

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



**IN RE: PUERTO RICO ELECTRIC POWER  
AUTHORITY RATE REVIEW**

**CASE NO.: CEPR-AP-2015-0001**

**SUBJECT:** Discovery confidentiality request  
6<sup>th</sup> Request of Information.

**RESOLUTION AND ORDER**

On October 19, 2016, the Puerto Rico Electric Power Authority ("PREPA") filed several answers to the Puerto Rico Energy Commission ("Commission") 6<sup>th</sup> Request of Information ("ROI6")<sup>1</sup>, including its answer to question CEPR-AH-0207, which contained several attachments.<sup>2</sup> In its filing PREPA requested confidentiality treatment for the direct answer and for the attachments incorporated in its answer. On October 26, 2016, PREPA filed a memorandum of law stating the arguments and legal grounds in support of its request for confidentiality.<sup>3</sup>

PREPA's confidentiality request for the information and documents included in its submission is based on the grounds that the information included in such documents constitutes Critical Energy Infrastructure Information ("CEII"). PREPA based its claims in the Critical Infrastructure Protection Act of 2001,<sup>4</sup> the definition of "security" of the Presidential Policy 21 and the definition of "critical infrastructure" of the Department of Homeland Security ("DHS") adopted by the Commission on April 5, 2016.<sup>5</sup> PREPA argued that the information included in those documents was the type of information that ordinarily would be considered CEII since it refers to security, stability and reliability of the electric system. Specifically, PREPA argues that such documents include detailed information related to the transmission and distribution system interruptions of PREPA's system. PREPA argues that the publication of such information may compromise the security of Puerto Rico's electric grid, because it could be used to forecast future interruptions in order to disrupt PREPA's general operations. In addition, PREPA argues that this is the type of information it would submit to the Federal Energy Regulatory Commission, pursuant Form No. 715, and therefore would be considered *de facto* CEII under federal law.

<sup>1</sup> 6<sup>th</sup> Requirement of Information sent to PREPA on July 29, 2016.

<sup>2</sup> PREPA's Response to ROI DRR CEPR-AH-02-07 (CONFIDENTIAL).pdf, CEPR-AH-02-07 Attach 02 (CONFIDENTIAL).xlsx, CEPR-AH-02-07 Attach 03 (CONFIDENTIAL).xlsx, CEPR-AH-02-07 Attach 04 (CONFIDENTIAL).xlsx, CEPR-AH-02-07 Attach 05 (CONFIDENTIAL).xlsx, CEPR-AH-02-07 Attach 05 (CONFIDENTIAL).xlsx, CEPR-AH-02-07 Attach 07 (CONFIDENTIAL).xlsx.

<sup>3</sup> As required by Section 1.15 of Regulation No. 8720, New Regulation on Rate Filing Requirements or the Puerto Rico Electric Authority's First Rate Case.

<sup>4</sup> Title X, Section 1016, P.L. 107-59.

<sup>5</sup> See *Resolution and Order, PREPA's Confidentiality Claims*, CEPR-AP-2015-0002, at page 7, April 5, 2016, where the Commission adopted as policy the definition of "security" as defined in 42 U.S.C.A. § 5195(e) and the definition of "critical infrastructure information" as defined in 6 U.S.C.A. § 131(3).

In its motion PREPA requests that the information and documents be protected from disclosure and that the Commission should establish that PREPA is not required to provide this information to intervenors or make it available to the general public. In the alternative, PREPA requests that the documents be only available to intervenors under specific rules, including establishing specific reasons for the access request.

After examining PREPA's arguments in support of its requests, the Commission **GRANTS** the confidentiality requests for the information and documents filed in response to question CEPR-AH-02-07 of ROI6.

Any intervenor that wishes to access the documents designated as confidential under the trade secrets or CEII doctrines, shall sign and return to the Commission the Non-Disclosure Agreement provided by the Commission through Resolution CEPR-MI-2016-0009. The access to such documents and confidential information will be granted according to the processes established in such 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 because of 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<sup>6</sup> and the applicable provisions of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act ("UAPA"). 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 Clerk's Office. Copy of the motion as filed must be sent by email to all the parties notified of this Resolution and Order within the timeframe established herein.

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 term to seek judicial review shall begin on the date in which the Commission notifies such denial or the date in which said fifteen (15) day expires, whichever occurs first. If the Commission considers the motion, the 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

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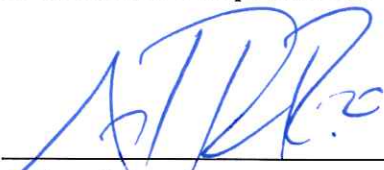
<sup>6</sup> Regulation No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures.

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.

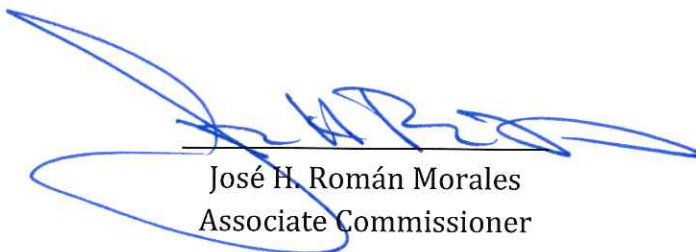
In the alternative, any affected party may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date a copy of the notice of this Resolution and Order was filed in the record of the Commission. This in accordance with Section 11.03 of Regulation 8543, the applicable dispositions of UAPA and the rules and regulations of the Court of Appeals.

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

Be it notified and published.



Ángel R. Rivera de la Cruz  
Associate Commissioner



José H. Román Morales  
Associate Commissioner

## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on November 2, 2016. The Chairman Agustín Carbó Lugo did not intervene. On this date a copy of this Resolution and Order was notified by electronic mail to the following: n-ayala@aepr.com, c-aquino@aepr.com, glenn.rippinge@r3law.com, michael.guerra@r3law.com, john.ratnaswamy@r3law.com, codiot@opic.pr.gov, jperez@oipc.pr.gov, 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, maribel.cruz@acueductospr.com, eirizarry@ccdawpr.com and pnieves@vnblegal.com. I also certify that today, November 2 2016, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

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For the record, I sign this in San Juan, Puerto Rico, today, November 2, 2016.



María del Mar Cintrón Alvarado  
Clerk