

COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY BUREAU

2019 JUN 21 AM 11:22

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

NO. CEPR-AP-2018-0001

**SUBJECT:** PREPA'S (1) UPDATED  
MOTION FOR CONFIDENTIAL  
TREATMENT OF PORTIONS OF ITS  
INTEGRATED RESOURCE PLAN  
FILING AND (2) COMPLIANCE FILING

**PREPA'S (1) MOTION FOR CONFIDENTIAL  
TREATMENT OF PORTIONS OF ITS INTEGRATED  
RESOURCE PLAN FILING AND (2) COMPLIANCE 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") PREPA's (1) Updated Motion for Confidential Treatment of Portions of its Integrated Resource Plan ("IRP") Filing and (2) Compliance Filing. This filing is submitted in compliance with the Energy Bureau's Resolution and Order issued at 4:32 p.m. on June 18, 2019, provided that the order called for compliance by 12:00 p.m. on June 19, 2019, but PREPA filed a pending motion for an extension of time of 2 days at 10:43 a.m. on June 19, 2019.

**I. BACKGROUND**

1. On February 13, 2019, PREPA submitted its initial proposed IRP filing. As part of that filing, PREPA submitted a motion for approval of the designation of certain material as confidential, mainly on the grounds that the material was Critical Energy Infrastructure Information ("CEII"), although some of the material was designated as trade

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secret or confidential customer data. Those categories of confidential information are discussed further later in this Motion.

2. On March 14, 2019, the Energy Bureau issued a Resolution and Order that, among other things, approved PREPA's February 13<sup>th</sup> confidentiality motion but also found the February 13<sup>th</sup> IRP filing non-compliant.

3. On June 7, 12, 13, and 14, 2019, PREPA filed its compliance proposed IRP filing. The June 7<sup>th</sup> material included PREPA's motion for approval of the designation of certain material as confidential, but the motion, due to its timing, inadvertently did not fully "sync up" with the materials as filed or submitted and named on June 12<sup>th</sup> through 14<sup>th</sup>.

4. Accordingly, on June 18, 2019, the Energy Bureau issued a Resolution and Order that, in brief: (1) directed PREPA to provide a detailed, specific, and coherent list of the documents for which confidential treatment is sought; and (2) directed PREPA to correct the file names of submitted electronic files so that they match the names in the updated confidential document list (and the list of documents in PREPA's cover filing filed on June 14, 2019).

## **II. UPDATED MOTION AND LIST**

### **A. Designations**

5. 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<sup>th</sup> – 14<sup>th</sup> IRP filing as Confidential.

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6. The Confidential designations are necessary primarily because the designated IRP filing items contain Critical Energy Infrastructure Information,<sup>1</sup> which is protected from public disclosure under federal and Puerto Rico law. CEII is highly sensitive information that 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 in some limited circumstances formal intervenors have been allowed very carefully controlled opportunities to review some CEII material.

7. Some of the Confidential designations are necessary because the information is a trade secret (confidential financial and other protected information), which is also protected under Puerto Rico law.

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

9. PREPA has made the confidentiality designations indicated in the chart below. Please note that the confidential work papers are presented in electronic form only (due to number, size, and Reg. No. 9021 requirements). Please also note that, unlike its February IRP filing, in the current filing, PREPA, to make things simpler, and because of the much larger number of electronic work papers -- over 500 files -- has grouped the confidential work papers into six large folders that, because of their large size (due to the large number of files and their file sizes), are presented as "zipped" folders. A zipped

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<sup>1</sup> 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.



folder contains compressed files to reduce the size of the material. Accordingly, PREPA has renamed the zipped folders by adding the word Confidential to the folder name, rather than individually renaming the over 500 files within the zipped folders.

Item (file name)	Date filed or submitted	Page(s)	Reasons for confidentiality designations
IRP2019 - Appendix 1 – Transmission and Distribution 06072019 CONFIDENTIAL.pdf	June 7th	All	CEII  Please note that a public redacted version of excerpts of Appendix 1, Section 2.3, was filed on June 14th
Appendix_1_workpapers CONFIDENTIAL.7z  .7z indicates that the item is a “zipped” folder  (81 files)	June 12 <sup>th</sup> – 14 <sup>th</sup>	All	CEII
Fuel Forecast Model & Workpapers CONFIDENTIAL.7z  (4 files)	June 12 <sup>th</sup> – 14 <sup>th</sup>	All	TRADE SECRETS
Load Forecast Model & Workpapers CONFIDENTIAL.7z  (3 files)	June 12 <sup>th</sup> – 14 <sup>th</sup>	All	TRADE SECRETS
OUT_files CONFIDENTIAL.7z  (469 files)	June 12 <sup>th</sup> – 14 <sup>th</sup>	All	CEII
Resource Side Workpapers – A CONFIDENTIAL.7z  (13 files)	June 12 <sup>th</sup> – 14 <sup>th</sup>	All	TRADE SECRETS
Resource Side Workpapers – B CONFIDENTIAL.7z  (8 files)	June 12 <sup>th</sup> – 14 <sup>th</sup>	All	TRADE SECRETS

**B. MEMORANDUM OF LAW**

10. 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.

**1. Critical Energy Infrastructure Information**

11. 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").

12. 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).

13. 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.

14. 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).

15. 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.

16. 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.

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## 2. Trade Secrets

17. 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."

18. 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.

19. 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 were 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.

### **3. Redaction**

20. On June 7<sup>th</sup>, PREPA submitted a redacted version of IRP Appendix 1. The redacted version is a cover page with a notation that the remainder of the document is confidential. Please note that a public redacted version of excerpts of Appendix 1, Section 2.3, relating to Minigrids, was filed on June 14<sup>th</sup>.

21. Redacting the Excel spreadsheets that have been designated as confidential is not practical.

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### **III. COMPLIANCE FILING**

22. PREPA is submitting a USB drive with a .pdf file and six zipped folders that have been renamed in compliance with the Energy Bureau's June 18th order and that are consistent with the list provided above. Please discard the earlier versions of the renamed file and folders.

23. PREPA also has included on the USB drive a document that also lists the electronic work papers that are not confidential.

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

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 21<sup>st</sup> DAY OF JUNE, 2019

**PUERTO RICO ELECTRIC POWER AUTHORITY**



Nitza D. Vázquez Rodríguez  
TSPR No. 9311  
Senior Attorney  
Puerto Rico Electric Power Authority  
P.O. Box 363928  
San Juan, Puerto Rico 00936-3928  
Tel. 787-521-4499  
Email: n-vazquez@aeep.com