

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

NEPR
Received:
Feb 6, 2023
6:52 PM

IN RE: AMENDMENT TO POWER
PURCHASE OPERATING AGREEMENT
BETWEEN PREPA AND CIRO TWO
SALINAS LLC

CASE NO.: NEPR-AP-2023-0001

SUBJECT: Memorandum of Law in Support of
Request for Confidential Treatment of Redacted
Portions of Petition

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL
TREATMENT OF REDACTED PORTIONS OF PETITION**

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 January 20, 2023, PREPA filed *Petition for Approval of Amendment to Power Purchase Operating Agreement Between the Puerto Rico Electric Power Authority and CIRO Two Salinas LLC* (“Petition”) requesting the Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) to allow PREPA to amend a power purchase operating agreement executed between PREPA and CIRO Two Salinas LLC (“CIRO Two”). The proposed amendment was attached as Annex D of the Petition (“Proposed Amended PPOA”). Portions of the Proposed Amended PPOA were presented redacted. PREPA submitted an unredacted version to the Energy Bureau under seal.

2. PREPA to the Energy Bureau that pages 111 and 167 on Annex D include transmitting utility maps and diagrams schematics and requests the Energy Bureau to determine that such information is critical energy infrastructure information (CEII) and, thus, confidential and to

maintain the public files with the redaction already provided and the unredacted versions under seal.

3. Applicable laws and regulations support the confidentiality request herein made. The documents in possession of a corporation like PREPA are presumed public. However, access to public information is not absolute, and there are various exemptions for access to public information. *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59, 82 (2017) (emphasis added).

4. These exceptions are:

(1) 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’ under Rule 514 of Evidence, 2009, 32 L.P.R.A. Ap. VI (formerly Rule 31 of Evidence 32 L.P.R.A. for. Ap. IV). *Colon Cabrera v. Caribbean Petroleum*, supra.

Id. at 83.

5. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*¹ 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[.]” Act 57 at Art. 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 Art. 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

¹ *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 L.P.R.A. §§ 1051-1056 (“Act 57”).

Energy [Bureau] who needs to know such information under nondisclosure agreements.” *Id.* at Art. 6.15(c). “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.” *Id.* at Art. 6.15(d).

6. In exercising its powers, the Energy Bureau and PREPA approved Regulation 8815, which has the force of law. *Id.* at Art. 6.3(b); *see also* Sec. 5 of the *Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, as amended, 22 L.P.R.A. §§ 191-240 (“The regulations so adopted shall have the force of law once the provisions of Act No. 38-2017, the *Government of Puerto Rico Uniform Administrative Procedure Act*, are complied with.”). According to Section 4.2 of Regulation 8815, communications between the Energy Bureau and PREPA shall remain confidential while the administrative competitive procurement process is ongoing.

7. Lastly, PREPA adopted the *Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*, No. 6285 (Jan. 10, 2001) (“Regulation 6285”). Pursuant to Regulation 6285, documents, including information on evaluating offers or bids requests, are confidential while the evaluation, adjudication, and award processes are still ongoing. *Id.* at Sec. V, ¶ 13.

8. 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

“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).

9. 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.

10. 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.

11. 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, the regulator, in its informed discretion, can establish limits on how information that it considers CEII can be accessed.

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

WHEREFORE, PREPA respectfully requests that the Energy Bureau determine that the unredacted copy of Annex D of the Petition is confidential, enter an order directing the Clerk of the Energy Bureau to maintain it under seal and disclose for public use the redacted copy.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 6th day of February 2023.

/s Joannely Marrero-Cruz
Joannely Marrero-Cruz
jmarrero@diazvaz.law
TSPR 20,014

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.
290 Jesús T. Piñero Ave.
Oriental Tower, Suite 803
San Juan, PR 00918
Tel.: (787) 395-7133
Fax. (787) 497-9664

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>.

In San Juan, Puerto Rico, on the 6th day of February 2023.

/s Joannely Marrero-Cruz
Joannely Marrero-Cruz