

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

NEPR

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IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN

CASE NO.: CEPR-AP-2018-0001

SUBJECT: Monthly Status Report of
Hydroelectric Study; Memorandum for
Confidentiality.

**MOTION TO SUBMIT THE APRIL 2021 MONTHLY STATUS REPORT ON HYDRO
STUDY AND MEMORANDUM FOR CONFIDENTIALITY**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW, the Puerto Rico Electric Power Authority, through its counsel of record and respectfully sets forth and prays:

I. INTRODUCTION

1. On August 24, 2020, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) entered *Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan* (the “Final IRP Order”) directing the Puerto Rico Electric Power Authority (the “Authority”) to, among other things, complete and submit a feasibility study of refurbishing each all the hydroelectric facilities (the “Hydro Study”). Pursuant to the Final IRP Order, the deadline to present the Hydro Study was February 22, 2021.

2. On February 22, 2021, the Authority submitted to the Energy Bureau *Motion to Submit Status Report of Feasibility Study for Improvement of PREPA’s Hydroelectric System and to Request Extension of Time to Submit Final Study* (the “Request for Extension”).

3. In the Request for Extension, the Authority informed the Energy Bureau that it had retained the services of Black and Veatch Puerto Rico, PSC (“Black and Veatch”) to conduct the Hydro Study in compliance with the Final IRP Order. The Authority also informed that it would submit to the Energy Bureau a status report of the project on a monthly basis.

4. Pursuant to the above stated, the Authority has submitted the Black & Veatch *Project Status Report* (the “Monthly Status Report”) for the months of February 2021 and March 2021.

5. The Authority hereby presents the April 2021 Monthly Status Report titled *Feasibility Study for Improvements to the PREPA’s Hydroelectric System-Status Report* dated April 28, 2021. Exhibit A. The Authority also submits the feasibility studies completed up to date by Black and Veatch referenced in the April 2021 Monthly Status Report (the “Feasibility Studies”). Exhibit B.

6. The Feasibility Studies include detailed descriptions of the hydroelectric assets, site visits, recommendations made by Black and Veatch for the improvements of the Authority’s Hydro facilities and chronicles the progress of the work done by Black and Veatch up to date with no conclusions made by the Authority. The process to complete the Hydro Study is still underway.

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[.]”¹ “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

¹ 9 L.P.R.A § 1054n.

allegedly confidential document is submitted.”² 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.”³ “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.”⁴

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 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.⁵

a. Trade Secrets

Exhibit B to the Motion contains information that qualifies as proprietary and includes trade secrets (*i.e.*, confidential and other protected information) which is protected under Puerto Rico law.⁶ Regulation 8543 specifically provides for the designation of such information as

² *Id.* at § 1054n(a).

³ *Id.* at § 1054n(c).

⁴ *Id.* at § 1054n(d).

⁵ Regulation 8543 at sec. 1.15.

⁶ 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).

confidential.⁷

The *Industrial and Trade Secret Protection Act of Puerto Rico* (“Act 80-2011”)⁸ 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.⁹

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.¹⁰ 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."¹¹ In Puerto Rico, moreover, trade secrets "do not require registration or compliance with any formalities in order to be protected."¹²

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."¹³

⁷ Regulation 8543 at sec. 1.15 (recognizing appropriateness of according to 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 Rico Department of State on April 24, 2018, 1.15 (providing for designation of information submitted in support of an integrated resource plan as confidential).

⁸ 10 L.P.R.A. § 4131, *et seq.*

⁹ 10 L.P.R.A. § 4132.

¹⁰ Act 80-2011 at Statement of Motives.

¹¹ *Id.*

¹² *Id.*

¹³ *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 Exhibit B 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. Therefore, PREPA requests the Energy Bureau to grant confidential designation to Exhibits B.

b. Deliberative Process Privilege

The Feasibility Reports in Exhibit B include recommendations for improvements to hydroelectric facilities, with no conclusions by the Authority, as the work by Black and Veatch is still ongoing. The final report is projected to be submitted by June 30, 2021.

The documents produced by PREPA are public. However, access to public information is not absolute and there are various exemptions for the access of public information.¹⁴ These exemptions are:

(a) a law so declares; (2) the communication is protected by one of the evidentiary privileges that the citizens may invoke; (3) revealing the information may injure the fundamental rights of third parties; (4) it deals with the identity of a confidante and (5) it is ‘official information’ pursuant to Rule 514 of Evidence, 2009, 32 LPRA Ap. VI (formerly Rule 31 of Evidence 32 LPRA for. Ap. IV). *Colon Cabrera v. Caribbean Petroleum, supra*.¹⁵

A claim of confidentiality on the part of the government can prosper when the information is considered official privileged information, among others. *Colon Cabrera v. Caribbean Petroleum, supra*; *Santiago v. Bobb y El Mundo, Inc.*, 117 DPR 153 (1986). Rule 514 of Evidence, *supra*, establishes the privilege of official information in our system.¹⁶ Among the fundamental

¹⁴ *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59, 82 (2017).

¹⁵ *Id.* at 83.

¹⁶ *Id.*

categories of privileged official information is the one used by public officers during the deliberative process related to the ongoing development of public policy.¹⁷

Restricting the access to information used during the deliberative procedures “protects “against *premature disclosure* of proposed policies and decisions before they have been finally formulated or adopted.”¹⁸

PREPA’s Regulation No. 6285 from January 10, 2001, known as *Regulation for the Document Administration Program of the Electric Power Authority* (“Regulation 6285”)¹⁹, regulates PREPA’s administration of documents and defines which categories of documents are considered confidential. Pursuant to Regulation 6285, information related to the deliberative process used to implement public policy is confidential.²⁰

c. Critical Energy Infrastructure Information

Federal and Puerto Rico law and Energy Bureau include multiple provisions and recognitions of critical energy infrastructure information (CEII). Attachment 3 to the Motion includes specific information and discussion of the Authority’s CEII.

Federal 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).

¹⁷ *Id.* at 86.

¹⁸ *Id.* at 87.

¹⁹ Duly recorded in the Puerto Rico Department of State on January 11, 2011.

²⁰ Regulation 6285, Sec. V (16).

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.

The Authority 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 the Authority's designations of material as CEII, recognizing that both federal law and Puerto Rico law support such designations when applicable. Wherefore, it is respectfully requested that the Feasibility Reports included in Exhibit B be designated as confidential, and the Energy Bureau orders they remain under seal to protect the Authority's CEII.

WHEREFORE, the Authority herein requests the Energy Bureau to accept this Motion and GRANT the Confidentiality to the Feasibility Reports included in Exhibit B of this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of May 2021.

s/ Katuska Bolaños Lugo

Katuska Bolaños Lugo

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TSPR 18,888

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CERTIFICATE OF SERVICE

It is hereby certified that, on this same date I have filed the above motion using the Energy Bureau's Electronic Filing System, at the following address: <http://radicacion.energia.pr.gov> and that a courtesy copy of the filing was sent via e-mail to: sierra@arctas.com; tonytorres2366@gmail.com; cfl@mcvpr.com; gnr@mcvpr.com; info@liga.coop; amaneser2020@gmail.com; hrivera@oipc.pr.gov; jrivera@cnspr.com; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com; manuelgabrielfernandez@gmail.com; acarbo@edf.org; pedrosaade5@gmail.com; rmurthy@earthjustice.org; rstgo2@gmail.com; larroyo@earthjustice.org; jluebke@earthjustice.org; acasellas@amgprlaw.com; loliver@amgprlaw.com; epo@amgprlaw.com; robert.berezin@weil.com; marcia.goldstein@weil.com; jonathan.polkes@weil.com; gregory.silbert@weil.com; agraitfe@agraitlawpr.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; castrodierralaw@gmail.com; voxpopulix@gmail.com; paul.demoudt@shell.com; javier.ruajovet@sunrun.com; escott@ferraiuoli.com; SProctor@huntonak.com; GiaCribbs@huntonak.com; mgrpcorp@gmail.com; aconer.pr@gmail.com; axel.colon@aes.com; rtorbert@rmi.org; apagan@mpmlawpr.com; sboxerman@sidley.com; bmundel@sidley.com.

In San Juan, Puerto Rico, this 7th day of May 2021.

s/ Katuska Bolaños Lugo
Katuska Bolaños Lugo

Exhibit A



Puerto Rico Electric Power Authority

Feasibility Study for Improvements to the PREPA's
Hydroelectric System - Status Report
April 28, 2021

Feasibility Study for Improvements to the PREPA's Hydroelectric System - Status Report – April 2021

- Status on Study Execution
 - PREPA and the Consultant have held 12 weekly progress meetings since the Notice to Proceed, which the project action list is discussed and how to address and solve any situation that arises during the study.
 - The Consultant have submitted 4 progress reports. The study is at 74% completion and its on schedule to be completed on the contract term requirement.
 - As part of the assessment of the hydropower facilities, the Consultant prepared and submitted on March 27, 2021 the draft of the Generation Capacity Report.
 - As part of the assessment of the hydropower facilities, the Consultant prepared and submitted on April 27, 2021 the final Generation Capacity Report.

Feasibility Study for Improvements to the PREPA's Hydroelectric System - Status Report – April 2021

- Status on Study Execution (Cont.)
 - The Consultant prepared and submitted on April 9, 2021 the draft of the Frequency Response and Remote Control Report.
 - The Consultant prepared and submitted on April 23, 2021 the draft of the Reservoir Rule Curve Optimization Report.
 - The Consultant prepared and submitted on April 27, 2021 the Reservoir Rule Curve Optimization Final Report.

Feasibility Study for Improvements to the PREPA's Hydroelectric System - Status Report – April 2021

- Project Timeline Status:**

Milestone	Schedule - Date	Status
Procurement Process for Services (Scope of Work Evaluation, Cost, Deliverables and Timeline)	September 15, 2020 – November 19, 2020	Completed
Contract Negotiation & Signature	January 5, 2021	Completed
Submittal & Approval of Project Work Plan	January 27, 2021	Completed
Task 202 – Site Visit	Feb 8-12, 2021	Completed
Task 201 – Draft Site Visit Memorandum	March 5, 2021	Completed
Task 201 – Draft Generation Capacity TM	March 26, 2021	Completed
Task 300 – Complete Review Water Availability Models	March 19, 2021	Completed
Task 400 – Draft Operating Scenarios TM	April 23, 2021	Completed
Task 400 – Final Operating Scenarios TM	April 27, 2021	Completed
Task 500 – Draft Evaluation for Frequency Response and Remote-Control TM	April 9, 2021	Completed
Task 500 – Final Report Frequency Resp and Remote Control	May 6, 2021	
Task 600 – Draft Economic Feasibility Evaluation Report	May 7, 2021	
Task 600 – Economic Feasibility Evaluation Final Report	May 26, 2021	
Task 700 – Submit Final Summary Report Project Complete, 160 days after NTP	June 18, 2021	

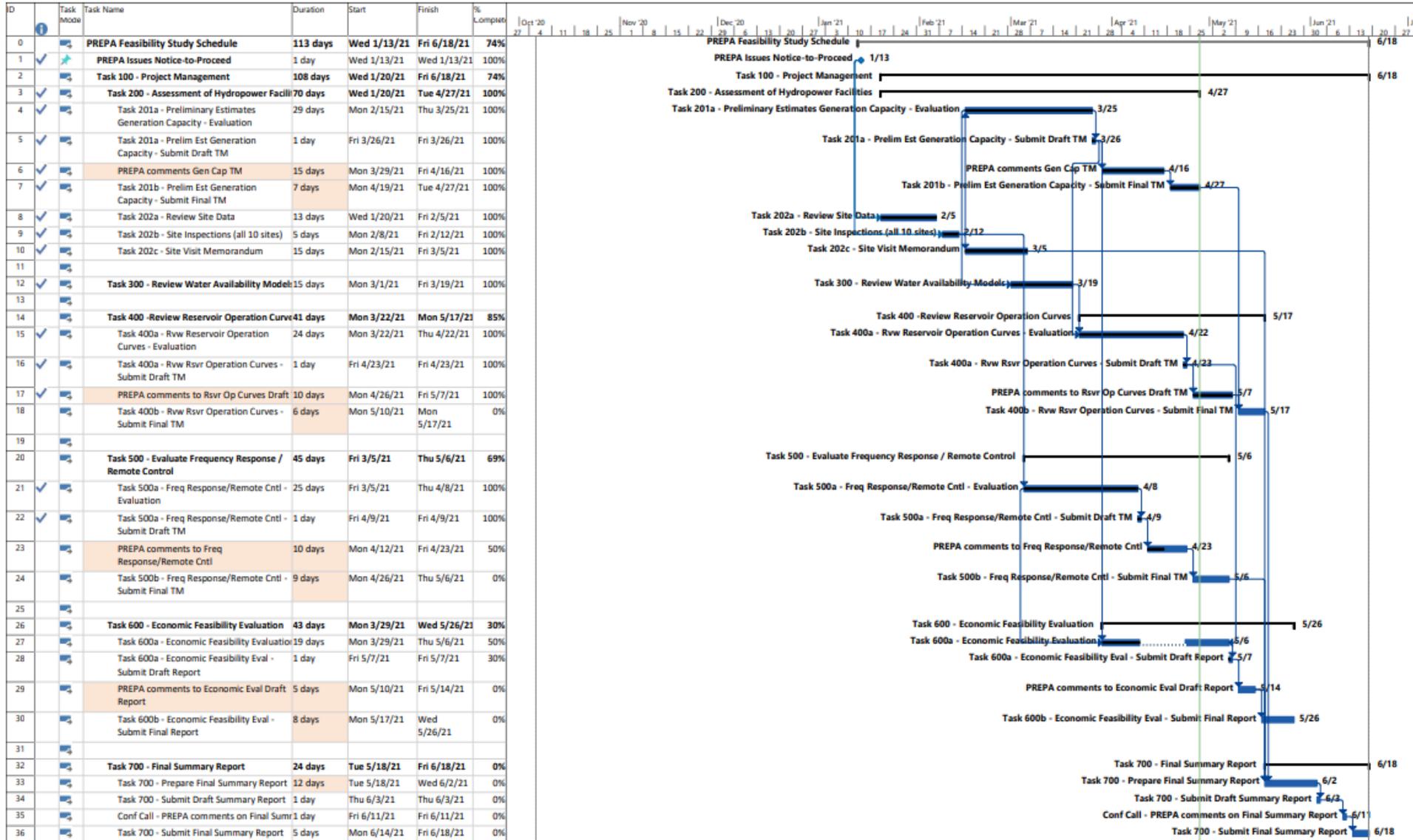
Feasibility Study for Improvements to the PREPA's Hydroelectric System - Status Report, April 2021

- Project Milestones Payments Breakdown & Status:**

Milestone	Payment Amount	Payment Approval Date
Task 200 - Kick-Off Meeting, Document Review, Project Planning, Mobilization	\$70,485	February 17, 2021
Task 200 - Site Visits Memorandum	\$60,660	March 18, 2021
Task 200 - Draft Technical Memorandum – Generation Capacity	\$30,206	April 14, 2021
Task 200 - Final Technical Memorandum – Generation Capacity	\$5,849	
Task 400 - Draft Technical Memorandum – Operating Scenarios	\$83,330	
Task 400 - Draft Technical Memorandum – Operating Scenarios	\$10,130	
Task 500 - Draft Technical Memorandum – Frequency Response/RC	\$35,530	April 28, 2021
Task 500 - Final Technical Memorandum – Frequency Response/RC	\$5,310	
Task 600 - Economic Feasibility Criteria	\$56,117	
Task 600 - Draft Economic Feasibility Report	\$56,117	
Task 600 - Final Economic Feasibility Report	\$4,676	
Task 700 - Draft Feasibility Study Summary Report	\$38,617	
Task 700 - Final Feasibility Study Summary Report	\$12,873	

Feasibility Study for Improvements to the PREPA's Hydroelectric System

Update Schedule – April 2021



Project: PREPA Feasibility Study
Date: Wed 4/28/21

Task	Summary	Inactive Milestone	Duration-only	Start-only	External Milestone	Manual Progress
Split	Project Summary	Inactive Summary	Manual Summary Rollup	Finish-only	Deadline	
Milestone	Inactive Task	Manual Task	Manual Summary	External Tasks	Progress	

Project Progress Report

April 26, 2021

To: Carlos A. Negrón Alfonso, PE, MECE, MEM
From: Randy Boyce, PE, Project Manager

Client: Puerto Rico Electric Power Authority (PREPA)
Project: Feasibility Study for Improvements to Hydroelectrical System

B&V Project No: 407635
B&V File No: 28.0000

Report March 26, 2021 – April 26, 2021
Report 3

This report summarizes the project schedule and budget status to date, identifies milestones completed, lists major activities performed and provides a look ahead for those activities planned for the next month.

SUMMARY OF MAJOR ACTIVITIES PERFORMED

- Task 100 - Conducted weekly project meetings with PREPA.
- Task 100 – Updated Project Action Item List weekly and reviewed in project meetings.
- Task 201a – Submitted draft Generation Capacity technical memorandum. (March 27, 2021)
- Task 400a – Submitted draft Reservoir Rule Curve Optimization technical memorandum (April 23, 2021).
- Task 500a – Submitted draft Frequency Response and Remote-Control technical memorandum (April 9, 2021).
- Task 600a – Working on draft Economic Feasibility technical memorandum.

ACHIEVED MILESTONES

- Completed Task 201a - submitted draft Generation Capacity technical memorandum.
- Completed Task 400a – draft Reservoir Rule Curve Optimization technical memorandum.

TRACKING THE SCHEDULE

The official start date was January 13, 2021 and the project is currently on schedule to be completed by June 22, 2021 (160 calendar days). See the Gantt chart at the end of this report for the overall schedule and estimated percent completion for each task. The table below summarizes the status of the milestones in the current schedule.

PREPA Feasibility Study for Improvements to Hydroelectrical System – Task	Major Milestone Scheduled Date	Major Milestone Actual Date
Task 200 - Assessment of Hydropower Facilities	Mon 4/26/21	-
• Task 201a – Draft Generation Capacity Report	Fri 3/26/21	Sat 3/27/21
• Task 201b – Final Generation Capacity Report	Mon 4/26/21	-
• Task 202c – Site Visit Memorandum	Fri 3/05/21	Fri 3/05/21
Task 300 - Review Water Availability Models	Fri 3/19/21	Fri 3/19/21
Task 400 - Reservoir Rule Curve Optimization Report	Mon 5/17/21	-
• Task 400a – Draft Report	Fri 4/23/21	Fri 4/23/21
• Task 400b – Final Report	Mon 5/17/21	-
Task 500 - Evaluate Local Automation / Remote Control	Thu 5/06/21	-
• Task 500a – Draft Report	Fri 4/09/21	Fri 4/09/21
• Task 500b – Final Report	Thu 5/06/21	-
Task 600 - Economic Feasibility Evaluation	Wed 5/26/21	-
• Task 600a – Draft Report	Fri 5/07/21	-
• Task 600b – Final Report	Wed 5/26/21	-
Task 700 - Final Summary Report	Fri 6/18/21	-

SCHEDULED ACTIVITIES FOR NEXT MONTH

- Task 400b – Issue Final Reservoir Rule Curve Optimization technical memorandum.
- Task 500a – Issue Final Frequency Response and Remote Control technical memorandum.
- Task 600a – Issue draft Economic Feasibility report.

EXPENDITURES AND BUDGET BALANCE

Project Total Cost	\$469,900.00
Cost of Last Invoice	\$35,530.00
Previously Billed	\$161,351.00
Total Earned to Date	\$196,881.00
Budget Balance	\$273,019.00

This report was prepared by the following Black & Veatch personnel:



Randy Boyce - Hydro Project Manager



Dianys Arocho - Engineering Manager

Exhibit B- Feasibility Reports

TASK	TITLE	DATE	DESCRIPTION	CONFIDENTIALITY
201	Feasibility Study for Improvements to Hydro Electrical System- Task 201 Installed Capacity & Average Annual Generation	April 27, 2021	Memorandum on water availability and net generation models used for 10 hydro electrical facilities	CEII, Trade Secret, Deliberative Process
400	Feasibility Study for Improvements to Hydro Electrical System- Task 400 Reservoir Curve Optimization	April 27, 2021	Examines the modification of the reservoir operating rule curves to determine if an increase in generation can be achieved	CEII, Trade Secret Deliberative Process

[These exhibits have been submitted under seal.]