

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

NEPR

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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 JANUARY 16, 2025, RESOLUTION, AND MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT

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. Procedural Background

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.

2. On December 31, 2025, one day after the issuance of the *Resolution and Order*, PREPA formally notified the selected proponents of the Energy Bureau's determination, including the Tranche 4 RFP model contract, thereby initiating the negotiation process as ordered.

3. In its notification to the proponents, PREPA expressly:
 - a. confirmed that negotiations were being initiated pursuant to the Energy Bureau's directive;
 - 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. On January 16, 2026, the Energy Bureau issued a Resolution directing PREPA to promptly initiate contract negotiations with the selected proponents. The Resolution further requires PREPA to submit a report on the status of these negotiations within ten (10) days, followed by additional status updates every five (5) days thereafter until the conclusion of the negotiation process. The deadline for completing all negotiations is set for **February 15, 2026**.

5. On January 26, 2026, and in compliance with the directive issued by the Bureau, PREPA submitted its initial status report on negotiations. Per the same directive, PREPA hereby submits its second status report regarding the ongoing negotiations.

6. As detailed in Exhibit 1, PREPA continues to make progress and remains committed to adhering to the Energy Bureau's directives. Specifically, one Proponent acknowledged receipt of PREPA's correspondence dated January 23

and January 26 regarding the ongoing negotiation process under NEPR-MI-2025-0005. PREPA also received a formal request from another Proponent for access to the relevant System Impact Study in order to validate PPOA-related assumptions. In response, and to prevent any potential delays in the negotiation process, PREPA has formally requested that LUMA provide the requested study by February 4, 2026. Additionally, LUMA has delivered to PREPA a preliminary assessment of the agreements currently under review. PREPA requested additional feedback from LUMA as the operator of the transmission and distribution system and is currently awaiting its response.

7. PREPA further notes that, as previously stated, certain aspects of the negotiation timeline are necessarily contingent upon the timely provision of technical and interconnection-related information by third parties. PREPA has acted diligently to facilitate the requests made in order to ensure that negotiations proceed on an informed and technically sound basis.

II. **Request for Confidential Treatment**

8. Considering the deliberative materials contained in Exhibit 1, PREPA respectfully requests confidential treatment of the same. Disclosure at this stage would undermine the integrity of the decision-making process and should, therefore, be protected under the deliberative process privilege until the negotiation process concludes.

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. Pursuant 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.

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 "Official Information and Decision-making Official Information in Public Policy-making Procedures, as recognized by case law", including deliberative materials as stated in Bhatia Gautier.

13. 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

14. 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 Order; and (3) **GRANT** confidential treatment to Exhibit I.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2nd day of February 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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