

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

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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; July 20, 2020 Request

**REQUEST FOR CONFIDENTIAL DESIGNATION OF ATTACHMENTS TO THE
REQUEST FOR APPROVAL OF JUNE 2020 RECONCILIATION AND REVISION OF
AUGUST AND SEPTEMBER FCA AND PPCA RIDER FACTORS**

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 July 20, 2020, PREPA¹ filed a *Request for Approval of June 2020 Reconciliation and Revision of August and September FCA and PPCA Rider Factors* (the “Request”). The Request includes several attachments in *.xls* format in native form. These spreadsheets in their native form have (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.² Therefore, the native form of these exhibits should remain under seal.

The Request also includes evidence of ongoing communications with adjusters and claim consultants of the commercial property insurance claim for the loss and damage arising from the

¹ Capitalized terms not defined herein shall be ascribed the same meaning provided in the Request.

² See the Request at exhibits A and D.

January 7, 2020, earthquake.³ These communications contain information that is privileged and confidential and such, should remain under seal.

II. MEMORANDUM OF LAW

Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act No. 57 of 2014, as amended (“Act 57-2014”), provides that “any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such[.]”⁴ “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.”⁵ If the Energy Bureau determines that the information is confidential, “the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements.”⁶ “The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.”⁷

Pursuant to its vested powers, the Energy Bureau approved the *Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigations Proceedings* (the “Regulation 8543”). Regarding the safeguards that the Energy Bureau gives to confidential information, Regulation 8543 provides that:

³ See the Request at Exhibit C.

⁴ 9 L.P.R.A § 1054n.

⁵ *Id.* at § 1054n(a).

⁶ *Id.* at § 1054n(c).

⁷ *Id.* at § 1054n(d).

[i]f 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.⁸

a. The Native Form of the Excel Spreadsheets

Exhibits A and D to the Request contain information that qualifies as proprietary and includes trade secrets (*i.e.*, confidential and other protected information) which is protected under Puerto Rico law.⁹ Regulation 8543 specifically provides for the designation of such information as confidential.¹⁰

The *Industrial and Trade Secret Protection Act of Puerto Rico* (“Act 80-2011”)¹¹ 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.¹²

⁸ Regulation 8543 at sec. 1.15.

⁹ See *Industrial and Trade Secret Protection Act of Puerto Rico*, as amended, Act No. 80-2011; see Act No. 57-2014, art. 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).

¹⁰ Regulation 8543 at sec. 1.15 (recognizing appropriateness of according proprietary information and trade secrets Confidential treatment); *cf.* Regulation 9021, *Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority* duly recorded in the Puerto Rice Department of State on April 24, 2018, 1.15 (providing for designation of information submitted in support of an integrated resource plan as confidential).

¹¹ 10 L.P.R.A. § 4131, *et seq.*

¹² 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 its competitors.¹³ 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."¹⁴ In Puerto Rico, moreover, trade secrets "do not require registration or compliance with any formalities in order to be protected."¹⁵

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."¹⁶

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 attachments to The Request 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.¹⁷ Therefore, PREPA herein requests the Energy Bureau to determine that exhibits A and D contain confidential trade secrets of PREPA and thus will remain under seal.

b. Communications with Insurers

Exhibit C includes ongoing communications between PREPA and its insurers concerning

¹³ Act 80-2011 at Statement of Motives.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ On April 7, 2020, the Energy Bureau entered a *Resolution and Order* granting confidential designation to spreadsheets similar to exhibits A and B of the Motion to Submit.

PREPA's insurance claim for earthquake-related losses at the Costa Sur Plant contain confidential information concerning PREPA's efforts to negotiate and obtain advance payments from its insurers while the insurers continue to adjust PREPA's loss under the Policies. These communications also contain interpretations regarding the scope of potential coverage under PREPA's insurance policies, requests for information from the insurers regarding the Costa Sur Plant as well as other generation facilities in Puerto Rico that may be relevant to their insurance coverage determinations, and comments and suggestions on ways that PREPA might try to mitigate its insured losses under PREPA's insurance policies. Claim adjusting negotiations are an iterative process, and statements by PREPA and its insurers in claim related communications by their nature are not final. Therefore, PREPA herein requests the Energy Bureau to determine that Exhibit C contains confidential proprietary information of PREPA and thus will remain under seal.

III. REQUEST FOR RELIEF

WHEREFORE, PREPA respectfully requests the Energy Bureau to grant confidential designation to exhibits A, C and D to the Request and to keep them under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 22nd day of July 2020.

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Exhibit A
Reconciliation June 2020

[The native version of this exhibit has been submitted under seal. A public version can be reviewed or downloaded at https://diazvaz-my.sharepoint.com/:f/g/personal/kbolanos_diazvaz_law/EliA2FZx7gdOgprqCZ_ZTDsBCcIkoKNYG9mE0JibO-0JkQ?e=i99SMY]

Exhibit C
Insurance Claim Update

[This document has been submitted under seal.]

Exhibit D
Revised Factors (August to September 2020)

[The native version of this exhibit has been submitted under seal. A public version can be reviewed or downloaded at https://diazvaz-my.sharepoint.com/:f/g/personal/kbolanos_diazvaz_law/EliA2FZx7gdOgprqCZ_ZTDsBCcIkoKNYG9mE0JibO-0JkQ?e=i99SMY]