

**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 THE JANUARY 16 AND FEBRUARY 6, 2026
RESOLUTIONS, 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:

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

2. On the following day, December 31, 2025, PREPA formally notified the selected proponents of the Energy Bureau's determination, provided the Tranche 4 RFP model contract, and thereby commenced the negotiation process in accordance with the Energy Bureau's December 30 Order. 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.

3. On January 16, 2026, the Energy Bureau issued a Resolution and Order ("January 16 Order") requiring PREPA to, *inter alia*, submit a report on the status of the negotiations within ten (10) days, followed by additional status updates every five (5) days thereafter until the conclusion of the negotiation process. The January 16 Order set February 15, 2026, as the deadline for completing all negotiations.

4. In compliance with the January 16 Order, on January 26, 2026, PREPA submitted its initial status report on the contract negotiations with the selected proponents.

5. In compliance with the January 16 Order, on February 2, 2026, PREPA submitted its second status report on the contract negotiations with the selected proponents.

6. On February 6, 2026, the Energy Bureau issued a Resolution and Order ("February 6 Order") whereby it directed PREPA to notify Proponent A that it had three (3) days to submit improved pricing offers for the Solar PV components of its projects and to continue negotiations to determine whether revised pricing

warrants further consideration of those components. PREPA was likewise required to notify all proponents whose projects were not selected that they had three (3) days to submit final improved pricing offers for their previously proposed projects. With respect to negotiations involving selected proponents, PREPA was required to: (a) ensure that proponents submit detailed written explanations supporting any requested contractual modifications, (b) provide PREPA's position on such proposed changes in writing, (c) participate in an initial good-faith meeting to discuss and attempt to resolve the proposed modifications, and, (d) where PREPA determined that a modification should not be accepted, communicate in writing the reasons supporting that determination. The Energy Bureau further recognized that pricing may be refined as contractual risk allocation and commercial terms are finalized and emphasized the need for PREPA to work toward timely completion of negotiations so that contracts may be submitted by the established deadline, unless the parties jointly request an extension.

7. In compliance with the January 16 Order, PREPA hereby submits its third status report regarding the ongoing contract negotiations with the selected proponents.

8. As detailed in Exhibit 1, PREPA continues to make progress and remains committed to adhering to the Energy Bureau's directives. Specifically, in compliance with PREPA's requests, LUMA supplied its review of the proponents' redlines and comments on three renewable energy contracts and further submitted the Tranche 3 Feasibility Study that includes preliminary information for

a proponent's project. LUMA further clarified information regarding procurement of current valid interconnection studies. Additionally, LUMA reiterated its prior position on the attached feasibility materials as a basis for system-impact conclusions.

9. PREPA further informs that, pursuant to the February 6 Order, it issued notifications that same day to the proponents whose projects were not selected under the December 30 Resolution, granting them a period of three (3) days to submit final improved pricing offers for their previously proposed projects for PREPA's consideration. PREPA also required all proponents to submit the detailed written explanations mandated by the February 6 Order and notified the selected proponents of the additional procedural and negotiation requirements set forth therein. See Exhibit 1.

10. PREPA reiterates that certain elements of the negotiation timeline necessarily depend on the timely provision of technical and interconnection-related information by third parties. PREPA has acted diligently to facilitate those requests to ensure that negotiations proceed on a fully informed and technically sound basis.

Request for Confidential Treatment

11. 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.

12. 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).

13. 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.

14. 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.

15. 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.

16. 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

17. 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*; (3) **DEEM** PREPA in partial compliance with the February 6 *Resolution and Order*; and (4) **GRANT** confidential treatment to Exhibit I.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th 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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