

**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU**

IN RE: THE UNBUNDLING OF THE  
ASSETS OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY

**CASE NO.:** NEPR-AP-2018-0004

**SUBJECT:** PREPA's COMPLIANCE  
MOTION RE: PREB AUGUST 16, 2019  
RESOLUTION AND ORDER

2019 AUG 20 PM 1:28  
SECRETARIA  
NEGOCIADO DE ENERGIA  
DE PUERTO RICO

**PREPA's COMPLIANCE MOTION**

The Puerto Rico Electric Power Authority ("PREPA") hereby respectfully submits to the Puerto Rico Energy Bureau (the "Energy Bureau") PREPA's Cover Filing for Responses to ROIs and Confidentiality Designations and Motion for More Time on Certain Items; and Motion for Confidential Treatment of Portions of Its Responses to ROIs.

This filing relates to the Energy Bureau's Resolution and Order issued on August 16, 2019 that orders PREPA to file the above documents under regulation 8543 and the Energy Bureau's instructions regarding the means of submission of documents.

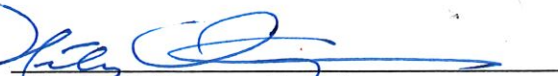
WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the honorable Puerto Rico Energy Bureau accept PREPA's Compliance Motion and approve its confidentiality designations dated July 23, 2019.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 20<sup>th</sup> August, 2019

PUERTO RICO ELECTRIC POWER AUTHORITY

I hereby certify that I have sent the foregoing document by electronic mail to :  
viacaron@energia.pr.gov; secretaria@energia.pr.gov; and legal@energia.pr.gov.



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**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU**

**IN RE:** THE UNBUNDLING OF  
THE ASSETS OF THE PUERTO  
RICO ELECTRIC POWER  
AUTHORITY

**CASE NO.:** NEPR-AP-2018-0004

**SUBJECT:** PREPA's Motion for  
Confidential Treatment of Portions of  
Its Responses to ROIs

**PREPA'S MOTION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS RESPONSES TO ROIs**

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")<sup>1</sup> PREPA's Motion for Confidential Treatment of Portions of Its Responses to Requirements of Information. This Motion relates to PREPA's separately filed Cover Filing for Attached Responses to ROIs and Confidentiality Designations and Motion for More Time on Certain Items.

**I. INTRODUCTION**

1. PREPA is submitting this Motion for purposes of certain confidentiality designations specified in Section II of this Motion. PREPA also intends, as this Unbundling case proceeds, and as PREPA makes additional confidentiality designations if and as needed, to refer back to and incorporate the legal discussion in Section III of this Motion, so as to avoid repetitive filings.

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

PREPA'S MOTION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS RESPONSES TO ROIs

2. PREPA, pursuant to federal and Puerto Rico law, including but not limited to the federal and Puerto Rico law referenced in Section III of this Motion; the Energy Bureau's Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings (Regulation No. 8543), §§ 1.15, 15.10, to the extent applicable; the Energy Bureau's August 31, 2016, Resolution in docket no. CEPR-MI-2016-0009; and the Energy Bureau's July 7, 2019, 1<sup>st</sup> Requirement of Information ("ROI") to PREPA, Instruction I(B); has designated specific responses or portions of responses to certain ROIs listed in Section II of this Motion as Confidential.

3. In some instances, Confidentiality designations are necessary because the information or document contains Critical Energy Infrastructure Information ("CEII"),<sup>2</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, upon written agreement to abide by confidentiality protections, have been allowed very carefully controlled opportunities to review some CEII material.

4. In other cases, Confidentiality designations are necessary because the information is a trade secret (confidential financial and other protected information), which

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<sup>2</sup> To the extent that any of the Critical Energy Infrastructure Information involved in this Unbundling case 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.



## PREPA'S MOTION FOR CONFIDENTIAL TREATMENT OF PORTIONS OF ITS RESPONSES TO ROIs

is also protected under Puerto Rico law. The confidential information can be, for example, PREPA financial information that should not be made available to PREPA suppliers, in order to avoid the suppliers being able to take unfair advantage of the information in a way that increases PREPA's costs, to the detriment of PREPA and its customers; confidential information from a PREPA supplier that should not be made available to competing PREPA suppliers, for similar reasons; or, confidential customer information.

5. For the sake of efficiency, PREPA has included as Section III of this Motion a Memorandum of Law to support its pending and future designations.

### II. CONFIDENTIALITY DESIGNATIONS

6. PREPA has made the following confidentiality designations with respect to its responses to the Energy Bureau's July 7<sup>th</sup> 1<sup>st</sup> set of ROIs.

Responses, Portions of Responses, or Attachments	Page(s)	Reason(s) for Confidentiality Designations
PREB-PREPA-01-01 (including attachments)	All	Intellectual Property, Trade Secret
PREB-PREPA-01-17	All	CEII

### III. MEMORANDUM OF LAW

7. Federal and Puerto Rico law and Energy Bureau orders contain multiple provisions and recognitions of CEII and other grounds for confidentiality designations. PREPA has made the Confidentiality designations in Section II of this Motion based on its careful assessment of the contents of the materials.

PREPA'S MOTION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS RESPONSES TO ROIs

**A. Critical Energy Infrastructure Information**

8. Federal law and Puerto Rico law 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").

9. 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 or safety, or any combination of those matters." 42 U.S.C. § 5195c(e).

10. 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.

11. 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)

PREPA'S MOTION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS RESPONSES TO ROIs

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, as stated in the Form's Instructions, FERC "considers the information collected by this report to be Critical Energy Infrastructure Information (CEII) and will treat it as such." See also 18 C.F.R. § 141.300(d) relating to the Form and CEII.

12. 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.

13. The Energy Bureau, on numerous occasions in 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.

**B. Trade Secrets**

14. Puerto Rico law also 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



PREPA'S MOTION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS RESPONSES TO ROIs

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."

15. As a public body whose costs are ultimately borne by citizens of Puerto Rico, PREPA also has a strong interest in protecting its own trade secrets and also 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

PREPA'S MOTION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS RESPONSES TO ROIs

protections as to PREPA's own trade secrets could allow suppliers to take unfair advantage of PREPA. Violating those protections as to confidential supplier information 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, again ultimately harming customers.

16. 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.

**C. Redaction**

17. PREPA, where applicable and practical, has prepared redacted portions of the applicable materials designated as Confidential. 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.



PREPA'S MOTION FOR CONFIDENTIAL TREATMENT  
OF PORTIONS OF ITS RESPONSES TO ROIs

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 23rd DAY OF JULY, 2019

PUERTO RICO ELECTRIC POWER AUTHORITY

I hereby certify that today, I have sent the foregoing document by electronic mail to : viacaron@energia.pr.gov; secretaria@energia.pr.gov; and legal@energia.pr.gov.



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**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
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IN RE: THE UNBUNDLING OF THE  
ASSETS OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY

**CASE NO.:** NEPR-AP-2018-0004

**SUBJECT:** PREPA's Cover Filing for  
Attached Responses to ROIs and  
Confidentiality Designations and Motion for  
More Time on Certain Items

**PREPA's Cover Filing for Responses to  
ROIs and Confidentiality Designations and  
Motion for More Time on Certain Items**

The Puerto Rico Electric Power Authority ("PREPA") hereby respectfully submits to the Puerto Rico Energy Bureau (the "Energy Bureau") PREPA's Cover Filing for Attached Responses to ROIs and Confidentiality Designations and Motion for More Time on Certain Items. This filing relates to the Energy Bureau's "1<sup>st</sup> Requirement of Information [ROIs] to PREPA" issued on July 9, 2019. The Energy Bureau's 1<sup>st</sup> set of ROIs set a due date for PREPA's responses of today, July 23, 2019. PREPA also separately is filing its related Motion for Confidential Treatment of Portions of Its Responses to ROIs.

**Attached Responses**

The attachments include to this cover filing include most of the 17 ROI responses (most of which have multiple subparts) due today. More specifically, the attachments include responses to ROI numbers:

PREB-PREPA-01-01

PREB-PREPA-01-02

PREB-PREPA-01-03

PREB-PREPA-01-04

PREPA's Cover Filing for Responses to ROIs and Confidentiality Designations and Motion for More Time on Certain Items

PREB-PREPA-01-05

PREB-PREPA-01-06

PREB-PREPA-01-07

PREB-PREPA-01-08

PREB-PREPA-01-09

PREB-PREPA-01-10

PREB-PREPA-01-11

PREB-PREPA-01-12 (partial)

PREB-PREPA-01-13

PREB-PREPA-01-14

PREB-PREPA-01-15

PREB-PREPA-01-16 (partial)

PREB-PREPA-01-17

**Confidentiality Designations**

PREPA designates the following responses, subparts of responses, or documents as confidential:

PREB-PREPA-01-01 and its attachments (Intellectual Property and Trade Secrets)

PREB-PREPA-01-17 and its attachments (Critical Energy Infrastructure Information)

PREPA is supporting these designations through its separate Verified Motion for Confidential Treatment of Portions of Its Responses to ROI.

(c)



PREPA's Cover Filing for Responses to ROIs and Confidentiality Designations and  
Motion for More Time on Certain Items

**Motion for More Time for Other Items**

Finally, PREPA respectfully requests an extension of time with respect to certain of the ROI responses. More specifically, PREPA requests an additional 7 days for the following ROIs or ROI subparts:

PREB-PREPA-01-12, part (d)

PREB-PREPA-01-16, part (c)

PREPA requests additional time because the requested information is extensive and we had difficulties in the gathering of said information and identifying a place to properly storage.

PREPA acknowledges that the Energy Bureau has indicated that motions for more time generally should be filed at least one day in advance of a due date. PREPA has been working to try to assemble a complete set of responses by today, and only determined this morning that it would need to request more time for certain items

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PREPA's Cover Filing for Responses to ROIs and Confidentiality Designations and  
Motion for More Time on Certain Items

**WHEREFORE**, the Puerto Rico Electric Power Authority respectfully requests that the honorable Puerto Rico Energy Bureau accept PREPA's ROI responses, approve its confidentiality designations, and approve its requests for more time.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 23rd DAY OF JULY, 2019

PUERTO RICO ELECTRIC POWER AUTHORITY

I hereby certify that this is a true and exact copy of PREPA's 1st submission of responses to the staff of the Puerto Rico Energy Bureau 1st ROI. I further certify that today July 23, 2019, I have sent the foregoing document by electronic mail to :  
viacaron@energia.pr.gov; secretaria@energia.pr.gov; and legal@energia.pr.gov.



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