

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



**IN RE: POLICY ON MANAGEMENT OF
CONFIDENTIAL INFORMATION IN
PROCEDURES BEFORE THE COMMISSION**

NÚM.: CEPR-MI-2016-0009

SUBJECT: CONFIDENTIALITY

RESOLUTION

The Puerto Rico Energy Commission ("Commission") recognizes that in the course of the procedures before it, the parties and their attorneys may produce and receive confidential information and materials which handling is subject to the legal normative regarding confidential information adopted by the Commission (collectively, "Confidential Information"). To protect against the inappropriate use or disclosure of such information, and to facilitate an orderly process to identify and protect such information, we adopt the following norms and procedures.¹

A. Process to Designate Confidential Information

Whenever a party believes that a specific document to be produced contains Confidential Information and is entitled to such treatment, that party ("Producing Party") must follow the following instructions so that such information is protected:

1. The Producing Party must identify such information by marking it "Confidential". Every document or information so identified will be referred to as "Confidential Information".
2. The Producing Party must, simultaneously with the filing 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.

¹ These norms and procedures are adopted 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 No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings ("Reg. 8543"); and the *Puerto Rico Energy Commission's Internal Guidelines for the Treatment of Confidential Information*.

3. As part of its memorandum of law, the Producing Party must provide a table which contains a list of all the documents included as Confidential Information, adhering to the following format:
 - First column: Document name.
 - Second column: Numbering (whether *Bates*, or any other numbering system used, if any) of the pages of the document in which Confidential Information is found.
 - Third column: Date when the Confidential Information was filed with the Commission.
 - Fourth column: Summary of the legal basis in support of each of the confidentiality claims.
 - Fifth column: Summary of the reasons for which each claim conforms to the legal basis previously cited.
 - Appendix: Any documentation that, according to the Producing Party, support a confidentiality claim, such as a contract or an agency certification.
4. Any document or page thereof not included in the aforementioned list of documents will be considered public.
5. If the document with Confidential Information is filed physically at the Commission (rather than by e-mail or any other electronic means), the Producing Party must tab the pages in which it believes Confidential Information is found.
6. The Producing Party must simultaneously file a “redacted” or “public” version and an “un-redacted” or “confidential” version of any document containing Confidential Information. The filing of any document containing Confidential Information will not be deemed complete until the Producing Party files both versions of the document. The Producing Party must notify all the parties a copy of the “redacted” or “public” version of said document.
7. Any electronic transmission (email) of Confidential Information or a file attachment containing Confidential Information must indicate in the “subject” line and in the body of the message that Confidential Information is being transmitted. Electronic files containing Confidential Information must include the word “CONFIDENTIAL” in the file name.
8. Any page that does not contain Confidential Information must not be identified with word alluding to a confidentiality claim such as “Commission Eyes Only” or “Confidential and Preliminary Subject to Substantial Revision”. Similarly, any

document, or portion of it, that contains similar designations and has not been included in the list of documents required in previous subsection (3) will not be considered Confidential Information.

9. Any revised document list must highlight any difference between the original document list and the revised one.

B. Procedure to Object Confidentiality Designations

Any party may object a confidentiality claim presented by any other party within seven (7) days, counted from the date the Confidential Information is filed and notified. The objection must be done by a well-founded motion, in which the objecting party clearly articulates its objections to the confidentiality claims.

C. Commission's Determination regarding Confidential Information

1. The Commission's staff having access to Confidential Information will follow the *Puerto Rico Energy Commission's Internal Guidelines for the Treatment of Confidential Information*.
2. The Commission will decide each confidentiality claim expeditiously. The information for which the Commission grants some type of confidential treatment will be classified as "Validated Confidential Information".
3. In its decision, the Commission will state (i) which information and documents deserve some type of confidential treatment; (ii) the rules which shall apply in order to safeguard Validated Confidential Information; and (iii) the type of access that other parties would have in the case.
4. The Commission will require the parties' representatives to sign a "Non-Disclosure Agreement" included as Appendix A of this Resolution, prior to having access to Validated Confidential Information. The Commission may establish additional security measures.
5. If the Commission denies a confidentiality claim, the Commission will disclose such information within thirty (30) days from the date its determination is notified, unless the Producing Party requests reconsideration, judicial review, or any other remedy it deems appropriate, which will interrupt the thirty (30) day term to disclose such information.

D. Access to Validated Confidential Information

Confidential Information will be handled in conformity with this Resolution and will receive the protection detailed in the Non-Disclosure Agreement (See Appendix A of this Resolution) and any other additional protection established by the Commission.

The Non-Disclosure Agreement must be signed by the parties' authorized representatives, including the Puerto Rico Electric Power Authority's, who want access to Confidential Information presented by the parties in a proceeding before the Commission. The parties must submit to the Commission the Non-Disclosure Agreements signed by its authorized representatives. The Commission will maintain a list of the parties, and their authorized representatives, who have signed the Non-Disclosure Agreement. Said list will be shared with all the parties in a proceeding before the Commission and may be updated by the Commission at any time.

The following rules shall apply for each type of Confidential Information:

1. Trade Secret Information

Any document designated by the Commission as Validated Confidential Information on the grounds that it is a trade secret pursuant to Act 80-2011 may only be accessed by the Producing Party and the Commission, unless otherwise set forth by the Commission or any competent court.

2. Critical Energy Infrastructure Information ("CEII")

The information designated by the Commission as Validated Confidential Information on the grounds of being CEII may be accessed by the parties' authorized representatives only after they have executed and delivered the Non-Disclosure Agreement.

Those authorized representatives who have signed the Non-Disclosure Agreement may only review the documents validated as CEII at the Commission or the Producing Party's offices. During said review, the authorized representatives may not copy or disseminate the reviewed information and may not bring any recording device to the viewing room.

3. Attorney-Client Privilege

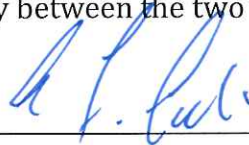
A designation of "attorney-client privilege" or attorney work-product will be evaluated by an Administrative Law Judge ("ALJ") appointed by the Commission, and who will have the role of evaluating these types of claims. The Commission will delegate in this ALJ the authority to evaluate and determine the validity of claims of such nature.

The ALJ will notify its final determination to all parties in a proceeding before the Commission. Said decision will be final and will be subject to reconsideration and/or judicial review pursuant to the Uniform Administrative Procedure Act. In case the ALJ determines that the confidentiality claims are not warranted, that information related to the ALJ's determination will be disclosed in thirty (30) days from the notification of the determination, unless the Producing Party obtains another remedy or seeks reconsideration and/or judicial review.

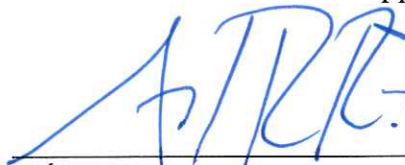
In cases when, in evaluating a document, the ALJ accepts certain confidentiality claims but rejects others, the ALJ may propose to disclose a redacted version of the document in which Validated Confidential Information is redacted, while information rejected confidentiality treatment is disclosed. In those cases, the ALJ, in notifying its determination, will provide a copy of the document as redacted by the ALJ so that the Producing Party has the opportunity to revise it and accept or object the ALJ's determination.

Any document that the ALJ validates as Confidential Information because it is protected under the attorney-client privilege or because it is attorney work-product will not be available to any party, to the Commission, or to the general public.

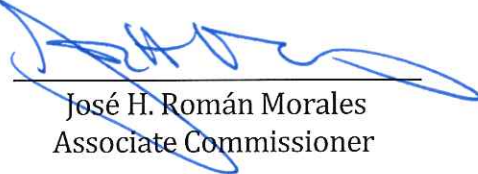
For the benefit of the public, the Commission publishes this Resolution in Spanish and English. Should any discrepancy between the two versions arise, the Spanish version shall prevail.



Agustín F. Carbó Lugo
President



Ángel R. Rivera de la Cruz
Associate Commissioner



José H. Román Morales
Associate Commissioner

I certify that the Puerto Rico Energy Commission so decided on August 31, 2016.



María del Mar Cintrón Alvarado
Secretary

NON-DISCLOSURE AGREEMENT

This Agreement ("Agreement") is executed between the Puerto Rico Energy Commission ("Commission") and the appearing Receiving Party ("Receiving Party").

I. Scope

1. Article 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."
2. On the other hand, Section 1.15 of Regulation No. 8543, known as the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures 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".
3. The purpose of this Agreement is to ensure the adequate protection of the confidential information that is presented by a party during any proceeding before the Commission and to which the Commission has granted confidential treatment, pursuant to Act 57-2014, Regulation 8543, and the applicable jurisprudence.

II. Definitions

1. "Administrative Proceeding" means any proceeding before the Commission, such as an adjudication, investigation, review of rates, integrated resource plan, and any other proceeding carried out before the Commission.

2. "Agreement" means this Non-Disclosure Agreement, including the Certificate of Non-Disclosure.
3. "Commission" means the Puerto Rico Energy Commission.
4. "Confidential Information" refers to the following information:
 - a) Any information marked by Puerto Rico Electric Power Authority ("PREPA") or any other party as "confidential" or "privileged" in the matter, 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";
 - c) Any document filed by a party in an Administrative Proceeding in relation to information described in (a) and (b) above.
5. "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.
6. "Party" refers to PREPA or a natural or legal person who has been authorized by the Commission to participate in an Administrative Proceeding. For purposes of this Agreement, the term includes the persons identified as authorized representatives by the Party and who have signed this Agreement.
7. "Producing Party" refers to the party in any Administrative Proceeding before the Commission who originally made a claim of confidentiality and was subsequently granted protections for such claim.
8. "Receiving Party" means the Party who, pursuant to this Agreement and the rules set forth by the Commission through order or resolution, has the right to access information that has been identified as Confidential Information by the Commission.

III. Receiving Party's Obligations

1. The Receiving Party shall protect, maintain secure, not disclose, share, discuss or allow access of any Confidential Information, as defined in Part II (4) above, to any person who has not been identified by a Party as an authorized representative and who has signed this Agreement.
2. The Receiving Party must send to the Producing Party and the Commission, via e-mail, a copy of this Agreement executed by its authorized representative, as well as a



copy of the Certificate of Non-Disclosure executed by each of its authorized representative to whom it wishes to allow access to Confidential Information.

3. If, during the course of the Administrative Proceeding, the Receiving Party obtains Confidential Information, the Receiving Party shall:
 - a. If the information is in electronic or intangible format, the Receiving Party shall maintain only one copy in a secure device and include the word "CONFIDENTIAL" in the file name. Under no circumstance will the Receiving Party store the Confidential Information in an unsecured, publicly accessible cloud environment, or store Confidential Information in devices which may be accessed by persons other than those who have executed this Agreement;
 - b. If the information is in paper or tangible format, the Receiving Party shall maintain only one copy and keep such information in a sealed envelope in a safe place, inaccessible to any person who is not bound by this Agreement;
 - c. The Receiving Party shall conspicuously note the confidentiality of any Confidential Information in the Receiving Party's possession. For example, by marking the header of a document or labeling a CR-ROM or USB pen drive with the word "CONFIDENTIAL".
 - d. To the extent the Receiving Party deems it necessary to extract, summarize, or describe the Confidential Information, the Receiving Party shall keep a record of such extracts, summaries, or descriptions, and shall maintain them secure as set forth in sub-sections (a), (b) and (c) above;
 - e. 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 the Receiving Party loses a USB pen drive with an electronic copy of the Confidential Information), the Receiving Party shall immediately notify the Commission and the Producing Party and take whatever steps the Receiving Party and/or the Commission deem necessary and desirable to protect the Confidential Information; and
 - f. The Receiving Party shall apply and observe the obligations stated in this Part III (3) with regards to any and all information identified by the Commission or by a court as Confidential Information, pursuant to the laws and regulations of the Commonwealth of Puerto Rico and to the laws and regulations of the United States of America.
4. The Receiving Party shall use Confidential Information only to the extent necessary for its participation in the Proceeding.

5. The Receiving Party will not use Confidential Information for any purpose unrelated to its participation in the Proceeding.
6. The Commission may periodically determine that certain Confidential Information shall be subject to additional protection so as to ensure its confidentiality. The Receiving Party 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.
7. Within thirty (30) days of the Commission's final decision on the Administrative Proceeding becoming final and firm, or of the conclusion of the Receiving Party's participation as a Party in the Proceeding, whichever occurs first, the Receiving Party shall return to the Producing Party all Confidential Information, including any reproduction, extracts, summaries or descriptions containing Confidential Information. The Receiving Party and the Producing Party Commission may agree in writing to forego the return of Confidential Information and, instead, have the Receiving Party destroy all Confidential Information. The Receiving Party must certify its compliance with the above to the Commission and the Producing Party within said term of thirty (30) days.
 - a. In any event, at the conclusion of the thirty (30) day period following the final determination by the Commission in the Proceeding becoming final and firm, or of the conclusion of the Receiving Party's participation as a Party in the Proceeding, the Receiving Party shall destroy all tangible and intangible Confidential Information in its possession including, without limitation, information included in USB devices, emails, files in a cloud environment, and documents stored in a back-up system, to ensure that no part of the Confidential Information remains available.
8. In the event that the Receiving Party is served with a judicial order or any judicial or legal subpoena or citation demanding the production or disclosure of Confidential Information, or any document, file or device containing or referencing Confidential Information, the Receiving Party shall: (a) notify the entity requesting the production of said Confidential Information that the same has been designated as such in the Proceeding; (b) provide within two business (2) days a copy of said order, subpoena or citation to the Commission and the Producing Party; (c) to the extent possible, allow and wait for the Producing Party to intervene in the process so as to protect the Confidential Information before disclosing it; and (d) use all reasonable efforts to ensure that the Confidential Information at issue is treated consistently with this Agreement.
9. The Receiving Party has no obligation to safeguard information which is or becomes publicly available without the Receiving Party's breach of this Agreement; which the Receiving Party rightfully receives without obligations of confidentiality; or which the Receiving Party develops without breaching of this Agreement. Upon the

Commission's request, the Receiving Party must show the information is publicly available.

IV. Producing Party's Obligations

In making any confidentiality claim and filing said Confidential Information, the Producing Party must observe the rules established by the Commission through Order or Resolution. Neither the Commission or any Receiving Party will be responsible for the disclosure of information that the Producing Party has not claimed as confidential or for which the Producing Party has not complied completely with what is established by the Commission.

V. Commission's Powers

1. When appropriate, the Commission may give the Receiving Party an encrypted copy of the Confidential Information.
2. The Commission will retain copies of all Confidential Information that is part of the administrative record, in accordance with the Commission's record retention policies. The Commission will follow the internal rules adopted for handling such Confidential Information.
3. The Commission is entitled to review, monitor and audit the receiving party's compliance with the terms of this Agreement. However, the Commission is not responsible for the Receiving Party's inadvertent or intentional disclosure of Confidential Information.
4. In the event of any breach by the Receiving Party, the Commission will impose a penalty to the Receiving Party pursuant to Article 6.37 of Act 57-2014. Part VI of this Agreement does not limit the remedies a Producing Party is entitled to seek before any court as a result of the Receiving Party's noncompliance.

VI. Remedies

In the event of any breach or possible breach by the Receiving Party, the Commission and/or the Producing Party may obtain such equitable relief or any other legal remedy to which it is entitled.

VII. Non-waiver of Rights

The Commission's or any Party's failure to enforce strict compliance with this Agreement, or any part thereof, shall not be construed as a waiver of the Commission or any Party to require strict compliance with this Agreement.



VIII. 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. The obligations under this Agreement shall survive the Administrative Proceeding and shall remain in full force and in effect prospectively so that Confidential Information is protected 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.

IX. 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 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.

X. Interpretation and Applicability

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.

The Parties agree and recognize that the fact that the present Agreement is executed individually by a Receiving Party does not limit the ability of another Party, and in particular, a Producing Party, to enforce its rights under this Agreement, as long as the Party that claims a right has executed this Agreement.

XI. Amendment

This Agreement may not be modified except in writing. Any amendment must be agreed and executed by all the Parties and will apply equally to all Parties.

XII. 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.



XIII. Language

For the benefit of the parties involved, the Commission publishes this Agreement in both English and Spanish. If there is any discrepancy between both versions, the Spanish version will prevail.

The Parties have executed this Agreement, which is made effective as of _____,
_____.

PUERTO RICO ENERGY COMMISSION

THE RECEIVING PARTY

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 Non-Disclosure Agreement ("Agreement") dated _____ in the matter In re: _____; CEPR-_____-_____-_____, 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 aforementioned proceeding and shall be returned to the Producing Party or destroyed pursuant to the terms and conditions provided in the Agreement.

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

By: _____

Authorized Representative of _____

Date: _____

Signature: _____