

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

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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  
DOCUMENTS PRODUCED IN COMPLIANCE WITH ORDER

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**

Today, on February 28,2020, the Puerto Rico Electric Power Authority PREPA<sup>1</sup> filed with the Energy Bureau the *Motion in Compliance with Order dated February 24,2020* (the “Motion in Compliance”). The Motion in Compliance was accompanied by three exhibits that were submitted under seal<sup>2</sup>. In the February 28 Motion PREPA informed the Energy Bureau that 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 de Commission, CEPR-MI-2016-0009*, PREPA herein submits a memorandum of law further explaining the legal basis in support of its argument that the

<sup>1</sup> 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.

<sup>2</sup> Due to the voluminous size of the exhibits, these have been included in a Share Point for the Energy Bureau to access them.

information attached to the Motion in Compliance contains confidential information and should remain under seal.

## **I. AURORA MODELING FILES**

The Exhibits I, II, III of the Motion in compliance are one same file for the different requested model runs and as such contain the same confidentiality designations.

- a. Confidential-PREPA- ESM Base Load Aurora input tables. *See* Exhibit I
- b. Confidential- PREPA- Scenario 3 Base Load Aurora input tables. *See* Exhibit II
- c. Confidential- PREPA- Scenario 4 Base Load Aurora input tables. *See* Exhibit III

The input tables of Aurora Modeling files are submitted as confidential, considering that the data pertains to detailed operational specifications of the generating units and transmission interconnections that could be used to compromise the integrity of Puerto Rico's electric system and should be protected as Critical Energy Infrastructure Information (CEII). The Aurora Modeling files also contain 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.

## **II. REQUEST FOR CONFIDENTIAL DESIGNATION AND TREATMENT**

### **a. Trade Secrets**

All the exhibits to the Motion in Compliance contain information that qualifies as proprietary and includes trade secrets (*i.e.*, confidential and other protected information) which is

protected under Puerto Rico law.<sup>3</sup> The Energy Bureau's regulations specifically provide for the designation of such information as Confidential.<sup>4</sup>

The *Industrial and Trade Secret Protection Act of Puerto Rico* ("Act 80-2011")<sup>5</sup> 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 require registration or compliance with any formalities in order to be protected."

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

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<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 10 L.P.R.A. § 4131, *et seq.*

secret, whether directly from the owner or by other means."

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 the draft request for proposals and attachments thereto 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.

**b. Critical Energy Infrastructure Information**

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 this motion based on its careful assessment of the contents of the materials.

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").

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).

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.

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.

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.

The Energy Bureau, on numerous occasions in prior dockets has accepted PREPA's designations of material as CEII, recognizing that both federal law and Puerto Rico law support such designations when applicable.

### III. CONCLUSION

Wherefore, PREPA respectfully requests the Energy Bureau to find that exhibits I, II, III of the Motion in Compliance contain trade secrets and CEII information, determine that said exhibits are confidential and also, to keep said exhibits under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28<sup>th</sup> day of February 2020.

*/s/ Katuska Bolaños*  
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Exhibit I -Motion in Compliance

Confidential- PREPA- ESM Base Load Aurora input tables.

*[Exhibit has been presented under seal.]*

Exhibit II -Motion in Compliance

Confidential- PREPA- Scenario 3 Base Load Aurora input tables.

*[Exhibit has been presented under seal.]*



Exhibit III- Motion in Compliance

Confidential- PREPA- Scenario 4 Base Load Aurora input tables.

*[Exhibit has been presented under seal.]*