

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

~~NEPR~~  
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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; September 18, 2020 Request

**REQUEST FOR CONFIDENTIAL DESIGNATION OF ATTACHMENTS  
TO THE REQUEST FOR APPROVAL OF (i) THE JULY AND AUGUST  
2020 RECONCILIATION AND (ii) THE FCA AND PPCA RIDERS FOR  
THE PERIOD OF OCTOBER TO DECEMBER 2020**

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 September 18, 2020, the Authority<sup>1</sup> filed a *Request for Approval of (i) the July and August 2020 Reconciliation and (ii) the FCA and PPCA Riders for the Period of October to December 2020* (the “Request”).<sup>2</sup> 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 the Authority, that (2) should not be made public in their native form and (iii) are protected under Puerto Rico law.<sup>3</sup> Therefore, the native form of these exhibits should remain under seal.

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

<sup>2</sup> *Solicitud de Aprobación de (i) Reconciliación del Periodo de Julio y Agosto de 2020 y (ii) Factores para las Cláusulas FCA y PPCA para el Periodo de Octubre a Diciembre 2020* filed by the Authority on September 18, 2020.

<sup>3</sup> Request, exhibits B and D.

## 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[.]”<sup>4</sup> “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.”<sup>5</sup> 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.”<sup>6</sup> “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.”<sup>7</sup>

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:

[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

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<sup>4</sup> 9 L.P.R.A § 1054n.

<sup>5</sup> *Id.*, § 1054n(a).

<sup>6</sup> *Id.*, § 1054n(c).

<sup>7</sup> *Id.*, § 1054n(d).

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.<sup>8</sup>

Exhibits B 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.<sup>9</sup> Regulation 8543 specifically provides for the designation of such information as confidential.<sup>10</sup>

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

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.<sup>13</sup> These examples are not exhaustive, however, and the Legislative Assembly

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<sup>8</sup> Regulation 8543, Sec. 1.15.

<sup>9</sup> 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).

<sup>10</sup> Regulation 8543, 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).

<sup>11</sup> 10 L.P.R.A. § 4131, *et seq.*

<sup>12</sup> 10 L.P.R.A. § 4132

<sup>13</sup> Act 80-2011, *Statement of Motives*.

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."<sup>14</sup> In Puerto Rico, moreover, trade secrets "do not require registration or compliance with any formalities in order to be protected."<sup>15</sup>

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."<sup>16</sup>

The Authority, 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 the Authority in a competitively disadvantageous position in dealing with potential proponents, ultimately harming customers. Therefore, the Authority herein requests the Energy Bureau to determine that exhibits B and D contain confidential trade secrets of the Authority and thus will remain under seal.

### **III. REQUEST FOR RELIEF**

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

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 18<sup>th</sup> day of September 2020.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

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Exhibit B

[The native version of this exhibit has been submitted under seal. A public version can be downloaded at [https://diazvaz-my.sharepoint.com/:f/g/personal/kbolanos\\_diazvaz\\_law/Ev8B0Emnhk1Itx5IfbKRvbYBXnarHbJHH4FMAqSzmhbHLA?e=g2SgBL](https://diazvaz-my.sharepoint.com/:f/g/personal/kbolanos_diazvaz_law/Ev8B0Emnhk1Itx5IfbKRvbYBXnarHbJHH4FMAqSzmhbHLA?e=g2SgBL) ]

## Exhibit D

[The native version of this exhibit has been submitted under seal. A public version can be downloaded at [https://diazvaz-my.sharepoint.com/:f/g/personal/kbolanos\\_diazvaz\\_law/Ev8B0Emnhk1Itx5IfbKRvbYBXnarHbJHH4FMAqSzmhbHLA?e=g2SgBL](https://diazvaz-my.sharepoint.com/:f/g/personal/kbolanos_diazvaz_law/Ev8B0Emnhk1Itx5IfbKRvbYBXnarHbJHH4FMAqSzmhbHLA?e=g2SgBL) ]