

**GOVERNMENT OF 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

**INFORMATIVE MOTION REGARDING NEGOTIATIONS WITH PROPONENT 3 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 ("December 30 Resolution") 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 December 30 Resolution, 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. 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 Resolution") whereby it required PREPA to submit a report on the status of negotiations with the selected proponents 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 was set for Sunday, February 15, 2026.

4. On January 26, 2026, and in compliance with the January 16 Resolution, PREPA filed its *Motion in Compliance with January 16, 2025<sup>1</sup>, Resolution and Memorandum of Law in Support of Request for Confidential Treatment*, submitting its initial status report on negotiations and its ongoing review of draft contracts. Specifically, PREPA informed that:

- a. It promptly notified the selected proponents, following the December 30 Resolution;
- b. Initiated negotiation using the Tranche 4 RFP model contract as the baseline; and
- c. Requested the necessary materials to advance discussions in accordance

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<sup>1</sup> PREPA inadvertently included in the Motion's title "January 16 2025 Resolution...". However, the Resolution to which it referred was issued on January 16, 2026.

with the Energy Bureau's directives.

5. On February 2, 2026, PREPA filed its *Motion in Compliance with January 16, 202[6], Resolution and Memorandum of Law in Support of Request for Confidential Treatment*, informing the status of the ongoing negotiations with selected proponents. It further explained that it had timely initiated negotiations using the approved Tranche 4 model contract as the baseline and continued to advanced discussions while facilitating requests for critical technical information, such as the System Impact Study, and seeking input from LUMA Energy, LLC ("LUMA"), as the transmission and distribution operator.

6. On February 6, 2026, the Energy Bureau issued a Resolution and Order ("February 6 Resolution"): (i) clarifying that only the Battery Energy Storage System ("BESS") components of Proponent A's (referred as "Proponent 3" in this motion) projects had been approved in the December 30 Resolution and ordered that Proponent A be afforded three (3) days to submit improved pricing for the Solar PV components for further evaluation, without constituting prior approval of those components; (ii) directing PREPA to notify proponents whose projects were not selected that they likewise had three (3) days to submit final improved pricing offers; (iii) regarding negotiations with selected proponents, ordering that any proposed contractual modifications be supported by detailed written justifications, that PREPA provide written responses to such proposals, and that the parties engage in good-faith negotiations to resolve outstanding issues; and (iv) requiring contracts to be submitted on or before February

15, 2026 unless the parties jointly request additional time.

7. On February 9, 2026, PREPA filed its *Motion in Compliance with the January 16 and February 6, 2026, Resolutions, and Memorandum of Law in Support of Request for Confidential Treatment*, whereby it submitted its third status report regarding ongoing contract negotiations. Specifically, it stated that LUMA had supplied its review of the proponents' redlines and comments on the three (3) renewable energy contracts and had further submitted the Tranche 3 Feasibility Study.

8. On February 12, 2026, PREPA sent communications to each selected proponent formally scheduling meetings for Friday, February 13, 2026, or an alternative date proposed by the proponent, via the *TEAMS* platform to discuss the revisions and comments submitted by the selected proponents to the model contract, explore potential areas of alignment, and address proposed pricing and contractual modifications.

9. On that same date, that is February 12, 2026, one of the proponents ("Proponent 1") requested that the meeting be scheduled for alternative dates (February 17, 18, and 19, 2026) and proposed that a joint extension of time be sought from the Energy Bureau to complete negotiations.

10. On February 13, 2026, PREPA sent a written communication to Proponent 1 scheduling the meeting for February 18, 2026, at 9:30 AM.

11. On February 17, 2026, Proponent 1 confirmed its availability for this initial meeting.

12. On February 13, 2026, PREPA held meetings with the remaining selected

proponents ("Proponents 2 and 3") to discuss the proposed contractual revisions and coordinate next steps in the negotiation process. During the meetings:

- a. Proponent 2 verbally agreed to extend the negotiation deadline through February 27, 2026. On that same date, February 13, PREPA sent a written communication memorializing the agreed-upon extension and requesting formal confirmation, which Proponent 2 subsequently provided in writing. Additionally, during the meeting, PREPA informed Proponent 2 that LUMA had submitted revisions to the draft contract and proposed convening a technical conference to address several technical questions raised by Proponent 2 concerning the Minimum Technical Requirements. PREPA agreed to coordinate this meeting with LUMA and emphasized that it should take place no later than the following week.
- b. With respect to Proponent 3, PREPA agreed during the meeting to provide its written position on Proponent 3's draft contract on or before February 18, 2026. Proponent 3 was the only proponent that did not agree to an extension during the meeting. PREPA advised Proponent 3 that its proposed revisions to the draft contract were extensive and substantive, which would make it difficult to reach consensus within the current negotiation deadline. PREPA further reiterated that, pursuant to the December 30 Resolution, the Energy Bureau directed PREPA to use the Tranche 4 RFP model contract as the governing framework for negotiations, permitting only non-substantial modifications deemed necessary to protect the public interest and to

ensure the technical and financial viability of the projects.

13. On February 13, 2026, consistent with its communications to Proponent 2, PREPA sent an email to the relevant LUMA personnel to schedule a technical conference to facilitate discussion of the outstanding technical matters and to obtain the availability of LUMA's technical team. PREPA emphasized that time was of the essence in light of the expedited nature of this proceeding and requested that the conference be scheduled no later than next week (February 16–20). LUMA acknowledged receipt of this request the same day and indicated that it would provide its availability for the conference as soon as possible.

14. On February 17, 2026, LUMA confirmed its availability for the proposed technical conference. PREPA promptly communicated this information to Proponent 2, advising that LUMA had proposed February 20, 2026, at 1:00 p.m. for the meeting, and requested Proponent 2 to confirm its availability for that date and time, which it did. Ultimately, the technical conference was held today, February 20, 2026 with LUMA, PREPA, and Proponent 2.

15. With respect to Proponent 3, on February 13, 2026, PREPA sent a written communication reiterating that additional time was necessary to continue negotiations in light of the substantial revisions proposed by Proponent 3. PREPA confirmed that it would submit its written revisions to Proponent 3's redlines to the model contract ("Proponent 3's Draft Contract") on or before February 18, and further requested written confirmation of an extension of the negotiation deadline through February 27.

16. On February 17, 2026, Proponent 3 requested that PREPA: (i) submit its

written position on the proposed contractual modifications no later than February 17, 2026; (ii) convene a negotiation meeting on February 18, 2026, to address outstanding commercial, technical, and contractual issues; and (iii) submit the negotiated contract to the Energy Bureau by February 20, 2026.

17. On that same date, February 17, 2026, PREPA formally transmitted to Proponent 3 (“February 17 Communication”) its written revisions and comments to Proponent 3’s Draft Contract, unequivocally reaffirming the governing regulatory framework and the limits imposed by the Energy Bureau. In that communication, PREPA made clear that:

- a. Contract negotiations must be conducted strictly and exclusively in accordance with the directives of the Energy Bureau, and not pursuant to unilateral timelines or frameworks unilaterally imposed by any party.
- b. The December 30 Resolution expressly requires PREPA to use the Tranche 4 RFP model contract as the operative baseline, permitting only non-substantial modifications necessary to protect the public interest and to ensure the technical and financial viability of the projects.
- c. Proponent 3’s draft contract contained numerous substantial and material deviations from the approved model contract, far exceeding the limited scope of permissible modifications authorized by the Energy Bureau.
- d. Given the breadth and substantive nature of the proposed departures, the magnitude of the changes could not reasonably be reconciled within the compressed schedule unilaterally proposed by Proponent 3.

e. PREPA further advised that it would seek an extension from the Energy Bureau through February 20 to allow negotiations to proceed within the proper regulatory framework; requested Proponent 3's formal position on PREPA's comments to the proposed modifications; and made clear that, in the absence of consensus, the disputed provisions and the parties' respective positions could be submitted to the Energy Bureau for determination.

18. On February 17, 2026, PREPA filed its *Motion in Compliance with Resolution and Order of February 6, 2026, Request for Extension of Time and Memorandum of Law in Support of Request for Confidential Treatment*, whereby it informed the Energy Bureau:

- a. the status of ongoing negotiations with the selected proponents and detailed the procedural history of the Energy Bureau's prior resolutions.
- b. the timely initiation of negotiations using the Tranche 4 RFP model contract as the governing framework, the scheduling and holding of meetings with proponents.
- c. the coordination of technical discussions with LUMA.
- d. that additional time was necessary to address outstanding technical, commercial, and contractual issues —particularly the extensive revisions proposed by one proponent —and noted that while some proponents agreed to a limited extension through February 27, 2026, others agreed only

to a shorter period.

II. **Recent developments regarding negotiations with Proponent 3**

19. On February 19, 2026, Proponent 3 sent a communication to PREPA stating, in summary, that: (a) it rejected PREPA's request for a two-week extension of the negotiation period through February 27, 2026; (b) it believed that the proposed extension was inconsistent with the Execute Order OE-2025-047 and the Energy Bureau directives; and (c) it demanded that PREPA meet with it on that same day, February 19, or today, February 20. See **Exhibit I**. Due to previously scheduled commitments with other proponents, it was not possible for PREPA to schedule the meetings within the proposed dates.

20. PREPA respectfully notes that Proponent 3 failed to comply with the Energy Bureau's directives set forth in its February 6 Resolution, which expressly require each proponent to "prepare a detailed written explanation describing the rationale for the requested modification and the benefits that, in their view, would result from the inclusion of such modification." Proponent 3 did not provide the required justification for its proposed changes. This failure, coupled with Proponent 3's refusal to agree to a reasonable extension of time and the magnitude of the substantial and material deviations from the approved model contract, has rendered it impossible for PREPA to finalize and submit a negotiated contract with Proponent 3 for the Energy Bureau's consideration.

21. In light of the foregoing, PREPA respectfully informs that the parties did not reach an agreement and hereby submits for the Energy Bureau's review and

determination, Proponent 3's Draft Contract (reflecting its proposed changes to the Tranche 4 model contract) and PREPA's corresponding comments. See **Exhibit II**. PREPA requests that the Energy Bureau provide guidance as to the appropriate disposition of the unresolved contractual issues.

III. **Request for Confidential Treatment**

22. Considering the deliberative materials contained in Exhibits I and II<sup>2</sup>, 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 by the deliberative process privilege until the negotiation concludes.

23. 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).

24. 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.

25. The Puerto Rico Supreme Court has expressly held that "documents that pertain to pre-decisional and deliberative processes may be shielded from public

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<sup>2</sup> Today, PREPA will submit a Confidential file for Exhibits I and II with the Energy Bureau's Secretary.

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.

26. 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 v. Gobernador.

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

<b>File</b>	<b>Summary of Legal Basis for Confidential Treatment</b>
<b>Exhibit I</b>	Deliberative material
<b>Exhibit II</b>	Deliberative material

28. PREPA requests that the exhibits remain confidential until the negotiation and approval process concludes.

29. In light of the foregoing, PREPA respectfully requests that the Energy Bureau review the draft document submitted as **Exhibit II**, which reflects both Proponent 3’s Draft Contract and PREPA’s corresponding comments, and provide guidance or make such determinations as it deems appropriate regarding the disposition of the substantial unresolved contractual issues that materially deviate from the Tranche 4 model

contract.

**WHEREFORE**, PREPA respectfully requests that the Energy Bureau take: (1) **NOTICE** of the present Motion; (2) **EVALUATE** the draft contract submitted as **Exhibit II**, (3) and **DETERMINE** what it deems appropriate regarding the disposition of the substantial unresolved contractual issues; and (4) **GRANT** confidential treatment for **Exhibits I and II**.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, on the 20th 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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