

**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 PROPONENTS 1 AND 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 the 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 a *Motion in Compliance with January 16, 2025¹, 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, the Motion informed that PREPA:

- a. 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

¹ 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 a *Motion in Compliance with January 16, 2026[6], Resolution and Memorandum of Law in Support of Request for Confidential Treatment*, informing the status of the ongoing negotiations with selected proponents. PREPA 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, and in light of the January 16 Resolution, the Energy Bureau anticipated that all contracts would be submitted no later than February 15, 2026, unless both parties agreed that additional time was required and jointly requested an extension from the Energy Bureau.

7. On February 9, 2026, PREPA filed a *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, February 12, 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 one of the meetings, 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.

13. On February 17, 2026, PREPA filed a *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; and
- 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, one proponent agreed only to a shorter period.

14. On March 3, 2026, the Energy Bureau issued a Resolution and Order ("March 3 Resolution") whereby it required, with regards to Proponent 3, that in light of the possibility of an agreement, the parties meet within three (3) days to address the proponent's revisions and potentially resolve pending contractual matters. Furthermore, the Energy Bureau ORDERED PREPA to submit the resulting agreement for the Energy Bureau's review immediately thereafter and/or within the referenced timeframe.

II. **Recent developments regarding negotiations**

15. With regards to Proponent 3, PREPA has engaged in good faith negotiations to reach a resolution that serves the interests of all parties involved.

16. Proponent 3 has substantially accepted all material requirements of the approved Tranche 4 model contract.

17. PREPA has no objection to the minimally redlined version of the contract.

18. PREPA notifies the Energy Bureau that Proponent 3 has not submitted any revised BESS offer, notwithstanding the Bureau's directive in its recent Resolution, and PREPA's subsequent request that the proponent provide the required revisions.

19. Accordingly, PREPA hereby submits the negotiated contract for Proponent 3, with tracked changes, for the Energy Bureau's review and consideration (see **Exhibit I**).

20. PREPA also informs the Energy Bureau that, on March 5, 2026, Proponent 3 informed for the first time that its portfolio consists of eleven (11) projects developed by different companies, totaling five hundred ninety-nine megawatts (599 MW) of capacity.

21. PREPA further requests that the Energy Bureau take notice and give due consideration to the fact that the current Integrated Resource Plan (IRP) establishes a planning cap of 1,500 MW, and that Proponent 3's portfolio, alone, will account for over one third of the IRP cap.

22. In addition, Proponent 3 submitted today March 6, 2026, at 3:20PM, eleven (11) ESSA Agreements to be executed by the eleven (11) respective proponents. Each

of the eleven agreements corresponds to a distinct project sponsored by a different developer, and each requires independent technical, financial, interconnection, and contractual validation. PREPA must respectfully note that the volume of agreements received simultaneously, combined with the complexity of the Tranche 4 ESSA structure, makes it operationally impossible for PREPA to conduct a substantive evaluation of the merits, readiness, or feasibility of each individual proponent within the limited time available. Refer to **Exhibit II**.

23. PREPA further notes that, pursuant to the Energy Bureau's Resolution and Order dated February 6, 2026 ("February 6 Resolution"), the Bureau expressly clarified that the Solar PV components of Proponent A's proposed projects were not approved. As stated on page 2, Section 1 of the Resolution, "only the BESS components of the projects proposed by Proponent A were approved, as the prices submitted for the Solar PV components were determined to be higher than what was considered reasonable." However, as directed in the February 6 Resolution, Proponent 3 has submitted an improved pricing offer for the solar photovoltaic component of its portfolio. Proponent 3 delivered an Improved Bid addressing the PV portion associated with its 599 MW BESS and co-located utility-scale PV systems to allow the Energy Bureau to evaluate whether the updated PV pricing warrants further consideration of the PV components in light of the February 6 Resolution. Refer to **Exhibit III**.

24. With respect to Proponent 1, PREPA, in collaboration with LUMA, has engaged in good faith negotiations to reach a resolution that serves the interests of all parties involved.

25. With respect to Proponent 1, on multiple occasions, PREPA requested written clarification as to whether the ASAP contract approved on November 13, 2025, should be treated as a separate proposal and contract from the 60 MW project authorized by PREB on December 30, 2025.

26. PREPA respectfully informs the Energy Bureau that on March 4, 2026, PREPA received a written communication from Proponent 1 through the PowerAdvocate platform. In this communication, Proponent 1 stated that its ASAP 120 MW project and its 60 MW BESS proposal submitted under PREPA's RFP correspond to the same project. Proponent 1 further indicated that both processes were managed in parallel and that the secured land and interconnection point are identical for both submissions. Refer to **Exhibit IV**.

27. PREPA also notes that Proponent 1 failed to comply with the Energy Bureau's directives set forth in its February 6 Resolution, which expressly required 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 1 did not acceptably provide the required justification for all proposed changes. This failure, coupled with 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 1 for the Energy Bureau's consideration.

28. Furthermore, PREPA respectfully informs the Energy Bureau that, as of today, Proponent 1 has not responded to PREPA's written request transmitted on March 5, 2026,

through the PowerAdvocate platform. PREPA's communication requested that Proponent 1 confirm, by March 6, 2026, its acceptance of the Energy Storage Services Agreement (ESSA) and PREPA's comments, in accordance with the Bureau's Resolution and Order issued on March 3, 2026. Refer to **Exhibit IV**.

29. Hence, PREPA respectfully notifies the PREB that it has not reached an agreement with Proponent 1 addressing the interests of all stakeholders.

III. **Request for Confidential Treatment**

30. Considering the deliberative materials contained in **Exhibits I, II III and IV**², 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.

31. 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).

32. 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

² Today, PREPA will submit Confidential files for Exhibits I, II, III and IV with the Energy Bureau's Secretary.

of Evidence. *Id.* At 83.

33. 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.

34. 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.

35. 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
Exhibit II	Deliberative material
Exhibit III	Deliberative material
Exhibit IV	Deliberative material

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

37. In light of the foregoing, PREPA respectfully requests that the Energy Bureau review the draft documents submitted as **Exhibits I, II, III, and IV** which reflect Proponent's Draft Contracts, PREPA's corresponding comments and improved pricing offer, 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 confidential documents submitted as **Exhibits I, II and III**; (3) **DETERMINE** what it deems as the appropriate course of action regarding the disposition of the unresolved contractual issues; and (4) **GRANT** confidential treatment for **Exhibits I, II III, and IV**.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 6th day of March 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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