

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY BUREAU

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IN RE: REVIEW OF THE PUERTO
RICO ELECTRIC POWER
AUTHORITY INTEGRATED
RESOURCE PLAN

NO. CEPR-AP-2018-0001

SUBJECT: PREPA'S VERIFIED
MOTION FOR CONFIDENTIAL
TREATMENT OF PORTIONS OF ITS
INTEGRATED RESOURCE PLAN
FILING

**PREPA'S VERIFIED MOTION FOR CONFIDENTIAL TREATMENT
OF PORTIONS OF ITS INTEGRATED RESOURCE PLAN FILING**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") and respectfully submits to the honorable Puerto Rico Energy Bureau (the "Energy Bureau")¹ PREPA's Motion for Confidential Treatment of Portions of its Integrated Resource Plan ("IRP") Filing.

PREPA, pursuant to federal and Puerto Rico law, including the Energy Bureau's Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority (Regulation No. 9021), has designated portions of its June 7, 2019, IRP filing as Confidential.

In many cases, the Confidential designation is necessary because the IRP filing contains Critical Energy Infrastructure Information ("CEII"),² which is protected from public disclosure under federal and Puerto Rico law. CEII is highly sensitive information that

¹ References herein to the Energy Bureau also include the former Puerto Rico Energy Commission when applicable.

² To the extent that any of the Critical Energy Infrastructure Information involved in this filing involves the water system rather than the energy system, the same concerns and legal principles apply, although some of the citations in the Memorandum of Law, below, are specific to CEII.

needs very careful protection, as has been recognized by the Energy Bureau in many past dockets. When PREPA has been required to produce CEII in the past, the material usually has restricted to possession and review by Commissioners and staff only, although formal intervenors have been allowed very carefully controlled opportunities to review some CEII material in some limited circumstances.

In other cases, the Confidential designation is necessary because the information that is a trade secret (confidential financial and other protected information), which is also protected under Puerto Rico law. In particular, the Confidential designation is necessary because the information is confidential customer information.

For the sake of efficiency, PREPA has included in this Motion a Memorandum of Law to support its designations.

I. CONFIDENTIAL MATERIAL BEING FILED

1. PREPA has made the following confidentiality designations. As to work papers, which are being provided in electronic form only (due to number, size, and Reg. No. 9021 requirements), the designations are noted in the electronic file names.

| Item | Page(s) | Reasons for Confidentiality Designations |
|--|----------------|---|
| IRP Main Report Attachment B Transmission & Distribution | all | CEII |
| IRP Appendix 1 Transmission Maps and Schematic Workpapers | all | CEII |
| IRP Appendix 1 | all | CEII |
| Existing Resources Workpaper – Existing Units Parameters (1 file) | all | Trade Secret |
| New Resources Workpaper – Distributed Generation Totals and Forecast | all | CEII and Confidential Customer Data |
| Resource Plan Modelling Input Files (19 files) | all | CEII and Trade Secret |

| | | |
|---|-----|------|
| Resource Plan modeling output files – Minigrids Files (8 files) | all | CEII |
| Steady State Analysis Workpaper | all | CEII |
| Post-Processing Analysis Workpaper Files (4 files) | all | CEII |

II. **MEMORANDUM OF LAW**

2. The Bureau's IRP regulation contains multiple provisions that recognize CEII and other grounds for confidentiality designations. See, e.g., Regulation No. 9021, § 1.15. PREPA has designated information in this filing as Confidential based on its careful assessment of the contents of the materials.

A. **Critical Energy Infrastructure Information**

3. Federal law and Puerto Rico law and regulation protect the confidentiality of CEII, the public disclosure of which may pose a security threat in that the information could be useful to a person or group in planning an attack on critical infrastructure. See, e.g., 18 C.F.R. § 388.113, as amended by Federal Energy Regulatory Commission ("FERC") Order No. 683, "Critical Energy Infrastructure Information" (issued September 21, 2006); "USA Patriot Act of 2001", § 1016, creating the "Critical Infrastructures Protection Act of 2001", including 42 U.S.C. § 5195c(e) (defining "Critical infrastructure").

4. Under the Critical Infrastructures Protection Act of 2001, the term "critical infrastructure" means "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health, safety, or any combination of those matters." 42 U.S.C. § 5195c(e).

5. In 2006, FERC Order No. 683 amended the regulations for gaining access to CEII and simplified procedures for obtaining access to CEII without increasing

vulnerability of the energy infrastructure and ensuring that access to CEII does not facilitate acts of terrorism.

6. A utility is not required to obtain FERC or other federal government approval in order to designate information as CEII. For example, information required by FERC's Annual Transmission Planning and Evaluation Report, Form No. 715, ("FERC No. 715"), is *de facto* considered CEII and is automatically afforded the heightened protections. FERC No. 715 requires that any transmitting utility that operates integrated (non-radial) transmission facilities at or above 100 kV must annually submit information including but not limited to: Power Flow Base Cases, Transmitting Utility Maps and Diagrams, Transmission Planning Reliability Criteria, Transmission Planning Assessment Practices, and Evaluation of Transmission System Performance. Any utility that submits the required transmission information pursuant to FERC No. 715 does so with the knowledge that FERC "considers the information collected by this report to be Critical Energy Infrastructure Information (CEII) and will treat it as such." 18 C.F.R. § 141.300(d).

7. PREPA further states that mainland regulators typically do not require a utility that designates material as CEII to follow any process before the federal government in order to make or support such a designation, and, further, that the regulator, in its informed discretion, can establish limits on how information that it considers CEII can be accessed.

8. The Energy Bureau, on many occasions in many prior dockets, has accepted PREPA's designations of material as CEII, recognizing that both federal law and Puerto Rico law support such designations when applicable. The Energy Bureau did

so, as well, in the instant docket, in its March 14, 2019, Resolution and Order with respect to PREPA's original IRP filing of February 13, 2019.

B. Trade Secrets

9. Puerto Rico law protects trade secrets, including information that has the potential for financial or commercial value. The principal law protecting the confidentiality of trade secrets, codified in Act 80-2011, is the "Industrial and Trade Secret Protection Act of Puerto Rico." Act 80-2011 defines a trade secret as any information that:

has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information; and [f]or which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

Trade secrets may take a variety of forms, including "a process to manufacture, treat or preserve materials, a formula or recipe, a project or pattern to develop machinery, or simply a list of specialized clients that constitute a specific market which provides the owner with an advantage over his/her competitors." However, these examples are not exhaustive, and the Legislative Assembly reinforced in the Statement of Motives of Act 80-2011 that the broad definition of a trade secret includes "any confidential information with trade or industrial value, which its owner reasonably protects to prevent its disclosure." In Puerto Rico, moreover, trade secrets "do not require registration or compliance with any formalities in order to be protected." The Legislative Assembly further noted that "failure to protect trade secrets could leave companies at the mercy of any competitor or former employee who gains knowledge of any such secret, whether directly from the owner or by other means."

10. As a public body whose costs are ultimately borne by citizens of the Commonwealth, PREPA also has a strong interest in protecting the trade secrets of actual and prospective vendors and contractors who entrust PREPA with that information in confidence as part of business and financial dealings. Violating those protections (e.g., by public release of confidential vendor or financial data) could not only harm those other parties, but also threaten PREPA's ability to acquire goods and services from the markets at the lowest cost, ultimately harming customers.

11. PREPA also has a valid interest in protecting confidential information of and regarding its customers. Such information falls within Act 80-2011's definition of trade secrets, in light of the inherent value in maintaining the trust and confidence of customers. PREPA believes its customers expect that PREPA will maintain this information in a confidential manner, and PREPA has a strong interest in protecting its relationships with customers by upholding their expectation of privacy. If PREPA was to compromise its relationships with its customers by publishing information that customers reasonably expected would be confidential, PREPA could lose its customers' business. Any loss of business would adversely impact PREPA's ability to operate, and its existing and future ratepayers.

C. Redaction

12. PREPA and Siemens have prepared redacted portions of the applicable IRP materials. Please note that if a document essentially is all confidential, then the redacted version is limited to a cover page or slip sheet with a notation that the remainder of the document is confidential.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Honorable Puerto Rico Energy Bureau accept the Confidentiality designations listed above.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 7th DAY OF JUNE, 2019.

PUERTO RICO ELECTRIC POWER AUTHORITY

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CERTIFICATION OF FILING AND SERVICE

I hereby certify that on June 7, 2019, I have filed the above Motion with the Puerto Rico Energy Commission in hard copy format at the office of the Clerk of the Puerto Rico Energy Bureau, at the Seaborne Building Plaza (old World Plaza Building), 268 Munoz Rivera Avenue, Plaza Level, Suite 202, San Juan, Puerto Rico, 00918; and, further, at approximately the same time, that courtesy copies of the Motion were sent via email to the Puerto Rico Energy Bureau via email to secretaria@energia.pr.gov and mcintron@energia.pr.gov, and to the office of the Energy Bureau's internal legal counsel via email to legal@energia.pr.gov and sugarte@energia.pr.gov.

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