

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

~~NEPR~~  
**Received:**  
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**IN RE:**

**PUERTO RICO ELECTRIC POWER  
AUTHORITY PERMANENT RATE**

CASE NO.:

NEPR-MI-2020-0001

SUBJECT:

Request for Confidential Designation and  
Treatment

**REQUEST FOR CONFIDENTIAL DESIGNATION OF ATTACHMENT TO  
MOTION IN PARTIAL COMPLIANCE WITH BENCH ORDER AND  
REQUEST FOR EXTENSION OF TIME**

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, March 19, 2020, the PREPA filed a *Motion in Partial Compliance with Bench Order and Request for Extension of Time* (the “Motion in Compliance”). The Motion in Compliance is accompanied by an excel spreadsheet attachment. The excel spreadsheet in its native form has (1) formulas, calculations and procedures that are proprietary information of PREPA, that (2) should not be made public in their native form and (iii) are protected under Puerto Rico law. *See* Exhibit D.

**II. MEMORANDUM OF LAW**

The Puerto Rico Energy Transformation and RELIEF Act, as amended, Act No. 57-2014, § 6.15 establishes 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.

If the Energy Bureau, after the appropriate evaluation, believes such information should be protected, it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted. *Id.*

In the exercise of its faculties and powers granted by Act 57-2014, the Energy Bureau approved Regulation 8543. Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigations Proceedings (“Regulation 8543”). Regulation 8543 also includes a provision regarding the safeguards that the Energy Bureau gives to confidential information. The regulation provides that:

If in compliance with the provisions of [Regulation 8543] or any of the Energy Bureau’s orders, a person has the duty to disclose to the Energy Bureau information considered to be privileged pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the Energy Bureau the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The Energy Bureau shall evaluate the petition and, if it understands the material merits protection, proceed according to what is set forth in Article 6.15 of Act No. 57-2014, as amended.

Regulation 8543, § 1.15.- Confidential Information

**a. Trade Secrets**

Exhibit E to the 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.<sup>1</sup> The Energy Bureau’s regulations specifically provide for the designation of such information

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<sup>1</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).

as Confidential.<sup>2</sup>

The *Industrial and Trade Secret Protection Act of Puerto Rico* (“Act 80-2011”)<sup>3</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 y 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." *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 Motion to Submit

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<sup>2</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>3</sup> 10 L.P.R.A. §§ 4131, *et seq.*

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.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau to grant confidential designation to exhibit E to the Motion in Compliance.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 19<sup>th</sup> day of March 2020.

*/s Katuska Bolaños*  
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Exhibit E

Revised September 2019 Fuel Report

*[The native form of this exhibit has been filed under seal.]*<sup>4</sup>

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<sup>4</sup> The native form of this exhibit has been included in the Share Point shared with the Energy Bureau on March 13, 2020.