

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

NEPR

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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 AUGUST 26, 2025, RESOLUTION AND ORDER AND
REQUEST FOR CONFIDENTIAL DESIGNATION AND TREATMENT**

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 30, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order directing PREPA to engage in negotiations with Pattern Puerto Rico Holdings, LLC ("Pattern") regarding Pattern's proposal to expand the battery storage capacities at the Barceloneta and Santa Isabel sites under their Tranche 1 Energy Storage Service Agreements ("ESSAs"). PREPA was also ordered to submit the proposed amended contracts, reflecting the negotiated terms, along with all communications among PREPA, LUMA, and Pattern, as well as any evaluations prepared by consultants.

2. On August 26, 2025, the Energy Bureau issued another Resolution and Order ("August 26 Resolution") directing PREPA to continue negotiations with

Pattern regarding the proposed amendments to their ESSAs and to submit the agreements for the Energy Bureau's evaluation.

3. In compliance with the August 26 Resolution, PREPA filed a *Motion in Compliance with Resolution and Order dated August 26, 2025*, informing the Energy Bureau that PREPA and Pattern had reached an agreement on the substantive terms of the amendments to the contracts. PREPA also submitted with the motion copies of the exchange of communications with Pattern during the negotiation process.

4. On September 27, 2025, PREPA's Governing Board issued a Resolution, No. 5209, titled *Approval of Amendments to the Pattern Power Purchase and Operating Agreement and Energy Storage Service Agreements* to: (1) approve the proposed amendments to the: (i) Pattern Barceloneta Storage LLC's ("Pattern Barceloneta") *Amended and Restated Power Purchase and Operating Agreement* ("PPOA"); (ii) ESSA for Pattern Barceloneta; and (iii) ESSA for Pattern Santa Isabel Storage LLC's ("Pattern Santa Isabel"), to incorporate the contractual terms related to the LPO financing, capacity increases, term extensions, and revised pricing; (2) authorize the submission of the proposed amendments to the Energy Bureau, the Financial Oversight and Management Board of Puerto Rico ("FOMB"), and other stakeholders as required by law for their respective approvals; and (3) authorize, after said approvals, execution of the amendments by PREPA's Executive Director.

5. As authorized by PREPA's Governing Board and in compliance with the August 26 Resolution, PREPA hereby submits for the Energy Bureau's evaluation and approval the following:

- i. The proposed amendments to the PPOA for Pattern Barceloneta, as **Exhibit I**;
- ii. The proposed amendments to the ESSAs for Pattern Barceloneta and Pattern Santa Isabel, as **Exhibit II** and **Exhibit III**; and
- iii. The redline versions of the PPOA and the ESSAs, as **Exhibits IV, V, and VI**.

6. PREPA further informs this Energy Bureau that the redlined versions of the two (2) ESSAs and the PPOA shall be included in a folder, and the proposed amendment versions will be in a separate folder properly identified as such.

REQUEST FOR CONFIDENTIAL DESIGNATION AND TREATMENT

7. In general, documents in possession of a public corporation like PREPA are presumed public. However, access to public information is not absolute. Bhatia Gautier v. Gobernador, 199 DPR 59, 82 (2017). The document sought to be disclosed must enjoy, in effect, that public status. Ortiz v. Dir. Adm of the Courts, 152 DPR 161 (2000).

8. A government entity may keep the information confidential when:

(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.

Bhatia Gautier v. Gobernador, at 83.

9. The Supreme Court of Puerto Rico has expressly held that “documents that pertain to pre-decisional and deliberative processes may be shielded from public disclosure.” 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. Bhatia Gautier v. Gobernador, at 86.

10. Additionally, Article 4(iv) of Act 122-2019, known as the *Puerto Rico Government Open Data Act*, 3 LPRA § 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.

11. Article 6.15 of Act 57-2014, known as the *Puerto Rico Energy Transformation and RELIEF Act* (“Act 57”) 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[.]” 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).

12. Moreover, 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 need 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).

13. 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.

14. Below is a summary of the information for which PREPA seeks confidential treatment:

Document	Summary of Legal Basis for Confidential Treatment
Ex. I PPOA proposed amendment draft for Pattern Barceloneta	Deliberative material
Ex. II ESSA proposed amendment draft for Pattern Barceloneta	Deliberative material
Ex. III ESSA proposed amendment draft for Pattern Santa Isabel	Deliberative material

Ex. IV Redline version PPOA amendment draft for Pattern Barceloneta	Deliberative material
Ex. V Redline version for ESSA proposed amendment draft for Pattern Barceloneta	Deliberative material
Ex. VI Redline version for ESSA proposed amendment draft for Pattern Santa Isabel	Deliberative material

15. The Exhibits contain ongoing deliberative materials and evaluation-related content of the proposed amendments to the PPOA and the ESSAs. Disclosure at this stage of Exhibits I-VI would undermine the integrity of the decision-making process and is, therefore, protected under the deliberative process privilege until the evaluation concludes.

16. Therefore, PREPA respectfully requests that Exhibits I through IV be afforded confidential treatment until the ongoing evaluation process is completed and the final agreements are duly executed. At this stage, the proposed amendments to the PPOA and ESSAs remain in draft form, subject to the Energy Bureau's review and approval.

17. PREPA further emphasizes that, once the amendments to the PPOA and ESSAs are finalized and executed, the documents will be made publicly available in full compliance with applicable legal requirements. Thus, PREPA's request for confidentiality is narrowly tailored and temporary, ensuring both the protection of sensitive draft information and eventual public access to the final, binding agreements.

WHEREFORE, PREPA respectfully requests that the Energy Bureau: (1) take NOTICE of the present Motion; (2) deem PREPA in compliance with the August 26 Resolution and Order, and (3) grant confidential treatment to Exhibits I-VI.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of October 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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