

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

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**IN RE: ELECTRIC SYSTEM PRIORITY
STABILIZATION PLAN**

CASE NO.: NEPR-MI-2024-0005

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
THE DOCUMENTS SUBMITTED IN PREPA'S MOTION IN COMPLIANCE WITH
ORDER OF SEPTEMBER 9, 2026**

TO THE HONORABLE ENERGY BUREAU:

COMES NOW Puerto Rico Energy Power Authority ("PREPA"), by and through the undersigned counsel, and respectfully states and requests as follows:

I. INTRODUCTION

On August 31, 2026, the Puerto Rico Energy Bureau ("Bureau") ordered PREPA to formally request a report from the Public-Private Partnerships Authority (P3) and the Third-Party Procurement Office ("3PPO") addressing the following matters: *(i)* the current status of the competitive process for the acquisition of temporary generation; *(ii)* whether the terms and conditions of the existing process allow for the continuation of the evaluation, negotiation, or award of previously submitted proposals; *(iii)* the available alternatives for continuing under said process, in addition to the necessary steps and approvals; *(iv)* if it is not possible to continue under said process, the corresponding legal, contractual, or procedural reasons; and *(v)* each entity's individual and independent recommendation on the most expeditious course of action to continue with the acquisition of emergency temporary generation. To comply with the order, PREPA was required to submit to the Bureau: *(i)* a

copy of the request submitted; (ii) the response received; and (iii) all documents and attachments included in each response.

In compliance with the foregoing, on September 9, 2026, PREPA filed a *Motion for Compliance with Order* (“Motion in Compliance”) with the Bureau. As part of said motion, PREPA included confidential information provided by 3PPO related to the ongoing competitive process for the acquisition of temporary generation, specifically from Gothams Energy, LLC, (“Gothams”) and Javelin Global Commodities US Holdings, Inc. (“Javelin”). Given the confidential nature of the information submitted, PREPA requested that the Bureau maintain the records under seal and treat them confidentially until the validity of the confidentiality request could be determined. PREPA also requested a five-day period to submit a memorandum of law in support of the aforementioned request for confidential treatment, outlining the legal grounds applicable to the submitted documents.

PREPA respectfully submits this Memorandum of Law in support of its request for confidential treatment of the documents attached to the September 9, 2026 Motion in Compliance. As explained below, the Honorable Bureau should grant confidential treatment because the documents are part of an ongoing competitive procurement process. Certain documents also contain predecisional assessments, recommendations, and communications generated or exchanged among governmental entities in connection with that ongoing process and the determination of the appropriate course of action for the acquisition of emergency temporary generation. As discussed below, those materials implicate the protections afforded to official information and predecisional governmental deliberations under Puerto Rico law. Additionally, documents related to Gothams and Javelin contain sensitive non-public, technical, operational, and economic information provided under applicable Non-Disclosure

Agreement ("NDA") executed in connection with the Request for Proposal for Emergency Temporary Power Generation (RFP-3PPO-0314-20-TPG2).

Public disclosure of this information could affect the legitimate business interests of Gothams and Javelin and the ongoing competitive procurement process, and, as applicable, the confidentiality of the governmental deliberative process concerning the alternatives presently under consideration.

II. REGULATORY FRAMEWORK

a. Puerto Rico Energy Transformation and Relief Act

Section 6.15 of the Puerto Rico Energy Transformation and Relief Act, Act No. 57 of May 27, 2014, (22 LPRA § 1054n), provides as follows:

If any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such, subject to the following:

- a) If the Energy [Bureau], after the appropriate evaluation, believes such information should be protected, it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.
- b) To such purposes, the Energy [Bureau] shall provide access to the document or the privileged portion of the document only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.
- c) The Energy [Bureau] shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements. However, the Energy [Bureau] shall direct that a non-confidential copy be furnished for public review.
- d) The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.

In addition to the Bureau's statutory confidentiality framework, the procurement regime governing the underlying transaction independently mandates confidentiality. Section 6.15 thus expressly contemplates the protection of information submitted pursuant to a Bureau requirement when an independently recognized confidentiality privilege applies, while preserving the Bureau's authority to tailor that protection to minimize any impact on transparency and the public interest.

b. Public-Private Partnership Authority Act

With respect to the confidentiality governing the procurement process administered through P3A and the 3PPO, Section 9(i) of the Public-Private Partnership Authority Act, Act No. 29 of June 8, 2009, (27 LPRA § 2608), postulates as follows:

In the course of the procedures for the evaluation and selection of and negotiation with Proponents, the **confidentiality of the information furnished and generated in connection with such procedures for the evaluation, selection, negotiation and grant of the proposals and the Partnership Contract shall be governed by the confidentiality criteria established by the Authority.** The information regarding such procedures, as well as the information submitted by the Proponents, **shall be disclosed upon approval of the Partnership Contract by the Governor or the executive official onto whom he/she delegates, except for such information which constitutes (1) a trade secret, (2) proprietary information or (3) privileged or confidential information of either the Proponents who participated or the Authority.** In cases in which there is the intent to have any information considered as a trade secret or as privileged information, Proponents must identify and mark such information in their proposals as "confidential," and shall present a request together with the proposal in order for the Partnership Committee to make a determination of confidentiality. Once the Partnership Committee determines that such information meets the criteria of this Section, such information shall be deemed to be confidential under the provisions of this Act and such special laws which protect trade secrets and proprietary, privileged or confidential information, and such information may not be disclosed to other Proponents or to third parties, except if otherwise provided in this Act and other applicable special laws. (Emphasis added.)

c. Policy on Management of Confidential Information in Procedures before the Commission

In the same way, the Policy on Management of Confidential Information in Procedures before the [Bureau], CEPR-MI-2016-0009, requires that:

Whenever a party believes that a specific document to be produced contains Confidential Information and is entitled to such treatment, that party (“Producing Party”) must follow the following instructions so that such information is protected:

1. The Producing Party must identify such information by marking it “Confidential”. Every document or information so identified will be referred to as “Confidential Information”.
2. The Producing Party must, no later than ten (10) days after filing of the Confidential Information, file a memorandum of law to the [Bureau] explaining in writing the legal basis in support of its argument that the information filed contains Confidential Information and deserves some form of protection. In its memorandum, the Producing Party must relate each document to a legal basis and specific argument that support each claim. The Producing Party must notify a copy of its memorandum of law to each party in the case.

d. Regulation No. 9078 dated as of April 1, 2019, known as Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act No. 120-2018 adopted by P3A

In the same way, Section 11.2(d) of the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act No. 120-2018, as amended, Regulation No. 9078 of April 1, 2019, states as follows:

Once the Governor and, if applicable, the Legislative Assembly, have approved the Transformation Contract, the Authority will make public the Committee Report of the relevant Partnership Committee which will contain the information related to the procurement, selection and negotiation process, and the information contained in the Proposal as required by Article 9(i) of Act 29-2009, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that will otherwise be protected from publication according to law, unless otherwise ordered by a court order. (Emphasis added.)

e. Regulation No. 8543 dated December 18, 2014, known as Regulation on Adjudicative, Notices of Non-Compliance, Rate Review and Investigations Proceedings adopted by the Energy Bureau

Moreover, Section 1.15 of the Regulation on Adjudicative, Notices of Non-Compliance, Rate Review and Investigations Proceedings, Regulation No. 8543 of December 18, 2014, asserts that:

If in compliance with the provisions of this Regulation or any of the [Bureau's] order, a person has the duty of disclose information to the Commission considered to be privileged, pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the [Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Bureau] shall evaluate the petition and, if it understands the material merits protection, proceed according to what is set forth in Article 6.15 of Act No. 57-2014, as amended.

Accordingly, the Bureau's own regulation expressly recognizes that an evidentiary privilege may constitute an independent basis for confidential treatment under Section 6.15.

f. Official Information and Predecisional Governmental Deliberations

Puerto Rico law also recognizes protection from public disclosure for certain official information and governmental materials generated as part of a predecisional and deliberative process. Rule 514 of the Puerto Rico Rules of Evidence recognizes a privilege for “official information” acquired in confidence by a public official or employee in the course of official duties, where the information has not been officially disclosed or made accessible to the public. The privilege applies when the information qualifies as official information and its disclosure is prohibited by law or disclosure would be prejudicial to the interests of the government. 32 LPRA Ap VI, R. 514.

Consistent with that evidentiary protection, the Supreme Court of Puerto Rico recognized in *Bhatia Gautier v. Gobernador*, 199 DPR 59 (2017), that documents

pertaining to predecisional and deliberative governmental processes may be protected from public disclosure. The protection is directed to materials that precede a governmental decision and reflect the consultative process through which governmental officials evaluate alternatives, exchange views, formulate recommendations, and reach governmental decisions. *Id.* at 83–89. The privilege does not arise merely because a document was exchanged internally or between governmental entities; its application depends upon the nature of the information and its relationship to the governmental decision-making process.

This protection is also preserved in the public-disclosure context by Article 4 of Act No. 122-2019, the *Puerto Rico Open Government Data Act*, which excludes from disclosure public information subject to privileges recognized under applicable law and the Rules of Evidence, including official information and official-decisional information in deliberative public-policy proceedings as recognized by case law. 3 DPR § 9894. These authorities therefore provide an additional basis for protecting those portions of the materials submitted here that disclose preliminary governmental assessments, recommendations, alternatives, or communications forming part of the decision-making process concerning the ongoing procurement.

Because the government bears the burden of establishing the applicability of the claimed protection, PREPA identifies below the particular information for which protection is requested and the governmental or proprietary interest that disclosure would impair.

III. REQUEST FOR CONFIDENTIAL TREATMENT

The foregoing statutory and regulatory provisions establish several independent but complementary bases for protection: (i) the confidentiality applicable to the ongoing procurement process; (ii) the protection conferred by applicable Non-Disclosure Agreements and protections applicable to proprietary and commercially sensitive third-party information; and (iii) as to governmental materials reflecting preliminary assessments, recommendations, alternatives, and consultations, the protection afforded to official information and predecisional governmental deliberations under Puerto Rico law.

a. Documents must receive confidential treatment as they are part of an active procurement process.

According to the applicable statutes and regulations described above, procurement materials submitted in connection with an active evaluation and negotiation process are subject to the confidentiality protections established by the governing procurement framework during the evaluation, selection, and negotiation process. Those protections preserve, among other things, information qualifying as trade secrets, proprietary information, privileged information, or otherwise confidential information under applicable law.

Importantly, the confidentiality afforded to proposal and evaluation materials in an ongoing procurement serves the integrity of the procurement process as a whole and is not limited to the protection of isolated commercial terms. The integrity of a competitive process depends upon preventing market participants from gaining insight into competitors' strategic approach, internal structuring, and financial positioning, and commercial methodology prior to conclusion of the process. Disclosure of procurement-sensitive information identified below would distort the level playing field contemplated by the governing procurement framework. Furthermore, allowing public access to these materials through a parallel

regulatory proceeding would effectively circumvent the confidentiality protections embedded in the procurement regime and create asymmetrical information advantages among market participants.

As of this filing, the Emergency Temporary Power Generation RFP process has not been completed, and evaluation and negotiation concerning the remaining procurement alternatives continue. This ongoing status supports confidential treatment of the procurement-sensitive information contained in the documents attached to PREPA's Motion in Compliance, since that information was generated or submitted as part of an ongoing competitive procurement process and contains sensitive, non-public, technical, operational, and economic information. Disclosure at this stage would substantially affect the integrity of the process and could grant an undue advantage to competitors, to the detriment of Gothams and Javelin, and the public interest.

Moreover, although Act 29-2009 does not directly bind this Bureau in determining whether materials filed in this proceeding should receive confidential treatment, its relevance to this proceeding is significant. First, the documents attached by PREPA in the September 9, 2026, Motion in Compliance, were created and submitted within the applicable procurement framework, which provides confidentiality protections during the evaluation, selection, and negotiation process and preserves protection for trade secrets, proprietary, privileged, and confidential information. Second, granting confidential treatment here is consistent with, and complementary to, the confidentiality regime already governing these same materials at the P3 level. The Bureau's grant of confidential treatment is therefore fully aligned with the public policy embedded in Act 29-2009 and serves the public interest in a competitive, fair, and efficient selection of temporary power generation for Puerto Rico.

b. Materials generated as part of the governmental decision-making process reflecting predecisional assessments and recommendations warrant confidential treatment

Certain documents submitted with the Motion in Compliance contain more than commercially sensitive procurement information. They also reflect preliminary assessments, recommendations, alternatives, and communications generated as part of the governmental decision-making process and in response to the Bureau's directive concerning the appropriate course of action following termination of the Power Expectations contract.

Most notably, the 3PPO's September 4, 2026 Report contains preliminary assessments regarding the continued viability of existing proposals, unresolved technical and commercial conditions, alternative paths available under the procurement, and the 3PPO's recommendation concerning the course that PREPA, P3A, and the 3PPO should consider in proceeding with the acquisition. Those assessments were prepared for governmental consideration while the relevant procurement and regulatory decisions remained unresolved. The report itself expressly characterizes 3PPO's position concerning continuation of the procurement as "preliminary" and separately provides 3PPO's recommendation concerning the course of action.

To the extent those materials disclose the consultative process through which PREPA, P3A and the 3PPO are evaluating available alternatives and formulating recommendations as part of the governmental decision-making process before final governmental action, they implicate the protections for official information and predecisional governmental deliberations recognized by Rule 514, *Bhatia Gautier*, and Act 122-2019. Confidential treatment of those portions also protects the government's ability to evaluate procurement alternatives candidly while negotiations and regulatory consideration remain ongoing.

c. Javelin and Gothams documents contain proprietary and commercially sensitive information subject to applicable confidentiality obligations

On July 15, 2025, 3PPO and Javelin entered an NDA in connection with the RFP-3PPO-0314-20-TPG2. PREPA understands that confidentiality obligations also govern information submitted by Gothams in connection with the procurement. Under said NDAs, 3PPO, Javelin and Gothams, separately, agreed to treat as confidential any non-public, sensitive, or proprietary data, materials, or information disclosed by Javelin or Gothams, whether in oral, written, graphic, electronic, or other tangible or intangible form, and whether or not specifically marked as “confidential,” that a reasonable person would understand to be confidential given the nature of the information and the circumstances of disclosure. As well, through said NDAs 3PPO agreed to maintain all Confidential Information in strict confidence, to protect it from unauthorized disclosure or access using at least the same degree of care that it uses to protect its own confidential and proprietary information, and in no event less than reasonable care. These NDAs have a validity period of three (3) years from the last date of disclosure or until such time as the Confidential Information no longer qualifies as confidential under applicable law, whichever occurs first. Therefore, to the extent applicable and presently effective, the NDAs provide an additional contractual basis for protecting the non-public commercial, technical, and proprietary information furnished by the proponents.

For the foregoing reasons, the confidential information contained in the documents attached to PREPA's September 9, 2026, Motion in Compliance warrants confidential treatment under the complementary statutory, regulatory, evidentiary, procurement, and contractual protections discussed above.

Finally, in compliance with, and as required by CEPR-MI-2016-0009, PREPA relates each document to its legal basis and the specific harm that would result from disclosure.

Document name	Pages with confidential information	Date confidential information was filed	Legal basis for confidentiality
Appendix 1 of the Motion in Compliance; 3PPO's September 4, 2026, communication: "Report of the 3PPO Pursuant to PREPA's September 2, 2026, Request" containing commercial, financial, technical and strategic information of Gotham and Javelin	Totality of the Appendix	September 9, 2026	○ Section 6.15 of Act 57-2014; ○ Section 9(i) of Act 29-2009; ○ CEPR-MI-2016-0009; ○ Section 11.2(d) of Regulation No. 9078; ○ Section 1.15 of Regulation No. 8543; ○ Rule 514 of the PR Rules of Evidence; ○ <i>Bhatia Gautier v. Gobernador</i>, 199 D.P.R. 59 (2017); ○ Article 4 of Act 122-2019; ○ Applicable NDAs and protections for proprietary information ○ Contains non-public information concerning the status and continued viability of competing proposals, ongoing negotiations, unresolved technical and commercial conditions, and alternatives available under the existing procurement. The Report also contains preliminary assessments and recommendations generated for consideration as part of the governmental decision-making process concerning whether and how the procurement should proceed. Disclosure while those matters remain unresolved would reveal the government's evaluation of competing procurement alternatives and negotiating posture, provide market participants insight into non-public information concerning competing proposals, and impair the integrity of the

			ongoing decision-making and competitive procurement processes.
Appendix 2 of the Motion in Compliance; PREPA's September 2, 2026 Formal Request pursuant to Energy Bureau Resolution and Order Case No. NEPR-MI-2024-0005 as is part of an ongoing competitive procurement process	Portions that disclose non-public procurement information beyond the matters already stated in the Energy Bureau's August 31, 2026 Resolution and Order.	September 9, 2026	○ Section 6.15 of Act 57-2014; ○ CEPR-MI-2016-0009; ○ Section 1.15 of Regulation No. 8543; ○ Rule 514, to the extent applicable; ○ <i>Bhatia v. Gautier</i>, to the extent applicable; ○ Article 4 of Act 122-2019; ○ Applicable procurement-confidentiality provisions ○ Protection applies to portions that independently reveal non-public procurement information or protected governmental deliberations not already disclosed in the Bureau's directive.
Exhibit A of the Motion in Compliance; "Gothams Energy, LLC – Contract & Site Status Report"	Totality of the Exhibit	September 9, 2026	○ Section 6.15 of Act 57-2014; ○ Section 9(i) of Act 29-2009; ○ CEPR-MI-2016-0009; ○ Section 11.2(d) of Regulation No. 9078; ○ Section 1.15 of Regulation No. 8543; ○ NDA and applicable contractual confidentiality obligations and protections for proprietary information ○ As applicable, Rule 514, <i>Bhatia Gautier</i>, and Article 4 of Act 122-2019. ○ Contains non-public information concerning Gothams' pending PPOA negotiations, transmission and interconnection constraints, alternative project sites, proposed contractual modifications, and the pending evaluation of a potential expansion to Aguirre. The Report also reflects 3PPO's

			evaluation of site alternatives and recommendations made during the ongoing procurement. Disclosure while those matters remain unresolved would reveal the government's evaluation of competing procurement alternatives and negotiating posture, provide market participants insight into non-public information concerning competing proposals, and impair the integrity of the ongoing decision-making and competitive procurement processes.
Exhibit B of the Motion in Compliance; Javelin's August 22, 2025 communication "Request for Proposal 3PPO-0314-20-TPG2 / Request for Information Timeline – Aguirre 156 MW," including attachments	Totality of the Exhibit	September 9, 2026	○ Section 6.15 of Act 57-2014; ○ Section 9(i) of Act 29-2009; ○ CEPR-MI-2016-0009; ○ Section 11.2(d) of Regulation No. 9078; ○ Section 1.15 of Regulation No. 8543; ○ July 15, 2025 NDA and protections applicable to proprietary and commercially sensitive information ○ Contains non-public technical and commercial information developed for Javelin's proposed Aguirre project, including project-development assumptions, generation configuration, fuel-supply alternatives, execution schedule and conditions, engineering layouts, single-line diagrams, equipment configuration, and water-treatment and operational schematics. The submission expressly states that it is governed by the July 15, 2025 NDA. Disclosure would reveal Javelin's proprietary technical

			design, project architecture, execution methodology, and commercially sensitive proposal strategy while the procurement remains active
Exhibit C of the Motion in Compliance; Javelin's September 2, 2026, communication: "Global Power Solutions participation in Puerto Rico Temporary Generation RFP"	Totality of the Exhibit	September 9, 2026	○ Section 6.15 of Act 57-2014; ○ Section 9(i) of Act 29-2009; ○ CEPR-MI-2016-0009; ○ Section 11.2(d) of Regulation No. 9078; ○ Section 1.15 of Regulation No. 8543; ○ July 15, 2025 NDA and protections applicable to proprietary and commercially sensitive information ○ Contains information concerning Javelin's financial capability, financing commitments, bonding, contractual arrangements with vendors and contractors, project readiness, and willingness to consider renewed engagement. Disclosure of its non-public commercial and procurement-sensitive information could reveal Javelin's financial and execution posture and provide competing market participants information relevant to potential renewed negotiations.

WHEREFORE, PREPA respectfully requests that the Honorable Energy Bureau take notice of the aforementioned, grant confidential treatment to the documents and information identified in the confidentiality table above, to the extent and for the reasons specified therein; maintain such information under seal or restricted access consistent with the Bureau's confidentiality procedures; and, should the Energy Bureau determine that any portion of the information for which

confidential treatment is requested is segregable and does not warrant such protection, allow PREPA to submit an appropriately redacted public version before any information claimed as confidential is disclosed, and grant such other and further relief as the Bureau deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 18 day of September, 2026.

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CERTIFICATE OF FILING AND SERVICE

It Is hereby certified that this document was filed with the Office of the Clerk of the Energy Bureau through its electronic filing system available at <https://radicacion.energia.pr.gov>. It is further certified that a file-stamped copy of the foregoing document will be notified upon the parties at the following email addresses: LUMA Energy, LLC and LUMA Energy ServCo, LLC, through Margarita Mercado, margarita.mercado@us.dlapiper.com; Emmanuel Porro González, emmanuel.porrogonzalez@us.dlapiper.com; Laura Rozas, laura.rozas@us.dlapiper.com; RegulatoryPREBOrders@lumapr.com; and Genera PR LLC through: lrn@roman-negron.com; legal@genera-pr.com; regulatory@genera-pr.com.