

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

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IN RE: COMPETITIVE PROCUREMENT
FOR NEW GENERATION SOURCES

CASE NO.: NEPR-MI-2025-0001

SUBJECT: Requirement of Information
by the Energy Bureau

**MOTION IN COMPLIANCE WITH THE MAY 8, 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:

I. Introduction

1. On March 19, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order in which it determined that: (i) given the pattern of forced outages of PREPA's existing, aging, thermal generation fleet, the available generation capacity is extremely limited and may complicate needed maintenance and repairs to the existing fleet; (ii) there is a need to explore the costs and timeframe of availability of new, modern, generation sources that will allow Puerto Rico to reach the goals set in the new energy public policy and serve the electricity customers' best interests; and (iii) this procurement effort shall explore 2,500 to 3,000MW of new capacity ("March 19, Resolution").

2. In the March 19 Resolution, the Energy Bureau also ordered PREPA to notify the Puerto Rico Public-Private Partnership Authority ("P3A") about the Energy Bureau's determination regarding the establishment of a P3A Request for Proposal ("RFP") for new generation sources at any location in Puerto Rico for the P3A to take the steps for the commencement of a competitive procurement process in alignment with the Energy Bureau's determination.

3. On May 21, 2025, the Energy Bureau issued a Resolution and Order clarifying that the procurement process mandated under the March 19 Resolution should be open to all technologies as long as the relevant Generation Facilities can provide a firm supply of energy ("May 21 Resolution").

4. On October 17, 2025, the P3A initiated the competitive procurement process for the New Flexible Generation Capacity project by issuing the Request for Qualifications No. RFQ 2025-02 ("RFQ"), thereby commencing the qualifications phase for potential proponents.

5. Through the RFQ, the prospective respondents had until October 30, 2025, to submit their Requests for Clarifications ("RFCs") with respect to the RFQ, and the P3A had until November 15, 2025, to issue a response to the RFCs.

6. On November 13, 2025, this Energy Bureau issued a Resolution and Order ("November 13 Resolution") ordering PREPA to provide, within five (5) days of the notification of this Resolution and Order, copies of the questions submitted by the prospective respondents. Likewise, PREPA was ordered that once the P3A

provides the corresponding answers to the prospective respondents, PREPA shall submit them to the Energy Bureau within five (5) days of their notification to them.

7. On November 18, 2026, PREPA filed its *Motion in Compliance with November 13, 2025, Resolution and Order* informing the Energy Bureau that it was submitting what the P3A provided it regarding the Requests for Clarifications (“RFCs”) submitted by prospective respondents to the Request for Qualifications (“RFQ”) for the New Flexible Generation Capacity project, together with the P3A’s responses to those requests. PREPA emphasized that the competitive procurement process is being conducted by P3A, not PREPA.

8. On May 8, 2026, the Energy Bureau issued a Resolution and Order ordering PREPA to submit by May 18, 2026, all documents related to or generated in connection with the RFQ previously filed in the docket and the subsequent RFP concerning the procurement of approximately 3,000 MW of new generation capacity. The requested materials include, without limitation, all exhibits, appendices, addenda, amendments, notices, communications, correspondence, questions and answers, clarifications, comments, bidder submissions, supporting documentation, evaluation and scoring materials, qualification determinations, lists of qualified or selected proponents, recommendations, draft contracts, and any other material associated with or submitted in connection with the RFQ and RFP processes. Additionally, the Energy Bureau noted that government officials had publicly referenced an ongoing bidding process for the development of a new firm generation facility at PREPA’s

Costa Sur complex, intended to add additional capacity to the electric system. Accordingly, the Energy Bureau further ordered PREPA to produce, within the same ten-day period, copies of the RFQ and RFP issued in connection with that procurement process, together with all related documentation, including amendments, communications, questions and answers, clarifications, submitted proposals, supporting materials, evaluation materials, and draft contracts.

9. PREPA reiterates that the procurement processes at issue are being led and conducted by the P3A, not PREPA. Accordingly, PREPA is neither privy to nor in possession of the documentation and information generated through the RFQ/RFP processes concerning new generation capacity.

10. Immediately upon issuance of the May 8 Resolution, PREPA contacted P3A to notify it of the Energy Bureau's directives and to coordinate compliance with the requested requirements. Since then, PREPA has maintained continuous communication with P3A regarding the collection and production of the requested documentation in order to comply with the May 8 Resolution. In furtherance thereof, PREPA followed up today with P3A executives concerning the outstanding documentation and information required by the Energy Bureau.

11. PREPA respectfully informs this Energy Bureau that the documentation received from P3A consists solely of a detailed summary of the competitive procurement processes.

12. Accordingly, in compliance with the May 8 Resolution, PREPA hereby submits as **Exhibit A** the information provided by P3A, which consists of a summary describing the RFQ/RFP processes for new generation capacity.

II. Request for Confidential Treatment and Designation

13. PREPA respectfully requests confidential treatment of Exhibit A because it contains deliberative materials related to ongoing competitive processes being conducted by the P3A. The P3A provided this information to PREPA on a confidential basis. Disclosure of Exhibit A at this stage would undermine the integrity of the decision-making process and is, therefore, protected under the deliberative process privilege until the competitive process is concluded.

14. Although documents in the possession of public corporations such as PREPA are generally presumed to be public, access to such documents is not absolute. The Supreme Court of Puerto Rico has recognized that only documents that truly enjoy public status are subject to mandatory disclosure. Bhatia Gautier v. Gobernador, 199 DPR 59, 82 (2017); Ortiz v. Director de la Administración de los Tribunales, 152 DPR 161 (2000).

15. Pursuant to Bhatia Gautier v. Gobernador, the government may validly withhold information when: (i) authorized by law; (ii) the information is protected by evidentiary privileges; (iii) its disclosure may affect the fundamental rights of third parties; (iv) it identifies a confidential source; or (v) it qualifies as “official information” under Rule 514 of Evidence. *Id.*, at 83.

16. The Supreme Court of Puerto Rico has expressly held that “documents that pertain to pre-decisional and deliberative processes may be protected 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, evaluations, and recommendations essential to the formulation of public policy.

17. Moreover, Article 4(e)(iv) of the *Puerto Rico Government Open Data Act*, Act 122-2019, 3 L.P.R.A. § 9894, expressly exempts from disclosure: “[P]ublic information subject to any privileges recognized under the Constitution of the United States or Puerto Rico, laws, and Rules of Evidence, including Official Information and Official-Decisional Information in Deliberative Proceedings on Public Policy, as recognized by case law.”

18. Additionally, Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act 57-2014, 22 L.P.R.A. § 1054(n), constitutes the core legal provision for managing confidential information filed before the Energy Bureau. It provides, in pertinent part, that “any person who is required to submit information to the Energy Bureau and believes that the information to be submitted has any confidentiality privilege may request the Bureau to treat such information accordingly.”

19. If, after due evaluation, the Energy Bureau determines that the information should be protected, it will grant such protection in a manner that minimizes any impact on the public interest, transparency, and the rights of the

parties involved in the administrative proceeding where the allegedly confidential document was filed. *Id.*, Art. 6.15(a). If the Energy Bureau determines that the information is confidential, “the information shall be duly protected and delivered exclusively to the Energy Bureau personnel who need to know it, under confidentiality agreements.” *Id.*, Art. 6.15(c). “The Energy Bureau shall act promptly upon any claim of privilege and confidentiality submitted by a person subject to its jurisdiction, through a resolution to that effect, before any allegedly confidential information is disclosed.” *Id.*, Art. 6.15(d).

20. Furthermore, the Energy Bureau's Confidentiality Policy (as amended) outlines the procedures that a party must follow to request confidential treatment of a document or any portion thereof. The policy requires the requesting party to identify the confidential information and file a memorandum of law explaining the legal basis and grounds supporting the confidentiality request. See CEPR-MI-2016-0009, § A, as amended by the Resolution of September 21, 2016, CEPR-MI-2016-0009. The memorandum must also include a table identifying the confidential information, a summary of the legal basis for the confidentiality designation, and a justification showing how each claim or designation meets the applicable legal standard. *Id.* ¶ 3.

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

Documents	Summary of Legal Basis for Confidential Treatment
Exhibit A- <i>P3A Summary of Competitive Procurement Processes for New Generation Capacity Development</i>	Deliberative material

22. PREPA respectfully requests that Exhibit A remain confidential until the competitive procurement processes conclude and the final contracts are executed.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau: (i) take **NOTICE** of the present Motion; (ii) **DEEM** PREPA in compliance with the May 8 Resolution; (iii) **GRANT** confidential treatment to Exhibit A.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 18th day of May, 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 margarita.mercado@us.dlapiper.com, laura.rozas@dlapiper.com, yahaira.delarosa@us.dlapiper.com, and to Genera PR, LLC through its counsels of record at jfr@sbgblaw.com and sromero@sbgblaw.com.

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