

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

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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-2025-0001

SUBJECT: MOTION FOR NOTICE

MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF APPENDIX AND EXHIBIT 1 INCLUDED IN YABUCOA ENERGY'S MOTION FOR NOTICE, DOCKETING, AND PROVISIONAL CONFIDENTIAL TREATMENT OF FEBRUARY 9, 2026

TO THE HONORABLE ENERGY BUREAU:

COMES NOW Yabucoa Energy, LLC (“Yabucoa”), by and through the undersigned counsel, and respectfully states and requests as follows:

I. INTRODUCTION

Yabucoa respectfully submits this Memorandum of Law in support of its request for confidential treatment of the February 9, 2026 communication (the “Appendix”) attached to the Motion for Notice. This Memorandum is submitted within the ten (10) day period contemplated by the Bureau’s confidentiality procedures and is therefore timely.

On February 18, 2026, Yabucoa filed its Motion for Notice, Docketing, and Provisional Confidential Treatment in the above-captioned case (“Motion for Notice”). Attached to that motion was a February 9, 2026 communication submitted to the Puerto Rico Electric Power Authority (“PREPA”) in connection with PREPA’s RFP No. 237366. Yabucoa requested that the aforementioned communication, be treated as confidential since they contain commercially sensitive information, including but not limited to details concerning team composition, financial capability, contractual site control, development strategy, and proprietary technical information.

As will be established below, under the applicable statutory and regulatory framework, the Honorable Energy Bureau should grant confidential treatment to the Appendix in their entirety. This document form part of an ongoing competitive procurement process and contain sensitive non-public technical, operational, and economic information. Disclosure of this information would provide other proponents with access to Yabucoa's sensitive commercial information and consequently, grant them an unfair competitive advantage. As discussed below, Yabucoa derives independent economic value and a commercial advantage from this information because it is not common knowledge or accessible to competitors through appropriate means. Therefore, it must be protected.

Importantly, the Appendix are integrated proposal materials submitted within the context of an active procurement process. They are not compilations of discrete, severable data points; rather, they present a cohesive commercial, financial, technical, and strategic narrative. Redaction of isolated elements would not meaningfully mitigate competitive harm because the remaining content, taken together, would allow competitors to reverse-engineer Yabucoa's proposal structure, strategic positioning, consortium configuration, and execution approach. For that reason, confidential treatment must extend to the totality of each document.

The governing legal framework provides two independent but complementary bases for protection: (i) the structural confidentiality embedded in the ongoing procurement process, and (ii) the substantive protection afforded to trade secrets and proprietary commercial information under Puerto Rico law.

II. REGULATORY FRAMEWORK

a. Puerto Rico Energy Transformation and Relief Act

Section 6.15 of the Puerto Rico Energy Transformation and Relief Act, Act No. 57 of May 27, 2014, (22 L.P.R.A. § 1054n), provides as follows:

If any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such, subject to the following:

- a) If the Energy [Bureau], after the appropriate evaluation, believes such information should be protected, it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.
- b) To such purposes, the Energy [Bureau] shall provide access to the document or the privileged portion of the document only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.
- c) The Energy [Bureau] shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements. However, the Energy [Bureau] shall direct that a non-confidential copy be furnished for public review.
- d) The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.

In addition to the Bureau's statutory confidentiality framework, the procurement regime governing the underlying transaction independently mandates confidentiality.

b. Policy on Management of Confidential Information in Procedures before the Commission

In the same way, the Policy on Management of Confidential Information in Procedures before the [Bureau], CEPR-MI-2016-0009, requires that:

Whenever a party believes that a specific document to be produced contains Confidential Information and is entitled to such treatment, that party (“Producing Party”) must follow the following instructions so that such information is protected:

1. The Producing Party must identify such information by marking it “Confidential”. Every document or information so identified will be referred to as “Confidential Information”.
2. The Producing Party must, no later than ten (10) days after filing of the Confidential Information, file a memorandum of law to the [Bureau] explaining in writing the legal basis in support of its argument that the information filed contains Confidential Information and deserves some form of protection. In its memorandum, the Producing Party must relate each document to a legal basis and specific argument that support each claim. The Producing Party must notify a copy of its memorandum of law to each party in the case.

c. Regulation on Adjudicative, Notices of Non-Compliance, Rate Review and Investigations Proceedings adopted by the Energy Bureau

Moreover, Section 1.15 of the Regulation on Adjudicative, Notices of Non-Compliance, Rate Review and Investigations Proceedings, Regulation No. 8543 of December 18, 2014, asserts that:

If in compliance with the provisions of this Regulation or any of the [Bureau’s] order, a person has the duty of disclose information to the Commission considered to be privileged, pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the [Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Bureau] shall evaluate the petition and, if it understands the material merits protection, proceed according to what is set forth in Article 6.15 of Act No. 57-2014, as amended.

d. Evidence Rule 513

Finally, Evidence Rule 513 recognizes the trade secret privilege, and its purpose is to protect the free enterprise system by providing that owners of trade secrets may refuse to disclose or prevent another from disclosing important secrets about their trade or business as long as doing so does not tend to conceal fraud or cause injustice. Ponce Adv. Med. v. Santiago González, 197 DPR 891, 901 (2017). Relevant to this case, this privilege has a solid foundation in defending the free

enterprise system. *Id.* at p. 902 (citing E.L. Chiesa Aponte, *Treatise on Evidence Law: Rules of Evidence of Puerto Rico and Federal Law*, San Juan, JTS Publishing House, 1998, Vol. I, p. 170).

The trade secret privilege is regulated by the “Puerto Rico Trade and Industrial Secrets Protection Act.” 10 L.P.R.A. § 4131 et seq. The Law defines a trade secret as any information that meets two requirements. First, that the information gives rise to an independent economic value, whether actual or potential, or a commercial advantage because the information is not common knowledge or accessible by appropriate means to those people who could obtain a pecuniary benefit from the use or disclosure of the information. *Id.* to § 4132(a). The second requirement is that the information has been subject to reasonable security measures, according to the circumstances, to maintain its confidentiality. *Id.* to § 4132(b).

Likewise, the Supreme Court of Puerto Rico has explained that a trade secret is any information: “(1) from which an actual value, a potential value, or an economic advantage is derived; (2) that is not common knowledge or accessible by appropriate means; and (3) that has been kept confidential through reasonable security measures.” *Ponce Adv. Med.*, 197 DPR p. 906.

III. REQUEST FOR CONFIDENTIAL TREATMENT

The foregoing statutory and regulatory provisions establish two independent but complementary bases for protection: (i) the structural confidentiality embedded in the ongoing P3A procurement process; and (ii) the substantive protection afforded to trade secrets and proprietary commercial information under Puerto Rico law. *Yabucoa* addresses each in turn.

a. Documents must receive confidential treatment as they are part of an active procurement process.

According to the applicable statutes described above, procurement materials submitted in connection with an active evaluation and negotiation process are treated as confidential under the governing statutory and regulatory framework until the conclusion of that process. A procurement

process concludes when the Governor grants approval of the final agreement. Until that time, all records and files submitted by proponents are maintained strictly confidential in order to preserve the integrity and competitiveness, and fairness of the ongoing procurement process.

Importantly, the confidentiality afforded to proposal and evaluation materials in an ongoing procurement is structural in nature, not selective. The integrity of a competitive process depends upon preventing market participants from gaining insight into competitors' strategic approach, internal structuring, and financial positioning, and commercial methodology prior to conclusion of the process. Disclosure of any meaningful portion of Yabucoa's submission in this docket would distort the level playing field contemplated by the governing procurement framework. Furthermore, allowing public access to these materials through a parallel regulatory proceeding would effectively circumvent the confidentiality protections embedded in the procurement regime and create asymmetrical information advantages among market participants.

As of this filing, the Notification to Submit Proposals Pursuant to Executive Order OE-2025-047 and Energy Bureau Resolution in Case No. NEPR-MI-2025-0005 (RFP No. 237366) has not been completed. This fact alone confirms that the Appendix to Yabucoa's Motion for Notice must be treated confidentially, since they are part of an ongoing competitive procurement process and contain sensitive, non-public, technical, operational, and economic information. Disclosure at this stage would substantially affect the integrity of the process and grant an undue advantage to competitors, to the detriment of Yabucoa and the public interest. The Bureau's grant of confidential treatment is therefore fully aligned public policy and serves the public interest in a competitive, fair, and efficient selection for new proposals pursuant to Executive Order OE-2025-047 and Energy Bureau Resolution in Case No. NEPR-MI-2025-0005 (RFP No. 237366).

Redaction is not a viable alternative

Lastly, although Act 57 contemplates confidentiality determinations that least affect the public interest, it does not require artificial segmentation were doing so would defeat the protective purpose of the statute. In this case, redaction is not a workable solution. The Appendix is structured such that commercially sensitive information permeates the documents, including strategic sequencing, technical integration, financial positioning, and consortium structuring. Even partial disclosure would reveal the architecture of Yabucoa's proposal and provide competitors with actionable intelligence. Courts have recognized that where confidential commercial and trade secret information is interwoven throughout a document such that redaction would not adequately prevent competitive harm, sealing of the document in its entirety is appropriate. See, e.g., Nixon v. Warner Communications, Inc., 435 U.S. 589, 598 (1978); Apple Inc. v. Samsung Electronics Co., 727 F.3d 1214, 1221–22 (Fed. Cir. 2013).

b. Documents must receive confidential treatment since they constitute a trade secret under Evidence Rule 513

The preceding argument establishes the confidentiality of the Appendix included in Yabucoa's Motion for Notice until the procurement process is completed. The protection of these documents is further supported by an independent and alternative basis: the information they contain constitutes trade secrets under Evidence Rule 513 and the Puerto Rico Trade and Industrial Secrets Protection Act.

At the outset, it bears emphasis that this request for confidential treatment is narrowly targeted. The publicly filed Motion for Notice contains high-level procedural and factual background that is already on the public record. This request does not seek to retract or shield that public-record content. Rather, it seeks protection for the Appendix, which contain substantially more granular

commercial, financial, and technical detail that was never intended for public dissemination and that constitutes trade secrets under Evidence Rule 513, as set forth below

As discussed above, under the Puerto Rico Trade Secrets Protection Act, a trade secret is considered to be any information: (i) from which an actual value, potential value, or economic advantage is derived; (ii) that is not common knowledge or accessible by appropriate means; and (iii) that has been kept confidential through reasonable security measures. The Appendix satisfy each of these elements, as set forth below.

First, the information included in Yabucoa's Motion for Notice contains its business model; operational criteria; a description of the proposed project; technical specifications and a description of, and contractual control, of the proposed site; financial capacity; and proprietary logistical and value-chain configuration. This information provides Yabucoa with both actual and potential economic value and a competitive advantage. The strategic alliance that culminated in the formation of the consortium reflects years of relationship development, internal diligence, and deliberate commercial alignment. Disclosure of these materials would allow competitors to replicate aspects of the consortium model, negotiate against Yabucoa's financing structure, challenge or preempt its site control arrangements, or tailor competing proposals to undercut its strategic positioning.

The economic value of the submitted information is compounded by the aggregation effect: the combination of consortium composition, site control, financial capacity, and development strategy into a single coordinated submission creates a commercial blueprint that is more sensitive than any individual component alone. In other words, the economic value of the information contained in the Appendix lies not only in discrete data points but in the aggregation and organization of those data points into a coordinated commercial strategy. Competitors could

replicate Yabucoa's consortium configuration, adjust their pricing or site strategies, alter negotiation tactics, or preemptively counter Yabucoa's execution sequencing if afforded access to these materials. Such harm would be immediate and irreparable, particularly given the active status of the procurement process.

With respect to the Appendix specifically, the document describes: (i) the composition of the consortium; (ii) financial capability disclosures submitted and are not otherwise obtainable by competitors through appropriate means; (iii) proprietary contractual site-control arrangements; and (iv) the proposed generation technology, all of which reflect Yabucoa's proprietary planning and competitive positioning. Each of these categories derives independent economic value from its non-public status. Disclosure would provide competitors with actionable insight into Yabucoa's commercial architecture and negotiation posture.

Second, no other proponent has access to the information submitted by Yabucoa in its Motion for Notice. Also, the attachments to the Motion for Notice are neither common knowledge nor accessible by appropriate means to competitors. These materials were submitted exclusively within the procurement framework and were not otherwise disseminated publicly. The information contained therein cannot be obtained through publicly available sources or ordinary market inquiry.

Third, every page of the Appendix indicates that it is confidential, thus prohibiting its disclosure to third parties. The documents were transmitted exclusively to designated procurement recipients at PREPA. Furthermore, in its Motion for Notice, Yabucoa specifically declared the confidentiality of the submitted information and requested that it be treated as such. Moreover, the confidentiality markings placed on every page are consistent with Yabucoa's practice of designating commercially sensitive materials as confidential. Access to the materials has been

restricted internally and externally to individuals subject to confidentiality obligations. These measures satisfy the requirement of reasonable security precautions under 10 L.P.R.A. § 4132(b).

For the foregoing reasons, the Appendix satisfy all three elements of the trade secret test under 10 L.P.R.A. § 4132 and Evidence Rule 513 and are entitled to protection as trade secrets independent of, and in addition to, the procurement confidentiality bar established in the preceding section.

Finally, in compliance with, and as required by, CEPR-MI-2016-0009, Yabucoa relates each document to its legal basis and the specific harm that would result from disclosure.

Document name	Pages with confidential information	Date confidential information was filed	Legal basis for confidentiality
Appendix of the Motion for Notice; Integrated procurement submission containing commercial, financial, technical and strategic information	Totality of the Appendix	February 9, 2026	<ul style="list-style-type: none"> ○ Rule of Evidence 513; ○ Section 6.15 of Act 57-2014; ○ Energy Bureau’s Policy of Management Confidential Information, CEPR-MI-2016-0009; ○ Section 1.15 of Regulation No. 8543-2014 ○ Disclosure would reveal proposal architecture, consortium structure, financial positioning, and strategic sequencing

WHEREFORE, Yabucoa respectfully requests that the Honorable Energy Bureau take notice of the aforementioned, grant confidential treatment to the Appendix in their entirety; maintain the materials under seal or restricted access consistent with the Bureau’s confidentiality procedures; and grant such other and further relief as the Bureau deems just and proper.

RESPECTFULLY SUBMITTED.

CERTIFICATE OF SERVICE. It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to PREPA through alexis.rivera@prepa.pr.gov; nzayas@gmlex.net; mvalle@gmlex.net and rcruzfranqui@gmlex.net.

In San Juan, Puerto Rico, this 2 day of March, 2026.

/s Fernando Molini
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