

**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: Resolution and Order of August 21, 2026, pertaining to Proponent #7's Motion Requesting Relief from the Puerto Rico Energy Bureau.

JOINT MOTION IN COMPLIANCE WITH THE AUGUST 21, 2026 RESOLUTION AND ORDER

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW, the Puerto Rico Electric Power Authority ("PREPA") and Proponent No. 7 ("Proponent No. 7"), by and through their undersigned counsel, and respectfully informs and requests as follows:

A. Compliance with the August 21 Order – Submission of agreed-upon PPOA and ESSA

1. On August 21, 2026, the Puerto Rico Energy Bureau issued a Resolution and Order ("August 21 Order") clarifying that its regulatory review presupposes that PREPA and Proponent No. 7 have agreed upon the contractual terms to be submitted for its consideration. The Energy Bureau asserted that it is the parties, and not the Energy Bureau, who must determine through their negotiations whether mutually acceptable terms can be reached. In the event PREPA and Proponent No. 7 were unable to resolve their outstanding differences and reach an agreement, the Energy

Bureau recognized there would be no proposed contract to review. Conversely, if the parties reached an agreement, the Energy Bureau required that the resulting proposed contract be submitted for its review and determination in accordance with the applicable legal and regulatory requirements and the Energy Bureau's prior directives in this proceeding.

2. In the August 21 Order, the Energy Bureau denied Proponent No. 7's request that the Energy Bureau direct how the parties must conduct their negotiations, including its requests that the Energy Bureau require specific negotiation sessions, provision-by-provision responses, or particular contractual modifications. The Energy Bureau determined that such matters fall within the parties' negotiation process and must be resolved between PREPA and Proponent No. 7. The Energy Bureau further determined that, if no proposed agreements approved by PREPA are submitted within the final term of ten (10) days from notification of the August 21 Order, the Energy Bureau shall deem that PREPA and Proponent No. 7 were unable to reach an agreement and that the projects proposed by Proponent No. 7 will not proceed.

3. Since the issuance of the August 21 Order, PREPA and Proponent No. 7 continued negotiations and exchanged communications in good faith in an effort to comply with the Energy Bureau's directives. Consistent with the Energy Bureau's Order, PREPA provided Proponent No. 7 with the draft Power Purchase and Operating Agreement ("PPOA") and Energy Storage Services Agreement ("ESSA"), based on the contractual frameworks previously approved by the Energy Bureau.

4. On August 31, 2026, Proponent No. 7 confirmed its acceptance of the PPOA and ESSA sent by PREPA.

5. Accordingly, PREPA and Proponent No. 7 hereby submit the negotiated draft PPOA and ESSA contracts, respectively, for the Energy Bureau review, evaluation, and approval. See **Confidential Exhibit A** – Draft PPOA between PREPA and Proponent No. 7 and **Confidential Exhibit B** – Draft ESSA between PREPA and Proponent No. 7.

6. For ease of reference, PREPA is submitting both the clean and redline version of each draft contract.

B. Request for Confidential Treatment and Memorandum of Law in Support

7. PREPA respectfully request confidential treatment of the draft contracts submitted herewith. These draft contracts constitute pre-decisional 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.

8. 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).

9. 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.

10. 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.

11. 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.

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

File	Summary of Legal Basis for Confidential Treatment
Confidential Exhibit A – Draft PPOA between PREPA and Proponent No. 7 Confidential Exhibit B – Draft ESSA between PREPA and Proponent No. 7.	Deliberative materials

13. PREPA and Proponent No. 7 respectfully requests that the Energy Bureau take notice of the abovementioned and grant confidential treatment to the draft contracts submitted herein submitted with this Motion.

WHEREFORE, PREPA and Proponent No. 7 respectfully request the Energy Bureau to: (i) take **NOTICE** of the foregoing; (ii) **DEEM** PREPA in compliance with the August 21, 2026 Resolution and Order, and (iii) **GRANT** confidential treatment to the draft contracts included.

In San Juan, Puerto Rico, this 31st 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>.

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