

NEPR

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

**IN RE: ACCELERATED EVALUATION OF
RENEWABLE ENERGY AND ENERGY
STORAGE PROJECT PROPOSALS TO
SECURE FEDERAL INVESTMENT TAX
CREDITS (ITCS)**

CASE NO.: NEPR-MI-2025-0005

**MOTION IN COMPLIANCE WITH DECEMBER 30, 2025, RESOLUTION AND ORDER AND TO
SHOW CAUSE**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA"), through its counsel of record, and respectfully states and prays as follows:

1. On December 30, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order approving the procurement of selected renewable energy and energy storage projects and directing PREPA to commence and complete negotiations with the selected proponents within ten (10) business days ("December 30 Order").

2. In compliance with the December 30 Order, the following day, December 31, 2025, PREPA formally notified the selected proponents of the Energy Bureau's determination, including the Tranche 4 RFP model contract, thereby initiating the negotiation process ordered by the Energy Bureau.

3. In that correspondence, PREPA expressly:

- a. Confirmed that negotiations were being initiated pursuant to the Energy Bureau's December 30 Order;
- b. Established the Tranche 4 RFP model contract as the baseline framework;

- c. Requested the proponents' availability and the submission of draft contracts; and
- d. Reiterated that any proposed modifications should not materially depart from the approved model contract.

4. Having not received any proposed contracts from the proponents, on January 14, 2026, PREPA issued a follow-up letter reiterating its request for the materials necessary to advance negotiations in strict compliance with the Energy Bureau's directives. PREPA requested that proponents submit: (i) the Tranche 4 RFP model contract with all proposed redlines; (ii) any proposed modifications that do not materially depart from the established contractual structure or risk allocation framework; and (iii) clear and specific justifications demonstrating that any proposed changes are necessary to ensure technical and financial viability and to advance the public interest, including cost discipline, system reliability, and timely execution. In addition, PREPA reminded proponents of the requirement to incorporate any outstanding Proposal Security or equivalent financial assurance into the contract for the period between execution and financial closing, as well as to submit any pending certifications of non-conflict prior to the commencement of substantive negotiations. This approach is fully consistent with the Energy Bureau's determination that the Tranche 4 contractual framework constitutes a vetted, reasonable, and public-interest-oriented model.

5. Between January 15 and 16, 2026, PREPA received thirteen (13) draft contracts from the proponents, all of which PREPA is currently and carefully reviewing. Notably, PREPA has received proposed contract drafts from certain proponents that

contain material deviations from the Tranche 4 model contract, despite the Energy Bureau's express instruction that no substantial changes be introduced.

6. PREPA has not summarily disqualified these proposed contracts. Instead, PREPA has continued to review such proposals in good faith, with the objective of determining whether the identified deviations can be addressed through negotiations that bring the contracts into compliance with the Energy Bureau's directives and advance the public interest.

7. Notwithstanding these actions, on January 14, 2026, an unknown proponent filed a Motion for Clarification before the Energy Bureau alleging that PREPA had failed to initiate negotiations ("Motion for Clarification"). Such allegation is factually incorrect.

8. Considering the foregoing factual background, the Motion for Clarification filed by an unidentified proponent lacks merits. The filing of motions that lack factual or legal merit, instead of timely submitting the required contractual documentation, serves only to delay the negotiation process ordered by the Energy Bureau. Requiring PREPA to pause ongoing negotiations to respond to unfounded motions undermines the very timelines that the proponents now seek to enforce. PREPA respectfully urges the proponents to focus their efforts on complying with the Energy Bureau's instructions by submitting complete, timely, and compliant draft contracts, rather than engaging in unnecessary motion practice.

9. Despite PREPA having failed to comply with any order and based solely on the allegations in the Motion for Clarification, on January 16, 2026, the Energy Bureau issued a Resolution ordering PREPA to show cause within ten (10) days why a

fine of \$25,000 should not be imposed for alleged noncompliance with the December 30, 2025 Order. In addition, the Energy Bureau ordered PREPA to immediately commence the contract negotiation process with the selected proponents and to submit, within ten (10) days, a report on the status of negotiations, with additional status reports to be filed every five (5) days thereafter until negotiations are completed, establishing February 15, 2026 as the deadline for completion of negotiations.¹

10. As stated above, PREPA timely initiated negotiations and has acted diligently and in good faith. However, PREPA continues to evaluate the draft contracts submitted by the proponents, and, due to the inherent complexity of these projects and the introduction of material contractual changes, PREPA's review and negotiation of the proposed draft contracts has not yet been finalized. As a result, the ten (10) business-day period originally contemplated by the Energy Bureau has proven insufficient to complete negotiations of this magnitude and complexity, notwithstanding PREPA's diligent efforts.

11. PREPA continues to advance the negotiation process and remains fully committed to complying with the Energy Bureau's directives, with the objective of submitting negotiated contracts on or before February 15, 2026, to the extent that

¹ PREPA respectfully notes that the Resolution and Order issued on January 16, 2026, contains an internal inconsistency regarding the applicable compliance deadline. In one instance, the Resolution states that the ten (10) business-day period granted under the December 30, 2025 Order expired on January 15, 2026, while elsewhere the Resolution reflects that the applicable deadline is January 16, 2026. Based on the computation of the ten (10) business-day period from December 30, 2025, the correct deadline is January 16, 2026. PREPA has proceeded, and continues to proceed, under the understanding that January 16, 2026, is the compliance date.

the proponents are able to submit negotiated contracts that comply with the Energy Bureau's directives and adequately protect the public interest.

12. For these reasons, the imposition of sanctions against PREPA would be unwarranted, disproportionate, and inconsistent with the factual record. PREPA acted promptly to initiate the negotiation process and has proceeded diligently and in good faith, taking continuous and affirmative steps to comply with the Energy Bureau's directives. Any delay in finalizing negotiations is attributable to the complexity of the process, the timing and substance of the materials submitted by the proponents, and the introduction of proposed contractual changes that deviate from the approved model framework, and not to any willful noncompliance or disregard of the Energy Bureau's authority. Under these circumstances, the record amply demonstrates that PREPA has shown good cause why no fine or sanction should be imposed.

Request for Confidential Treatment

13. PREPA respectfully requests confidential treatment of Exhibit I. The exhibit contains ongoing deliberative materials. Disclosure at this stage would undermine the integrity of the decision-making process and is, therefore, protected under the deliberative process privilege until the negotiation process concludes.

14. 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).

15. According to Bhatia Gautier v. Gobernador, 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.

16. 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.

17. 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.

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

File	Summary of Legal Basis for Confidential Treatment
Exhibit I	Deliberative material

19. PREPA respectfully requests that the aforementioned exhibit remain confidential until the negotiation and approval process concludes.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take: (1) **NOTICE** of the present Motion; (2) **DEEM** PREPA in compliance with the January 16 Resolution; and (3) **GRANT** confidential treatment to Exhibit I.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16 day of January 2026.

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>.

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