

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

IN RE: AGUIRRE SITE ECONOMIC ANALYSIS

CASE NO.: CEPR-AP-2017-0001

SUBJECT: Order Initiating Proceeding on
Aguirre Site Economic Analysis.

ORDER

I. INTRODUCTION AND BACKGROUND

Act 57-2014,¹ recognized the need for a meaningful transformation of Puerto Rico's electric market. To achieve such goal, the Legislature empowered the Puerto Rico Energy Commission ("Commission") with broad regulatory powers aimed at forcing structural changes within all levels of Puerto Rico's energy sector. One of the main tools in achieving the transformation of the electric market was the implementation of effective and reliable long-term planning standards. Such standards were aimed to achieve an efficient and up-to-date infrastructure and generation system and the reduction of energy costs. In order to achieve efficient short-, medium- and long-term planning, Act 57-2014 required the Puerto Rico Electric Power Authority ("PREPA") to develop and file for Commission review and approval an Integrated Resource Plan ("IRP"). As defined in Act 57-2014 an IRP is:

a plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of time, including those related to the offering of electric power, whether existing, traditional, or new resources, and those related to energy demand, such as energy conservation and efficiency, or demand response and localized energy generation by the customer.²

Following Act 57-2014 directives, on July 7, 2015, PREPA filed before the Commission its first IRP proposal. On September 26, 2016, the Commission issued its Final Resolution and Order ("Final Resolution") through which it disapproved PREPA's proposed IRP, approved a Modified IRP and required PREPA to adopt said Modified IRP, provide certain information required by the Commission and develop and execute internal procedures for guaranteeing that future IRP proposals will comply with all legal requirements and satisfy prevailing energy industry planning standards.

¹ The Puerto Rico Transformation and RELIEF Act, as amended.

² Art. 1.3(hh) of Act 57-2014.

PREPA's IRP, as expressed in the Final Resolution, focused in reconfiguring PREPA's existing generating fleet to meet environmental requirements (especially the Environmental Protection Agency's Mercury and Air Toxics Standards ("MATS") rule), increase reliability, upgrade aging infrastructure, reduce reliance upon oil, and satisfy Puerto Rico's renewable portfolio standard ("RPS").³ In preparing its IRP, PREPA was required to "develop a group of scenarios that encompass the reasonable range of possible outcomes for uncertain forecasts."⁴ In developing such scenarios, PREPA included several cases examining its pre-existing plans for the development of resources at the Aguirre Site, which includes the development of the Aguirre Offshore Gas Port ("AOGP"), PREPA's preferred alternative for introducing natural gas to Aguirre.

The AOGP project consists of a structure that accepts shipments of liquified natural gas, thereby allowing much of PREPA's southern generation fleet to run on natural gas rather than fuel oil or diesel. As explained in the Final Resolution, with the development of AOGP, PREPA assumed that it would provide two main benefits: (1) meeting MATS rule standards by converting generating units from oil to natural gas and, (2) under the assumption that gas prices would be lower than oil prices, lowering PREPA's fuel cost.⁵

After careful examination of the AOGP project, the Commission determined that PREPA had "failed to examine a range of fuel price trajectories"⁶. As a result, PREPA's initial assessment of AOGP's economic benefit, which it estimated at approximately \$2.5 billion, was later revised to approximately \$200 million⁷ over a period of 20 years. This was a significant reduction which contributed to the uncertainty surrounding AOGP's cost-benefit analysis. Furthermore, aside from capital investments in its construction, the development of the AOGP project requires PREPA to incur in additional recurring fixed costs which in some instances may amount to approximately \$77 million annually⁸. Additionally, the information related to the financial investments for the construction of AOGP, presented by PREPA in the IRP Case and the Rate Case,⁹ showed a wide variety of inconsistencies that

³ Commission's Final Resolution and Order, Case No. CEPR-AP-2015-0002, ¶77.

⁴ Regulation No. 8594, Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority, §2.04(B)(1)(c). As established on §1.08(B)(36) of said Regulation, "Scenario" refers to a "combination of system requirements needed to serve load, commodity prices, capital costs and risks that influence the choice of resources serving the utility's future load."

⁵ Commission's Final Resolution and Order, Case No. CEPR-AP-2015-0002, ¶78.

⁶ *Id.* ¶ 256.

⁷ *Id.*

⁸ See PREPA's answer to question 4 of Commission's 3rd Request of Information of February 10, 2016 on Case No. CEPR-AP-2015-0002 filed on March 1st, 2016.

⁹ In re: Puerto Rico Electric Power Authority Rate Review, Case No. CEPR-AP-2015-0001.

prevent the Commission from assessing AOGP from a financial standpoint. As an example of these inconsistencies, the Project Capital Cost for AOGP have deviated from \$358,304,000¹⁰ to approximately \$382,644,000.¹¹ Moreover, PREPA failed to use a capacity expansion model, which meant that AOGP was not tested against optimized portfolios that could achieve the same benefits as AOGP with a different set of resources. Finally, problems with permitting of AOGP, which have already delayed its completion by two years, have created further uncertainty, which prevented the Commission from being able to determine that AOGP is the least cost option for PREPA.

The absence of reliable information and the risk of increased costs to ratepayers resulted in numerous uncertainties related to AOGP's long-term feasibility. These uncertainties prevented the Commission from determining, with an acceptable level of confidence, that the investments required to develop AOGP would benefit PREPA's ratepayers. However, given the central role AOGP played in PREPA's long-term planning strategy, the Commission determined not to permanently disapprove the construction of AOGP. Therefore, the Commission established a \$15 million spending cap on any AOGP-related expenditure. This cap allowed PREPA to continue permitting, engineering and planning activities related to the AOGP project, but limited the ability to commence construction of AOGP until a final Commission decision was made. The Commission also provided a mechanism for PREPA to request an increase in the cap. To do so PREPA would need to submit "a sound economic analysis of AOGP,"¹² as well as a comparison of AOGP to alternative options. Such analysis must include "a detailed economic assessment of the AOGP project, assessing a range of fuel forecast, demand requirements, and alternative mechanisms of meeting MATS requirements in a timely fashion."¹³ The purpose of such analysis is for PREPA to show the Commission that by developing AOGP to its full capacity, AOGP can provide net benefits to PREPA's ratepayers, reduce emissions and help meet MATS requirements.

On October 13, 2016, PREPA filed a Verified Motion for Reconsideration of Provisions of the Final Resolution and Order ("Motion for Reconsideration"), taking issue with a number of the Commission's findings and directives, including several arguments with respect to AOGP. In its Motion for Reconsideration, PREPA questioned the Commission's decision to disapprove the construction of AOGP and argued, among other things, that such action will adversely impact and significantly delay its ability to comply with MATS; expose PREPA to civil and criminal penalties, citizen suits, cease or desist orders; that it would delay environmental justice; and that it represents the best multi-pollutant emissions reduction profile and provides environmental justice relief to the Aguirre Power Complex neighboring

¹⁰ See Draft IRP, Table 5-1, p. 5-7.

¹¹ See PREPA Response ROI DRR CEPR-AH-01-04_Attach 01.xlsx, Commission's Fourth Request of Information, Case No. CEPR-AP-2015-0001.

¹² *Id.* ¶ 261.

¹³ *Id.* Section VII(B)(a)(2).

communities by substantially reducing criteria air pollutants. PREPA also argued that AOGP's economics indicate that it will yield significant cost savings in a wide variety of fuel price scenarios.

While the Commission was not persuaded by PREPA's arguments in its Motion for Reconsideration regarding the socio-economic benefits of AOGP, the Commission has determined it necessary to initiate a procedure to thoroughly review the benefits of the Aguirre Site Plan and arrive at a final determination of whether or not construction of AOGP is commensurate with a low-cost, low-risk path to meeting PREPA's future resource portfolio needs. Although the Commission's Final Resolution provided PREPA with the procedural mechanism for filing a sound economic analysis of AOGP, PREPA has not done so. Given PREPA's inaction, the Commission has taken the initiative in moving forward with a comprehensive and reliable evaluation of AOGP.

The Commission's objective in this proceeding is to compel PREPA to ensure that both, AOGP and alternative options to AOGP, are assessed on a fair and equitable basis to ensure a least-cost long-term resource plan. Such analysis will provide greater transparency into PREPA's long-term planning and allow the Commission to make a final determination on the future of AOGP based on factual evidence. Without such analysis, a decision on AOGP would not guarantee the best interest of Puerto Rico's electric service consumers, as the uncertainties related to actual cost savings and reductions could result in increase energy costs over time.

II. ECONOMIC ANALYSIS

1. PREPA's Economic Analysis

PREPA shall conduct an economic analysis of the value of the its plans for the Aguirre Site, which comprises AOGP as well as the gas conversions at the Aguirre generating units. PREPA's analysis shall examine four different resource plans under a range of fueling plans, fuel price trajectories, and load forecasts. PREPA shall use PROMOD and its pre-existing financial model framework to calculate the total present value of system costs for each resource plan under each scenario, using a twenty-year study period from 2017 through 2037. In addition, PREPA shall file testimony detailing the results of its analysis. Each of these components is described further below.

a) Resource Plans

For the purposes of this proceeding, we describe PREPA's plan regarding its generation fleet, transmission infrastructure, and power purchase and operating agreements as a "resource plan." This term explicitly does not include fuel delivery infrastructure or determination of fuel type or source for units at Aguirre or in the North, which we refer to collectively as a "fueling plan."

PREPA shall test the following four resource plans, using the Modified IRP scenarios as approved in the Final Resolution, with Commission's energy efficiency modeling assumptions:

- i. P3MF1M (herein referred to as "AG")
 - Portfolio as per the Updated Fuel IRP
 - Includes gas conversions at Aguirre and AOGP construction
- ii. P3MF1M_S5 (herein referred to as "AG+RE")
 - Portfolio as per the Updated Fuel IRP
 - Includes gas conversions at Aguirre and AOGP construction
 - Includes full RPS compliance and demand response
- iii. P3MF2M (herein referred to as "NO")
 - Portfolio as per the Updated Fuel IRP
 - Excludes gas conversions at Aguirre and AOGP construction
- iv. "NO+RE"
 - New portfolio with similar construction to P3MF1M_S5 but without gas provision at Aguirre or AOGP construction or, in other words, a no-gas-at-Aguirre option that includes full RPS compliance and demand response.

In calculating the costs of the latter two resource plans, PREPA shall correct the methodological errors in its evaluation of demand response ("DR") costs as described in the Final Resolution. Specifically, PREPA shall consider not only the costs of the DR program, but also the benefits provided by demand response when it enables PREPA to utilize renewable energy that would otherwise have been curtailed, thus avoiding fossil generation.

As these resource plans are identical or very similar to plans already tested by PREPA in the IRP, the Commission does not expect additional transmission system modeling to be necessary for the purposes of this analysis. However, PREPA shall update its assumptions in PROMOD to reflect the most recent actual data available regarding the operational status of its existing units and the online dates of planned future units and fuel infrastructure.

We observe here that the "AG" plans identified above include the planned fuel conversions of the Aguirre generating units while the "NO" plans do not. Therefore, by testing these plans, PREPA will demonstrate the costs and benefits of the Aguirre site plan as a whole as opposed to just AOGP itself.

b) Fueling Plans

PREPA shall describe at least the following options for fuel delivery:

- i. Options with gas to Aguirre only:
 - AOGP, with the earliest expected online date;
 - AOGP, with a one-year delay from the earliest expected online date (*i.e.*, due a delay in permitting or financing);
 - Deliveries of containerized liquefied natural gas (“LNG”) or compressed natural gas (“CNG”), absent AOGP.
- ii. No gas or gas to North only:
 - Gas to the North only, using deliveries of containerized LNG or CNG, as described on page 5-2 of the Base IRP;
 - A no-gas scenario.

PREPA’s description shall include a full accounting of the capital costs, permitting costs, financing costs, and any associated rental, licensing, service, or operational costs associated with new fuel delivery infrastructure. PREPA shall endeavor to arrive at a single “all-in” cost of each option, following a similar analytical framework as that followed for AOGP in the Base IRP.¹⁴ PREPA shall describe the path to full-fleet MATS compliance with each option, including the earliest possible date of full-fleet compliance given each fueling plan. In addition, PREPA shall assess the feasibility and risk of each fueling plan. In particular, PREPA shall discuss the likelihood that each plan would suffer delays and/or increases in cost and describe the potential cost and compliance impacts from these eventualities.

PREPA may present a motion to the Commission asking permission to include additional fueling plans in its description. It may not, however, request additional time to perform the analysis contemplating such additions.

c) Fuel Prices

PREPA shall prepare, or have prepared on its behalf, up-to-date, long-term delivered fuel price forecasts for both natural gas and fuel oil, delivered to the appropriate ports or facilities as dictated by the scenario. These forecasts shall be based on the Henry Hub and West Texas Intermediate (“WTI”) price forecasts in the Reference, High Oil Price, and Low Oil Price cases of the Energy Information Administration’s 2017 edition of the Annual Energy Outlook. Forecasts shall also include any applicable adders or delivery charges applicable to fuel purchases by PREPA.

¹⁴ Base IRP, Table 5-1.

d) LNG Market Research

To inform these forecasts, PREPA shall perform sufficient market research to obtain at least three quotes of near-term delivered prices for LNG at AOGP, as well as at least one quote of delivered containerized LNG or CNG prices. PREPA shall also obtain at least one long-term (at least 20 year) forecast of LNG prices in particular, incorporating and explicitly specifying liquefaction and delivery costs.

e) Sales Forecast

PREPA's analysis shall test all combinations of resource and fueling plans using its base gas and base oil forecasts under its most recent base case sales forecast, assuming the energy efficiency trajectory from the Commission's December 4th Order in the IRP case¹⁵.

f) Modeling Scenarios

The Commission recognizes that testing all possible combinations of the resource plans, fuel plans, fuel prices, and load forecasts enumerated above would be a burdensome task. The Commission therefore orders PREPA perform PROMOD runs testing only the following scenarios:

Scenario	Resource	Fuel Plan	Fuel Price
1	AG	AOGP	Base
2	AG	AOGP	High Oil
3	AG	AOGP	Low Oil
4	AG+RE	AOGP	Base
5	AG+RE	AOGP	High Oil
6	AG+RE	AOGP	Low Oil
7	NO	No gas	Base
8	NO	No gas	High Oil
9	NO	No gas	Low Oil
10	NO+RE	No gas	Base
11	NO+RE	No gas	High Oil
12	NO+RE	No gas	Low Oil

g) Report and Evaluation

PREPA shall file testimony with at least the following results for each scenario:

- i. Annual spending on fuel, operations and maintenance, capital, purchased power, renewable energy, and demand-side management (including energy efficiency and demand response);

¹⁵ Commission's December 8, 2015 Order, Case No. CEPR-AP-2015-0002.

- ii. Total net present value of system costs;
- iii. Earliest year of MATS compliance for each MATS-applicable unit.

In addition, PREPA's testimony shall include the fueling plan descriptions elaborated upon above. We reiterate that PREPA's descriptions shall be both comprehensive and specific and shall highlight specific risk factors for each fueling option that may lead to delays, cost increases, or any combination thereof. PREPA's report shall also include the results of its market research, including the price quotes received and PREPA's evaluation of its market position with regards to fuel purchases and any important factors affecting PREPA's ability to purchase fuel at market prices.

PREPA shall file working copies of all relevant workpapers, including at least its financial model and PROMOD outputs for each tested scenario, simultaneously to its testimony. We note here that any delay caused by PREPA will prevent the Commission from concluding this proceeding in a timely manner.

The Commission will seek to evaluate the results presented by PREPA and determine, based on these results, whether or not AOGP and the Aguirre site plan appropriately minimize both cost and risk for PREPA's ratepayers.

2. Intervenors' Economic Analysis

The Commission invites the participation of intervenors. However, the Commission does not require that those intervenors present an independent analysis of PREPA's proposal or alternatives thereto. Notwithstanding the preceding, in the interest of ensuring that this proceeding considers all reasonable alternatives to AOGP we encourage intervenors in this proceeding to present evidence regarding the costs of fueling proposals not considered by PREPA. We note that in order for such evidence to be of greatest value to the Commission, the results presented by PREPA and intervenors must be comparable to one another on fair and even grounds. This requirement places important obligations on both, PREPA and intervenors.

In order to allow for the effective participation of all interested parties, we **ORDER** PREPA to develop easily-transmittable data packages suitable for intervenors to use as inputs in modeling. These packages shall include PREPA's most recent base case sales forecast as well as operational and cost parameters for the units in PREPA's generating fleet. We expect these inputs to be identical to those used in modeling for the IRP, with the exception of the adjustments to unit availability and online dates mentioned above, and therefore expect them to be available within an expedient timeframe. PREPA shall develop these packages in both, native PROMOD and spreadsheet format.

In addition, we emphasize the following obligations governing PREPA's treatment of intervenor involvement in this proceeding: PREPA will accept appropriately-executed non-disclosure agreements and PREPA will provide model inputs to intervenors requesting such

inputs as soon as practicable, but no later than five weeks prior to the analysis filing deadline. We reiterate here that any delay caused by PREPA will prevent the Commission from concluding this proceeding in a timely manner..

With regards to intervenors who wish to submit alternative fueling plans for the Commission's consideration, we state the following obligations:

- a. Intervenors must declare their intent to file independent modeling and costs results in their applications to intervene, subject to the procedural calendar established below.
- b. Intervenors who presented their intent to file independent modeling and costs results must sign appropriate non-disclosure agreements¹⁶ and file those agreements with the Commission as expeditiously as possible.
- c. Intervenors may request from PREPA one of either (a) PROMOD inputs in native PROMOD format or (b) PREPA's load forecast and unit operational parameters and costs in spreadsheet format. The Commission will not require PREPA to provide model inputs in other formats.
- d. Intervenors must file modeling results and supporting workpapers with a similar level of detail as required of PREPA and described above.
- e. Intervenors must provide detailed descriptions of the permitting, contracting, financing, engineering, and construction steps required to realize their proposals.
- f. Intervenors may not file modeling that entails alterations of the resource plans identified above.

Intervenors are not required to employ PROMOD or any comparable production-cost modeling tool in their analyses. However, we caution intervenors that the Commission will take into consideration the detail and robustness of the model framework used in their analyses.

III. PROCEDURAL CALENDAR

Initial Technical Conference – The Commission will hold an initial technical conference in this proceeding to discuss any questions PREPA may have regarding the requirements set forth herein or regarding the procedural calendar established as part of this Order. The initial technical conference will be held via telephone on **February 21, 2017**.

¹⁶ See Attachment 1 of this Resolution and Order.

Dial-in information will be shared at a later date. Any party wishing to attend said initial conference call may request dial-in information by sending an email to legal@energia.pr.gov.

Request for intervention – Any interested person may file a petition to intervene in this proceeding **on or before February 27, 2017**. The petition to intervene must comply with the provisions of Section 5.05 of Regulation No. 8543 and must demonstrate the existence of a substantive interest in the proceeding. The Commission will evaluate each petition to intervene pursuant to the requirement of Regulation No. 8543 and Section 3.5 of the Uniform Administrative Procedures Act.¹⁷ Any party authorized by the Commission to intervene in the IRP proceeding, Case No. CEPR-AP-2015-0002, shall be authorized to intervene in this proceeding, subject to such party notifying the Commission in writing its intent to do so **on or before February 27, 2017**.

Economic Analysis Submittal – PREPA and intervenors interested in filing any independent modeling and costs results, shall file to the Commission their economic analysis **on or before April 10, 2017**. Such analysis must contain the information indicated in this Order, along with direct testimony to support the analysis.

Discovery – Every intervenor will have the right to issue discovery with regards to the economic analysis presented by PREPA and/or intervenors that present their independent analysis, pursuant to the norms established in Regulation No. 8543. The discovery period **will begin on April 11, 2017 and will end on April 30, 2017**. There will be a ten (10) day term to answer all information requests¹⁸. Every request for information or documents, and the corresponding answers, shall be notified by email to the address on record of every intervenor and to the Commission.

The following shall apply to all discovery requests and corresponding responses:

1. Any information requirement, request for production of documents or any other discovery requirement must be sent in **searchable PDF format** via email to the party to whom the request is made, to the Commission, and to all other approved intervenors. It will not be necessary for a discovery request to include the signature of the requesting party's authorized representative. Parties may use electronic signatures when sending such documents.
2. All discovery request shall be sent via email by the requesting party's authorized representative to the email in record of each intervenor, and to the Commission. Parties **need not** file a physical copy of the discovery request with the Commission's Clerk.
3. When answering any discovery request, the responding party shall notify its responses to the requesting party, all other intervenors and to the Commission via

¹⁷ Act No. 170 of August 12, 1988, as amended.

¹⁸ Parties will have until May 10, 2017 to file its answers to the discovery.

email. Responses to any discovery request must be filed in **searchable PDF format**. All answers may only be notified by the responding party's authorized representative.

4. If, due to its size, a document is unable to be sent via email, the responding party shall deliver it to the requesting party, all other intervenors, and to the Commission, through a pendrive or a cloud-based storage service (e.g. Dropbox, OneDrive, Google Drive, etc.).
5. With the purpose of easing the discovery process, the Commission has determined to exempt all parties in the instant proceeding from the requirement that all answers to a discovery request be physically signed and notarized.
6. Each discovery response must clearly identify the person providing the answer to each question or requirement and include a certification regarding that, to the best of his/her knowledge, all answers provided are true and correct and none of the information provided is willingly misleading.
7. Physical copies of responses to discovery request **need not** be filed with the Commission's Clerk.
8. Should any party claim confidential treatment of the information provided in response to a discovery request, or a portion thereof, said party shall follow the guidelines set forth by the Commission in its August 31, 2016 Resolution, CEPR-MI-2016-0009.
9. All emails addressed to the Commission shall be sent to the following addresses: tnegron@energia.pr.gov, viacaron@energia.pr.gov, afigueroa@energia.pr.gov and secretaria@energia.pr.gov.

Public Hearing – The Commission will hold a public hearing with the purpose of achieving a bigger citizen participation. The hearing will be held on **May 15, 2017** at the Commission's Hearing Room, Seaborne Building, 268 Ave. Muñoz Rivera, 8th Floor. During the public hearing, the general public will have the opportunity to present their opinion about the economic analysis presented. During the course of the proceeding the Commission may determine to celebrate additional hearings in different places along the Island.

Written public comments – Any person interested in presenting their comments regarding this proceeding to the Commission may file their written comments **on or before May 20, 2017**. The comments may be presented at the Commission's Clerk, located at Seaborne Building, 268 Muñoz Rivera Avenue, Nivel Plaza Suite 202, San Juan, Puerto Rico, or by email at comentarios@energia.pr.gov.

Testimony on parties' analysis – PREPA and intervenors may file testimony on any party's analysis **on or before May 20, 2017**.

Reply to Testimony on parties' analysis – Any party who received comments on their proposal by PREPA or other intervenors, may file responses to such comments **on or before May 31, 2017.**

Technical Hearing – The Commission will hold a Technical Hearing in which parties will have the opportunity to participate in a session of questions about the testimonies filed as part of the economic analysis presented. The Commission will provide at a later date all information regarding the format of the technical hearing, including the applicable rules of behavior that will apply and the order of the proceedings, as well as the date, time and place where the hearing will be held.

Final Substantive and Legal Briefs – PREPA and Intervenors may file their substantive and legal briefs **on or before June 15, 2017.**

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



Be it notified and published.

Agustín F. Carbó Lugo

Chairman

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 February 10, 2017. I also certify that a copy of this Resolution and Order regarding Case No. CEPR-AP-2017-0001 was notified by electronic mail to the following: n-ayala@aeepr.com, n-vazquez@aeepr.com and c-aquino@aeepr.com. I further certify that on February 10, 2017, I have proceeded with the filing of this Resolution and Order and I have sent a copy thereof to:

Autoridad de Energía Eléctrica de Puerto Rico

Attn.: Lcda. Nitza D. Vázquez Rodríguez
Lcda. Nélida Ayala Jiménez
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P.O. Box 363928
Correo General
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María del Mar Cintrón Alvarado
Clerk

NON-DISCLOSURE AGREEMENT

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

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.

I. 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.

II. 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.

III. Producing Part'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.

IV. 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.

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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.

XI. 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.

XII. 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: _____