

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

**IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY'S
HYDROELECTRIC STUDY**

CASE NO.: NEPR-MI-2021-0012

**SUBJECT: Technical Conference and
Determination of Confidential Designation.**

RESOLUTION AND ORDER

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Final Resolution and Order approving an Integrated Resources Plan and Modified Action Plan ("August 24 Order")¹. In the August 24 Order, among other things, the Energy Bureau ordered the Puerto Rico Electric Power Authority ("PREPA") to complete a feasibility study on refurbishing each of PREPA's hydroelectric generation facilities ("Study"), including the expected cost and likely change in electricity production.² The Energy Bureau required PREPA to submit the Study, along with a proposed action plan for each facility informed by the Study, within one hundred and eighty days (180) from the notification of the August 24 Order.³ PREPA was required to file the Study on February 22, 2021.

On February 22, 2021, PREPA filed before the Energy Bureau a document titled *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* ("February 22 Motion"). Through the February 22 Motion, PREPA requested the Energy Bureau to grant an extension for the filing of the Study until June 30, 2021. PREPA informed the Energy Bureau that it had retained the services of Black and Veatch Puerto Rico, PSC ("Black and Veatch") to prepare the Study and offered to submit monthly project status reports to the Energy Bureau.⁴

On June 30, 2021, PREPA filed a document titled *Motion to Submit Final Hydro Study and June 2021 Monthly Status Report and Request for Confidentiality Designation* ("Motion"). As Exhibit A to the Motion, PREPA submitted a document titled *Feasibility Study for Improvements to Hydroelectrical System- Task 700- Feasibility Study Summary Report*, dated June 28, 2021. As Exhibit B to the Motion, PREPA submitted a status report for the month of

¹ Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001, August 24, 2020.

² *Id.*, p. 16, ¶ 100.

³ *Id.*

⁴ The Energy Bureau did not make a determination on PREPA's request for extension.



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June 2021, titled *Feasibility Study for Improvements to the PREPA's Hydroelectric System-Status Report*, prepared by Black and Veatch and dated June 29, 2021. Finally, PREPA included as Exhibits C and D, respectively, the feasibility studies of Tasks 500 and 600 prepared by Black and Veatch ("Feasibility Studies"), which include detailed descriptions of the hydroelectric assets, site visits, recommendations made by Black and Veatch for the improvements and economic impact of PREPA's hydroelectric facilities and generation units.

In the Motion, PREPA asked the Energy Bureau to, pursuant to Article 6.15 of Act 57-2014⁵, grant confidential designation and treatment to Exhibits C and D.⁶ According to PREPA, the information included in Exhibits C and D is proprietary, commercially sensitive and qualifies as trade secrets.⁷ PREPA argued that the disclosure of this information could place PREPA in a competitively disadvantageous position in dealing with potential proponents, ultimately harming PREPA customers.⁸

With respect to request for confidentiality requests, Article 6.15 of Act 57-2014 establishes that:

Any person who is required to submit information to the Energy Commission understands that the information to be submitted has any confidentiality privilege, the person may request the Commission grant such treatment, subject to the following:

- a) If the Energy Commission, after the appropriate evaluation, understands that the information should be protected, it shall find a way to grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative proceeding in which the allegedly confidential document is submitted.
- b) To that effect, the Energy Commission can provide access to the document, or to parts of the document, only to the attorneys and external consultants involved in the administrative proceeding after the execution of a confidentiality agreement
- c) Only in exceptional cases, the Energy Commission shall maintain completely out of the public scrutiny documents filed with it. In those cases, the information shall be duly safeguarded and delivered exclusively to the Energy Commission's staff on a need to know basis, under nondisclosure requirements. Notwithstanding the foregoing, the Energy Commission shall order that a nonconfidential version be supplied for the public's review.

⁵ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

⁶ See Motion, p. 7.

⁷ See Motion, ¶ 13.

⁸ *Id.*



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- d) Any claim of confidentiality or privilege of information of a person under the jurisdiction of the Energy Bureau shall be resolved in an expedited manner by the Commission through a resolution to that effect, before any information claimed as confidential by its source is disclosed.

Further, regarding request for confidentiality, the Energy Bureau *Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigations Proceedings* ("Regulation 8543") provides:

[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.

Upon review of the arguments presented by PREPA regarding the confidential nature of the information included in Exhibits C and D, the Energy Bureau **GRANTS** confidential designation and treatment to Exhibits C and D.

The Energy Bureau **DETERMINES** that it is beneficial and convenient to evaluate the Study and the Feasibility Studies under a separate docket. Accordingly, the Energy Bureau **OPENS** the instant case.

The Energy Bureau **ORDERS** PREPA to:


- i. File, **on or before Thursday, July 29, 2021**, a public (*i.e.*, redacted) versions of Exhibits C and D.
- ii. Attend a Virtual Technical Conference **on Monday, August 23, 2021, at 10:00 am**, to present to the Energy Bureau its findings and recommendations included in the Study and the Feasibility Studies and the next steps and timeline towards the development and completion of the action plan required in the August 24 Order;
- iii. File, **on or before on Monday, August 19, 2021**, a PFD copy of the presentation to be made during for the Virtual Technical Conference; and
- iv. Ensure that PREPA representatives and relevant consultants attend the Virtual Technical Conference and are prepared to answer questions from the Energy Bureau staff and consultants.



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The Energy Bureau **WARNS** PREPA that noncompliance with the Energy Bureau's orders or applicable legal requirements may carry the imposition on administrative fines of up to twenty thousand dollars (\$25,000.00) per day, per violation and/or other sanction that the Energy Bureau may deem appropriate.


Be it notified and published.


Edison Avilés Deliz
Chairman


Ángel R. Rivera de la Cruz
Associate Commissioner


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on July 22, 2021. I also certify that on July 23, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: kbolanos@diazvaz.law. I also certify that today, July 23, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today July 23, 2021.


Sonia Seda Gaztambide
Clerk

