

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: Resolution and Order on Local Environmental Organization's Response Identifying Documents Designated as Confidential by PREPA; and on the Puerto Rico Electric Power Authority's Notice of Intent to File Opposition to LEO's January 23, 2020 Motion.

RESOLUTION AND ORDER

I. Introduction

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, LEO alleged that the Non-Disclosure Agreement ("NDA") should be modified, that the NDA should apply to specific information labelled "Validated Confidential Information", and 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. LEO also stated that the Energy Bureau should allow the parties' expert witnesses to sign the NDA 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* ("December 6 Objection"). On the December 6 Objection, PREPA argued that the right to access information does not operate without limitation, as established in Act 57-2014¹ and the August 31, 2016 Resolution in Case No. CEPR-MI-2016-0009 ("August 31, 2016 Resolution").

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 reaffirmed its position and restated the arguments presented in the November 20 Motion ("December 11 Motion").

On January 13, 2020, the Energy Bureau issued an Order in the instant case ("January 13 Order"). In the January 13 Order, the Energy Bureau stated that the November 20 Motion does not mention specific events in the instant case in which the NDA has prevented access

¹ Known as *The Puerto Rico Energy Transformation and Relief Act*, as amended.

to information or any documents or information which should not be designated and treated as confidential. The Energy Bureau also stated that any party who believes the information needed is essential to perform the work of their 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. For this reason, the Energy Bureau ordered LEO to 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, 2016 Resolution.

On January 23, 2020, pursuant to the January 13 Order, LEO filed a document titled *Local Environment Organizations' Response Identifying Documents Designated as Confidential by PREPA* ("Request"). In its Request, LEO identified several documents and information for which it has not been granted access due to a confidential designation.² LEO also identified certain documents for which, according to LEO, the confidentiality status is unclear.³ Finally, LEO restated its petition for the Energy Bureau to modify the NDA so that it should apply to specific information labelled "Validated Confidential Information" and to indicate that a party's signature of an NDA does not necessarily imply the loss of the right to question a confidentiality determination.⁴ LEO also stated that the Energy Bureau should allow the parties' witnesses to sign the NDA and review confidential material.⁵

Each of LEO's statements and petitions are addressed below. It is important to note that, after a thorough search of the Energy Bureau's files, we could not find an NDA signed by a LEO representative. A signed NDA is a prerequisite to access confidential information, as established in the August 31, 2016 Resolution.

II. Ruling on confidentiality designation with respect to documents identified in the August 27, 2019 Resolution and Order.

On August 27, 2019, the Energy Bureau issued a Resolution and Order in the instant case ("August 27, 2019 Resolution"). Through the August 27, 2019 Resolution, the Energy Bureau granted confidential status to certain documents it considered contained proprietary information, Critical Energy Infrastructure Information ("CEII") and customer identifying information.⁶ In addition, the Energy Bureau ordered PREPA to provide the reasons as to why the following information should not be public:⁷

² Request, p. 1.

³ *Id.*, p. 3.

⁴ *Id.*, p. 6.

⁵ *Id.*

⁶ August 27, 2019 Resolution, pp. 3 – 4.

⁷ *Id.*, pp. 5 – 6.



- Distribution_Sub_Feeder_v1.1.xlsx
- Distribution_Sub_Feeder_v1.xlsx
- Mini Grids CapEx Summary 1.22.2029.xlsx
- IRP_19_Substation_LoadProcessing_Final.xlsx
- Minigrid VOLL_final.xlsx
- MiniGrids CapEx Summary_wPriority_Final.xlsx
- Contingency_Analysis_Output_Final.xlsx
- 46_Mapa Maestro PRGrid64.pdf
- 46_Mapa PR_40_Grid_2
- PREPA Fossil New Resources 10-9 2018_v6.2.xlsx
- PREPA IRP Solar Wind Storage Costs-Updated CF-Wind-final.xlsxm
- PERPA Fuel Forecast 06032019_FINAL_with formulas.xlsx
- PREPA Fuel Price Designation (Conversion Cost details)_v2.xlsx
- PREPA Fuel Forecast 10232018_Client.xlsx

On September 6, 2019, PREPA filed a document titled *Motion in Compliance with Order Dated August 27, 2019 and in Further Support to Request for Confidentiality Designation* ("September 6 Motion"). On the September 6 Motion PREPA included its justification regarding the confidentiality designation of the above files.

PREPA stated that, after further analysis, the following documents can be designated as not confidential:⁸

- PREPA Fossil New Resources 10-9 2018_v6.2.xlsx
- PREPA IRP Solar Wind Storage Costs-Updated CF-Wind-final.xlsxm
- PERPA Fuel Forecast 06032019_FINAL_with formulas.xlsx
- PREPA Fuel Price Designation (Conversion Cost details)_v2.xlsx
- PREPA Fuel Forecast 10232018_Client.xlsx

Therefore, the Energy Bureau **DETERMINES** that these documents shall be public. On the other hand, PREPA argued that the remaining documents shall be considered confidential since, according to PREPA, they contain CEII.⁹ In addition, PREPA requested the Energy Bureau to reconsider its decision regarding the file "Existing Units Parameters_12292018_V6.1.xlsx". In support of its petition, PREPA argued that such file "contains sensitive information on PREPA's generation units and on AES and EcoEléctrica generating units that can be justified as Trade Secret Information."¹⁰ After evaluating PREPA's arguments, the Energy Bureau **GRANTS** PREPA's request for confidential treatment for the following documents:

⁸ September 6 Motion, pp. 5 – 6.

⁹ *Id.*, pp. 3 – 5.

¹⁰ *Id.*, p. 2.



File	Reason
Existing Units Parameters_12292018_V6.1.xlsx	Proprietary Information
Mini Grids CapEx Summary 1.22.2029.xlsx	CEII
IRP_19_Substation_LoadProcessing_Final.xlsx	CEII
Minigrid VOLL_final.xlsx	CEII
MiniGrids CapEx Summary_wPriority_Final.xlsx	CEII
Contingency_Analysis_Output_Final.xlsx	CEII
46_Mapa Maestro PRGrid64.pdf	CEII
46_Mapa PR_40_Grid_2	CEII

III. LEO's request to access certain confidential documents

In its Request, LEO states that the information contained in the IRP designated as confidential "is necessary for its experts to fully participate in this proceeding."¹¹ According to LEO, their experts "have received confidential documents in other proceedings, they have experience taking the necessary steps to ensure the protection of these documents, and they are willing to sign the Non-Disclosure Agreement provided by the Bureau."¹²

LEO provided a list of documents for which they are requesting access. LEO divided the documents in several areas to include the IRP; Appendix 1 to the IRP; the AES Coal Plan Conversion Assessment; First, Second and Fourth Sets of Energy Bureau's ROIs; the August 13, 2019 Presentation Documents; and LEO's Second and Third ROIs. We will address these areas below.

It is important to note that through the July 3, 2019, Resolution and Order in the instant case, the Energy Bureau established that all confidential treatment request will be evaluated in accordance with the guidelines established in the August 31, 2016 Resolution.¹³ To that effect, the August 31, 2016 Resolution establishes that documents designated as trade secret information can only be accessed by the Producing Party and the Energy Bureau.¹⁴ Moreover, the August 31, 2016 Resolution also establishes that documents designated as CEII may be accessed by the parties' authorized representatives **only after they have executed and delivered the NDA.**¹⁵

Notwithstanding the above, due to the sensitive nature of CEII documents, the parties' authorized representatives can only review such documents at the Energy Bureau or the

¹¹ *Id.*, p. 4.

¹² *Id.*

¹³ July 3, 2019, Resolution and Order, p. 8.

¹⁴ August 31, 2016 Resolution, p. 4.

¹⁵ *Id.*



Producing Party's offices.¹⁶ During said review, the authorized representatives may not copy or disseminate the reviewed information and may not bring any recording device to the viewing room.¹⁷

1. IRP; Appendix 1 to IRP; AES Coal Plan Conversion Assessment; First, Second and Fourth Sets of Energy Bureau's ROIs.

In its Request, LEO asked the Energy Bureau to grant them access to the following documents pertaining to the IRP; Appendix 1 to the IRP; the AES Coal Plan Conversion Assessment; and to the First, Second and Fourth Sets of Energy Bureau's ROIs:¹⁸

File	Status
Existing Units Parameters_12292018_V6.1.xlsx	Confidential - Proprietary Info
Distribution_Sub_Feeder_v1.1.xlsx	Confidential - CEII
Mini Grids CapEx Summary 1.22.2029.xlsx	Confidential - CEII
IRP_19_Substation_LoadProcessing_Final.xlsx	Confidential - CEII
Minigrid VOLL_final.xlsx	Confidential - CEII
MiniGrids CapEx Summary_wPriority_Final.xlsx	Confidential - CEII
Contingency_Analysis_Output_Final.xlsx	Confidential - CEII
46_Mapa Maestro PRGrid64.pdf	Confidential - CEII
46_Mapa PR_40_Grid_2	Confidential - CEII
Distribution DG Impact v2.1.xlsx	Confidential - Customer identifying information
MAX FEED AMP 083016 1200 2100.xlsx	Confidential - CEII
DG Impact estimation.xlsx	Confidential - Customer identifying information
DG Impact v2.xlsx	Confidential - Customer identifying information
Distribution DG Impact v2.xlsx	Confidential - Customer identifying information
"Maps" folder in the Appendix 1 folder (5 files; ITEM 46)	Confidential - CEII
AWS WIND SITES.xlsx	Confidential - Proprietary Info
Generic Wind Profiles 20190418 vS.xlsx	Confidential - Proprietary Info
20131104 Upd Solar TS Hurrlrene.zip	Confidential - Proprietary Info
DEL 2 Updated Wind data.zip	Confidential - Proprietary Info
AWS Solar v4.3.xlsx	Confidential - Proprietary Info
A WS Wind v4.3.xlsx	Confidential - Proprietary Info
Section 4-AES Steady State Assessment	Confidential - CEII

¹⁶ Id.

¹⁷ Id.


¹⁸ The Energy Bureau classified these documents as confidential through Resolution and Order of June 10, 2019, July 3, 2019, August 27, 2019, September 17, 2019 and September 23, 2019.



File	Status
Confidential-PREP A ROI_2_04 Attach 3.zip	Confidential - CEII
Confidential-PREP A ROI_2_04 Attach 4.pdf	Confidential - CEII
Confidential-PREP A ROI_2_04 Attach 5.xlsx	Confidential - CEII
Question PREB-PREP A-02-09: Confidential-PREP A ROI_4_9 Attach 1.pdf	Confidential - CEII
Question PREB-PREPA-04-43: Confidential-PREP A ROI_4_43 Attach 1.pdf	Confidential - CEII
Question PREB-PREPA-04-43: Confidential-PREP A ROI_4_43 Attach 2.pdf	Confidential - CEII
Question PREB-PREPA-04-44: Confidential PREP A ROI_4_44 Attach 1.xlsx	Confidential - CEII
Question PREB-PREPA-04-50: Confidential PREP A ROI_4_50 Attach 1.pdf	Confidential - CEII
Question PREB-PREPA-04-50: Confidential PREP A ROI_4_50 Attach 2.pdf	Confidential - CEII
Question PREB-PREPA-04-50: Confidential PREP A ROI_4_50 Attach 3.pdf	Confidential - CEII
Question PREB-PREPA-04-50: Confidential PREP A ROI_4_50 Attach 4.pdf	Confidential - CEII
Question PREB-PREPA-04-50: Confidential PREP A ROI_4_50 Attach 5.pdf	Confidential - CEII
Question PREB-PREPA-04-50: Confidential PREP A ROI_4_50 Attach 6.pdf	Confidential - CEII
Question PREB-PREPA-04-50: Confidential PREP A ROI_4_50 Attach 7.pdf	Confidential - CEII
Confidential-PREPA ROI_4_21 Attach 1.xlsx	Confidential - CEII
Confidential-PREPA ROI_4_22 Attach 1.xlsx	Confidential - CEII
Question PREB-PREPA-01-06: Confidential-PREP A ROI_1_6 Attach 1.docx	Confidential - CEII
Question PREB-PREPA-01-06: Confidential-PREP A ROI_1_6 Attach 2.xlsx	Confidential - CEII
Question PREB-PREPA-01-16: Confidential-PREP A ROI_1_16 Attach 1.pdf	Confidential - CEII
Question PREB-PREPA-01-16: Confidential-PREP A ROI_1_16 Attach 2.pdf	Confidential - CEII
Question PREB-PREPA-01-16: Confidential-PREP A ROI_1_16 Attach 3.pdf	Confidential - CEII
Question PREB-PREPA-01-16: Confidential-PREP A ROI_1_16 Attach 4.pdf	Confidential - CEII
Question PREB-PREPA-01-16: Confidential-PREP A ROI_1_16 Attach 5.pdf	Confidential - CEII
Question PREB-PREPA-01-16: Confidential-PREP A ROI_1_16 Attach 6.pdf	Confidential - CEII

Handwritten signature and initials in blue ink.





File	Status
Question PREB-PREPA-01-56: Confidential-PREP A ROI_1_56 Attach 1.xlsx	Confidential - Trade Secret
Confidential-PREP A ROI 2 09 Attach 3.xlsx	Confidential - CEII
Confidential-PREP A ROI 2 09 Attach 4.xlsx	Confidential - CEII
Confidential-PREP A ROI 2 09 Attach 5.xlsx	Confidential - CEII
Confidential-PREP A ROI 2 09 Attach 6.xlsx	Confidential - CEII
Confidential-PREP A ROI 2 09 Attach 7.xlsx	Confidential - CEII
Confidential-PREP A ROI 2 09 Attach 8.xlsx	Confidential - CEII
Confidential-PREP A ROI 2 09 Attach 9.xlsx	Confidential - CEII
Confidential-PREP A ROI 2 17 Attach 1.pdf	Confidential - Trade Secret

The Energy Bureau classified as Confidential – CEII, Confidential – Trade Secret/Propriety Information or Confidential - Customer Identifying Information the aforementioned documents. In accordance with the provisions of the August 31, 2016 Resolution, the documents classified as Confidential – Trade Secret/Propriety Information can only be accessed by the Producing Party (i.e. PREPA) and the Energy Bureau. Therefore, the Energy Bureau **DENIES** LEO's Request with respect to the documents classified as Confidential – Trade Secret/Propriety Information.

As we stated before, in order to access the documents classified as Confidential – CEII, LEO's authorized representatives must sign the required NDA and follow the procedure established in the August 31, 2016 Resolution. On August 2, 2019, the Energy Bureau sent a letter via email to LEO's legal representation explaining the NDA requirement. The letter also included a copy of the NDA. To this date, no LEO representative has signed the NDA. Since signing the NDA is a prerequisite to access documents classified as Confidential – CEII, and since no LEO representative has signed said NDA, the Energy Bureau **DENIES** LEO's Request with respect to the documents classified as Confidential – CEII. The Energy Bureau might reconsider this determination once LEO's authorized representatives sign the required NDA.

Similar to the documents classified as Confidential – CEII, in order to obtain access to the documents classified as Confidential - Customer Identifying Information LEO's authorized representatives must sign the required NDA. Since no LEO representative has signed said NDA, the Energy Bureau **DENIES** LEO's Request with respect to the documents classified as Confidential – Customer Identifying Information. The Energy Bureau might reconsider this determination once LEO's authorized representatives sign the required NDA.

2. August 13, 2019 Presentation Documents.

In its Request, LEO asked the Energy Bureau to grant them access to the documents "04 Confidential - PREPA IRP 2019 - MiniGrid_and_ Transmission_Draft.pdf" and "05 Confidential and CEII - PREPA IRP 2019 - MiniGrid_and_ Transmission_Draft.pdf". On August 13, 2019, the Energy Bureau issued a Resolution through which it classified as Confidential the documents "04 Confidential - PREPA IRP 2019 - MiniGrid_and_ Transmission_Draft.pdf"

and "05 Confidential and CEII - PREPA IRP 2019 - MiniGrid_and_Transmission_Draft.pdf".¹⁹ Document "04 Confidential - PREPA IRP 2019 - MiniGrid_and_Transmission_Draft.pdf" contains trade secrets, whereas the document "05 Confidential and CEII - PREPA IRP 2019 - MiniGrid_and_Transmission_Draft.pdf" contains trade secrets and CEII.

Since access to trade secret information is restricted to the Producing Party and the Energy Bureau, LEO's Request with respect to the documents "04 Confidential - PREPA IRP 2019 - MiniGrid_and_Transmission_Draft.pdf" and "05 Confidential and CEII - PREPA IRP 2019 - MiniGrid_and_Transmission_Draft.pdf" is **DENIED**.

3. LEO's Second and Third ROIs.

In its Request, LEO inform the Energy Bureau that PREPA did not provide certain documents related to LEO's Second and Third ROIs. Specifically, LEO stated that PREPA did not provide certain email communications between the Fiscal Oversight Management Board and PREPA's consultant, Siemens, regarding PREPA's Fiscal Plan sales forecast.²⁰ In addition, LEO argued that PREPA failed to provide the attachments to a United States Coast Guard letter of recommendation, dated September 26, 2018.²¹ Finally, LEO stated that PREPA failed to provide weekly status reports on the conversion of San Juan Units 5 and 6, as requested on LEO's Third ROI.²²

i. FOMB Emails.

Question #23 of LEO' Second ROI requested PREPA to "provide all communications from the Fiscal Oversight Management Board concerning its electricity sales forecast."²³ In its response to said question, PREPA stated, among other things, that "[e]mail communications between Siemens and FOMB are confidential."²⁴ However, PREPA did not provide a justification for its claim that the emails between the Fiscal Oversight Management Board and PREPA's consultant, Siemens, are confidential.

The Energy Bureau **ORDERS** PREPA to file, on or before 3:00 p.m. on January 31, 2020, a legal brief regarding the confidentiality claim for the emails between the Fiscal Oversight Management Board and PREPA's consultant, Siemens.

¹⁹ August 13, 2019, Resolution, pp. 1 – 2.

²⁰ Request, p. 2.

²¹ August 13, 2019, Resolution, pp. 1 – 2.

²² *Id.*

²³ *Id.* See also LEO's Second ROI, Question #23, August 23, 2019.

²⁴ *The Puerto Rico Electric Power Authority Additional Responses to the Second Discovery Request to Puerto Rico Electric Power Authority from Local Environmental Organizations*, p. 3, October 15, 2019.



ii. United States Coast Guard Letter of Recommendation.

In its answer to Question #6 of LEO's Third ROI, PREPA included a letter from the United States Coast Guard, dated September 26, 2018. The referenced letter states that it has two enclosures: (1) Letter of Recommendation Analysis (Redacted) and (2) Letter of Recommendation Analysis (SSI).²⁵ However, PREPA failed to include such enclosures with its filing. Therefore, the Energy Bureau **ORDERS** PREPA to file, on or before 3:00 p.m. on January 31, 2020, Enclosures (1) and (2) of the September 26, 2018, United States Coast Guard Letter.

iii. Weekly status reports with respect to the San Juan Units 5 and 6 conversions.

LEO stated that Question 19 of its Third ROI asked for all weekly status reports on the conversion of San Juan Units 5 and 6 and the micro fuel handling facility. According to LEO, PREPA provided the report for the week of September 30, 2019, but has refused to provide any further reports. The Energy Bureau **ORDERS** PREPA to, on or before 3:00 p.m. on January 31, 2020, submit LEO the weekly status reports regarding the conversion of San Juan Units 5 and 6 and the micro fuel facility, corresponding to the period of October 1, 2019 to the present.

IV. Aurora modeling files.

On the August 27, 2019 Resolution the Energy Bureau ordered PREPA to submit the Aurora modeling files in a readable format within ten (10) days from the notification of the August 27, 2019 Resolution, in order to assign the corresponding confidential designation.²⁶ On September 6, 2019, PREPA filed a document titled *Motion in Compliance with Order Dated August 27, 2019 and in Further Support to Request for Confidentiality Designation* ("September 6 Motion"). In its September 6 Motion, PREPA argued that it could provide the Aurora inputs tables in MS-Excel format, however, according to PREPA, such files would have little value to the user since many Aurora functionalities are not included in the files and such files contain links to external tables and documents that would make it difficult to follow.²⁷

During the course of this case the Energy Bureau obtained the necessary information and documents, through PREPA's filing and the discovery process, in order to thoroughly evaluate the proposed IRP. Although the information contained in the Aurora model files is already part of the administrative file of the instant case in the form of working papers and other files, the Energy Bureau determines that, in order to have a more robust docket, PREPA

²⁵ United States Coast Guard Letter of September 26, 2018, signed by E. P. King, Captain, U.S. Coast Guard, Captain of the Port.

²⁶ August 27, 2019 Resolution, p. 6.

²⁷ September 6 Motion, p. 6.



must submit the Aurora model files in a readable format for the following runs: S3S2, S4S2 and ESM (base). PREPA must provide such input files in Excel format or any other suitable format within fifteen (15) days from the notification date of this Resolution and Order.

V. Request to amend the Non-Disclosure Agreement.

As we expressed before, in its Request, LEO restated its petition, as stated in the November 20 Motion and the December 11 Motion, for the Energy Bureau to modify the NDA so that it should apply to specific information labeled “Validated Confidential Information” and to indicate that a party’s signature of an NDA does not necessarily imply the loss of the right to question a confidentiality determination.²⁸ LEO also stated that the Energy Bureau should allow the parties’ witnesses to sign the NDA and review confidential material.²⁹

According to the provisions of the August 31, 2016 Resolution the term “Validated Confidential Information” refers to such information for which the Energy Bureau grants some type of confidential treatment.³⁰ As such, any information or document the Energy Bureau classifies as Confidential – CEII – Trade Secret/Propriety Information - Customer Identifying Information, or any other type of Confidential designation, shall be construed as “Validated Confidential Information” for the purpose of the August 31, 2016 Resolution, and any NDA signed by virtue of said resolution.

Moreover, the standard NDA used in every Energy Bureau Proceeding since 2016, defines “Confidential Information” as information labeled by a party as “confidential” or “privileged”, unless the Energy Bureau or a court of law decides otherwise; any information the Energy Bureau or a court of law marks or treats as “confidential” or “privileged”; or any document filed by a party in an Administrative Proceeding in relation to the information described above. The purpose of the NDA and the procedures established in the August 31, 2016 Resolution, is to provide protection against the inappropriate use or disclosure of confidential or privileged information, and to facilitate an orderly process to identify and protect such information.³¹

For the purpose of this proceeding, and in accordance with the provisions of the August 31, 2016 Resolution, the NDA will apply to all information the Energy Bureau classifies as confidential, may it be CEII, trade secret/proprietary information, customer identifying information, or any other information classified as such. Therefore, the Energy Bureau **DENIES** LEO’s request to modify the NDA so that it should apply to specific

²⁸ *Id.*, p. 6.

²⁹ *Id.*

³⁰ August 31, 2016 Resolution, p. 3, Paragraph C.2.

³¹ *Id.*, p. 1.



information labeled "Validated Confidential Information", since such distinction is not necessary.

Regarding the parties right to object a confidentiality claim or a confidentiality determination, we must point out that the August 31, 2016 Resolution clearly states that "[a]ny party may object a confidentiality claim presented by any other party within seven (7) days, counted from the date the Confidential Information is filed and notified."³² Moreover, in each resolution in the instant case in which the Energy Bureau has issued a determination of confidentiality, it recognized the affected parties' right to request a reconsideration or to appeal the decision to the Puerto Rico Court of Appeals.³³

It is important to distinguish between a party to the proceeding or an intervenor, and their authorized representatives. The right to object a confidentiality claim or a confidentiality determination belongs to the party or the intervenor, in this case LEO as an institution. The right to object such claims, or determinations doesn't belong to LEO's lawyers, consultants or any other authorized representatives. The NDA is applicable to a corporeal person, may it be a lawyer, a consultant or any other authorized representative, which are the persons called to sign it. LEO as an institution cannot sign the NDA, LEO is not a corporeal person. The right to object a confidentiality claim or a confidentiality determination belongs to LEO, the NDA is applicable to its authorized representatives that act on LEO's behalf.

The fact that LEO's authorized representatives sign an NDA doesn't affect LEO's right to object a confidentiality claim or a confidentiality determination. As such, LEO's proposed NDA modification to indicate that a party's signature of an NDA does not necessarily imply the loss of the right to question a confidentiality determination is unnecessary. Therefore, the Energy Bureau **DENIES** LEO's request to modify the NDA to indicate that a party's signature of an NDA does not necessarily imply the loss of the right to question a confidentiality determination. LEO's right to object a confidentiality claim or a confidentiality determination exists, even if its authorized representatives sign an NDA.

Regarding LEO's petition to allow the parties' witnesses to sign the NDA and review confidential material we must express that this option has always been available to LEO. The term "Authorized Representative", as it pertains to the August 31, 2016 Resolution, is not restricted to the parties' lawyers. As with other major cases before the Energy Bureau, parties' external consultants are given the opportunity to sign an NDA in order to gain access to confidential information.³⁴

³² *Id.*, p. 3, Paragraph B.

³³ See Resolution and Order of June 10, 2019, July 3, 2019, August 27, 2019, September 17, 2019 and September 23, 2019.

³⁴ See for example, Docket No. CEPR-AP-2015-0001, In Re: Puerto Rico Electric Power Authority Rate Review and Docket No. CEPR-AP-2015-0002, In Re: Integrated Resource Plan for the Puerto Rico Electric Power Authority. See also Paragraph (b) of Section 6.15 of Act 57-2014; "To such purposes, the Energy [Bureau] shall



In order for LEO's authorized representatives to gain access to confidential information, limited by the provisions of the August 31, 2016 Resolution, all they have to do is execute the NDA and submit it for Energy Bureau's approval. However, as we stated before, to this date, no LEO representative has signed the NDA even though LEO have been informed of this requirement since August 2, 2019.

VI. PREPA's Notice of Intent to File Opposition to LEO's January 23, 2020 Motion

On January 27, 2020, PREPA filed a document titled *Notice of Intent to File Opposition to LEO's January 23, 2020 Motion* ("Notice of Intent"). Through its Notice of Intent, PREPA informed the Energy Bureau its intent to file an opposition to LEO's Request.³⁵ For this reason, PREPA requested a term of ten (10) days to file a motion of opposition.³⁶

Based on today's ruling, the Notice of Intent is moot.

VII. Conclusion

For all of the above, the Energy Bureau **DENIES** LEO's Request as determined in Parts III and V of this Resolution and Order. The Energy Bureau **GRANTS** LEO's Request with respect to the weekly status reports regarding the conversion of San Juan Units 5 and 6.

The Energy Bureau **ORDERS** PREPA to file, on or before 3:00 p.m. on January 31, 2020, Enclosures (1) and (2) of the September 26, 2018, United States Coast Guard Letter. The Energy Bureau **ORDERS** PREPA to, on or before 3:00 p.m. on January 31, 2020, submit LEO the weekly status reports regarding the conversion of San Juan Units 5 and 6 and the micro fuel facility, corresponding to the period of October 1, 2019 to the present. The Energy Bureau **ORDERS** PREPA to file, on or before 3:00 p.m. on January 31, 2020, a legal brief regarding the request for confidential treatment with respect to the document discussed in part III.3.i. above. The Energy Bureau **ORDERS** PREPA to file, within fifteen (15) days of the notification date of this Resolution and Order, the Aurora modeling files in a readable format for the following runs: S3S2, S4S2 and ESM (base). The Energy Bureau rules that PREPA's Notice of Intent is moot.

Finally, the Energy Bureau **WARNS** PREPA that noncompliance with the provisions of Act 57-2014⁴, the Energy Bureau's regulations and/or the Energy Bureau's orders is sufficient cause for the imposition of fines and other administrative sanctions of up to \$25,000 per day per violation.

provide access to the document or the privileged portion of the document only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.

³⁵ Notice of Intent, ¶ 2.

³⁶ *Id.*, ¶ 3.



Be it notified and published.



Edison Avilés Deliz
Chairman

Ángel R. Rivera de la Cruz
Associate Commissioner


Lillian Mateo Santos
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 29, 2020. I also certify that on January 29, 2020 a copy of this Resolution was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aepr.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, jriviera@cnslpr.com, manuelgabrielfernandez@gmail.com, acasellas@amgprlaw.com, corey.brady@weil.com, maortiz@lvprlaw.com, rnegron@dnlawpr.com, paul.demoudt@shell.com, escott@ferraiuoli.com, sproctor@huntonak.com, agraitfe@agraitlawpr.com, castrodieppalaw@gmail.com, voxpopulix@gmail.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 29, 2020.



Wanda I. Cordero Morales
Clerk