

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

IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY'S 10-YEAR
INFRASTRUCTURE PLAN - DECEMBER
2020

CASE NO.: NEPR-MI-2021-0002

SUBJECT: Resolution and Order regarding
*Memorandum of Law in Support of Request
for Confidentiality of Documents Submitted
Under Seal with the January 14th and January
22nd Motions*, filed by the Puerto Rico
Electric Power Authority.

RESOLUTION AND ORDER

On January 14, 2024, the Puerto Rico Electric Power Authority ("PREPA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Urgent Motion Submitting for Review and Approval of the Scope of Work for the Transfer/Ownership to PREPA of the Temporary Generation Units* ("January 14 Motion"). Through the January 14 Motion, PREPA requested the Energy Bureau's approval of the initial Scope of Work for the acquisition and ownership to PREPA of the temporary generation units installed in the Palo Seco Steam Plant (150MW) and the San Juan Power Plant (200MW) ("Temporary Units"). PREPA further requested that Exhibits 1-14 filed with the January 14 Motion be considered confidential.

Upon review of the January 14 Motion, on January 19, 2024, the Energy Bureau issued a Resolution and Order whereby, among other things, it ordered PREPA to notify the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") of its intent to acquire the two-emergency power generating units with a combined 350MW capacity in the Palo Seco and San Juan sites, within five (5) business days, so applicable procedures could take place. The Energy Bureau also stated that PREPA's request for confidentiality would be resolved in a separate Resolution.

On January 22, 2024, PREPA filed a document titled *Motion in Compliance with the January 19th, 2024 Resolution and Order* ("January 22 Motion"). Through the January 22 Motion, PREPA informed that on January 22, 2024 it notified the P3 Authority of its intent to acquire the referenced emergency power generation units. PREPA attached the letter sent to the P3 Authority as Exhibit 1 of the January 22 Motion and requested it be deemed confidential.

Regarding the confidentiality of the Exhibits filed with the January 14 and January 22 Motions, PREPA vaguely alleged that the information in such Exhibits was part of a negotiation process and incorporates trade or business secrets. As such, on January 26, 2024, the Energy Bureau determined that PREPA did not comply with the process to designate confidential information ("January 26 Resolution"). Consequently, the Energy Bureau ordered PREPA to, within (5) five business days, comply with the requirements set forth in the Energy Bureau's Policy in Management of Confidential Information.¹ The Energy Bureau further reminded PREPA to provide a table containing a list of all the documents included as Confidential Information, adhering to the format identified in referenced policy. Additionally, the Energy Bureau warned PREPA it must simultaneously file a redacted or public version and an un-redacted or confidential version of any document containing Confidential Information.

On February 2, 2024, PREPA filed a document titled *Motion for Extension of Time to Comply with January 26th Resolution* ("February 2 Motion"). In its February 2 Motion, PREPA informed that despite its efforts, it was still reevaluating the documents submitted as confidential with the January 14 and January 22 Motions. Therefore, PREPA requested an extension of five (5) business days, until February 9, 2024, to comply with the January 26 Resolution.

¹ See Resolution, *In Re: Policy on Management of Confidential Information in Procedures Before the Commission*, Case No. CEPR-MI-2016-0009, August 31, 2016.



On February 7, 2024, the Energy Bureau granted PREPA's request.

On February 9, 2024, PREPA filed a document titled *Memorandum of Law in Support of Request for Confidentiality of Documents Submitted Under Seal with the January 14th and January 22nd Motions* ("February 9 Motion"). Through the February 9 Motion, PREPA withdrew its request for confidential treatment with respect to Exhibits 1, 5, 6, 7, 8, 12, 13, and 14 filed with the January 14 Motion.² With regards to Exhibits 2, 3, 4, 9, 10, and 11 of the January 14 Motion and Exhibit 1 of the January 22 Motion PREPA reiterated its confidentiality request.³ PREPA argued such Exhibits had to be kept under seal per instructions by the Federal Emergency Management Agency ("FEMA") to not share information with Genera PR, LLC ("Genera") concerning the acquisition of the temporary units and because they incorporate trade secrets.⁴ In addition, PREPA maintained that Exhibits 10 and 11 of the January 14 Motion and Exhibit 1 to the January 22 Motion also contained critical energy infrastructure information.⁵

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The Energy Bureau **DENIES** PREPA's request for confidentiality as it pertains to Exhibits 2,⁶ 3,⁷ 4,⁸ and 9⁹ of the January 14 Motion. The referenced documentation does not include confidential information, nor does it contain information that warrants protection from Genera. The Energy Bureau is cognizant that Genera, as a subsidiary of NFE, must be excluded from discussions and/or information shared between Puerto Rico and the Federal Government concerning the potential acquisition of NFE equipment, and any negotiations with NFE for the acquisition of that equipment. Nonetheless, the referenced Exhibits do not contain confidential communications regarding discussions and/or negotiations concerning the acquisition of the temporary units that could give Genera an unfair competitive advantage.

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With regards to Exhibits 10¹⁰ and 11¹¹ of the January 14 Motion and Exhibit 1¹² of the January 22 Motion, the Energy Bureau **GRANTS** partial confidentiality on the grounds of containing information related to critical energy infrastructure. As such, the Energy Bureau **ORDERS** PREPA to, **within three (3) business days**, file a redacted version for the public record omitting critical energy infrastructure information.

APR

2 February 9 Motion, pp. 6 – 7.

3 *Id.*

4 *Id.*, p. 7.

5 *Id.*

6 Letter from FEMA to the Central Office for Recovery, Reconstruction and Resilience ("COR3") dated October 16, 2023, regarding the Direct Federal Assistance Emergency Work in which FEMA is essentially announcing the end of the United States Army Corps of Engineers ("USACE") mission on March 15, 2024.

7 Letter from COR3 to FEMA, dated November 7, 2023, regarding the Direct Federal Assistance Emergency Work requesting the extension of the USACE while PREPA acquires either by lease or purchase the temporary units.

8 Letter from COR3 to FEMA, dated November 17, 2023, regarding the Direct Federal Assistance Emergency Work requesting the extension of the USACE while PREPA acquires either by lease or purchase the temporary units and establishing a timeline for the process.

9 Letter from FEMA to COR3 dated January 5, 2024, regarding acquisition process of the temporary units and potential funding scenarios.

10 General Requisition Form (RF 113) Form in which Puerto Rico/PREPA requested a power barge of 500 MW as a result of Hurricane Fiona with Reference No. PREMA-09-27-22-2337, dated 09/27/2022.

11 DR-4339 – PR Hurricane María FEMA Public Assistance Project Scope of Work with Costs Estimates FAAS – Power Generation (Generation) GM#739681 1/9/2024.

12 Letter from PREPA to the P3 Authority, dated January 22, 2024, notifying its intent to acquire the temporary generation units. It also contains preliminary information related to the referenced transaction and Palo Seco and San Juan Temporary Generation and Equipment Inventory Lists.



The Energy Bureau **WARNS** PREPA that noncompliance with this Resolution and Order will result in the imposition of fines pursuant to Article 6.36 of Act 57-2014.¹³

Be it notified and published.

 _____ Edison Avilés Deliz Chairman	 _____ Lillian Mateo Santos Associate Commissioner
 _____ Ferdinand A. Ramos Soegaard Associate Commissioner	 _____ Sylvia B. Ugarte Araujo Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on February 14, 2024. Associate Commissioner Antonio Torres Miranda did not intervene. I also certify that on February 14, 2024 a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com, Yahaira.delarosa@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; alopez@sbgblaw.com; jfr@sbgblaw.com, legal@genera-pr.com, regulatory@genera-pr.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today February 14, 2024.

	 _____ Sonia Seda Gaztambide Clerk
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¹³ Puerto Rico Energy Transformation and RELIEF Act, as amended (Act 57-2014”).