

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

NEPR

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IN RE: IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Request for Information

**MOTION IN COMPLIANCE WITH THE APRIL 21, 2026, RESOLUTION AND ORDER AND
MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT**

TO THE HONORABLE ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal representation and, very respectfully, informs and requests as follows:

1. On April 10, 2026, PREPA filed the *Motion Submitting Proposed Draft Amendments to Several ESSAs and PPOAs and Memorandum of Law in Support of Request for Confidential Treatment* ("April 10 Motion") whereby it requested the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") to review and approve proposed draft amendments to several Energy Storage Services Agreements ("ESSAs") and Power Purchase and Operating Agreements ("PPOAs") executed under Tranche 1 of its Integrated Resource Plan procurement. The proposed draft amendments are limited to extending the Guaranteed Commercial Operation Dates ("GCODs") and related project milestones due to delays beyond the contractors' control (such as permitting, regulatory, supply chain, and financing issues)

2. The April 10 Motion further informed that PREPA's Governing Board had already approved these amendments and that they were being submitted for regulatory approval, while also requesting confidential treatment of the draft amendments because they constituted pre-decisional and deliberative materials still under negotiation, the disclosure of which could undermine the integrity of the decision-making process.

3. In connection to the April 10 Motion, on April 21, 2026, the Energy Bureau issued a Resolution and Order ("April 21 Resolution") whereby ordering PREPA to submit, within five (5) days --due today, April 27, 2026-- the following requirements of information ("ROIs"): (i) copies of the formal requests submitted by the "Contractors" seeking amendments to the ESSAs and PPOAs to extend the GCODs, as referenced in paragraph 6 of the April 10 Motion; (ii) all supporting documentation submitted by the "Contractors" in connection with such requests, including materials evidencing the alleged delays and any description of mitigation measures, as referenced in paragraph 6 of the April 10 Motion; (iii) a table illustrating the original GCOD and the currently proposed GCOD for each project for which an amendment is requested; and (iv) any internal document or explanation, whether generated by PREPA or by its consultants, relating to the analysis conducted in connection with evaluating and preparing the requested amendments, including any internal assessments, memoranda, reports, models, communications, or other work product used to support or substantiate the proposed amendments.

4. In compliance with the April 21 Resolution, PREPA hereby submits the above-mentioned documents, including **Exhibits I, I(a)-(b), II-II(a), III¹, IV-IV(a), V, VI, and VII².**

Request for Confidential Treatment

a. Deliberative process privilege

5. PREPA respectfully requests confidential treatment of Exhibits I-V. The exhibits contain ongoing deliberative materials as the parties are still in the negotiation process. Disclosure at this stage of these exhibits would undermine the integrity of the decision-making process and is, therefore, protected under the deliberative process privilege until the negotiation process concludes.

6. 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).

7. According 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'

¹ As to Tetris Power LLC, one of the Contractors, it is a subsidiary of Yarotek PR, LLC.

² PREPA will submit today to the Clerk's Energy Bureau the confidential OneDrive folder containing Exhibits I-VII.

fundamental rights; (iv) it identifies a confidential source; or (v) it qualifies as “official information” under Rule 514 of Evidence. *Id.* at 83.

8. 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.

9. In addition, Article 4(iv) of Act 122-2019, known as the *Puerto Rico Government Open Data Act*, 3 L.P.R.A. § 9894, explicitly exempts from disclosure “[i]nformation and official information related to decision-making in public policy-making processes, as recognized by case law,” including deliberative materials.

b. Attorney-client privilege and work product doctrine

10. Additionally, PREPA respectfully requests confidential treatment of Exhibits VI and VII. These exhibits contain communications and materials protected by the attorney-client privilege and the attorney work-product doctrine. Specifically, the exhibits reflect privileged communications between PREPA’s in-house counsel and other PREPA employees exchanged for purposes of providing or obtaining legal advice. As such, they are exempt from disclosure and must be safeguarded from public dissemination.

11. Rule 505 of the Puerto Rico Rules of Evidence governs both the attorney-client privilege and the work-product doctrine. In its pertinent part, Rule

505(A)(1) provides that confidential communications between an attorney and client are privileged and protected from disclosure.

12. Furthermore, regarding the work-product doctrine, Rule 505(A)(2) extends protection to materials that constitute the work product of a party or its attorney, including documents and tangible things prepared in anticipation of litigation or for use in an administrative proceeding. This protection encompasses not only factual compilations but also the attorney's mental impressions, conclusions, opinions, and legal theories.

13. Accordingly, Exhibits VI and VII fall squarely within the protections afforded by Rule 505 of the Puerto Rico Rules of Evidence, as they contain confidential attorney-client communications and attorney work product prepared in connection with this proceeding. Disclosure of these materials would undermine the fundamental protections afforded by the attorney-client privilege and the work-product doctrine by revealing PREPA's legal strategy and privileged communications. Therefore, good cause exists for this Honorable Energy Bureau grant confidential treatment to Exhibits VI and VII and protect them from public disclosure.

14. Moreover, the Energy Bureau's *Policy on Confidential Information* ("Policy"), CEPR-MI-2016-0009, originally issued on August 31, 2016, and later amended on September 21, 2016, sets forth the procedural requirements governing requests for confidential treatment of documents submitted before the Energy Bureau. Under this framework, a party seeking confidentiality must expressly designate the information claimed to be confidential and submit a legal

memorandum articulating the statutory or regulatory grounds supporting such a request, together with the evidentiary basis justifying confidential treatment. See CEPR-MI-2016-0009, Section A, as amended by Resolution dated September 16, 2016.

15. The Policy further requires that the legal memorandum includes a detailed table identifying the specific information for which confidentiality is sought, along with a summary explaining how each item satisfies the applicable legal standard. See *Id.* ¶ 3. Below is a summary of the information for which PREPA seeks confidential treatment:

File	Summary of Legal Basis for Confidential Treatment
Exhibit I -Solaner Request for Extension of GCOD- January 20, 2026	Deliberative material
Exhibit I(a) -PREPA letter to Solaner regarding Request for Extension of Time- February 18, 2026	Deliberative material
Exhibit I(b) -Solaner GCOD Extension Package	Deliberative material
Exhibit II -Clean Flexible Energy Update to Notice of Permitting Delays; Extension of Time- December 18, 2025.	Deliberative material
Exhibit II(a) -PREPA letter to Clean Flexible Energy regarding Extension of time- November 25, 2025.	Deliberative material
Exhibit III -Yarotek's (Tetris Power) Request for PPOA Amendment- February 18, 2026	Deliberative material
Exhibit IV -Convergent Request of Amendment of GCOD Dates- February 26, 2026	Deliberative material

Exhibit IV(a) - <i>Convergent-Extension Request Presentation</i>	Deliberative material
Exhibit V - <i>Comparison Table Original GCOD v. Proposed GCOD</i>	Deliberative material
Exhibit VI - <i>PREPA Legal Evaluation-Amendments to Tranche 1 ESSAs & PPOAs to Extend...- February 27, 2026</i>	Attorney work-product
Exhibit VII - <i>PREPA Internal Communication Request for Approval of Amendments to ESSAs and PPOAs- March 19, 2026</i>	Attorney-client privilege

16. PREPA respectfully requests that Exhibits I-V remain confidential until the ongoing evaluation process concludes. As to Exhibits VI-VII, they must remain confidential even after the evaluation process concludes, as such communications are privileged and work-product. At this stage, the information included in Exhibits I-V relates to proposed amendments submitted in the April 10 Motion, which are still drafts, subject to the Energy Bureau's review and approval.

WHEREFORE, PREPA respectfully requests that the Energy Bureau: (1) **TAKE NOTICE** of the present Motion; (2) **DEEM** PREPA in compliance with the April 21 Resolution; and (3) **GRANT** confidential treatment to Exhibits I-VII.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 27th of April, 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>, and courtesy copies were sent via e-mail to LUMA Energy, LLC through its counsels of record at

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Katuska.bolanos-lugo@us.dlapiper.com and to Genera PR, LLC through its
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