**COMMONWEALTH OF PUERTO RICO**
**PUERTO RICO ENERGY COMMISSION**

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| **IN RE:** PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW | **CASE NO.:** CEPR-AP-2015-0001<br><br>**SUBJECT:** Motion for reconsideration of the Commission's Resolution in case CEPR-MI-2016-0009 regarding the guidelines and procedures for filing confidentiality claims. |

## RESOLUTION

On September 7, 2016 the Puerto Rico Electric Power Authority ("PREPA") filed a motion for reconsideration through which it requested the Puerto Rico Energy Commission ("Commission") to reconsider certain portions of the Resolution issued on August 31, 2016 in case number CEPR-MI-2016-0009. Through said Resolution, the Commission established the guidelines and procedures that would apply to the filing and evaluation of confidentiality claims made with regards to information filed before the Commission.

On September 20, 2016, the Commission issued a resolution in case number CEPR-MI-2016-0009 through which it addressed the motion for reconsideration filed by PREPA. The Commission hereby notifies PREPA, and all intervenors in the instant proceeding, of the approval of the aforementioned resolution. Copy of such resolution is attached herein as Attachment A.

For the benefit of all parties involved, the Commission issues this Resolution in both English and Spanish language. Should any discrepancy between each language arise, the Spanish language shall prevail.

Be it notified and published.

Agustín F. Carbó Lugo
President

Ángel R. Rivera de la Cruz
Associate Commissioner

José H. Román Morales
Associate Commissioner

**CERTIFICATION**

I hereby certify that the Puerto Rico Energy Commission has so agreed on September 20, 2016. I also certify that on this date a copy of this Resolution was notified by electronic mail to the following: n-ayala@aeepr.com, c-aquino@aeepr.com, glenn.rippie@r3law.com, michael.guerra@r3law.com, john.ratnaswamy@r3Law.com, codiot@opic.pr.gov, jperez@oipc.pr.gov, cfl@mcvpr.com, ivc@mcvpr.com, mmuntanerlaw@gmail.com, jfeliciano@constructorespr.net, abogados@fuerteslaw.com, jose.maeso@aae.pr.gov, edwin.quinones@aae.pr.gov, nydinmarie.watlington@cemex.com, aconer.pr@gmail.com, epenergypr@gmail.com, jorgehernandez@escopr.net, ecandelaria@camarapr.net, pga@caribe.net, manuelgabrielfernandez@gmail.com, mreyes@midapr.com, agraitfe@agraitlawpr.com, mgrpcorp@gmail.com, attystgo@yahoo.com and maribel.cruz@acueductospr.com.

María del Mar Cintrón Alvarado
Clerk

I certify that this is a true and exact copy of the Resolution issued by the Puerto Rico Energy Commission. I further certify that today, September ___, 2016, I have proceeded with the filing of the Resolution and I have sent a copy thereof to:

**Puerto Rico Electric Power Authority**
Attn.: Nélida Ayala Jiménez
Carlos M. Aquino Ramos
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**Grupo Windmar**
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**Centro Unido de Detallistas, Inc.**
Lcdo. Héctor Fuertes Romeu
PMB 191 – PO Box 194000
San Juan, Puerto Rico 00919-4000

For the record, I sign this in San Juan, Puerto Rico, today, September ___, 2016.

_____
Jessica Fuster Rivera
Clerk of the Puerto Rico
Telecommunications Regulatory Board

**COMMONWEALTH OF PUERTO RICO**
**PUERTO RICO ENERGY COMMISSION**

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|---|---|
| **IN RE:** POLICY ON MANAGEMENT OF CONFIDENTIAL INFORMATION IN PROCEDURES BEFORE THE COMMISSION | **CASE NO. :** CEPR-MI-2016-0009<br><br>**SUBJECT: PREPA's request for Reconsideration** |

## RESOLUTION

On August 31, 2016 the Puerto Rico Energy Commission ("Commission") issued a Resolution ("August 31 Resolution") through which it established the rules and procedures applicable to the filling of confidentiality claims, the Commission's evaluation of such claims and the guidelines which would govern the disclosure of confidential information once the Commission issue a determination regarding such claims.[1] The rules and procedures established therein would apply to any circumstance in which a person or entity is compelled to file before the Commission information that it considers confidential.

On September 7, 2016, the Puerto Rico Electric Power Authority ("PREPA") filed, in case number CEPR-AP-2015-0001, In Re: Puerto Rico Electric Power Authority Rate Review, a request for reconsideration of the August 31 Resolution. Specifically, PREPA requested the Commission to reconsider the requirement established on Section A.2 which requires that, simultaneously with the filling of the information for which confidential treatment is sought, the producing party shall file a memorandum of law establishing the legal basis supporting their request. Similarly, PREPA requested the Commission to reconsider Section D.3 of the August 31 Resolution which established that "a designation of attorney-client privilege or attorney work-product will be evaluated by an Administrative Law Judge ("ALJ") appointed by the Commission."

Although PREPA filed its request under case number CEPR-AP-2015-0001, the Commission has determined address PREPA's request, since the rules established by the Commission in the August 31 Resolution affects the confidentiality claims that PREPA has raised, or could raise, as well confidentiality claims that may be raised by any other intervening party, in case number CEPR-AP-2015-0001.

[1] The Commission adopted said resolution pursuant to Sections 1.4, 6.3 and 6.15 of Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act ("Act 57-2014"); Section 1.15 of Regulation Num. 8543 of Adjudicative Proceedings, Non-Compliance Notices, Rate Reviews and Investigations; and the Puerto Rico Energy Commission's Internal Confidential Information Management Guidelines.

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**A. Section A.2 – Filling of Memorandum of Law.**

Section A.2 of the August 31 Resolution responds to the mandate established by Article 6.15 of Act 57-2014 which requires the Commission to evaluate and solve any confidentiality claim in an expedite manner. This mandate is consistent with the policy of transparency and accountability encouraged by Act 57-2014 and which can only be accomplish through the public's access to information which is relevant to the electric services they consume. Therefore, provided that the August 31 Resolution is applicable to any proceeding before the Commission, the Commission **DETERMINES** to modify the simultaneous filling of a Memorandum of Law requirement and **AMENDS** section A.2 of the August 31 Resolution to read as follows:

> *The producing party must, no later than ten (10) days after filling of the Confidential Information, file a memorandum of law to the Commission 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 arguments that support each claim. The Producing Party must notify a copy of its memorandum of law to each party in the case.*

In order to guarantee the necessary flexibility to ensure that the procedures are conducted within the context of transparency and efficiency, the Commission reserves the right and discretion to, when it deems necessary and/or convenient to achieve adequate citizen participation, modify the aforementioned term of ten (10) days.

Nevertheless, with regards to the specific nature of the review of PREPA's rates (case number CEPR-AP-2015-0001), procedure within which PREPA's request for reconsideration was filed, PREPA argues that the simultaneous filing of a memorandum of law along with the filing of information for which confidentiality is claimed will divert resources that otherwise are used for the preparation and submission of information and documentation requested by the Commission. PREPA further argues that such requirement and result in delays by PREPA in complying with the timetable establish by the Commission for the filing of information. Therefore, PREPA requests the Commission to reconsider its determination and keep the ten (10) day period previously establish for the presentation of any memorandum of law related to a confidentiality claim.

The Commission considers that, provided the short period of time established by Act 57-2014 for the Commission to review and issue a final determination on PREPA's rate review, it is impractical to grant up to ten (10) days for a party that files information that it considers merits confidential treatment to file its arguments in support of such request. Any unnecessary delay in the availability to analyze information that is relevant would undermine the Commission's capacity to undertake an inclusive procedure and which results in rates that are just and reasonable and are the result of an exhaustive review.

Consequently, in order to ensure transparency in PREPA's rate review process, promote an effective public participation and guarantee an outcome that is in the public's

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best interest, the Commission **DENIES** PREPA's request for reconsideration. However, after considering PREPA's arguments in support of its request, the Commissions **DETERMINES** to modify the term to file the memorandum of law. Therefore, when filing information that it deems warrants confidential treatment, **the producing party shall present a memorandum of law in support of their request no later than five (5) days after filing the information for which it request confidentiality treatment.** Such determination will only be applicable to PREPA's rate review proceeding, case number CEPR-AP-2015-0001.

**B. Section D.3 – Assessment of claims under the doctrine of attorney-client privilege or work -product.**

PREPA argues that the Commission's determination that every confidentiality claim based on the attorney-client privilege or attorney's work-product will be reviewed by an outside Administrative Law Judge establishes an unusual procedure that is inconsistent with the protections granted to attorney-client information as such protections have been elaborate by local and federal case law. PREPA argues that in camera review of confidential information under attorney-client privilege or attorney work-product should not be automatic, but rather be applied when there is a reasonable basis to determine that the information for which confidentiality treatment is being sought falls within one of the exceptions to the privilege.

The Commission agrees with PREPA's analysis, particularly since the Commission's intention through the August 31 Resolution was not to implement an automatic review procedure, but to establish the process through which such information would be reviewed when the Commission deemed it applicable. According to the aforementioned, the Commission **DETERMINES** to amend the first paragraph of Section D.3 of the August 31 Resolution to read as follows:

> *3. Attorney-Client Privilege*
>
> *In those cases in which the Commission determines that there is sufficient basis to determine that the information for which confidentiality treatment is sought pursuant to the attorney-client or attorney work-product privilege falls within one of the exceptions to this privilege, such information will be reviewed by an external Administrative Law Judge who shall be responsible for reviewing such claims.*
>
> *The Administrative judge will notify... .*

Be it notified and published.

Agustín F. Carbó Lugo
President

Ángel R. Rivera de la Cruz
Associate Commissioner

José H. Román Morales
Associate Commissioner

**CERTIFICATION**

I hereby certify that the Puerto Rico Energy Commission has so agreed on September 20, 2016. I also certify that on this date a copy of this Resolution was notified by electronic mail to the following: n-ayala@aeepr.com, c-aquino@aeepr.com, glenn.rippie@r3law.com, michael.guerra@r3law.com, john.ratnaswamy@r3Law.com, and n-vazquez@aeepr.com.

María del Mar Cintrón Alvarado
Clerk

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San Juan, PR 00936-4267

**Rooney Rippie & Ratnaswamy LLP**
E. Glenn Rippie
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Michael Guerra
350 W. Hubbard St., Suite 600
Chicago Illinois 60654

For the record, I sign this in San Juan, Puerto Rico, today, September ___, 2016.

Jessica Fuster Rivera
Clerk of the Puerto Rico
Telecommunications Regulatory Board