

**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

**SUBJECT:** PREPA's Informative Motion

**MOTION IN COMPLIANCE WITH THE RESOLUTION AND ORDER OF APRIL 24, 2026, 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 March 26, 2026, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("March 26 Order") approving Proponent 3's eleven (11) Energy Storage Services Agreements ("ESSAs") and eleven (11) Power Purchase and Operating Agreements ("PPOAs" and together with the ESSAs, the "Agreements") for its twenty-two (22) distinct solar PV and battery energy storage system hybrid projects, under Request for Proposals, Power Advocate Event 237366 ("RFP").

2. After other procedural incidents, on April 24, 2026, Proponent #3 submitted to the Energy Bureau an *Informative Motion* ("Proponent 3 Motion") regarding the status of the ongoing negotiations to finalize and implement the modifications to the contracts approved by the Energy Bureau pursuant to the *Resolution and Order* dated March 26 Order.

3. On that same date, that is, April 24, 2026, the Energy Bureau ordered PREPA to submit, on or before Monday, April 27, 2026 at 5:00 p.m., all communications referenced in the Proponent 3 Motion and its attachments, as well as any responses that PREPA had issued to date in connection therewith.

**II. Additional Relevant Background and Compliance with the April 24 Order**

4. As a matter of background, PREPA informs that, on April 15, 2026, Proponent 3 submitted to PREPA a letter outlining certain revisions and actions proposed to be incorporated into the Agreements to address the mandates set forth in the March 26 Order, including the following matters:

- a. Automatic Contract Termination
- b. Conditional Price Adjustment Based on Financing Terms
- c. Future Actions to Enhance Financing Prospects
- d. Proponent 3 Proposed Contracts (Hybrid Projects)

5. On April 17, 2026, PREPA responded to Proponent 3, as follows:

PREPA acknowledges receipt of [Proponent 3's] letter dated April 15, 2026, submitted pursuant to the negotiation process established under the Puerto Rico Energy Bureau's (PREB) Resolution and Order issued March 26, 2026, in Case No. NEPR MI 2025 0005. PREPA appreciates [Proponent 3's] diligence in advancing the implementation of the approved Energy Storage Services Agreements ("ESSAs") and Power Purchase and Operating Agreements ("PPOAs").

...

PREPA will implement PREB's directive that Section 2.3(b) of each Agreement be revised to establish a **uniform** period of two hundred ten (210) days for automatic termination, **ensuring consistency across all projects**. PREPA will therefore limit the revision to substituting the original ninety (90) days with two hundred ten (210) days, without introducing additional qualifying language or exceptions. This approach maintains the uniformity mandated by PREB and

avoids introducing discretionary extensions or conditional termination triggers that could undermine the Bureau's intent.

...

PREPA agrees that [Proponent 3's] proposed amendment to Appendix F appropriately reflects PREB's directive to expressly establish alternative compensation structures applicable if the financing conditions contemplated in Proponent 3's final proposal are achieved. PREPA finds the proposal reasonable and consistent with the Resolution and Order. However, PREPA recommends that the reference to the specific date of September 1, 2026, be removed **to preserve flexibility** and avoid introducing a fixed milestone not contemplated by PREB. The adjustment mechanism should instead be tied to the occurrence of the relevant financing closing event.

...

PREB encouraged the Parties, **as contemplated under the contracts**, to pursue **contract modifications** necessary to achieve financing, provided such efforts are consistent with the public interest and, to the extent possible, result in further cost reductions for ratepayers.

**As contemplated under the contracts**, Section 21.1 of the Agreements already provides that" [t]his Agreement, including the appendices hereto, may be amended or waived only by written agreement between the Parties .... Notwithstanding anything to the contrary, **the Parties shall use commercially reasonable, good faith efforts to agree upon any amendments to this Agreement required by Persons providing or proposing to provide financing (including tax equity) for the Project**. The Parties acknowledge and agree that any amendments to the economic or technical terms of this Agreement, or the scope of the Facility, require **PREB approval**."

PREPA notes that the proposals set forth on pages 4 through 8 of [Proponent 3's] letter introduce **additional negotiation** topics that should have been, or were already, addressed during the negotiation period established by PREB.

Accordingly, PREPA recommends limiting the current contract review to only those matters expressly identified in PREB's Resolution and Order. Other **contract modifications** necessary to achieve financing should be considered on a case-by-case basis according

to the provisions of Section 21.1 cited above.

(Emphasis added.)<sup>1</sup>

6. On April 20, 2026, Proponent 3 submitted to PREPA twenty (22) draft Agreements containing proposed pre-execution changes, some of them substantial.

7. On April 23, 2026, Proponent 3 submitted to PREPA revised versions of the twenty-two (22) draft Agreements previously circulated on April 20, 2026, incorporating additional proposed pre-execution changes, several of which were substantial.

8. PREPA emphasizes that, at all times, it has engaged in the negotiations with Proponent 3 in a timely, good-faith, and responsible manner, with the objective of reaching a resolution that balances the interests of all parties while safeguarding the interests of ratepayers. Between April 20 and April 23, 2026, Proponent 3 submitted multiple rounds of revisions to the Agreements. PREPA is currently reviewing and analyzing these proposed changes with the rigor and care required by the public interest.

9. Preliminarily, PREPA informs it is unable to agree with the proposed changes because they (i) violate the contract procurement uniformity requirement and exceed the scope of the Energy Bureau-authorized modifications; (ii) introduce a structural shift in project risk against PREPA and, thus, ratepayers; (iii) penalize system operators for performing reliability functions; and (iv) weaken project milestone enforcement.

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<sup>1</sup> The following provisions are relevant for the proper analysis of PREPA's April 17<sup>th</sup> communication: Section 21.1 of the Agreements contain the standard clause that allows amendments after the contract is signed, subject to the Energy Bureau's approval. On its part, Section III(E)(1) and (2) of the March 26 Order identify two specific pre-execution changes: (i) uniform 210-day termination period and (ii) incorporation of alternative compensation structures. PREPA construes the foregoing as explicitly deferring any other changes to "future actions." PREPA's reasoning is that, if the Energy Bureau intended additional pre-execution negotiations, it would have listed them together with the pre-execution changes in Section III(E)(1) and (2).

10. In compliance with the April 24 Order, PREPA hereby submits all communications referenced in Proponent 3's Motion and its attachments, as well as responses that PREPA issued to date in connection therewith. **See Confidential Exhibit 1.**<sup>2</sup>

11. PREPA respectfully requests that the Energy Bureau review the communications and attachments submitted as **Confidential Exhibit I** 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.

### **III. Request for Confidential Treatment**

12. Considering the deliberative materials contained in **Confidential Exhibit I**, 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.

13. 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).

14. 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

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<sup>2</sup> Today, PREPA will submit the Confidential Exhibit I with the Energy Bureau's Secretary.

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

15. 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.

16. 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.

17. 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>Confidential Exhibit I</b>	Deliberative material

18. PREPA requests that **Exhibit I** remain confidential until the negotiation and approval process concludes.

**WHEREFORE**, PREPA respectfully requests that the Energy Bureau: (1) take **NOTICE** of the present Motion; (2) **EVALUATE** the confidential document submitted as **Exhibit I**; (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 **Exhibit I**.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, on the 27th day 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>.

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