

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

NEPR

Received:

Jul 22, 2025

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IN RE: IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER DATED JUNE 30, 2025

TO THE HONORABLE ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal representation and, very respectfully, informs and requests as follows:

1. On June 12, 2025, the Energy Bureau issued a Resolution and Order directing PREPA to submit: (1) a status table of PPOA amendment requests from Tranche 1 and legacy renewable project developers; (2) copies of the developers' requests; (3) communications or documents exchanged with LUMA about those requests; and (4) any draft PPOA amendments prepared in response. This included: copies of amendment requests submitted by developers; all communications and documents exchanged between PREPA and LUMA Energy, LLC ("LUMA") concerning those requests; and any draft amendments to the PPOAs prepared in response to such requests.

2. In compliance with the June 12 Resolution, PREPA submitted the required materials to the Energy Bureau on June 17, 2025. Among the documents submitted was a request from Pattern Puerto Rico Holdings LLC ("Pattern")

seeking to expand the W-2-ESSA and AA-2-ESSA projects. On May 16, 2025, PREPA informed Pattern that it cannot approve the requested increases in battery storage capacity for the Barceloneta and Santa Isabel sites beyond the originally authorized 50 MW each. The denial was based on concerns about non-competitive pricing, lack of operational flexibility, outdated cost assumptions, and LUMA's assessment that the proposal is not in the best interest of ratepayers. Pattern requested that PREPA reconsider its position, but after several exchanges of correspondence, PREPA maintained its stance.

3. On June 24, 2025, PREPA submitted the final versions of the W-2-ESSA and AA-2-ESSA agreements to the Energy Bureau. Subsequently, on June 30, 2025, the Energy Bureau issued an additional Resolution and Order ("June 30 Resolution") instructing PREPA to engage in negotiations with Pattern concerning the proposed expansions. While the Energy Bureau made clear that the June 30 Resolution did not constitute approval of the expansions or any related contract amendments, it ordered PREPA to submit a contract incorporating the proposed modifications within seven (7) days, along with all relevant communications among PREPA, LUMA, and Pattern, as well as any evaluations conducted by consultants regarding the proposed amendments.

4. On July 7, 2025, PREPA submitted a motion requesting an extension of fifteen (15) days, until July 22, 2025, to comply with the June 30 Resolution, in order to obtain and evaluate the necessary technical and economic input from LUMA before resuming negotiations with Pattern. On July 14, 2025, PREPA received LUMA's written response to its request for additional information, including

estimates of the levelized cost of storage (LCOS), projected usage, operational feasibility, and interconnection costs related to the proposed expansion.¹

5. On July 15, 2025, the Energy Bureau issued a Resolution and Order approving the final versions of the W-2-ESSA and AA-2-ESSA agreements submitted by PREPA on June 24, 2025. The Energy Bureau further determined that PREPA had complied with the requirements outlined in the December 5, 2024 Resolution, including the incorporation of modifications to Sections 2.3(b), 2.3(c), 16.1(g)(4), and 16.1(g)(5). PREPA is currently awaiting Pattern's execution of the approved agreements.

6. PREPA highlights the following aspects of LUMA's response for the Energy Bureau's consideration:

- a. First, in response to Question No. 1, LUMA provided the Levelized Cost of Storage (LCOS) for both the existing ASAP BESS projects and the proposed Pattern expansion. This cost differential underscores the need for careful economic scrutiny of the proposed expansion, particularly with respect to ratepayer impact and overall portfolio cost-effectiveness.
- b. Second, in response to Question No. 3, LUMA estimated that the Puerto Rico system could effectively utilize approximately 1,200 MW of BESS capacity, of which 800 MW are currently justifiable based on average utilization, with an additional 400 MW potentially warranted to improve reliability and provide ancillary services. PREPA draws

¹ See Exhibit A.

attention to the fact that there are currently approximately 2,299 MW of energy storage projects in development, a figure that nearly doubles the effective utilization threshold identified by LUMA.²

7. LUMA's response does not place PREPA in a materially different position with respect to its prior assessment of the expansion request. Therefore, the information received from LUMA is hereby submitted for the Energy Bureau's evaluation and consideration in accordance with the June 30 Resolution.

8. PREPA respectfully requests that the Energy Bureau maintain the confidentiality of Exhibit A. Exhibit A contains business secrets and evaluation-related content that form part of the ongoing decision-making process. Therefore, the entirety of Exhibit A is protected under the deliberative process privilege until the evaluation process is concluded.

9. Although documents held by public corporations such as PREPA are generally presumed to be public, 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).

10. 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;

² See Exhibit B.

(iv) it identifies a confidential source; or (v) it qualifies as “official information” under Rule 514 of Evidence. *Id.* at 83.

11. 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.

12. 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.

13. 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[.]”

14. 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).

15. 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.

16. As previously stated, Exhibit A includes information that is part of an ongoing negotiation process and incorporates trade or business secrets that should be maintained in a confidential manner. Accordingly, PREPA respectfully requests that the Energy Bureau find that Exhibit A is confidential and thus order that it be maintained under seal.

WHEREFORE, PREPA respectfully requests that the Energy Bureau: (1) take NOTICE of the present Motion; (2) deem PREPA in compliance with the Resolution and Order dated June 30, 2025, and (3) grant confidential treatment to Exhibit A.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 22nd 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>, and courtesy copies were sent via e-mail to LUMA Energy, LLC through its counsels of record at margarita.mercado@us.dlapiper.com, laura.rozas@dlapiper.com, yahaira.delarosa@us.dlapiper.com and to Genera PR, LLC through its counsels of record at jfr@sbgblaw.com.

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