

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

NEBR

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IN RE:

**REQUEST FOR PROPOSALS FOR
TEMPORARY EMERGENCY
GENERATION**

CASE NO.: ~~NEPR-AP-2019-0001~~ **NEPR-AP-2020-0001**

SUBJECT:

Request for Confidential Designation and
Treatment

**MEMORANDUM OF LAW REQUESTING CONFIDENTIAL TREATMENT
FOR CERTAIN EXHIBITS ATTACHED TO THE NOTIFICATION AND
URGENT REQUEST FOR APPROVAL OF REQUEST FOR PROPOSALS
FOR TEMPORARY EMERGENCY GENERATION**

TO THE HONORABLE 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, February 12, 2020, PREPA submitted a Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation (the "Request for Approval"). The Request for Approval is supported with three exhibits. Exhibits B and C were submitted under seal. In compliance with the (i) *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, the (ii) Resolution entered in case CEPR-MI-2016-0009, *In Re: Policy on Management of Confidential Information in Procedures Before the Commission* and the (iii) *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet* (the "Joint Regulation"), PREPA herein submits a memorandum of law further explaining

the legal basis in support of its argument that the information attached to the Request for Approval contains confidential information and deserves to remain under seal.

II. REQUEST FOR CONFIDENTIAL DESIGNATION AND TREATMENT

a. Trade Secrets

Exhibits B and C of the Request for Approval contain information that qualifies as proprietary and includes trade secrets (*i.e.*, confidential and other protected information) which is protected under Puerto Rico law.¹ PREB regulations specifically provide for the designation of such information as Confidential.²

The *Industrial and Trade Secret Protection Act of Puerto Rico* (“Act 80-2011”)³ 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

¹ 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).

² 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).

³ 10 L.P.R.A. § 4131, *et seq.*

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 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. Ongoing Administrative Competitive Procurement Process

Exhibit B is the draft request for proposals for temporary emergency generation together with its exhibits and, Exhibit C is a business case assessment prepared by PREPA in which PREPA explains why the Project⁴ is necessary. Both documents are part of the administrative competitive procurement process. Article 4.2 of the Joint Regulation provides that "[t]hese communications shall be maintained confidential while the administrative competitive procurement process is ongoing."

⁴ As defined in Regulation 8815, Art. 2.20

III. CONCLUSION

Wherefore, PREPA respectfully requests the Energy Bureau to find that exhibits B and C of the Request for Approval contain trade secrets and information protected by the Joint Regulation and to designate the aforementioned exhibits as Confidential.

RESPECTFULLY SUBMITTED.

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

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Exhibit B of the Request for Approval

[This exhibit has been submitted under seal.]

Exhibit C of the Request for Approval

[This exhibit has been submitted under seal]