

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement” or “NDA”) is executed between the Puerto Rico Energy Commission (“COMMISSION”) and the requestor of confidential information (“REQUESTOR”), 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 in part 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.”

In its rate filing, the Puerto Rico Electric Power Authority (“PREPA”) has made confidentiality designations as to certain materials 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-2015-0001 (hereinafter also referred to as “Review of Rates”). The purpose of this Agreement is to ensure 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 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-2015-0001;

c) Any document REQUESTOR 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) "REQUESTOR" refers to a natural person, 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. REQUESTOR'S OBLIGATIONS**

A) REQUESTOR 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 Review of Rates, REQUESTOR obtains information marked by the COMMISSION, PREPA, or any other party in the Review of Rates as "confidential" or "privileged," REQUESTOR shall:

1) If the information is in electronic or intangible format, REQUESTOR shall maintain only one copy, in a secure device, with encryption. Under no circumstance will REQUESTOR 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, REQUESTOR 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) REQUESTOR shall conspicuously note the confidentiality of any confidential information in REQUESTOR's possession (for example, by marking the header of a document with the word "CONFIDENTIAL").

4) To the extent REQUESTOR deems it necessary to extract, summarize, or describe the confidential information, REQUESTOR 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 REQUESTOR loses a secure, encrypted device with an electronic copy of the confidential information), REQUESTOR shall immediately notify the

COMMISSION and take whatever steps REQUESTOR and/or the COMMISSION deem necessary and desirable to protect the confidential information; and

6) REQUESTOR 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) REQUESTOR shall use confidential information solely in connection to the Review of Rates.

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

E) The COMMISSION may periodically determine that certain confidential information, such as, for example, Critical Energy Infrastructure Information, shall be subject to additional protection so as to ensure its confidentiality. REQUESTOR 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 Review of Rates becoming final and firm, or of the conclusion of REQUESTOR’s participation as a party in the Review of Rates, whichever occurs first, REQUESTOR shall return to the COMMISSION all confidential information, including any extracts, summaries or descriptions containing confidential information. REQUESTOR and the COMMISSION may agree in writing to forego the return of confidential information and, instead, have REQUESTOR destroy confidential information.

1) In any event, at the conclusion of the thirty (30) day period, REQUESTOR 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 REQUESTOR.

2) REQUESTOR 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 REQUESTOR 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, REQUESTOR 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) REQUESTOR has no obligation to safeguard information which is or becomes publicly available without REQUESTOR's breach of this Agreement; which REQUESTOR rightfully receives without obligations of confidentiality; or which REQUESTOR develops without breach of this Agreement. However, REQUESTOR 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 Review of Rates 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 REQUESTOR's obligations under this Agreement.

#### **V. COMMISSION'S POWERS**

A) The COMMISSION may give REQUESTOR 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 Review of Rates 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 REQUESTOR's compliance with the terms of this Agreement. However, the COMMISSION is not liable for REQUESTOR's inadvertent or intentional disclosure of confidential information.

D) In the event of any breach by REQUESTOR, the COMMISSION will fine REQUESTOR as described below in Section V.

#### **VI. PENALTIES**

Any REQUESTOR 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 REQUESTOR, 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 REQUESTOR'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. REQUESTOR's obligations under this Agreement (Part III, above) shall survive the Review of Rates 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 \_\_\_\_\_  
\_\_\_\_\_, 2016.

PUERTO RICO ENERGY COMMISSION

REQUESTOR

\_\_\_\_\_  
Agustin F. Carbo 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 Non-Disclosure Agreement (“Agreement”) dated \_\_\_\_\_ in the matter In re: Review of Rates of the Puerto Rico Electric Power Authority, CEPR-AP-2015-0001, 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 workproduct, 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 Review of Rates 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 Review of Rates, I shall continue to be bound by the terms and conditions of the Agreement.

By: \_\_\_\_\_

Authorized Representative of: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_