

INTERVENOR NON-DISCLOSURE AGREEMENT

This Intervenor Non-Disclosure Agreement (“Agreement”) is executed between the Puerto Rico Energy Commission (“COMMISSION”) and the INTERVENOR, collectively the “PARTIES.”

I. Scope

Section 6.15 of Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act, provides that if “any person who is required to submit information to the Energy Commission believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such,” and that any information treated by the COMMISSION as confidential or privileged shall be afforded “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.”

On the other hand, Section 1.15 of Regulation No. 8594, known as the Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority, states that if “in compliance with the provisions of this Regulation or any of the Commission’s orders, a person has the duty to 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 Commission the protection of said information, and support, in writing, its arguments for a claim of information of privileged nature. The Commission 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 57-2014, as amended.” Meanwhile, Regulation No. 8594 grants intervening parties “full rights as an intervening party . . . [but] no petitioner shall be entitled to confidential information from PREPA until its petition to intervene has been granted by the Commission.”

In its IRP filing, the Puerto Rico Power Authority (“PREPA”) raised confidentiality claims and may raise other confidentiality claims during the proceedings in the matter In re: Integrated Resource Plan for the Puerto Rico Electric Power Authority, CEPR-AP-2015-0002 (hereinafter also referred to as “IRP process”).

The INTERVENOR has been granted intervenor status in the IRP process. As such, the INTERVENOR is a party to the IRP process and is entitled to examine information classified by PREPA or any other party as “confidential” or “privileged” during the IRP process, unless and until the COMMISSION or a court of law decides otherwise in writing.

The purpose of this Agreement is to ensure that INTERVENOR may adequately participate in the IRP process, while ensuring that any and all confidential information

is kept secure and undisclosed subject to the conditions stated by the COMMISSION or by a court of law.

II. Definitions

- (1) "Agreement" means this Intervenor Non-Disclosure Agreement, including the Certificate of Non-Disclosure.
- (2) "COMMISSION" means the Puerto Rico Energy Commission, created by Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act, and represented by its Chair, collegiate panel, General Counsel, or its Information Systems Director.
- (3) "Confidential" refers to the following information:
 - a) Any information marked by PREPA or any other party as "confidential" or "privileged" in the matter In re: Integrated Resource Plan for the Puerto Rico Electric Power Authority, CEPR-AP-2015-0002, unless and until the COMMISSION or a court of law decides otherwise;
 - b) Any information the COMMISSION or a court of law marks or treats as "confidential" or "privileged" in the matter In re: Integrated Resource Plan for the Puerto Rico Electric Power Authority, CEPR-AP-2015-0002;
 - c) Any document INTERVENOR creates, drafts or prepares in light of or in relation to information described in (a) and (b) above.
- (4) "Information" includes, in whole or in part, data, documents, graphs, maps, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media.
- (5) "INTERVENOR" refers to a natural person, who is designated as an authorized representative of one granted intervenor status in the IRP process, in accordance to the orders and regulations of the COMMISSION, and who has signed and agreed to abide by the terms and conditions of this Agreement, and therefore may receive or have access to confidential information.

III. INTERVENOR's Obligations

- A) INTERVENOR shall protect, maintain secure, not disclose, share, discuss or allow access of any confidential information, as defined in Part II (3) & (4) above, to any person other than the PARTIES and PREPA.

B) If, during the course of the IRP process, INTERVENOR obtains information marked by the COMMISSION, PREPA or any other party in the IRP process as “confidential” or “privileged,” INTERVENOR shall:

- 1) If the information is in electronic or intangible format, INTERVENOR shall maintain only one copy, in a secure device, with encryption. Under no circumstance will INTERVENOR store the confidential information in an unsecured, publicly accessible cloud environment, or store the confidential information in devices which may be accessed by persons other than the PARTIES;
- 2) If the information is in paper or tangible format, INTERVENOR shall maintain only one copy and keep such information in a safe place, inaccessible to third parties who are not bound by this Agreement;
- 3) INTERVENOR shall conspicuously note the confidentiality of any confidential information in INTERVENOR’s possession (for example, by marking the header of a document with the word “CONFIDENTIAL”).
- 4) To the extent INTERVENOR deems it necessary to extract, summarize, or describe the confidential information, INTERVENOR shall keep a record of such extracts, summaries, or descriptions, and shall maintain them secure as set forth in sub-sections (1), (2) and (3) above;
- 5) If confidential information is or could have been accidentally or otherwise disclosed in violation of this Agreement (for example, and without exhausting the possibilities, if INTERVENOR loses a secure, encrypted device with an electronic copy of the confidential information), INTERVENOR shall immediately notify the COMMISSION and take whatever steps INTERVENOR and/or the COMMISSION deem necessary and desirable to protect the confidential information; and
- 6) INTERVENOR shall apply and observe the obligations stated in this Clause (B) with regard to any and all information treated by the COMMISSION, or required by a court to be treated, as “confidential” or “privileged,” pursuant to the laws and regulations of the Commonwealth of Puerto Rico and to the laws and regulations of the United States of America.

C) INTERVENOR shall use confidential information solely in connection to the IRP process.

D) INTERVENOR will not knowingly use confidential information for an illegal or non-legitimate purpose.

- E)** The COMMISSION may periodically determine that certain confidential information shall be subject to additional protection so as to ensure its confidentiality. INTERVENOR agrees to abide by the particular confidentiality rules that the COMMISSION sets forth in addition to or in lieu of these terms and conditions, as the COMMISSION may deem necessary.
- F)** Within thirty (30) days of the COMMISSION's final order on the IRP process becoming final and firm, or of the conclusion of INTERVENOR's participation as a party in the IRP process, whichever occurs first, INTERVENOR shall return to the COMMISSION all confidential information, including any extracts, summaries or descriptions containing confidential information. INTERVENOR and the COMMISSION may agree in writing to forego the return of confidential information and, instead, have INTERVENOR destroy confidential information.
- 1) In any event, at the conclusion of the thirty (30) day period, INTERVENOR shall destroy all tangible and intangible confidential information in its possession including, without limitation, USB devices, email, files in a cloud environment, and documents stored in a back-up system, to ensure that no part of the confidential information remains available to INTERVENOR.
 - 2) INTERVENOR shall submit to the COMMISSION a statement affirming that it has, in fact, properly destroyed its copy of any confidential information and any extract, summary or description containing or referencing confidential information.
- G)** In the event that INTERVENOR is served with a subpoena or other judicial or legal process demanding the production or disclosure the confidential information, or any document, file or device containing or referencing confidential information, INTERVENOR shall: (a) immediately provide the COMMISSION a copy of such subpoena or process; (b) to the extent possible, allow and wait for the COMMISSION to intervene in the process so as to protect the confidential information before disclosing it; and (c) use all reasonable efforts to ensure that the confidential information at issue is treated consistently with this Agreement.
- H)** INTERVENOR has no obligation to safeguard information which is or becomes publicly available without INTERVENOR's breach of this Agreement; which INTERVENOR rightfully receives without obligations of confidentiality; or which INTERVENOR develops without breach of this Agreement. However, INTERVENOR shall not disclose the information described in this paragraph (H) until the COMMISSION confirms the information's public availability in writing.

IV. PREPA's Obligations

- A) In the event any party, other than PREPA, in the IRP process marks information as “confidential” or “privileged”, PREPA may have access to such confidential information, exclusively through designated authorized representatives, provided that its authorized representatives sign this Agreement.
- B) By executing this Agreement, PREPA’s authorized representatives will have, to the full extent, all INTERVENOR’s obligations under this Agreement.

V. COMMISSION’s Powers

- A) The COMMISSION may give INTERVENOR an encrypted copy of any confidential information.
- B) The COMMISSION will retain copies of all confidential information that is part of the administrative record of the IRP process before the COMMISSION, in accordance with the COMMISSION’s record retention policies. The COMMISSION will securely maintain such confidential information.
- C) The COMMISSION is entitled to review, monitor and audit INTERVENOR’s compliance with the terms of this Agreement. However, the COMMISSION is not liable for INTERVENOR’s inadvertent or intentional disclosure of confidential information.
- D) In the event of any breach by INTERVENOR, the COMMISSION will fine INTERVENOR as described below in Section V.

VI. Penalties

An INTERVENOR who breaches this Agreement shall be subject to fines in accordance to Article 6.37 of Act 57-2014.

VII. Remedies

In the event of any breach or threatened breach by INTERVENOR, the COMMISSION and any other person with standing may obtain such equitable relief, any other legal remedy, as may be necessary to protect against any such breach or threatened breach.

VIII. Non-waiver of Rights

The COMMISSION’s failure to enforce INTERVENOR’s obligations under this Agreement shall not be construed as a waiver of such obligations under this Agreement.

IX. Severability and Survival

If any clause of this Agreement is held to be invalid, the remainder of the Agreement will remain in full force and effect. INTERVENOR's obligations under this Agreement (Part III, above) shall survive the IRP process and shall remain in full force and in effect unless the PARTIES agree in writing to set the Agreement aside, or a court of competent jurisdiction finds that the information does not qualify as confidential information.

X. Choice of Law and Forum

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Puerto Rico. The PARTIES to this Agreement consent to the exclusive jurisdiction of the Puerto Rico state courts, and to the exclusive primary jurisdiction of the Court of First Instance, San Juan Section, for any dispute arising out of this Agreement.

XI. Interpretation

Any interpretation and any controversy regarding this Agreement shall be construed so as to protect the confidentiality of the information in accordance with the laws and regulations of the Commonwealth of Puerto Rico and the laws and regulations of the United States of America.

XII. Amendment

This Agreement may not be modified except in writing duly executed by the PARTIES.

XIII. Notice

Any notice required by this Agreement or given in connection with it, shall be made in writing and shall be forwarded to the appropriate party by electronic mail and by certified mail, postage prepaid, or recognized overnight delivery services.

The PARTIES have executed this Agreement, which is made effective as of November 2, 2015.

PUERTO RICO ENERGY COMMISSION

INTERVENOR



Agustín F. Carbó Lugo
Chairman

See signed CERTIFICATES OF NON-
DISCLOSURE

CERTIFICATE OF NON-DISCLOSURE

I understand that Confidential Information is being provided to me pursuant to the terms and restrictions of the Intervenor Non-Disclosure Agreement (“Agreement”) dated October 27, 2015 in the matter In re: Integrated Resource Plan for the Puerto Rico Electric Power Authority, CEPR-AP-2015-0002, before the Puerto Rico Energy Commission. I also certify that I have been given a copy of the Agreement, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information, as defined in the Agreement, and any work-product, notes, memoranda, summaries, abstracts, studies, computer software, software information or other documentation derived from Confidential Information, shall not be disclosed to anyone other than in accordance with the Agreement, shall be used only for the purpose of the IRP process and shall be returned to the COMMISSION or destroyed upon the terms and conditions provided within the Agreement.

I further acknowledge that, in the event that I cease to be engaged in the IRP process, I shall continue to be bound by the terms and conditions of the Agreement.

By: _____

Authorized Representative of: _____

Date: _____

Signature: _____