



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

**IN RE: THE PERFORMANCE OF THE PUERTO  
RICO ELECTRIC POWER AUTHORITY**

**CASE NO.:** CEPR-IN-2016-0002

**SUBJECT:** Discovery Confidentiality Request  
1<sup>st</sup> Requirement of Information.

**RESOLUTION AND ORDER**

On March 6, 2017, the Puerto Rico Electric Power Authority (“PREPA”) filed its answers to the Puerto Rico Energy Commission (“Commission”) 1<sup>st</sup> Requirement of Information (“ROI 1”) in the instant case.<sup>1</sup> In its filing, PREPA requested confidentiality treatment for the attachments incorporated in the answers to five Commission requirements.<sup>2</sup> On March 10, 2017, PREPA filed a memorandum of law stating the arguments and legal grounds in support of its confidentiality request.

PREPA’s confidentiality request for three<sup>3</sup> of the 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> and the definition of “critical infrastructure”.<sup>5</sup> PREPA argued that the information included in such documents contains CEII since it provides detailed information related to PREPA’s forced system interruptions at power generation facilities. Furthermore, PREPA states that the information within the documents could compromise the security of Puerto Rico’s electric grid because such information could be used to forecast future system interruptions to disrupt PREPA’s 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.

PREPA bases its confidentiality request for the other two<sup>6</sup> documents on the grounds that the information contained in such documents constitutes business confidential trade

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<sup>1</sup> 1<sup>st</sup> Requirement of Information sent to PREPA on February 17, 2017.

<sup>2</sup> PREPA requested confidential treatment for the following attachments: PREPA ROI\_01\_01 Attach 01 (CONFIDENTIAL).pdf, PREPA ROI\_01\_03 Attach 01 (CONFIDENTIAL).pdf, PREPA ROI\_01\_05 Attach 01 (CONFIDENTIAL).pdf, PREPA ROI\_01\_07 Attach 02 (CONFIDENTIAL).pdf, and PREPA ROI\_01\_11 Attach 01 (CONFIDENTIAL).xlsx.

<sup>3</sup> PREPA ROI\_01\_01 Attach 01 (CONFIDENTIAL).pdf, PREPA ROI\_01\_03 Attach 01 (CONFIDENTIAL).pdf, PREPA ROI\_01\_07 Attach 02 (CONFIDENTIAL).pdf.

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

<sup>5</sup> 42 U.S.C. § 5195 c(e).

<sup>6</sup> PREPA ROI\_01\_05 Attach 01 (CONFIDENTIAL).pdf, PREPA ROI\_01\_11 Attach 01 (CONFIDENTIAL).xlsx.

information. Act 80-2011<sup>7</sup> requires PREPA to demonstrate that the information it deems a trade secret has a real or potential independent economic value, or that the information provides a competitive advantage since such information is not readily accessible to the public.

PREPA argues that the information provided is not known to the general public and has an independent economic value. Furthermore, PREPA states that such information is currently under investigation since it relates to the internal operations of the utility and if disclosed to the public, could compromise the investigation or negatively impact PREPA's operations. Also, PREPA argues that the disclosure of the information may reduce or eliminate PREPA's competitive advantage.

As part of its motion, PREPA requests that the documents provided be protected from disclosure. Furthermore, PREPA requests that the Commission should establish that PREPA is not required to provide CEII confidential information to intervenors or make it available to the general public. In the alternative, PREPA requests that the documents be available under specific rules, including establishing specific reasons for the access request. In the case of the information deemed to be trade secret, PREPA requests that such information be provided under the terms of the Commission's August 31, 2016 Resolution on Confidentiality.<sup>8</sup>

Ordinarily, the information provided as part of a Commission's investigation is deemed confidential throughout the course of the proceeding.<sup>9</sup> Once the investigation is concluded, the administrative record shall be disclosed to the public, except "any information classified as privileged during the course of the investigation, or [...] that may violate [...] the right to privacy of the person investigated."<sup>10</sup>

Notwithstanding the above, and after examining PREPA's arguments in support of its request, the Commission **GRANTS** the confidentiality requests for the information and documents filed in response to ROI 1. Such information shall be classified as confidential after the conclusion of this proceeding. The Commission's Clerk is **ORDERED** to take the necessary measures to comply with the provisions herein, in accordance with the procedures for handling of confidential information established by the Commission.

Access to the documents and information deemed as confidential shall be made in accordance with the processes established in the Commission's August 31, 2016 Resolution on Confidentiality.

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<sup>7</sup> Industrial and Trade Secret Protection Act of Puerto Rico.

<sup>8</sup> August 31, 2016 Resolution, as amended, Case No. CEPR-MI-2016-0009.


<sup>9</sup> See Section 15.10 of Regulation No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures.

<sup>10</sup> *Id.*



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

Be it notified and published.

  
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Agustín F. Carbó Lugo  
Chairman

  
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Angel R. Rivera de la Cruz  
Associate Commissioner


  
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José H. Román Morales  
Associate Commissioner

#### CERTIFICATION

I hereby certify that the Puerto Rico Energy Commission has so agreed on March 28, 2017. I also certify that a copy of this Resolution and Order regarding Case No. CEPR-IN-2016-0002 was notified by electronic mail to the following: n-ayala@aepr.com, n-vazquez@aepr.com, and c-aquino@aepr.com. I further certify that on March 28, 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**

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María del Mar Cintrón Alvarado  
Clerk