

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

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Received:
Mar 12, 2020
2:31 PM

IN RE:

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

CASE NO.:

CEPR-AP-2018-0001

SUBJECT:

Request for Confidential Designation and
Treatment

**MEMORANDUM OF LAW REQUESTING CONFIDENTIAL TREATMENT FOR
EXHIBITS ATTACHED TO THE PRODUCTION OF DOCUMENTS IN RESPONSE TO
INFORMATION REQUESTS MADE DURING IRP EVIDENTIARY HEARINGS**

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:

I. INTRODUCTION

On March 12, 2020, PREPA¹ filed with the Energy Bureau the *Production of Documents in Response to Information Requests Made During IRP Evidentiary Hearings* (the “March 12 Motion”). The March 12 Motion was accompanied by several exhibits out of which, one was submitted under seal and other that was redacted to maintain portions under seal.² In compliance with section 1.15 of Regulation 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation* and Resolution *In Re: Policy Management of Confidential Information in Procedures Before the Commission, CEPR-MI-2016-0009*, PREPA herein submits a memorandum of law further explaining the legal basis in support of its argument that exhibits A

¹ Capitalized terms not defined herein shall have the meanings ascribed to the in the Motion in *Motion in Compliance with Order dated February 24, 2020* filed today, February 28, 2020.

² Exhibit A, the Nodal Spreadsheet analysis: Confidential_PREPA: S4S2_V5.0 Metrics_CR7_R7 Storage Adj_Final Generation Bus Mapping 20190521.xlsx. and Exhibit B, the PREPA *Generation Directorate Generation Fleet Status, rev.02/24/2020*.

and B to the March 12 Motion contain confidential information and that said information should remain under seal.

II. REQUEST FOR CONFIDENTIAL DESIGNATION AND TREATMENT

- a. **Exhibit A- Nodal Spreadsheet Analysis** Confidential_PREPA: S4S2_V5.0 Metrics_CR7_R7 Storage Adj_Final Generation Bus Mapping 20190521.xlsx.

The Nodal Spreadsheet Analysis contains trade secrets as it contains performance curves of the units of diesel that, if disclosed, could place PREPA in a competitively disadvantageous position in dealing with potential proponents, ultimately harming customers. Therefore, PREPA requests the Energy Bureau to designate the files as confidential.

- b. **Exhibit B- Generation Report** PREPA *Generation Directorate Generation Fleet Status, rev. 02/24/2020.*

The Generation Report contains different types of information organized in columns. One column contains information that describes specific infrastructure that has been damaged and maybe need to be repaired, restored or replaced. The reports have been submitted in redacted versions, thus protecting information that is proprietary of PREPA and should be kept confidential. The disclosing of said information may place PREPA in a competitively disadvantageous position when dealing with potential proponents to repair the units, provide services to repair the units, sell parts to repair the units, or similar transactions, ultimately harming customers. Therefore, PREPA requests the Energy Bureau to designate the redacted information as confidential.

III. MEMORANDUM OF LAW

a. Trade Secrets

Exhibits A and B to the March 12 Motion contain information that qualifies as proprietary and includes trade secrets (*i.e.*, confidential and other protected information) which is protected under Puerto Rico law.³ The Energy Bureau's regulations specifically provide for the designation of such information as Confidential.⁴

The *Industrial and Trade Secret Protection Act of Puerto Rico* ("Act 80-2011")⁵ 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.

10 L.P.R.A. § 4132

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. These examples are not exhaustive, however, and the Legislative Assembly has acknowledged in Act 80-2011's Statement of Motives, 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

³ See *Industrial and Trade Secret Protection Act of Puerto Rico*, as amended, Act No. 80-2011; see also Puerto Rico Energy Transformation and RELIEF Act, as amended, Act No. 57-2014, § 6.15 (establishing that any person having the obligation to submit information to the Energy Bureau can request privileged or confidential treatment of any Information which the submitting party believes to warrant such protection).

⁴ Regulation 8815, § 10.2 (recognizing appropriateness of according proprietary information and trade secrets Confidential treatment); *cf* Regulation 8594, § 1.15 (providing for designation of information submitted in support of an IRP as Confidential).

⁵ 10 L.P.R.A. § 4131, *et seq.*

require registration or compliance with any formalities in order to be protected." *Id.*

As the Legislative Assembly has noted, "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." *Id.*

PREPA, as a public body whose costs are ultimately borne by citizens of Puerto Rico, has a strong interest in protecting its trade secrets. The information included in March 4 Motion attachments is proprietary, commercially sensitive and qualifies as trade secrets. The disclosure of this information could place PREPA in a competitively disadvantageous position in dealing with potential proponents, ultimately harming customers.

IV. CONCLUSION

Wherefore, PREPA respectfully requests the Energy Bureau to (1) find that exhibits A and B of the March 12 Motion contain trade secrets, to (2) determine that said exhibits are confidential and also, to (3) keep the file marked as Exhibit A under seal and Exhibit B's redacted information under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of March 2020.

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Exhibit A of the March 12 Motion

Confidential_PREPA: S4S2_V5.0 Metrics_CR7_R7 Storage Adj_Final Generation Bus Mapping
20190521.xlsx.

[Exhibit has been presented under seal in a zip file.]

Exhibit B of the March 12 Motion

PREPA *Generation Directorate Generation Fleet Status, Rev. 02/24/2020.*

[Exhibit has been presented in a redacted version.]

CERTIFICATE OF SERVICE

It is hereby certified that, on this same date I have filed the above motion using the Energy Bureau's Electronic Filing System, at the following address: <http://radicacion.energia.pr.gov> and that a courtesy copy of the filing was sent via e-mail to: sierra@arctas.com; tonytorres2366@gmail.com; cfl@mcvpr.com; gnr@mcvpr.com; info@liga.coop; amaneser2020@gmail.com; hriviera@oipc.pr.gov; jriviera@cnslpr.com; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com; manuelgabrielfernandez@gmail.com; acarbo@edf.org; pedrosaade5@gmail.com; rmurthy@earthjustice.org; rstgo2@gmail.com; larroyo@earthjustice.org; jluebkekmann@earthjustice.org; acasellas@amgprlaw.com; loliver@amgprlaw.com; epo@amgprlaw.com; robert.berezin@weil.com; marcia.goldstein@weil.com; jonathan.polkes@weil.com; gregory.silbert@weil.com; agraitfe@agraitlawpr.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; castrodiappalaw@gmail.com; voxpopulix@gmail.com; paul.demoudt@shell.com; javier.ruajovet@sunrun.com; escott@ferraiuoli.com; SProctor@huntonak.com; GiaCribbs@huntonak.com; mgrpcorp@gmail.com; aconer.pr@gmail.com; axel.colon@aes.com; rtorbert@rmi.org; apagan@mpmlawpr.com; sboxerman@sidley.com; bmundel@sidley.com.

In San Juan, Puerto Rico, this 12th day of March 2020.

s/ Katuska Bolaños
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