: (1) a trade secret, (2) proprietary information or (3) privileged or confidential information of either the Proponents who participated or the Authority.

Pursuant to Article 4 of Act 120-2018, Act 29-2009 are applicable to the public-private partnerships regarding PREPA. Article 4 establishes that "[a]ll of the provisions of Act No. 29-2009 (including, but not limited to, Section 11 of Act No. 29-2009) shall apply to PREPA Transactions, except as otherwise provided in this Act." The Energy Bureau **DETERMINES** that the information which confidential designation and treatment is requested by the P3 Authority constitutes confidential information pursuant to Act 29-2009 and Act 120-2018.

The Energy Bureau further **DETERMINES** that the preceding legal principles regarding confidentiality also apply to the documents issued by the Energy Bureau in the instant case, which are: (i) the November 21 Resolution, (ii) the December 27 Resolution, and (iii) this Resolution. Likewise, such analysis applies to the documents to be issued by the Energy Bureau in the instant case. Therefore, the confidential designation extends to each document that forms part or will form part of the administrative record.

III. Conclusion

Upon review of the P3 Authority's arguments and Applicable Law, the Energy Bureau **GRANTS** confidential designation and treatment to the First Petition, the First Preliminary Contract, the Report, the Second Petition, the Second Preliminary Contract, the Memorandum, the December 16 Motion, the Petition, and the Preliminary Contract,

¹² *Id.*

¹³ *See*, Initial Petition, pp. 8-9.

¹⁴ Known as *Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System Under Act No. 120-2018, As Amended*.

¹⁵ *See*, Initial Petition, p. 8.

¹⁶ *See*, Initial Petition, pp. 9-12.

¹⁷ Known as *Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico*.

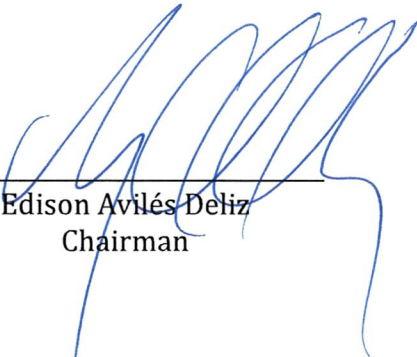
¹⁸ Known as *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*.

¹⁹ *See*, Initial Petition, pp. 13-15.





THE CLERK OF THE ENERGY BUREAU SHALL NOTIFY THIS RESOLUTION TO THE P3 AUTHORITY ONLY AND SHALL KEEP IT CONFIDENTIAL UNTIL OTHERWISE INSTRUCTED BY THE ENERGY BUREAU.

Be it notified.



Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner
Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 27, 2022. Associate Commissioner Ferdinand A. Ramos Soegaard did not intervene. I also certify that on December 27, 2022 a copy of this Resolution was notified by electronic mail to iperez@p3.pr.gov and fermin.fontanes@p3.pr.gov and I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today December 27, 2022.


Sonia Seda Gaztambide
Clerk