

**GOVERNMENT OF PUERTO RICO
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 regarding the status of renewable energy projects.

**MOTION IN COMPLIANCE WITH MAY 5 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 respectfully informs and requests as follows:

I. Introduction

1. On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Final Resolution and Order related to PREPA's Integrated Resource Plan ("IRP") under Case No. CEPR-AP2018-0001, where it approved in part and rejected in part PREPA's proposed IRP ("IRP Final Order"). As part of the IRP Final Order, the Energy Bureau ordered the adoption and implementation of a Modified Action Plan, which contained specific directives and requirements, including the formulation of a Renewable Energy and Battery Energy Storage Resource Procurement Plan.

2. On February 22, 2021, PREPA launched its Tranche 1 RFP 112648 for the procurement of 1,000 MW of renewable generation resources and at least 500 MW of battery energy storage resources, consistent with the guidance

provided by the Energy Bureau and the Financial Oversight and Management Board of Puerto Rico ("FOMB").

3. Under Tranche 1, PREPA entered into certain Energy Storage Services Agreements ("ESSAs") and Power Purchase Operating Agreements ("PPOAs") (collectively, the "Offtake Agreements") for the development, construction, and operation of renewable energy and energy storage projects in Puerto Rico.

4. The Offtake Agreements were entered into with the following contractors ("collectively the "Contractors"): (i) the ESSAs entered into with Convergent Ponce Energy Storage 1 LLC ("Convergent Ponce"), Convergent Caguas Energy Storage 1 LLC ("Convergent Caguas"), and Convergent Peñuelas Energy Storage 1 LLC ("Convergent Peñuelas"); (ii) the PPOA entered into with Solaner Puerto Rico One, LLC ("Solaner"); (iii) the PPOAs and ESSAs entered into with Clean Flexible Energy, LLC ("Clean Flexible"), consisting of the Salinas PPOA, the Salinas ESSA, the Jobos PPOA, and the Jobos ESSA; and (iv) the PPOA entered into with Tetris Power, LLC ("Tetris Power").

5. Pursuant to the applicable Offtake Agreements, each project is subject to a Guaranteed Commercial Operation Date ("Guaranteed COD"), as such term is defined and established in the Offtake Agreements, including, in certain cases, by reference to milestone-based definitions rather than fixed calendar dates.

6. On April 10, 2026, PREPA filed a motion (the "April 10 Motion") requesting approval of amendments to the following ESSAs and PPOAs:

Convergent Ponce ESSA, Convergent Caguas ESSA, Convergent Peñuelas ESSA, Solaner PPOA, Salinas PPOA, Salinas ESSA, Jobos PPOA, Jobos ESSA, and Tetris Power PPOA. Collectively, these amendments are referred to as the "Proposed Amendments." PREPA included the following exhibits as part of the April 10 Motion and requested confidential treatment thereof:

- i. Exhibit I, Resolution 5234 issued by PREPA Governing Board
- ii. Exhibit II, ESSA Amendment Convergent Ponce
- iii. Exhibit III, ESSA Amendment Convergent Caguas
- iv. Exhibit IV, ESSA Amendment Convergent Peñuelas
- v. Exhibit V, Amendment No. 5 Solaner PPOA
- vi. Exhibit VI, Amendment No. 8 to Clean Flexible Salinas PPOA
- vii. Exhibit VII, Amendment No. 8 to Clean Flexible Salinas ESSA
- viii. Exhibit VIII, Amendment No. 7 to Clean Flexible Jobos PPOA
- ix. Exhibit IX, Amendment No. 7 to Clean Flexible Jobos ESSA
- x. Exhibit X, Amendment No. 6 to Tetris Power PPOA

7. On April 21, 2026, the Energy Bureau issued a Resolution and Order (the "April 21 Resolution") directing PREPA to produce additional information in support of its request for approval of the Proposed Amendments ("ROI #1").

8. On April 27, 2026, PREPA filed a motion in response to the April 21 Resolution and ROI #1. As part of its filing, PREPA submitted certain ongoing deliberative materials together with other communications and materials

protected by the attorney-client privilege and the attorney work-product doctrine, and requested confidential treatment for them.

9. On May 5, 2026, the Energy Bureau issued a Resolution and Order (the "May 5 Resolution") in which, based on the analysis and evaluation of the materials submitted by PREPA, it approved the proposed amendments extending the GCOD for all proposed amended contracts under consideration.

10. However, with respect to the Convergent Ponce ESSA, Convergent Peñuelas ESSA, and Convergent Caguas ESSA, the Energy Bureau denied the proposed modifications to the Operating Characteristics set forth in Appendix J.

11. Furthermore, with respect to the Convergent Ponce ESSA and the Convergent Peñuelas ESSA, the Energy Bureau determined that the Resource Provider Delay Liquidated Damages shall remain as established in the contracts as originally approved, and thus rejected the proposed modifications.

12. In its May 5 Resolution, the Energy Bureau further ordered PREPA to submit the updated contracts within ten (10) business days from the date of notification of its May 5 Resolution. As part of its submittal, PREPA is required to include clean and redline versions of the updated contracts. The Bureau also clarified that (i) the modifications required do not require a subsequent determination by Resolution from the Energy Bureau; and (ii) the required filing is for the purpose to assure it is part of the administrative file.

13. Lastly, the May 5 Resolution ordered PREPA to submit to the Energy Bureau, within five (5) business days of the execution of the contracts, such

executed contracts and evidence that they have been filed with the Office of the Comptroller of Puerto Rico.

II. Compliance with Order

14. In response to the May 5 Resolution, PREPA respectfully submits the following **Confidential Exhibit I**:

- i. Amendment No. 1 to the Amended and Restated Energy Storage Services Agreement between the Puerto Rico Electric Power Authority ("PREPA") and Convergent Ponce Energy Storage 1 LLC.
- ii. Amendment No. 1 to the Amended and Restated Energy Storage Services Agreement between the Puerto Rico Electric Power Authority ("PREPA") and Convergent Penuelas Energy Storage 1 LLC.
- iii. Amendment No. 1 to the Amended and Restated Energy Storage Services Agreement between the Puerto Rico Electric Power Authority ("PREPA") and Convergent Caguas Energy Storage 1 LLC.
- iv. Clean versions of each updated agreement.
- v. Redline versions, reflecting all modifications required by the Energy Bureau.

15. Due to the volume of **Confidential Exhibit I**, PREPA informs the Energy Bureau that, with this motion, it will submit **Confidential Exhibit I** by email to the Secretary.

III. Request for Confidential Treatment

16. PREPA respectfully requests confidential treatment of **Confidential Exhibit I**. The exhibit contains ongoing deliberative materials reflecting internal opinions, assessments, and recommendations critical to policy formulation. Disclosure at this stage of **Confidential Exhibit I** would undermine the integrity of the policy-formulation process and is, therefore, protected under the deliberative process privilege until the negotiation process concludes.

17. 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).

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

19. 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.

20. 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 “[i]nformation and official information related to decision-making in public policy-making processes, as recognized by case law,” including deliberative materials.

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

File	Summary of Legal Basis for Confidential Treatment
Confidential Exhibit I	Deliberative material

22. PREPA respectfully requests that the Energy Bureau take notice of the abovementioned and approve the request for confidential treatment of the information submitted in **Confidential Exhibit I** with this Motion.

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 5, 2026, Resolution and Order; and (iii) **APPROVE** the request for confidential treatment of the information submitted in **Confidential Exhibit I** with this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, May 19th, 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 counsels of record at alexis.rivera@prepa.pr.gov; katiuska.bolanos-lugo@us.dlapiper.com; yahaira.delarosa@us.dlapiper.com; laura.rozas@us.dlapiper.com; RegulatoryPREBorders@lumapr.com; jfr@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com.

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