

NEPR

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

IN RE: PREPA'S 10-YEAR PLAN
COMPETITIVE INFRASTRUCTURE
PROCUREMENT PROCESS

CASE NO.: NEPR-MI-2022-0005

SUBJECT:

Motion to Submit Bi-monthly Status Reports dated May 15 2023 on the Emergency Generation and Black Start Generation Procurement in Compliance with the January 23 Order

**MOTION TO SUBMIT BI-MONTHLY STATUS REPORTS DATED MAY 15 2023
ON THE EMERGENCY GENERATION AND BLACK START GENERATION
PROCUREMENT IN COMPLIANCE WITH THE JANUARY 23 ORDER**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (PREPA) through the undersigned legal representation and respectfully submits and requests as follows:

1. On November 10, 2022, PREPA submitted to the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") a notice titled *Request for Approval to Proceed with Request for Proposals ("RFP") for the New Black-Start Systems at Costa Sur and Yabucoa* ("Request"). The request had attached a draft request for proposals identified as *Yabucoa and Costa Sur New Black-Starts Units Projects* ("Black-Start Systems Draft RFP").
2. On December 5, 2022, the Energy Bureau entered Resolution and Order ("December 5 Resolution") approving the Black Start Projects RFP subject to the implementation and modification of certain matters as further stated in the December 5 Resolution.
3. Thereafter, on December 29, 2022, PREPA submitted to the Energy Bureau a notice titled *Request for Approval to Proceed with Request for Proposals for the New Emergency Generation Units at Jobos, Daguao and Palo Seco* ("December 29 Request"). The December 29 Request had

a draft request for proposals identified as *Jobos, Daguao and Palo Seco Emergency Generation Projects* (“Emergency Generation Draft RFP”).

4. On January 23, 2023, the Energy Bureau issued a Resolution and Order (“January 23 Order”) through which it conditionally approved the Emergency Generation Draft RFP and Project Application Package with various conditions, including the following:

PREPA will report to the Energy Bureau on the status of emergency generation and black start generation procurement, including interconnection study assumption consistency between contractors, at bi-monthly intervals for the first year, and at quarterly intervals thereafter as stated above until installation.

January 23 Order p. 5.

5. In compliance with the January 23 Order, PREPA includes as Annex A to this motion a document titled *RFP 3784, Power Advocate Event 138790 New Black Start Units Yabucoa and Costa Sur Power Stations RFP Status Report* dated May 15, 2023 (“RFP 3784 Status Report”) detailing the black start generation procurement current process. As Annex B, PREPA includes a document titled *RFP 3800, Power Advocate Event 139303 New Peaker Units for the Daguao, Jobos and Palo Seco Power Stations RFP Status Report* dated May 15, 2023 (“RFP 3800 Status Report”) detailing the emergency generation procurement process.¹

6. PREPA respectfully requests that Energy Bureau, in furtherance of the provisions of Regulation 8815, determine that status reports included as annexes A and B are confidential and direct the Secretary of the Energy Bureau to maintain them under seal until the competitive procurement process is completed.

7. Applicable laws and regulations support the confidentiality request herein made. The

¹ To comply with the January 23 Order’s bi-monthly cadence to submit the procurement process reports, PREPA’s RFP 3784 and RFP 3800 Status Reports will be filed on the first and fifteenth of every month.

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).

8. 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). *Colón Cabrera v. Caribbean Petroleum*, supra.

Id. at 83.

9. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*² 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

² *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 LPRA §§ 1051-1056 (“Act 57”).

allegedly confidential information is disclosed.” *Id.* at Art. 6.15(d).

10. 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”). Regulation 6285 has the force of law and, according to its provisions, documents, including information on evaluating offers or bid requests, are confidential while the evaluation, adjudication and award processes are still ongoing. *Id.* at Sec. V, ¶ 13. Annexes A and B include information on evaluating proposals, and the process is currently ongoing. Thus, Regulation 6285 favors PREPA’s request for the Energy Bureau to determine the status reports confidential and, therefore, must remain under seal while the process is ongoing.

WHEREFORE, for the reasons stated above, PREPA respectfully requests the Energy Bureau to take notice of the RFP 3784 Status Report and the RFP 3800 Status Report dated May 15, 2023, finding PREPA in compliance with the January 23 Order, determine that annexes A and B documents are confidential, and enter an Order directing the Clerk of the Energy Bureau to maintain annexes A and B under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of May 2023.

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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 has been sent to Genera-PR, LLC through the following addresses jfr@sbgblaw.com; alopez@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com.

In San Juan, Puerto Rico, this 15th day of May 2023.

s/ Joannely Marrero Cruz
Joannely Marrero Cruz

Annex A

[submitted under seal]

Annex B

[submitted under seal]