**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:** Confidentiality claims filed by PREPA |

## RESOLUTION AND ORDER

Pursuant to Section 3.02(A) of Regulation 8720[1], on May 26, 2016, the Puerto Rico Electric Power Authority ("PREPA") filed before the Puerto Rico Energy Commission ("Commission") copy of all reports made by PREPA's Chief Restructuring Officer to its Governing Board in relation to ongoing restructuring efforts (hereinafter referred to as the "CRO Reports"). PREPA requested confidential treatment of certain portions of such reports it is protected by the attorney-client privilege, it is considered Critical Energy Infrastructure Information ("CEII") or that such information is business confidential because in contains trade secrets.

On May 27, 2016, PREPA filed before the Commission its Petition for Review of Rates ("Petition") which included as part of Schedule I-3 copy of the CRO Reports previously filed, as well as several other documents in support of its Petition. On June 3, 2016, PREPA filed a motion identifying several documents from the Petition for which it sought confidential treatment based on trade secret/business confidential and CEII principles.[2] Those documents identified in the Petition for which it sought confidential treatment where filed by PREPA through the June 3, 2016 motion.

On June 22, 2016, the Commission notified a letter ordering PREPA to supplement its June 3, 2016 request and provide additional information in support of its confidentiality claims. On June 29, 2016, PREPA filed a motion providing an updated document log and detailed information regarding the legal and factual bases in support of its confidentiality claims.

On July 1, 2016, PREPA filed a motion supplementing its Petition in response to deficiencies previously notified by the Commission. Along with such motion, PREPA filed an updated version of Schedule H-5 and requested it be granted confidential treatment as trade secret/business confidential. On July 7, 2016, PREPA filed a motion requesting confidential treatment of two document attached to PREPA's response to the Commission's Second

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[1] Regulation No. 8720, New Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority's First Rate Case.

[2] The documents for which PREPA sought confidential treatment are: Schedules I-3; G-1; G-2; G-4; G-6; M-1; M-2; M-3; and N-1; and Workpapers Ex. 4.0, WP 2; Ex. 5.0, WP 1 and 2; Ex. 6.0, WP 5; and Ex. 9.0, WP 1.

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Requirement of Information.[3] PREPA claimed such documents contained information which was trade secret/business confidential.

On July 15, 2016, the Commission sent a letter ordering PREPA to once again update its June 3, 2016 request and provide additional information in support of its confidentiality claims, specifically those based on trade secret/business confidential and CEII. On July 22 2016, PREPA filed a motion further supplementing its confidentiality requests and notifying its intent of filing an updated document log. On July 27, 2016 PREPA filed its updated document log, withdrew several confidentiality claims and provided updated copies of the CRO Reports to reflect that information for which PREPA no longer sought confidential treatment.

### A. Trade Secret/Business Confidential

Act 80-2011[4] requires PREPA to show that the information it deems a trade secret has a real or potential independent economic value or that the information provides a competitive advantage since such information is not readily accessible to the public. Through the document log filed on July 27, 2016, PREPA identified several documents for which it sought confidential treatment, including the CRO Reports (Schedule I-3), Schedules G-1; G-2; G-4; G-5; G-6; M-1; M-2; M-3; N-1 and Workpapers Ex. 4.0, WP 2; Ex. 5.0, WP 1 and 2; Ex. 6.0, WP 5; and Ex. 9.0, WP 1.

With regards to the CRO Reports, PREPA argued that such documents contain sensitive information related to PREPA's negotiations and operational strategies with regards to its debt restructuring, procurement of goods and services and operational restructuring. With regards to the remaining Schedules and Workpapers, PREPA argued that such documents contain proprietary economic and financial models developed by Navigant Consulting which it provides as part of its services and which represent a competitive advantage.

With regards to the attachments filed by PREPA along with its response to the Commission's Second Requirement of Information, PREPA argued that such documents contain proprietary information which is shared by their respective vendors through a subscription service, thus it is information not ordinarily available to the public. Finally, with regards to Schedule H-5, PREPA argued that the information contained therein applied to a limited number of customers and that disclosure of such information would reveal the identity of such customers and their confidential energy consumption costs.

Having examined PREPA's arguments in supports of its claims, the Commission **GRANTS** PREPA's trade secret/business confidential based confidentiality claims, as such claims were updated by PREPA's July 27, 2016 letter. Intervenors may access the following documents beginning on the date this Resolution is notified pursuant to the procedures set

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[3] The documents for which PREPA sought confidential treatment are *Attachment PPS-1 RRA Data* and *Attachment PPS-3 Fitch Public Power Yearbook_unlocked.*

[4] Puerto Rico Commercial and Industrial Trade Secret Protection Act.

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forth in Resolution CEPR-MI-2016-0009, as amended: Schedules *G-1*, *G-2*, *G-4*, *G-5*, *G-6*, H-5, *M-1*, *M-2*, *M-3*, and *N-1*; those portions of the *CRO Reports* identified as trade secret/business confidential (*Schedule* I-3); Workpapers Ex. 4.0, WP 2; Ex. 5.0, WP 1 and 2; Ex. 6.0, WP 5; and Ex. 9.0, WP 1; *Attachment PPS-1 RRA Data*; and *Attachment PPS-3 Fitch Public Power Yearbook_unlocked.*[5]

**B. CEII**

PREPA identified several portions of the CRO Reports for which it claimed confidential treatment pursuant to CEII.[6] PREPA based its claims on the Critical Infrastructure Protection Act of 2001[7] and argued that the information contained in such documents was the type of information which would ordinarily be considered CEII since it relates to the safety, stability and reliability of the electric system. Specifically, PREPA argued that such documents include information regarding vulnerabilities in PREPA's information systems and electric system configuration.

On April 5, 2016, the Commission adopted as a policy the definition of "safety" as it appears in the Presidential Policy No. 21, the definition of "critical infrastructure" as defined by the Department of Homeland Security pursuant to 42 U.S.C.A. §5195(e) and the definition of "critical infrastructure information" as defined in 6 U.S.C.A. §131(3).[8] Consequently, the Commission concludes that the arguments provided by PREPA satisfy the definition of "critical infrastructure information" and are sufficient to justify designating such documents as CEII. As such, the Commission **GRANTS** PREPA's claims as such claims were updated by its July 27, 2016 letter. Intervenors may access documents and information identified as CEII from the notice of approval of this Resolution, pursuant to the procedures set forth in Resolution CEPR-MI-2016-0009, as amended.

**C. Attorney-Client**

PREPA identified as attorney-client several portions of the CRO Reports. In support of its claim, PREPA argued, in essence, that the information contained therein consisted of information, compliance strategies and legal analysis and opinions developed by PREPA's legal counsel, Cleary Gottlieb Steen & Hamilton LLP, and provided to PREPA's Governing Board through its Chief Restructuring Officer.

Pursuant to the ample protections granted to information considered as confidential under the attorney-client privilege, the Commission **GRANTS** PREPA's claims, as such claims were updated by the July 27, 2016 letter. Document designated as attorney-client confidential shall not be accessible to the public, intervenors nor the Commission.

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[5] PREPA agreed that these documents could be shared with intervenors once each intervenor signed a Non-Disclosure Agreement. See, *PREPA's Motion for Entry of a Protective Order and for Confidential Treatment of Certain Items*, CEPR-AP-2015-0001; and *PREPA's Emergency Motion for Confidential Treatment of Two Items.*

[6] These document are: 1510016 PREPA IT Go Forward Plan; 151112 AlixPartners Contract Extension; 151217 T&D Assessment; y 160310 Comité Ejecutivo – AlixPartners Contract Extension.

[7] Title X, Section 1016, P.L. 107-59.

[8] See, Resolution and Order, *PREPA's Confidentiality Claims*, CEPR-AP-2015-0002, p. 7.

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Any intervenor wishing to access those documents designated as confidential information pursuant to trade secret/business confidential and CEII principles must sign and return to the Commission the Non-Disclosure Agreement adopted by the Commission through Resolution CEPR-MI-2016-0009, as amended. Access to such documents shall be made pursuant to the guidelines and procedures set forth on said Resolution.

PREPA shall have a continuing obligation to update any information it deems confidential to eliminate any claim applicable to information which, due to the passing of time or to its voluntary disclosure, no longer warrants confidential treatment. As such, PREPA is **ORDERED** to, from time to time, update its document logs and disclose any information which it deems no longer warrants confidential treatment.

Any party adversely affected by this Resolution and Order may file a motion for reconsideration before the Commission, pursuant to Section 11.01 of Regulation 8543 and the applicable provisions of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act (LPAU). Said motion must be filed within twenty (20) days from the date in which copy of the notice of this Resolution and Order has been filed. Said motion must be filed at the Commission's Clerk's Office, temporarily located at the Puerto Rico Telecommunications Regulator Board, 500 Ave. Roberto H. Todd, San Juan, PR 00907-3941. Copy of the motion as filed must be sent by email to all the parties notified of this Resolution and Order.

The Commission shall have fifteen (15) days from the date in which said motion is filed to consider it. If the Commission rejects it forthright or fails to act upon it within said period of fifteen (15) days, the thirty (30) day term to seek judicial review before the Puerto Rico Court of Appeals shall begin on the date in which the Commission notifies such denial or the date in which said fifteen (15) days expires, whichever occurs first. If the Commission considers the motion, the thirty (30) day term to seek judicial review shall commence from the date a copy of the notice of the Commission's resolution definitively resolving the motion for reconsideration is filed. Such resolution shall be issued and filed within ninety (90) days after the motion for reconsideration has been filed. If the Commission's considers the motion for reconsideration but fails to take any action with respect to such motion within ninety (90) days of its filing, it shall lose jurisdiction to consider it and the term to seek judicial review shall commence upon the expiration of said ninety (90)-day term, unless the Commission, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.

If a party elects not to file a motion for reconsideration, the thirty (30) day term to seek judicial review before the Puerto Rico Court of Appeals shall begin on the date in which copy of the notice of this Resolution and Order has been filed. The filing of such request for judicial review shall be made pursuant to Section 11.03 of Regulation 8543, the applicable provisions of the LPAU and the Regulation of the Puerto Rico Court of Appeals.

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 21, 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, n-vazquez@aeepr.com, c-aquino@aeepr.com, glenn.rippie@r3law.com, michael.guerra@r3law.com, john.ratnaswamy@r3Law.com, codiot@oipc.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:

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

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Jessica Fuster Rivera
Clerk of the Puerto Rico
Telecommunications Regulatory Board