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**GOVERNMENT 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 |

**MOTION SUBMITTING THE SECOND PROPOSED CONTRACT RESULTING FROM TEMPORARY EMERGENCY POWER GENERATION RFP FOR THE ENERGY BUREAU'S REVIEW AND APPROVAL 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:

1. On February 26, 2025, Genera PR, LLC ("Genera") submitted to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a request for expedited approval of emergency generation measures, citing a critical generation shortfall following the failure of Aguirre Unit 1. In response, on March 14, 2025, the Energy Bureau issued a Resolution and Order finding that the electric system was facing a generation deficit of between 700 and 850 MW and that immediate measures were necessary to address the emergency. The Energy Bureau approved the acquisition of temporary generation capacity and ordered PREPA to take specific actions. Among those directives, on March 19, 2025, the Energy Bureau ordered PREPA to notify the Puerto Rico Public-Private Partnerships Authority ("P3A") to activate the services

of the Third-Party Procurement Office ("3PPO"), since Genera is classified as a restricted party. PREPA promptly complied.

2. On March 25, 2025, the 3PPO issued RFP No. 3PPO-0314-20-TPG for the procurement of up to 800 MW of temporary emergency generation capacity. The objective of the RFP was to identify one or more qualified providers capable of deploying and operating generation solutions—such as barges or mobile gas turbines—at the Aguirre and Costa Sur substations. The 3PPO received and evaluated seven (7) proposals, which resulted in the selection of one proponent.

3. Following various procedural filings and actions, the 3PPO closed the RFP No. 3PPO-0314-20-TPG and reopened the procurement process and issued RFP No. 3PPO-0314-20-TPG2. On October 10, 2025, the Energy Bureau issued a Resolution and Order directing PREPA to submit a detailed progress report on the ongoing emergency generation acquisition process conducted through the 3PPO.

4. PREPA complied with said directive by filing on October 15, 2025, its *Motion in Compliance with the October 10, 2025 Resolution and Order and Memorandum of Law in Support of Request for Confidential Treatment*, which included a detailed progress report and a copy of the RFP file.

5. On October 24, 2025, PREPA's Governing Board authorized the 3PPO to negotiate with the proponents for the purpose of formalizing the corresponding contracts. The Governing Board also authorized PREPA's Executive Director to formalize and execute said contracts, provided that the negotiated contracts'

terms and conditions are in accordance with the procurement process criteria and requirements.

6. On November 26, 2025, PREPA filed a Motion submitting the first proposed contract of one of the proponents, Power Expectations, LLC, for the Energy Bureau's review and approval. On December 11, 2025, the Energy Bureau issued a Resolution and Order approving the draft contract and ordering PREPA to submit to the Financial Oversight and Management Board of Puerto Rico ("FOMB") for its approval.

7. PREPA hereby submits the second proposed contract titled *Performance Service Agreement Contract* of Gothams Energy LLC—included in the *Exhibit I-Proposed Contract and its Exhibits folder—*, resulting from the competitive procurement process for temporary emergency power generation for the Energy Bureau's review and approval.

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[1] PREPA informs this Energy Bureau that it sent to secretaria@jrsp.pr.gov a **confidential** *OneDrive File* with two (2) files: (1) Exhibit I- Proposed Contract and its Exhibits; and (2) Exhibit II-Other Documents.

8. Moreover, PREPA submits to the Energy Bureau other communications and documents to ensure complete transparency and that the Energy Bureau has a complete record of the RFP process. Please refer to the *Exhibit II-Other Documents* folder.

**Request for Confidential Treatment and Designation**

9. PREPA respectfully requests confidential treatment of all the documents, including those in the designated Exhibits I and II folders, because they contain ongoing deliberative material that forms part of an active negotiation process as part of a competitive procurement process. Disclosure of the designated Exhibits I and II folders at this stage would undermine the integrity of the decision-making process and, therefore, is protected under the deliberative process privilege until the contract is fully executed.

10. 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).

11. 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.

12. 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.

13. 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."

14. 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."

15. 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).

16. 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.

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

| Documents | Summary of Legal Basis for Confidential Treatment |
|---|---|
| **Exhibit I- Proposed Contract and Its Exhibits folder** | Deliberative material |
| **Exhibit II-Other Documents folder** | Deliberative material |

18. PREPA respectfully requests that the designated Exhibits I and II folders remain confidential until the evaluation process concludes and the final contract is executed. The documents included in the Exhibits I and II folders are part of an ongoing evaluation process, including a proposed contract, which is still a draft, subject to the Energy Bureau's review and approval.

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau take **NOTICE** of the present Motion and **GRANT** confidential treatment of the designated Exhibits I and II folders.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 23 of January 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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