

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

<b>NEPR</b>  <b>Received:</b>  Jul 12, 2022  11:58 AM
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**IN RE:** THE IMPLEMENTATION OF THE  
PUERTO RICO ELECTRIC POWER  
AUTHORITY INTEGRATED RESOURCE  
PLAN AND MODIFIED ACTION PLAN

**CASE NO.:** NEPR-MI-2020-0012

**SUBJECT:** Amended Motion to Submit  
Confidential and Redacted Execution Copies  
of PPOAs

**AMENDED MOTION TO SUBMIT CONFIDENTIAL AND REDACTED EXECUTION  
COPIES OF PPOAS**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

**COMES NOW** the Puerto Rico Electric Power Authority (PREPA), through its counsel of record, and respectfully submits and prays as follows:

1. On June 30, 2022 PREPA filed motion titled *Motion to Submit Execution Copies of PPOA's in Compliance with the April 27 and June 13 Orders, Request for Additional Time to Submit Certain PPOAs and Memorandum of Law Requesting Confidential Treatment of PPOAS and Exhibits* ("June 30 Motion").

2. As part of its filing, PREPA had requested that the execution copies of the PPOAs in **Exhibit A** be kept confidential. Further, PREPA requested that the information in exhibits A, B, C, D, and E, which includes communications relating to contract pricing and related terms, as well as topics that remain under negotiations, also be kept confidential until the adjudication and award process of Tranche 1 is completed and final.

3. In response to the June 30 Motion, on July 5, 2022, the Energy Bureau of the Puerto Rico Service Regulatory Board ("Energy Bureau") entered *Resolution and Order* ("July 5 Order") granting the confidential designation and treatment of exhibits A, B, C, D and E filed with the June

30 Motion since these documents contain detailed information related to the ongoing negotiations, strategies to prepare documents to be negotiated and proposals in the Tranche 1 process which are still under the deliberative process and are confidential until the adjudication and award process is final.

4. Further, as part of the July 5 Order, the Energy Bureau ordered PREPA to

show cause, on or before July 8, 2022, as to why the Energy Bureau should not issue an order requiring PREPA to file a redacted (public) version of the execution copies of PPOAs in Exhibit A. The Energy Bureau further stated that “[t]his determination is aligned and consistent with Act 57-2014, that required the Energy Bureau to protect confidential information in a manner that least affects the public interest, transparency, and the rights of the parties involved in the instant case.

July 5 Order at p. 1.

5. On July 8, 2022 PREPA filed with the Energy Bureau “*Motion to Submit Redacted Execution Copies of PPOA’s in Compliance with the July 5 Resolution and Order*” (“July 8 Motion”). In the July 8 Motion PREPA stated that it agreed with the Energy Bureau that the executed PPOA’s could be filed in redacted versions thereby protecting information that is currently confidential until the Tranche 1 process is finalized and at the same time balancing the public interest as contemplated in the *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014<sup>1</sup>. Notwithstanding, by inadvertence PREPA uploaded incomplete versions of **Exhibit A** to the Energy Bureau website. Accordingly, through this motion PREPA hereby submits complete copies of both the confidential **Exhibit A** filed in the June 30 Motion, to be kept under seal, as well as redacted public versions of **Exhibit A**. PREPA respectfully requests that the Energy Bureau maintain the confidential designation and treatment of both the confidential

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<sup>1</sup> 22 L.P.R.A. §§ 1051-1056.

unredacted **Exhibit A** as well as the redacted information in the public versions of **Exhibit A** for the reasons stated in the June 30 Motion and as granted by the Energy Bureau in the July 5 Order.

6. Further, PREPA submits to the Energy Bureau that the information redacted in the public redacted versions of **Exhibit A** should be maintained confidential not only because they currently affect the deliberative process of the Tranche 1 RFP as stated in the June 30 Motion but also because there is information that is considered critical energy infrastructure information (“CEII”) that cannot be disclosed to the public. To protect such confidentiality, PREPA has redacted the transmitting utility maps and diagrams schematics from the PPOA’s and requests the Energy Bureau to determine that such information is CEII and thus, confidential and to maintain the public files with the redaction already provided and the unredacted versions under seal.

7. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of 2014, as amended (“Act 57”)<sup>2</sup>, 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[.]” *Id.* at Sec. 6.15. “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.* at Sec. 6.15(a). 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.” *Id.* at Sec. 6.15(b). “The Energy [Bureau] shall swiftly act on any privilege and

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<sup>2</sup> *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 L.P.R.A. §§ 1051-1056.

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.” *Id.* at Sec. 6.15(c).

8. Under its vested powers, the Energy Bureau approved the *Regulation on Adjudicative, Notices of Compliance, Rate Review, and Investigations Proceedings* (“Regulation 8543”).<sup>3</sup> 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.

Regulation 8543 at Sec. 1.15.

9. Federal and Puerto Rico laws 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 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). FERC regulations subject such information to limitations on use and disclosure to

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<sup>3</sup> Energy Bureau, *Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigations Proceedings*, No. 8543 (December 16, 2015).

“ensure that information deemed CEII stays out of the possession of terrorists.” 18 C.F.R. § 388.113(d)(4). *Off. of People's Counsel v. Pub. Serv. Comm'n.*, 21 A.3d 985, 991, Util. L. Rep. P 27157, 2011 WL 2473405 (D.C. App. 2011).

10. 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 the vulnerability of the energy infrastructure and ensuring that access to CEII does not facilitate acts of terrorism.

11. A utility is not required to obtain FERC or other federal government approval 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 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 under 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 CEII and will treat it as such.” *See also* 18 C.F.R. § 141.300(d) relating to the Form and CEII.

12. Mainland regulators typically do not require a utility that designates material as CEII to

follow any process before the federal government 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.

13. It is respectfully submitted that the transmitting utility maps and diagrams schematics in the PPOA's qualifies as CEII and thus, should remain redacted. Furthermore, it is asserted that the redactions made are the manner that least affects the public interest, transparency, and the rights of the public. *See*, Act 57-2014 at Sec. 6.15(a).

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau **TAKES NOTICE** of PREPA's compliance with the July 5 Order, maintain the confidential designation and treatment of the unredacted versions of **Exhibit A** under seal for the reasons stated in the June 30 Motion and as granted in the July 5 Order and determine that the redacted information in the public versions of **Exhibit A** is confidential given that the information redacted affects the current deliberation, adjudication and award process of Tranche 1 as already determined in the July 5 Order or that the information contains CEII.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 12<sup>th</sup> day of July 2022.

/s Maralíz Vázquez-Marrero

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**CERTIFICATE OF SERVICE**

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com).

In San Juan, Puerto Rico, on this 12<sup>th</sup> day of July 2022.



**Exhibit A**