

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

NEPR

Received:

Jul 14, 2025

6:38 PM

**IN RE:** Petition for approval of amendment to PPOA between Energiza, LLC and PREPA

**CASE NO.:** NEPR-AP-2025-0003

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST OF CONFIDENTIALITY OF PPOA AMENDMENT AND IN COMPLIANCE WITH THE JULY 2, 2025-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:

**I. Introduction**

1. On June 20, 2025, PREPA filed a *Petition for Approval of Amendment to PPOA between Energiza, LLC and PREPA*, submitting an amendment to Energiza, LLC's ("Energiza") *Power Purchase Agreement*, for the evaluation and approval of this Energy Bureau. PREPA also requested the Energy Bureau to treat the amendment (Exhibit A) ("PPOA amendment") and a Summary (Exhibit B) as confidential due to the inclusion of trade secrets and ongoing negotiations.

2. On July 2, 2025, the Energy Bureau issued a *Resolution and Order* ("July 2-Resolution") ordering PREPA, among other matters, to file in ten (10) days a legal memorandum thoroughly establishing the need to maintain the PPOA amendment as confidential.

3. Therefore, in compliance with the July 2-Resolution, PREPA hereby submits the present memorandum, which includes the legal basis supporting the

confidentiality argument and the request for the PPOA amendment to be kept under seal.

II. **Request for Confidential designation and treatment**

4. In general, documents held by public corporations such as PREPA are presumed to be public, but access to such documents is not absolute. The Puerto Rico Supreme Court has recognized that only documents that truly enjoy public status are subject to mandatory disclosure. *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59, 82 (2017); *Ortiz v. Director de la Administración de los Tribunales*, 152 D.P.R. 161 (2000).

5. According to *Bhatia Gautier*, the government may validly withhold information when (i) a law so authorizes; (ii) the information is protected by evidentiary privileges; (iii) its disclosure may harm third parties' fundamental rights; (iv) it identifies a confidential source; or (v) it qualifies as “official information” under Rule 514 of Evidence. *Id.* at 83.

6. The Puerto Rico Supreme Court has expressly held that “documents that pertain to pre-decisional and deliberative processes may be shielded from public disclosure.” *Id.* at 86. This deliberative process privilege protects materials that are (i) pre-decisional—created before the agency's final determination, and (ii) deliberative—reflecting internal opinions, assessments, and recommendations critical to policy formulation.

7. In addition, Article 4(iv) of the Puerto Rico Government Open Data Act, Act 122-2019, codified at 3 L.P.R.A. § 9894, explicitly exempts from disclosure

“[i]nformation and official information related to decision-making in public policy-making processes, as recognized by case law,” including deliberative materials.

8. Moreover, Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act 57-2014, is the core provision for managing confidential information filed before the Energy Bureau. It provides, in its pertinent part, 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[.]”

9. 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).

10. Furthermore, the Energy Bureau's Policy on Confidential Information (as amended, the “Confidentiality Policy”) details the procedures a party should follow to request that a document or portion thereof be afforded confidential

treatment. The policy requires identifying confidential information and filing a memorandum of law explaining the legal basis and support for a request to file information confidentially. See CEPR-MI-2016-0009, § A, as amended by the Resolution dated September 20, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* at ¶ 3.

11. For all the foregoing reasons, PREPA respectfully requests that the PPOA amendment, and the Summary, be afforded full confidential treatment until the conclusion of the evaluation process and its final execution. PREPA informs this Energy Bureau that, once the PPOA amendment is fully executed, it will no longer need to be kept confidential, as it will be filed before the Office of the Comptroller of Puerto Rico, as required by law. Regarding the Summary, PREPA informs the Energy Bureau that once the PPOA amendment is fully executed, the Summary will no longer need to be kept confidential.

12. However, the PPOA amendment remains a draft subject to the Energy Bureau's evaluation and approval. The Summary is an internal document that reflects internal opinions and recommendations. Below is a summary of the information for which PREPA seeks confidential treatment:

File	Summary of Legal Basis for Confidential Treatment
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<b>Ex. A-PPOA amendment<sup>1</sup></b>	Deliberative material
<b>Ex. B-Summary of Amendments to the Energiza PPOA As of May 27, 2025</b>	Deliberative material

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of the present Motion, **GRANT** confidential treatment to the PPOA amendment and the Summary and **DEEM** PREPA in compliance with the July 2-Resolution.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 14<sup>th</sup> day of July 2025.

**CERTIFICATE OF SERVICE:** We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, which will send notification of such filing to all attorneys of record.

**GONZÁLEZ & MARTÍNEZ**

1509 López Landrón  
Seventh Floor  
San Juan, PR 00911-1933  
Tel.: (787) 274-7404

**s/Alexis G. Rivera Medina**

**Alexis G. Rivera-Medina**

TSPR No.: 18,747

Email:[arivera@gmlex.net](mailto:arivera@gmlex.net)

**s/Natalia Zayas Godoy**

**Natalia Zayas Godoy**

TSPR No.: 20, 415

Email:[nzayas@gmlex.net](mailto:nzayas@gmlex.net)

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<sup>1</sup> These Exhibits A and B were submitted to the Energy Bureau with PREPA's June 20- Petition for Approval of Amendment to PPOA between Energiza, LLC and PREPA.