

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

NEPR Received: Aug 23, 2019 10:10 AM

IN RE:

**REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN**

CASE NO.:

CEPR-AP-2018-0001

SUBJECT:

Request for Confidential Designation of AES
Coal Plant Conversion Assessment

**REQUEST FOR CONFIDENTIAL DESIGNATION
OF UNREDACTED AES COAL PLAN CONVERSION ASSESSMENT**

TO THE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority through the undersigned legal representation and respectfully sets forth and pray:

Today, the Puerto Rico Electric Power Authority (PREP) has filed a *Submittal of AES Coal Plant Conversion Assessment*.

The aforementioned filing contains confidential information and, as such, PREPA has presented a redacted version in the public docket and a unredacted version under seal to the Puerto Rico Energy Bureau (the “Energy Bureau”). PREPA now moves the Bureau to designate the documents filed under seal as confidential.

I. INTRODUCTION

1. The Puerto Rico Electric Power Authority submits this Request for Confidential Designation of AES Coal Plant Conversion Assessment (the “Motion”) for purposes of certain confidentiality designations specified in Section II of this Motion. PREPA also intends, as the case of caption (“IRP”) develops, 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 to avoid repetitive filings.

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 Puerto Rico Energy Bureau (the “Energy Bureau”)’s Regulation 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, §§ 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 11, 2019, 1st 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”),¹ 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 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

¹ To the extent that any of the Critical Energy Infrastructure Information involved in this IRP 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.

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 the AES Coal Plant Conversion Assessment document.

- Part 4 – AES Steady State Assessment – Technical Information.

7. The items designated as Technical Information are Confidential Energy Infrastructure Information (CEII).

III. MEMORANDUM OF LAW

8. 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.

A. Critical Energy Infrastructure Information

9. 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”).

10. 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).

11. 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.

12. 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, 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.

13. 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.

14. The Energy Bureau, on numerous occasions in prior dockets and the instant docket 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

15. 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 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.”

16. 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 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.

17. 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.

WHEREFORE, PREPA requests the Energy Bureau to grant Confidentiality designation to the files listed in section II of this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of August, 2019.

/s/ Katuska Bolaños
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CERTIFICATE OF SERVICE

We hereby certify that, on this same date we have filed the above motion at the office of the Clerk of the Puerto Rico Energy Bureau; and a courtesy copy of the filing was sent via e-mail to the Puerto Rico Energy Bureau Clerk and internal legal counsel to: secretaria@energia.pr.gov; wcordero@energia.pr.gov; legal@energia.pr.gov; and sugarte@energia.pr.gov.

In addition, the foregoing filing was sent via e-mail to the approved or pending intervenors (Arctas, Caribe GE, League of Cooperatives and AMANESER 2025, OIPC, EcoEléctrica, Empire Gas, Environmental Defense Fund, Local Environmental Organizations, National, “Non Profits”, Progression, SESA-PR, Renew, Shell, Sunrun, Wartsila, Windmar Group) and amicus (ACONER, AES-PR, RMI) at the following e-mail addresses: acarbo@edf.org; javier.ruajovet@sunrun.com; pedrosaade5@gmail.com; rsto2@gmail.com; rmurthy@earthjustice.org; larroyo@earthjustice.org; juebkemann@earthjustice.org; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com; rtorbert@rmi.org; victorluisgonzalez@yahoo.com; mgrpcorp@gmail.com; hrivera@oipc.pr.gov; jrivera@cnslpr.com; manuelgabrielfernandez@gmail.com; axel.colon@aes.com; acasellas@amgprlaw.com; corey.brady@weil.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; paul.demoudt@shell.com; escott@ferraiuoli.com; aconer.pr@gmail.com; agraitfe@agraitlawpr.com; presidente@ciapr.org; castrodieppalaw@gmail.com; voxpathulix@gmail.com; cfl@mcvpr.com; sierra@arctas.com; tonytorres2366@gmail.com; info@liga.coop; amaneser2020@gmail.com; csanchez@energia.pr.gov; ireyes@energia.pr.gov; asanz@energia.pr.gov; bmulero@energia.pr.gov; nnunez@energia.pr.gov; gmaldonado@energia.pr.gov; viacaron@energia.pr.gov.

In San Juan, Puerto Rico, this 23rd day of August, 2019.

/s/ Katuska Bolaños
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