

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



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

CASE NO.: CEPR-AP-2018-0001

SUBJECT: PREPA's position towards
petition requesting amendment to the
Energy Bureau's Non Disclosure Agreement
(NDA).

ORDER

On November 20, 2019, the Local Environmental Organizations ("LEO") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a motion titled *Petition Requesting Amendment to Non-Disclosure Agreement* ("NDA") (November 20 Motion). In summary, (1) LEO alleges that the NDA should be modified because it is unnecessarily broad and contrary to the Energy Bureau's Resolution on Confidentiality in Case No. CEPR-MI-2016-0009, (2) LEO argued the NDA should apply to specific information labelled "Validated Confidential Information", and (3) LEO also alleges that the NDA should be modified to indicate that a party's signature of an NDA does not necessarily imply the loss of the right to question a confidentiality determination and should allow the parties to allow their expert witnesses to sign as well and review confidential material.

On December 6, 2019, the Puerto Rico Electric Power Authority ("PREPA") filed a motion titled *Objection to the Local Environmental Organizations' Petition to Amend the Non-Disclosure Agreement* ("Objection"). On the Objection, PREPA argued: (1) the right to access the information does not operate without limitation, is not absolute and will be subject to those limitations the State imposes, (2) PREPA's documents and information will be available to those customers who so request, except for: confidential information under the Rules of Evidence, information related to collective bargaining, labor-related disputes, or issues related to personnel, ideas regarding the negotiation of potential PREPA information of strategies regarding lawsuits of PREPA, information of internal investigations of PREPA while these are being conducted, aspects regarding the intellectual property of third parties, trade secrets of third parties, issues that PREPA should be keep confidential under any confidentiality agreement, or matters of public security involving threats against PREPA, its property or employees,¹ (3) Act 57-2014² regulates how will be handle the disclosure of information, and under Act 57-2014, the Energy Bureau may rule on the different confidential information as explained in the Confidentiality Resolution established in CEPR-MI-2016-0009 on August 31, 2016.

¹ See 22 L.P.R.A. sec. 196.

² Known as *Puerto Rico Energy Transformation and Relief Act*, as amended.



On December 11, 2019, LEO filed a motion titled *Local Environmental Organizations' Response to PREPA's Objection to the Local Environmental Organizations' Petition to Amend the Non-Disclosure Agreement*. In summary, LEO reaffirms its position and requests the Energy Bureau (1) to amend the NDA because is not limited to specific information or document determined to be "Validated Confidential Information", (2) to modify the NDA 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 can be withheld from the parties or from the public, and (3) to amend the NDA to allow the parties' expert witness to sign the NDA and review confidential information.

Pursuant to the provisions of Act 57-2014, the Energy Bureau must determine the confidentiality claims that either PREPA has raised, or could raise, and confidentiality claims that may be raised by any other intervening party. On August 31, 2016, the Energy Bureau issued a resolution in case number CEPR-MI-2016-0009 ("August 31 Resolution") through which it established the rules and procedures applicable to confidentiality claims and the guidelines which would govern the disclosure of confidential information once the Energy Bureau issue a determination regarding such claims. The rules and procedures established would apply to any circumstances in which a person or entity is compelled to file before the Energy Bureau information it considers confidential.

The November 20 Motion filed by LEO does not mention specific events in the instant case in which the NDA has prevented access to information or any documents or information which should not be designated and treated as confidential. Moreover, a party who believes the information needed is essential to perform the work of his expert witness should request specifically the information and the reasons for the disclosure to the third party with all the consequences involved with the disclosure. As established in the August 31 Resolution, the PREB will address and resolve confidentiality claims on a case by case basis.

The Energy Bureau **ORDERS** LEO to, on or before ten (10) days from the notification date of this Resolution and Order, specifically identify information which it has not been granted access due to a confidentiality designation or the execution of an NDA, in order for the Energy Bureau to evaluate it in accordance with the provisions of Act 57-2014 and the August 31 Resolution.

Be it notified and published.


Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner


Ángel R. Rivera de la Cruz
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 13, 2020. I also certify that on January 13, 2020 a copy of this Resolution was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeep.com, c-aquino@prepa.com, mvazquez@diazvaz.law, kbolanos@diazvaz.law, acarbo@edf.org, javier.ruajovet@sunrun.com, pedrosaade5@gmail.com, rmurthy@earthjustice.org, carlos.reyes@ecoelectrica.com, ccf@tcmrslaw.com, victorluisgonzalez@yahoo.com, mgrpcorp@gmail.com, hriviera@oipc.pr.gov, jrivers@cnslpr.com, manuelgabrielfernandez@gmail.com, acasellas@amgprlaw.com, corey.brady@weil.com, maortiz@lvprlaw.com, rnegrón@dnlawpr.com, paul.demoudt@shell.com, escott@ferraiuoli.com, sproctor@huntonak.com, agraitfe@agraitlawpr.com, cfl@mcvpr.com, sierra@arctas.com, tonytorres2366@gmail.com, info@liga.coop, amaneser2020@gmail.com, mpietrantoni@mpmlawpr.com, apagan@mpmlawpr.com.

I sign this in San Juan, Puerto Rico, today January 13, 2020.


Wanda I. Cordero Morales
Clerk

