

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

NEPR

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IN RE: ELECTRIC SYSTEM PRIORITY
STABILIZATION PLAN

CASE NO.: NEPR-MI-2024-0005

SUBJECT: Reporting Directives and
Information Requirement regarding
PREPA's Proposed Contract Resulting
from Temporary Emergency Power
Generation

**MOTION IN COMPLIANCE WITH OCTOBER 10, 2025, RESOLUTION AND ORDER AND
MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT**

TO THE HONORABLE ENERGY BUREAU,

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

I. Introduction

1. On February 26, 2025, Genera PR, LLC ("Genera") submitted to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a request for an expedited approval of emergency generation measures, citing a critical generation shortfall following the failure of Aguirre Unit 1. In response, the Energy Bureau issued a Resolution and Order on March 14, 2025, in which it found that the electric system was facing a generation deficit between 700 and 850 MW and that immediate measures were necessary to address the emergency.

2. To that end, the Energy Bureau approved the acquisition of temporary generation capacity and ordered PREPA to take specific actions. Among those directives, the Energy Bureau ordered PREPA to notify the Puerto Rico Public-Private Partnerships Authority ("P3A") to activate the services of the Third-Party Procurement Office ("3PPO"), since Genera is classified as a restricted party. PREPA promptly complied with that directive.

3. On March 25, 2025, the 3PPO issued RFP No. 3PPO-0314-20-TPG for the procurement of up to 800 MW of temporary emergency generation capacity.

4. Following various procedural filings and actions, on October 10, 2025, the Energy Bureau issued a Resolution and Order ("October 10 Resolution") ordering PREPA to submit, no later than October 15, 2025, a detailed progress report on the ongoing emergency generation acquisition process, including the following:

- i. An updated project timeline indicating milestones achieved and upcoming target dates;
- ii. The suppliers contacted and their current participation status;
- iii. All relevant, legal, technical, and financial information and documentation regarding the evaluation conducted to date, including methodologies, evaluation criteria, and preliminary determinations;
- iv. The current status of contractual documentation and draft agreements;

- v. A summary regarding required licenses, permits, and interconnection studies;
- vi. The budget and estimated costs, identifying any deviations from the preliminary estimates;
- vii. Actions executed to date, including relevant internal and third-party communications;
- viii. Any obstacles or delays encountered;
- ix. The next steps and work plan with estimated completion dates; and
- x. All relevant RFP documents and materials, including but not limited to requests for proposals, submissions received, evaluation reports, internal memoranda, and any correspondence or communications exchanged with the 3PPO, the P3A, or prospective suppliers.

5. Therefore, in compliance with the October 10 Resolution, PREPA hereby submits as **Exhibits I and II**, the 3PPO detailed report and the electronic RFP file. Because of the voluminosity of the RFP file, PREPA informs this Energy Bureau that it will provide to the PREB's Secretary by email a confidential link that can only be accessed by the PREB.

II. Request for Confidential Treatment and Designation

6. PREPA respectfully requests confidential treatment of Exhibits I and II because they contain ongoing deliberative material that forms part of an active

competitive process. Disclosure of Exhibits I and II at this stage would undermine the integrity of the decision-making process and, therefore, is protected under the deliberative process privilege until the competitive process is concluded.

7. Although documents in the possession of public corporations such as PREPA are generally presumed to be public, access to such documents is not absolute. The Supreme Court of Puerto Rico has recognized that only documents that truly enjoy public status are subject to mandatory disclosure. Bhatia Gautier v. Gobernador, 199 DPR 59, 82 (2017); Ortiz v. Director de la Administración de los Tribunales, 152 DPR 161 (2000).

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

9. The Supreme Court of Puerto Rico has expressly held that “documents that pertain to pre-decisional and deliberative processes may be protected 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, evaluations, and recommendations essential to the formulation of public policy.

10. Moreover, Article 4(e)(iv) of the *Puerto Rico Government Open Data Act*, Act 122-2019, 3 L.P.R.A. § 9894, expressly exempts from disclosure: “[P]ublic

information subject to any privileges recognized under the Constitution of the United States or Puerto Rico, laws, and Rules of Evidence, including Official Information and Official-Decisional Information in Deliberative Proceedings on Public Policy, as recognized by case law."

11. Additionally, Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act 57-2014, 22 L.P.R.A. § 1054(n), constitutes the core legal provision for managing confidential information filed before the Energy Bureau. It provides, in pertinent part, that "any person who is required to submit information to the Energy Bureau and believes that the information to be submitted has any confidentiality privilege may request the Bureau to treat such information accordingly."

12. If, after due evaluation, the Energy Bureau determines that the information should be protected, it will grant such protection in a manner that minimizes any impact on the public interest, transparency, and the rights of the parties involved in the administrative proceeding where the allegedly confidential document was filed. *Id.*, Art. 6.15(a). If the Energy Bureau determines that the information is confidential, "the information shall be duly protected and delivered exclusively to the Energy Bureau personnel who need to know it, under confidentiality agreements." *Id.*, Art. 6.15(c). "The Energy Bureau shall act promptly upon any claim of privilege and confidentiality submitted by a person subject to its jurisdiction, through a resolution to that effect, before any allegedly confidential information is disclosed." *Id.*, Art. 6.15(d).

13. Furthermore, the Energy Bureau's Confidentiality Policy (as amended) outlines the procedures that a party must follow to request confidential treatment of a document or any portion thereof. The policy requires the requesting party to identify the confidential information and file a memorandum of law explaining the legal basis and grounds supporting the confidentiality request. See CEPR-MI-2016-0009, § A, as amended by the Resolution of September 21, 2016, CEPR-MI-2016-0009. The memorandum must also include a table identifying the confidential information, a summary of the legal basis for the confidentiality designation, and a justification showing how each claim or designation meets the applicable legal standard. *Id.* ¶ 3.

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

Documents	Summary of Legal Basis for Confidential Treatment
Exhibit I- 3PPO Response to PREB Resolution and Order...	Deliberative material
Exhibit II-Confidential Temporary Power Generation	Deliberative material

15. PREPA respectfully requests that Exhibits I and II remain confidential until the competitive procurement process concludes and the final contract is executed.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of the present Motion and **DEEM** PREPA in compliance with the October 10 Resolution.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th 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 and sromero@sbgblaw.com.

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