

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

IN RE: AGUIRRE SITE ECONOMIC ANALYSIS

CASE NO.: CEPR-AP-2017-0001

SUBJECT: PREPA's Confidentiality Request
7th Requirement of Information, CEPR-
PREPA-07-03.

RESOLUTION

I. Brief Background

On July 26, 2017, the Puerto Rico Electric Power Authority ("PREPA") filed its second submission of answers to the Puerto Rico Energy Commission's ("Commission") 7th Request of Information ("ROI 7"),¹ which included PREPA's response to question CEPR-PREPA-07-03, along with several attachments.² As part of its filing, PREPA requested confidentiality treatment of the attachments provided along with its response to CEPR-PREPA-07-03, specifically that such documents be withheld and not disclosed to other parties and intervenors. On the same date, PREPA filed its memorandum of law³ stating the arguments and legal grounds in support of its request for confidentiality, as well as a table with a list of all documents for which confidential treatment was requested, as required by the Commission's Resolution CEPR-MI-2016-0009.⁴

On August 1, 2017, PREPA filed an *Urgent Motion Requesting Order* notifying that, on July 28, 2017, it had "inadvertently" disclosed to all parties and intervenors the documents for which it sought confidential treatment.⁵ Accordingly, PREPA requested the Commission to adopt a series of measures aimed at addressing the inadvertent disclosure of such documents.⁶

¹ 7th Requirement of Information sent to PREPA on June 30, 2017. The Commission sent a Reply to PREPA's 7th Requirement of Information Responses on July 18, 2017.

² PREPA ROI_07_03 Attach 1 (CONFIDENTIAL & PROP).pdf; and PREPA ROI_07_03 Attach 2-A (CONFIDENTIAL & PROP)[original document name].xlsx through PREPA ROI_07_03 Attach 2-M (CONFIDENTIAL & PROP)[original document name].xlsx.

³ PREPA's Memorandum of Law on Confidentiality Designations in its 2nd Submission of Responses to the Staff of the Puerto Rico Energy Commission's 7th Requirement of Information, July 26, 2017.

⁴ *In Re*: Policy on Management of Confidential Information in Procedures before the Commission, as amended.

⁵ See PREPA's Urgent Motion Requesting Order at ¶5.

⁶ *Id.* at ¶9.

II. Determination Regarding Request for Confidential Treatment

PREPA's confidentiality request for the documents attached to its response to CEPR-PREPA-07-03 is based on the grounds that the information contained in such documents constitutes business confidential trade information. Act 80-2011 requires PREPA to demonstrate that the information deemed as 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.⁷

To comply with Act 80-2011's requirements, PREPA argues that the information included in the aforementioned attachments is not known to the general public and has an independent economic value since it can be used by "a competitor or other market participant to reduce or eliminate PREPA's competitive advantage."⁸ PREPA also claims that the information presented relates to its business operations, as well as cost estimates related to the ongoing Aguirre Offshore Gas Port ("AOGP") project, and therefore the disclosure of such information could compromise the AOGP project and have a negative impact in PREPA's operations if it were used to obtain competitive advantage from other market participants.⁹

In light of the foregoing, the Commission **GRANTS** the confidentiality request and, therefore, **DESIGNATES** the attachments included in PREPA's response to CEPR-PREPA-07-03 as confidential.

III. Determination Regarding PREPA's *Urgent Motion Requesting Order*

On August 31, 2016, the Commission issued Resolution CEPR-MI-2016-0009, through which it adopted the policies, procedures and guidelines that would apply to the filing, handling and disclosure of confidential information within any proceeding before the Commission. Attached to said resolution is the model Non-Disclosure Agreement ("NDA") to be signed and executed by any party involved in a proceeding in which confidential information is filed.

On February 10, 2017, the Commission issued its Order initiating the instant proceeding and setting forth the procedural guidelines that would apply during the proceeding ("Initial Order"). All parties in the proceeding were required to sign the NDA and have done so accordingly.¹⁰

Part III.3.e of the NDA provides that the Commission may take any necessary and desirable steps required to protect information deemed as Confidential when inadvertently

⁷ Section 3 of Act 80-2011, known as the Industrial and Trade Secret Protection Act of Puerto Rico, as amended.

⁸ PREPA's Memorandum of Law on Confidentiality Designations in its 2nd Submission of Responses to the Staff of the Puerto Rico Energy Commission's 7th Requirement of Information, July 26, 2017, at 4 ¶ 7.

⁹ *Id.*

¹⁰ The NDA was distributed along with the Initial Order as attachment 1.

disclosed. As such, and in light of the Commission's determination herein regarding the confidential nature of PREPA's attachments to its response to CEPR-PREPA-07-03 and in light of its *Urgent Motion Requesting Order*, the Commission **GRANTS** PREPA's request and **ORDERS** all parties and intervenors expediently take the following measures:

1. Any party or intervenor to whom the information deemed as confidential herein and to whom such information was disclosed by PREPA via email on July 28, 2017 shall refrain from disclosing, copying or distributing, in whole or in part, such documents, and shall refrain from relying in, or using, in whole or in part, any information contained therein.
2. All parties and intervenors are hereto ordered to delete or destroy any physical or digital copies of the documents identified as confidential herein.
3. If such documents have been distributed or shared with any other third-party who is not a signatory to the NDA, the party or intervenor who distributed or shared such documents shall endeavor to require from such third-party to delete or destroy any digital or physical copies in its possession and to seek such same action from any other party with whom such third-party may have shared or disclosed such information.
4. The parties and intervenors to whom such documents may have been disclosed shall refrain from disclosing, through any means, including verbal communications, the contents of such documents, regardless of whether such communication is made within or outside the scope of the instant proceeding.
5. All parties and intervenors shall, no later than August 9, 2017, file a motion with the Commission certifying having complied in full of the aforementioned requirements.
6. Failure to comply with the aforementioned requirements, may result in the imposition of administrative penalties, pursuant to Article 6.37 of Act 57-2014,¹¹ along with any other remedy readily available to the Commission through any other applicable law.

Any party adversely affected by this Resolution may file a motion for reconsideration before the Commission, pursuant to Section 11.01 of Regulation 8543¹² and the applicable provisions of Act 38-2017, known as the Uniform Administrative Procedure Act of the Government of Puerto Rico ("UAPA"). Said motion must be filed within twenty (20) days from the date in which copy of the notice of this Resolution has been filed. Said motion must

¹¹ The Puerto Rico Energy Transformation and RELIEF Act, as amended.

¹² Regulation No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures.

be filed at the Commission Clerk's Office. Copy of this motion as filed must be sent by email to all the parties notified of this Resolution within the timeframe established herein.

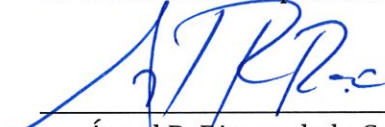



The Commission shall have fifteen (15) days from the date in which said motion is filed to consider it. If the Commission rejects it forthright or fails to act upon it within said period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Commission notifies such denial or the date in which said fifteen (15) days 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 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 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 fail 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 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 of regulation of the Court of Appeals.

For the benefit of all the parties involved, the Commission issues this Resolution in both English and Spanish languages. Should any discrepancy 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
Interim Chairman

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on August 1, 2017. I also certify that on August 2, 2017, and on this date a copy of this Resolution was notified by electronic mail to the following: j-morales@aeep.com, n-vazquez@aeep.com, c-aquino@aeep.com, n-ayala@eepr.com, pbarcelo@estrellallc.com, lmorera@estrellallc.com, serdar.tufekci@na.engie.com, richard.houston@na.engie.com, jperez@oipc.pr.gov, codiot@oipc.pr.gov, rstgo2@gmail.com, ladrian@gasnaturalfenosa.com, francisco.rullan@aae.pr.gov, wilma.lopez@aae.pr.gov, tonytorres2366@gmail.com, sierra@arctas.com, molinilawoffices@gmail.com, ccf@tcmrslaw.com, carlos.reyes@ecoelectrica.com, cfl@mcvpr.com, hmc@mcvpr.com,

mgrpcorp@gmail.com, victorluisgonzalez@yahoo.com, epo@amgprlaw.com, acasellas@amgprlaw.com, agraitfe@agraitlawpr.com, kbolanos@cnrd.com and lfortuno@steptoe.com. I also certify that today, August 2, 2017, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

Autoridad de Energía Eléctrica de Puerto Rico

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For the record, I sign this in San Juan, Puerto Rico, today, August 2, 2017.



María del Mar Cintrón Alvarado
Clerk