

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

**NEPR**

**Received:**

**Dec 11, 2019**

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**IN RE: PUERTO RICO ELECTRIC POWER  
AUTHORITY INTEGRATED RESOURCE  
PLAN**

**CASE NO. CEPR-AP-2018-0001**

**SUBJECT: PETITION REQUESTING  
AMENDMENT TO NON-DISCLOSURE  
AGREEMENT (NDA)**

**LOCAL ENVIRONMENTAL ORGANIZATIONS' RESPONSE TO PREPA'S  
OBJECTION TO THE LOCAL ENVIRONMENTAL ORGANIZATIONS' PETITION  
TO AMEND THE NON-DISCLOSURE AGREEMENT**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

COME NOW, the Local Environmental Organizations,<sup>1</sup> and state and request as follows:

- 1) On November 20, 2019 the Local Environmental Organizations ("LEOs") filed a petition requesting that the Non-Disclosure Agreement ("NDA") attached to the Energy Bureau's letter of August 2, 2019 be amended in three respects. First, the LEOs argued that the NDA be limited to specific information previously determined to be "Validated Confidential Information", as per the Bureau's Resolution of August 21, 2016.<sup>2</sup> Next, the LEOs requested that the NDA be modified to indicate that a party's signature does not necessarily imply an expression of endorsement or agreement that any document was properly determined to be Validated Confidential Information, which can be withheld from the parties or from the public. Finally, the LEOs requested that the NDA

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<sup>1</sup> Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc. -Enlace Latino de Acción Climática, Comité Yabucoefío Pro-Calidad de Vida, Inc., Alianza Comunitaria Ambientalista del Sureste, Inc., Sierra Club and its Puerto Rico chapter, Mayagüezanos por la Salud y el Ambiente, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., Campamento Contra las Cenizas en Peñuelas, Inc., and CAMBIO Puerto Rico, Inc., ("Local Environmental Organizations").

<sup>2</sup> In Re Policy or Management of Confidential Information in Procedures Before the Commission, the "Resolution of 2016".

be amended to allow the parties' expert witnesses to sign the NDA and review confidential information.

- 2) On December 6, 2019 PREPA filed its opposition to the modification of the existing NDA<sup>3</sup>. Because of the importance of this controversy, the LEOs respectfully request that the Energy Bureau consider this reply, addressing PREPA's erroneous arguments.

**PREPA's Response to LEOs' First Request**

- 3) Regarding LEOs' first request, PREPA's opposition basically argues that it is "inconsequential" whether the NDA applies or not to Validated Confidential Information - ("VCI"). Objection, at page 8.
- 4) The NDA should be modified to reflect the procedure and specificity of the Resolutions of 2016. The NDA as written applies to "confidential information as determined in first instance by PREPA itself, not the PREB. NDA Part II(4). As it stands now, the NDA is not limited to a specific information or document previously determined to be a VCI but, instead, to all "confidential" information as labelled by PREPA. Thus, the NDA's current broadness could be interpreted as a consent that all information labelled by PREPA as "confidential" could or should be kept from the parties or the public. Note also that PREPA can delay submittal of legal memoranda justifying its initial confidentiality decision. See Resolution of Sept. 21, 2019. Case No. CEPR-MI-2016\_0009.
- 5) PREPA does not dispute that the NDA ought to apply after an individualized and specific scrutiny of the PREB as to whether a particular piece of information ought or not be considered confidential, that is, restricted as VCI. PREPA neither disputes that in Puerto Rico access to public information is rooted in the Constitution itself specifically the right to freedom of Speech and Expression. Opposition, at page 2. See Constitution of Puerto Rico, Article II, Section 4 and Soto v. Secretario de Justicia, 112 DPR 477 (1982). Finally, PREPA does not dispute that the applicable law is number 57-2014, article 6.15 (22 LPRA Sec. 1054n) which clearly contains a legal standard of exceptionality before granting confidential status to information. See article 6.15(c). However, PREPA wrongly invokes section 6(j) of its organic law as an implied

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<sup>3</sup> See Objection to the Local Environmental Organizations Petition to Amend the Non-Disclosure Argument, "Objection".



limitation to availability or information in the present IRP proceeding. This sector deals with petitions of information by "clients", 22 LPRA sec. 196(j), (k). PREPA also fails to address Regulation number 9021, which directly deals with the IRP process, and instead cites regulations numbers 8543, 8815. See sector 1.15 of Regulations No. 9021.

- 6) The Constitution, Law 57-2014, Regulation 9021, and the Bureau's August 21, 2016 Resolution all require that information only be withheld from the public after a specific determination by the PREB that the information is VCI. The LEOs, thus, believe that in such a sensitive area of the law, where the Constitution and Article 6.15 of Law 57-2014 are implied, the NDA and if need be, also Resolution of 2016, should be amended.

**PREPA's Response to LEOs' Second Request**

- 7) LEOs' second request is that the NDA be modified to indicate that a party's signature does not necessarily imply an expression of endorsement or agreement that any document was properly determined to be Validated Confidential Information, which can be withheld from the parties or from the public.
- 8) On this point, PREPA acknowledges that any party may question a confidentiality designation through a motion for reconsideration or judicial review. Objection p. 8. LEOs merely seek amendment of the NDA to confirm that signature of the NDA does not abridge these rights.

**PREPA's Response to LEOs' Third Request**

- 9) PREPA does not object to LEOs' final request, that the NDA be amended to allow the parties' expert witnesses to sign the NDA and review confidential information.

Wherefore, it is requested that LEOs' motion be granted, and PREPA's Opposition be denied.

Respectfully submitted, on December 11, 2019,

/s/ Raghu Murthy  
Raghu Murthy  
Earthjustice

## CERTIFICATION OF SERVICE

We hereby certify that, on December 11, 2019, we have filed this Motion via the Energy Bureau's online filing system, and sent to the Puerto Rico Energy Bureau Clerk and legal counsel to: [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov); [astrid.rodriguez@prepa.com](mailto:astrid.rodriguez@prepa.com); [jorge.ruiz@prepa.com](mailto:jorge.ruiz@prepa.com); [n-vazquez@aepr.com](mailto:n-vazquez@aepr.com); [c-aquino@prepa.com](mailto:c-aquino@prepa.com) and to the following persons:

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Respectfully submitted on this day December 11, 2019

s/Pedro Saadé

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