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

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

PREPA'S MOTION IN COMPLIANCE WITH THE JULY 23, 2026 RESOLUTION AND ORDER AND RESPONSE TO PROPONENT NO. 7'S INFORMATIVE MOTION AND REQUEST FOR RELIEF

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

1. On July 23, 2026, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order concerning Proponent No. 7 and the ongoing negotiations with PREPA. In that Resolution and Order, the Energy Bureau reiterated that the evaluation and negotiation process applicable to this proceeding must follow, in a substantially similar manner, the framework previously adopted for the Tranche 4 proceedings. The Energy Bureau further recognized that project-specific modifications to the applicable agreements may be appropriate, while emphasizing that any such modifications must remain limited in scope and may not constitute material or substantive departures from the contractual framework previously approved by the Energy Bureau.

2. Consistent with that framework, the Energy Bureau rejected Proponent No. 7's characterization of its proposal as a hybrid project for purposes of this proceeding. Instead,

it determined that the proposed Solar PV facility and Battery Energy Storage System ("BESS") must continue to be evaluated independently, under their respective contractual frameworks and through separate agreements. The Energy Bureau therefore made clear that each component must be evaluated on its own merits and that any negotiated contractual revisions must remain consistent with the applicable approved framework.

3. Against that backdrop, the Energy Bureau ordered PREPA and Proponent No. 7 to continue negotiating in good faith and, within ten (10) days from notification of the July 23 Resolution and Order, jointly inform the Energy Bureau whether an agreement had been reached. If the parties reached an agreement, they were required to jointly notify the Energy Bureau and submit copies of the corresponding proposed agreements for its review and determination. If no agreement was reached, the parties were instead required to file a joint status report identifying the unresolved issues and describing the efforts undertaken to resolve them.

4. In compliance with those directives, PREPA has actively and consistently engaged in good-faith negotiations with Proponent No. 7 since the issuance of the July 23 Resolution and Order. PREPA provided Proponent No. 7 with draft PPOA and ESSA agreements based upon the contractual frameworks previously approved by the Energy Bureau, reviewed the extensive revisions proposed by Proponent No. 7, coordinated the review of those revisions with LUMA where appropriate, and transmitted revised drafts incorporating PREPA's and LUMA's comments. These actions are entirely consistent with the Energy Bureau's directive that the parties continue negotiating in good faith.

5. Proponent No. 7 subsequently submitted redlined versions of both the PPOA and ESSA containing numerous revisions, including revisions that PREPA determined

constitute material departures from the contractual framework established by the Energy Bureau. PREPA nevertheless reviewed those proposals and provided its substantive contractual position. On August 3, 2026, Proponent No. 7 returned revised versions of the PPOA and ESSA that continued to contain material changes. On August 4, 2026, Proponent No. 7 submitted an additional version of the PPOA reflecting further additions purportedly made in response to LUMA's comments.

6. Following its review of Proponent No. 7's latest submissions, and in direct compliance with the July 23 Resolution and Order, on August 6, 2026, PREPA transmitted to Proponent No. 7 a draft joint motion intended to jointly inform the Energy Bureau of the status of the negotiations, the matters upon which the parties had not reached agreement, and the efforts undertaken to resolve those matters. This is precisely the filing mechanism contemplated by the July 23 Resolution and Order in the event the parties were unable to reach an agreement.

7. On August 7, 2026, the date through which PREPA had requested an extension to comply with the July 23 Resolution and Order, Proponent No. 7 requested additional time, until the morning of Monday, August 10, 2026, to review PREPA's proposed joint filing. In an effort to accommodate Proponent No. 7's request and to preserve the opportunity to make the joint filing expressly contemplated by the Energy Bureau, PREPA sought an additional extension until August 11, 2026. Thus, PREPA's request for additional time was not the result of inaction or delay on PREPA's part; rather, it was prompted by Proponent No. 7's request for additional time to review the joint motion PREPA had already prepared and circulated.

8. On August 10, 2026, however, Proponent No. 7 informed PREPA that it would not agree to submit a joint motion. Later that same day, Proponent No. 7 served PREPA with its unilateral *Informative Motion and Request for Relief*, notwithstanding PREPA's prior efforts to comply with the Energy Bureau's express directive through a joint filing. Accordingly, PREPA is now compelled to submit this Motion separately in order to place before the Energy Bureau a complete and accurate account of the negotiations and PREPA's efforts to comply with the July 23 Resolution and Order.

9. PREPA categorically rejects Proponent No. 7's assertion that PREPA has failed to negotiate in good faith. The record demonstrates otherwise. Good-faith negotiation requires meaningful consideration and engagement with contractual proposals; it does not require PREPA to accept every revision demanded by a proponent, nor does it require PREPA to abandon the contractual framework established by the Energy Bureau. Disagreement over contractual terms, particularly where PREPA concludes that proposed revisions materially alter the approved contractual structure or allocation of risk, does not constitute a failure to negotiate in good faith.

10. Indeed, PREPA's position is compelled by the very Resolution and Order that Proponent No. 7 now invokes. The Energy Bureau expressly determined that any project-specific modifications must remain limited in scope and "may not constitute material or substantive departures from the contractual framework previously approved by the Energy Bureau." The Energy Bureau further determined that, notwithstanding Proponent No. 7's characterization of its proposal as a hybrid project, the Solar PV facility and BESS must be evaluated independently under their respective contractual frameworks and governed by separate agreements. PREPA cannot reasonably be accused of negotiating in bad faith

for declining contractual revisions that it has determined are inconsistent with those express directives.

11. Proponent No. 7's assertion that "no negotiations have occurred" is irreconcilable with the procedural and administrative record. The parties have exchanged multiple versions of both agreements; PREPA and LUMA reviewed and commented upon Proponent No. 7's proposed revisions; Proponent No. 7 submitted responsive revisions; PREPA evaluated those revisions; and PREPA prepared and circulated the joint status filing required by the Energy Bureau. Proponent No. 7 may disagree with PREPA's contractual positions, but disagreement is not evidence that negotiations did not occur, much less evidence of bad faith.

12. Nor can Proponent No. 7 convert PREPA's refusal to accept material contractual changes into evidence of bad faith. The obligation to negotiate in good faith is not an obligation to reach agreement, and it certainly is not an obligation for PREPA to acquiesce to contractual provisions that PREPA determines are inconsistent with the Energy Bureau-approved framework, alter the allocation of project risk, or expose PREPA and its ratepayers to additional obligations.

13. It is also significant that the July 23 Resolution and Order expressly contemplated a joint filing in the event the parties failed to reach agreement. PREPA undertook the affirmative step required to accomplish that directive by drafting and circulating the proposed joint motion on August 6, 2026. Proponent No. 7 first requested additional time to review that filing, prompting PREPA to request additional time from the Energy Bureau, and thereafter declined to participate in the joint filing altogether. Under these

circumstances, any suggestion that PREPA failed to comply with the filing requirement, or caused the delay in complying with it, is unsupported by the record.

14. Proponent No. 7's request that the Energy Bureau impose additional procedural requirements upon PREPA is unsupported by the record and unnecessary. PREPA has complied with the Energy Bureau's directive to negotiate in good faith and has demonstrated its willingness to continue doing so. The fact that the parties have reached an impasse on material contractual provisions does not justify transforming the negotiation process into a regulatory mandate requiring weekly meetings, provision-by-provision written responses within arbitrarily prescribed periods, or the adoption of contractual templates different from those applicable to this proceeding.

15. More fundamentally, the July 23 Resolution and Order expressly anticipated that good-faith negotiations might not result in agreement. For that very reason, the Energy Bureau directed the parties, in the absence of agreement, to identify the unresolved issues and describe their efforts to resolve them. The existence of unresolved contractual issues therefore does not demonstrate noncompliance; it is an outcome expressly contemplated by the Energy Bureau's Order.

16. After completing its review, PREPA determined that it could not accept several of Proponent No. 7's proposed revisions because, among other things, they: (i) materially depart from the contractual framework previously approved by the Energy Bureau; (ii) seek to introduce contractual concepts associated with an integrated or hybrid project configuration notwithstanding the Energy Bureau's determination that the Solar PV and BESS components are to be evaluated independently and governed by separate agreements; and/or (iii) materially alter the allocation of contractual and project risk in a

manner that could shift additional obligations and exposure to PREPA and ultimately its ratepayers. PREPA's refusal to accept such revisions constitutes the exercise of responsible contractual judgment, not a failure to negotiate in good faith. To provide the Energy Bureau with a complete record of the parties' respective contractual positions and the issues that remain unresolved, PREPA submits herewith the latest drafts of the PPOA and ESSA, reflecting the comments and revisions exchanged by the parties during the negotiation process.

17. PREPA respectfully request confidential treatment for the draft contracts submitted herewith. These draft contracts constitute predecisional and deliberative materials generated in the course of ongoing negotiations and reflect internal analyses, assessments, recommendations, and proposed contractual positions that remain subject to review and modification. Public disclosure at this stage would impair the integrity of the deliberative and decision-making process, undermine the parties' ability to negotiate effectively and in good faith, and potentially prejudice the successful completion of the transactions. Accordingly, the draft contracts are protected from disclosure under the deliberative process privilege and should remain confidential until the negotiation, approval, and execution processes have been completed.

18. 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).

19. 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.

20. 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.

21. 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.

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

File	**Summary of Legal Basis for Confidential Treatment**
Draft contracts	Deliberative material

23. PREPA respectfully requests that the Energy Bureau take notice of the abovementioned and approve the request for confidential treatment of the information submitted with this Motion.

WHEREFORE, PREPA respectfully request the Energy Bureau to: (i) take **NOTICE** of the foregoing; (ii) **DEEMS** PREPA in compliance with the July 23 Resolution and Order**;** and (iii) **GRANT** confidential treatment to the draft contracts included.

In San Juan, Puerto Rico, this 11th day of August 2026.

CERTIFICATE OF SERVICE

We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau through its Electronic Filing System at https://radicacion.energia.pr.gov/login. We further certify that a true and exact copy of this document was served by electronic mail upon: eirizarry@ccdlawpr.com.

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