

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

**IN RE:** REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY'S 10-YEAR  
INFRASTRUCTURE PLAN - DECEMBER  
2020

**CASE NO.:** NEPR-MI-2021-0002

**SUBJECT:** Determination on PREPA's May  
18, 2023 Motion.

**RESOLUTION AND ORDER**

**I. Introduction**

On March 26, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("March 26 Resolution") through which it ordered the Puerto Rico Electric Power Authority ("PREPA") to provide certain information related to the different projects under the categories of Transmission Line Projects, Transmission Substation Projects, and Distribution Substation Projects in the PREPA 10 - Year Infrastructure Plan. The Energy Bureau ordered PREPA to submit each specific capital investment project for approval to avoid potential noncompliance with the Approved Integrated Resource Plan ("IRP") and Modified Action Plan.<sup>1</sup> To streamline the process, the Energy Bureau requested PREPA to submit the specific projects to the Energy Bureau at least thirty (30) calendar days before their submittal to the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency ("COR3") and the Federal Emergency Management Agency ("FEMA").<sup>2</sup>

On August 20, 2021, the Energy Bureau issued a Resolution and Order ("August 20 Resolution"),<sup>3</sup> through which it determined that the March 26 Resolution applies equally to LUMA<sup>4</sup>.

On May 18, 2023, PREPA filed a document titled *Motion to Submit Scope of Work* for Guayabal Dam Seismic Retrofit and Hurricane Maria Repairs ("May 18 Motion"), in which PREPA submits the scope of works ("SOW") for permanent repairs to be performed on the Guayabal Dam, located on the Rio Jacaguas.<sup>5</sup> In the May 18 Motion, PREPA states that it will seek reimbursement from FEMA for these works.<sup>6</sup>

PREPA requested confidential designation and treatment to the unredacted version of Exhibit A attached to the May 18 Motion as it contains critical energy infrastructure information (CEII) that cannot be disclosed to the public.<sup>7</sup>

**II. Evaluation of the May 18, 2023**

Through the May 18 Motion, as Exhibit A, PREPA submitted SOW for: Guayabal Dam Seismic Retrofit and Hurricane Maria Repairs (Dams/Hydro). Guayabal Dam is located in Rio

<sup>1</sup> Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("IRP Order").

<sup>2</sup> March 26 Resolution, pp. 14-15.

<sup>3</sup> August 20, 2021, Resolution and Order, p. 3.

<sup>4</sup> LUMA Energy, LLC, and LUMA Energy ServCo, LLC (collectively, "LUMA")

<sup>5</sup> May 18 Motion, p. 1, ¶ 3.

<sup>6</sup> *Id.*, p. 2, ¶ 4.

<sup>7</sup> *Id.*, p. 3, ¶¶ 6-7.



Jacaguas, Juana Díaz which provides irrigation for local crops as well as potable water for approximately 7,500 residents of Villalba and Juana Diaz Municipalities.<sup>8</sup>

The SOW in Exhibit A includes the repair of damages that the Dam Suffered as the consequences of the direct hit of Hurricane Maria. Works to be performed are conservation, repairs, and retrofitting of its units and their auxiliary equipment. The structural retrofit is necessary to meet the US Bureau of Reclamation risk safety guideless for dam operation.<sup>9</sup> Works to be performed include (i) Access Road/Parking Pavement, (ii) Fencing, Swing Gates, (iii) Steel Arch Shed Building, (iv) Concrete Office Building, (v) Facility Site/Grounds, (vi) Guayabal Dam Structure.<sup>10</sup> The project is intended to Restore to Codes and Standards to its pre- disaster function and to approved codes/standards, restore the pre disaster function of the facility and incorporate improvements in facility size, capacity, dimension, or footprint.<sup>11</sup>

The estimated costs for the projects represent **\$299,273,328.00** which includes **\$1.81M** for permanent repairs works and **\$297.46M** for the proposed mitigation measures based on the preliminary cost estimate of a 406 Hazard Mitigation Proposal.<sup>12</sup> This Hazard Mitigation Proposal includes all the necessary scope of works to harden the facilities and prevent future damages and reduce the risk of future catastrophic failures due to seismic activities or during flooding events.<sup>13</sup> These improvements include H&H studies for the of Rio Jacaguas, A&E studies to proposed mitigation measurements, additional access roads, spillway shut concrete apron, seismic retrofits, dam crest spillway, and backup power.<sup>14</sup> All costs are based on a Class 5 estimates that includes materials, construction labor and equipment, engineering, permitting, management, and contingencies.<sup>15</sup>

After a review of Exhibit A of the May 18 Motion, the Energy Bureau **DETERMINES** that the project is necessary to meet current U.S. Bureau of Reclamation risk safety guidelines for dam operation. The Energy Bureau **APPROVES** the project described in **Exhibit A** to this Resolution and Order. This approval represents **\$299,273,328.00** based on the Class 5 Cost Estimates submitted by PREPA.

### III. PREPA's Request for Confidential Information Designation and Treatment of parts of Exhibit A of the May 18 Motion

In the May 18 Motion, PREPA requested that the unredacted version of parts of Exhibit A be granted confidential treatment. PREPA alleges that the unredacted version of the SOWs in Exhibit 1 contain: confidential information in the form of critical energy infrastructure information or critical electric infrastructure information ("CEII") that garners protection from public disclosures pursuant to federal statutes and regulations;<sup>16</sup> and the Energy

<sup>8</sup> *Id.*, pp. 1-2, ¶ 3.

<sup>9</sup> *Id.*

<sup>10</sup> Exhibit A, Section 3.1, pp. 5-7.

<sup>11</sup> Exhibit A, Section 3.2, p. 7.

<sup>12</sup> May 18 Motion, pp. 2-3, ¶ 4.

<sup>13</sup> May 18 Motion, p. 2, ¶ 4.

<sup>14</sup> Exhibit A, Section 6.1, pp. 8-9.

<sup>15</sup> Exhibit A, Section 5, p. 8.

<sup>16</sup> 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020).





Bureau policy on management of confidential information,<sup>17</sup> that therefore is also protected under Act 57-2014.<sup>18</sup>

PREPA indicates that the CEII in the Scope of Work presented are global positioning system (GPS) coordinates of the power plant. PREPA stresses that CEII included within Exhibit A, warrants confidential treatment to protect critical infrastructure from threats that could undermine the system and negatively affect electric power services. Table 1 below details the portions of Exhibit A which PREPA requested confidential designation and treatment.

**Table 1: PREPA’s Request for Confidential Information Designation and Treatment, parts of Exhibit A.**

Document	Name	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
Exhibit A	Guayabal Dam Seismic Retrofit and Hurracaine Maria Repairs (Dams /Hydro)	GPS Location Page 4, Sec. 2.1	Right to privacy ( <i>see, e.g.,</i> Const. ELA, Art. II, Sections 8 and 10)	May 18, 2023

**IV. Energy Bureau Determination**

The Energy Bureau **APPROVES** the project in **Exhibit A** to this Resolution and Order, which shall be presented to FEMA and COR3 to finalize their approval process for the request of federal funds. The Energy Bureau approved this project based upon the information provided by PREPA. Should the scope of the project change or the request for the federal funds are not approved for such project, PREPA **SHALL** immediately seek the Energy Bureau’s approval of such changes.

The Energy Bureau **ORDERS** PREPA to (i) submit to the Energy Bureau copy of the approval by COR3 and/or FEMA of the project in **Exhibit A**, which shall contain the costs obligated for the project, **within ten (10) days of receipt of the approval**; (ii) provide the Energy Bureau the actual contracted cost to construct the project in **Exhibit A, within ten (10) days from the execution of the contract**; and (iii) inform the Energy Bureau once the projects are completed.

The directive established in the March 26 Resolution regarding the submission of projects before the Energy Bureau at least thirty (30) calendar days before submitting such projects to FEMA and/or COR3 remains unaltered.

Act 57-2014<sup>19</sup> establishes that any person having the duty to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.<sup>20</sup> Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information stated that “the Energy Bureau, after the appropriate evaluation, believes such information should be protected”.<sup>21</sup>

<sup>17</sup> Resolution, *In re: Política sobre Manejo de Información Confidencial en los Procedimientos ante la Comisión*, Case No. CEPR- MI-2016-0009, issued on August 31, 2016.

<sup>18</sup> Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>19</sup> *Id.*

<sup>20</sup> Section 6.15 of Act 57-2014.

<sup>21</sup> *Id.*

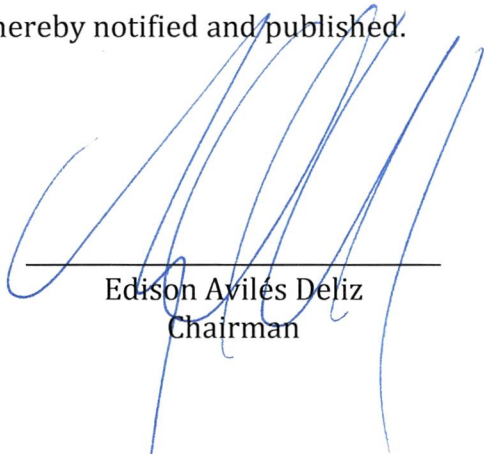


In such case, the Energy Bureau “shall grant such protection **in a manner that least affects the public interest, transparency,** and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.”<sup>22</sup>

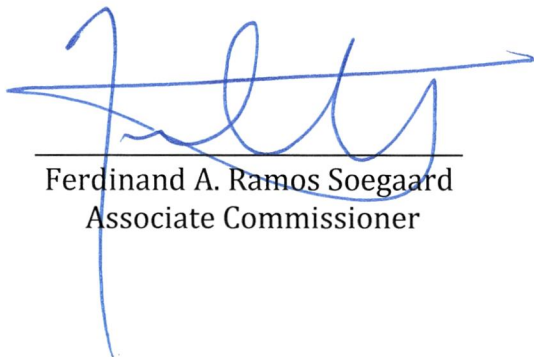
After a review of PREPA’s arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to the parts of Exhibit A as described in Table 1 above, pursuant to Article 6.15 of Act 57-2014. The Energy Bureau **TAKE NOTICE** that PREPA already submitted a redacted (*i.e.*, public) version of Exhibit A as described in Table 1.

The Energy Bureau **WARNS** LUMA that, noncompliance with any provision of this Resolution and Order, may result in the imposition of fines pursuant to Act 57-2014<sup>23</sup> and applicable Energy Bureau’s regulations and any other appropriate administrative sanctions, as considered appropriate by the Energy Bureau.

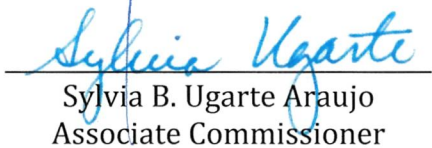
Be it hereby notified and published.



Edison Avilés Deliz  
Chairman



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner



Antonio Torres Miranda  
Associate Commissioner

**CERTIFICATION**

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 26, 2023. Associate Commissioner Lillian Mateo Santos did not intervene. I also certify that in May 26, 2023 a copy of this Resolution and Order was notified by electronic mail to laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com, Yahaira.delarosa@us.dlapiper.com; jmarrero@diazvaz.law; mvazquez@diazvaz.law; and have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today May 26, 2023.

  
Sonia Seda Gaztambide  
Clerk

<sup>22</sup> *Id.* (Emphasis added).

<sup>23</sup> Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.



Attachment A  
Projects Approved by the Energy Bureau

Region	Project Name	Presented Estimate (\$M)	
Rio Jacaguas, Juana Diaz/ Villalba	Guayabal Dam Seismic Retrofit and Hurracaine Maria Repairs (Dams /Hydro)	Repairs Estimate costs	\$1.81
		406 Hazard Mitigation Proposal	\$297.46
		Total	\$299.27

