

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

NEPR

Received:

Sep 20, 2024

10:39 AM

IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY'S EMERGENCY RESPONSE
PLANS

CASE NO.: NEPR-MI-2019-0006

MOTION IN COMPLIANCE WITH THE RESOLUTION AND ORDER OF JULY 24TH, 2024

TO THE HONORABLE ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal counsels and respectfully informs and requests as follows:

1. On July 24, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order conditionally approving the Emergency Response Plans ("ERPs") submitted by PREPA, LUMA Energy LLC ("LUMA"), and Genera PR LLC ("Genera") for the year 2024.

2. As part of the July 24, 2024 Order, the Energy Bureau instructed PREPA to submit its HoldCo Continuity of Operations Plan ("COOP Plan"), among other documents. PREPA was initially granted until August 23, 2024, to comply with the Resolution and Order.

3. On August 23, 2024, PREPA partially complied with the July 24, 2024 Resolution and Order by submitting certain required documents. Furthermore, PREPA requested an extension until September 6, 2024, to submit the COOP Plan.

4. In good faith, on September 6, 2024, PREPA requested this Honorable Bureau another extension as additional time was required to allow for the

necessary review and gathering of input from the relevant parties and, therefore, ensure the COOP Plan's accuracy and compliance with the Energy Bureau's requirements.

5. In compliance with the July 24, 2024, Order and the extensions requested to the Energy Bureau on August 23, 2024, and September 6, 2024, PREPA hereby submits as Exhibit A the complete and reviewed COOP Plan for the year 2024.

6. Exhibit A is part of internal protocols and procedures not disclosed to the public and are, therefore, confidential. PREPA respectfully requests confidential treatment from the Energy Bureau for Exhibit A.

7. In general, documents in possession of a public corporation like PREPA are presumed public. However, access to public information is not absolute. Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 82 (2017). The document sought to be disclosed must enjoy, in effect, that public status. Ortiz v. Dir. Adm of the Courts, 152 DPR 161 (2000).

8. A government entity may keep the information confidential when:

- 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" pursuant to Rule 514 of Evidence.

See Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 83 (2017).

9. Article 6.15 of Act 57-2014 is the core provision for managing confidential information filed before the Energy Bureau. It provides, in its pertinent

part, 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”.

10. If the Energy Bureau believes, after the appropriate evaluation, that the 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).

11. The Energy Bureau's Policy on Confidential Information (as amended, the “Confidentiality Policy”) details the procedures a party should follow to request that a document or portion thereof be afforded confidential treatment. The policy requires identifying confidential information and filing a memorandum of law explaining the legal basis and support for a request to file information confidentially. See CEPR-MI-2016-0009, § A, as amended by the Resolution dated September 20th, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* at ¶ 3.

12. From the face of Exhibit A it is clear that its intended use is internal and for official purposes only. This exhibit was not prepared with the intention of its information to be shared with the general public. Furthermore, Exhibit A

contains personal information of various employees of PREPA, for their security and privacy, such information as well as the totality of the document shall be deemed confidential.

13. Lastly, Rule 513 of the Puerto Rico Rules of Evidence, 32 LPRA App. VI, R. 513 recognizes the trade secret privilege. Its purpose is "to protect the free enterprise system by providing that trade secret owner may refuse to disclose, or prevent another from disclosing, important secrets about their trade or business, so long as it does not tend to conceal a fraud or cause a miscarriage of justice." Secretariat of the Judicial Conference, *Rules of Evidence Report*, 2007, p. 287. In essence, this privilege protects confidential business information. Likewise, Puerto Rico's Trade Secret Protection Act, 10 P.R. Laws Ann. §§ 4131-4141, considers trade secrets the internal protocols and procedures.

14. The following is a detailed list of the information that PREPA requests the Energy Bureau to declare confidential:

File	Pages in which confidential information is found	Summary of legal basis for Confidential Treatment
Exhibit A	Entire document	Trade Secret Information

WHEREFORE, PREPA respectfully requests the Energy Bureau to take (1) **NOTICE** of the above, (2) deem PREPA compliant with the July 24th, 2024 Resolution and Order, and (3) **GRANT** the requested confidential treatment to Exhibit A, the HoldCo Continuity Of Operations Plan ("COOP Plan").

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of September 2024.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and courtesy copies were sent via e-mail to LUMA Energy, LLC through its counsels of record at margarita.mercado@us.dlapiper.com, julian.angladapagan@us.dlapiper.com, laura.rozas@dlapiper.com, yahaira.delarosa@us.dlapiper.com and to Genera PR, LLC through its counsels of record at jfr@sbgblaw.com, alopez@sbgblaw.com.

GONZÁLEZ & MARTÍNEZ

1509 López Landrón
Seventh Floor
San Juan, PR 00911-1933
Tel.: (787) 274-7404

s/ Alexis G. Rivera Medina

Alexis G. Rivera-Medina

TSPR No.: 18,747

E-mail: arivera@gmlex.net

- Exhibit A –
(Confidential)