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PUERTO RICO
Comisión de Energía de Puerto Rico

**REGULATION ON ADJUDICATIVE, NOTICE OF NONCOMPLIANCE,
RATE REVIEW AND INVESTIGATION PROCEEDINGS**

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COMMONWEALTH OF PUERTO RICO
ENERGY COMMISSION OF PUERTO RICO

**REGULATION ON ADJUDICATIVE, NOTICE OF NONCOMPLIANCE, RATE REVIEW
AND INVESTIGATION PROCEEDINGS**

CHAPTER I - GENERAL PROVISIONS APPLICABLE TO ALL PROCEEDINGS

ARTICLE I.- GENERAL PROVISIONS

Section 1.01.- Title

This Regulation shall be known as Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings of the Energy Commission of Puerto Rico.

Section 1.02.- Legal Basis

This Regulation is adopted pursuant to Articles 6.3, 6.4, 6.24 and 6.25 of Act No. 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act, and Act No. 170 of the 12 of August of 1988, as amended, known as the Uniform Administrative Procedure Act.

Section 1.03.- Purpose

The purpose of this Regulation is to establish the standards that shall govern adjudicative proceedings before the Energy Commission of Puerto Rico—including the process of reviewing and approving the electric service rate of the Electric Power Authority—which shall complement the provisions of the abovementioned Uniform Administrative Procedure Act, as amended, and its interpretive case law. Furthermore, this Regulation establishes the bylaws that shall govern in conjunction with the Uniform Administrative Procedure Act and its interpretive case law, as well as the Commission's proceedings regarding notices of noncompliance and investigation.

Section 1.04.- Application

This Regulation shall apply to all adjudicative proceedings, notices of noncompliance and investigations addressed before or by the Energy Commission of Puerto Rico.

Section 1.05.- Interpretation

This Regulation shall be interpreted in a manner that promotes the best public interest and the protection of the interests of the residents of Puerto Rico. Moreover,

it shall be construed to secure a just, speedy and inexpensive determination of all proceedings.

Section 1.06.- Provisions of Other Regulations

The provisions of this Regulation may be supplemented with other regulations of the Energy Commission of Puerto Rico that are not incompatible with the provisions stated herein.

Section 1.07.- Unforeseen Proceedings

When a specific proceeding has not been planned for in this or another regulation by the Commission, the Commission may conduct them in any manner not inconsistent with Act No. 57-2014, as amended.

Section 1.08.- Definitions

A) For purposes of this Regulation, the following terms will have the meaning established below, except when its context clearly indicates otherwise:

- 1) "PREPA" refers to the "Puerto Rico Electric Power Authority".
- 2) "Commission" or "Energy Commission" refers to the "Energy Commission of Puerto Rico", as well as its examining officers, administrative judges and plenary of commissioners, when acting as representatives of the Commission.
- 3) "Electric service company" includes:
 - a) PREPA;
 - b) Any person or entity, natural or legal, that offers generation, storage, invoicing or reselling of electricity services;
 - c) Any person or entity, natural or legal, that has an electrical energy generation plant in Puerto Rico, including generators distributing in excess of 1 MW; and
 - d) Any person or entity, natural or legal, that is or constitutes a wheeling "eligible business," pursuant to Act No. 73-2008.
- 4) "CEPPO" refers to the "Commonwealth Energy Public Policy Office".
- 5) "ICPO" refers to the "Independent Consumer Protection Office".
- 6) "Person" includes any natural person, partnership, or corporation,

regardless of how it is organized.

- B) Every word used in the singular in this Regulation, shall be understood to also include the plural, unless the context indicates otherwise. Similarly, the terms used in the masculine gender shall include the feminine and vice versa.

Section 1.09.- Dates and Terms

In computing any period conceded by this Regulation, or by order of the Commission, the period shall begin accruing the day after the act, event or noncompliance that triggers the period takes place. If a period ends on a Saturday, Sunday, or a legal holiday, said period shall be extended until the next day that is not a Saturday, Sunday or legal holiday.

Section 1.10.- Language

- A) If there is a discrepancy between the Spanish version and the English version of this Regulation, the provisions of the Spanish version shall prevail.
- B) The proceedings heard before the Commission shall be conducted in the Spanish language. Notwithstanding, upon request of a party or when warranted, the Commission may order the proceedings to be conducted in the English language, provided it is not incompatible with the fair adjudication of the case.
- C) All pleadings, motions, and documents shall be completed in Spanish or English, according to the appearing party's preference. Any document undersigned by a party or person who does not understand Spanish or English, may be submitted in the vernacular language of said party or person, as long as a certified translation into Spanish or English is provided.
- D) Documents submitted in English do not require a translation. Notwithstanding, when the translation of a document is considered indispensable for the fair adjudication of a case, the Commission shall order the translation of any pleading, motion or document into Spanish.
- E) All documents submitted in any language other than Spanish or English shall be accompanied by a certified translation into Spanish or English.

Section 1.11.- Severability Clause

If any article, provision, word, sentence, paragraph or section of this Regulation is disputed, for any reason, before a court and declared unconstitutional or void, such ruling shall not affect, impair, or invalidate the remaining provisions of this Regulation, but its effect shall be limited to the article, provision, word, sentence, paragraph or section that is declared unconstitutional or void. The nullification or

invalidation of any article, word, sentence, paragraph or section in any specific case, shall not affect or jeopardize in any way its validity or enforceability in any other case, except when expressly stated.

Section 1.12.- Forms

The Commission shall establish the forms it deems necessary to conduct the proceedings pursuant to this Regulation, and shall make them available to the public via its Internet portal. Notwithstanding the fact that the Commission has not adopted one or more forms, is in the process of reviewing them, or the Internet website is not in service, shall not relieve anyone of their obligation to comply with the provisions stated herein or the Commission's orders.

Section 1.13.- Mode of Presentation

The forms, documents and appearances required by virtue of this Regulation or any order of the Commission, must be submitted before the Commission in electronic format according to the instructions which, periodically, the Commission sets forth by means of an order related to the electronic filing system.

If the electronic filing system is temporarily out of service, the forms, documents and appearances required by virtue of this Regulation or any order of the Commission, shall be submitted before the Commission in compliance with the terms established periodically by the Commission by way of an order.

Section 1.14.- Effect of Presentation

The presentation of a document whose content has been formulated by the undersigned party, shall be equivalent to certifying that the content of said document is true and that, according to the signer's best knowledge, information and belief, formed after reasonable inquiry, the document is based on facts, arguments, legal sources and correct information.

Section 1.15.- Confidential Information

If in compliance with the provisions of this Regulation or any of the Commission's orders, a person has the duty to disclose information to the Commission considered to be privileged, pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the Commission the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The Commission 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.

Section 1.16.- Validity

Pursuant to Article 6.20 of Act No. 57-2014, as amended, this Regulation shall enter into effect immediately after its submission to the Department of State and the Legislative Library of the Office of Legislative Services.

CHAPTER II - ADJUDICATIVE PROCEEDINGS

ARTICLE II.- MISCELLANEOUS STANDARDS ON ADJUDICATIVE PROCEEDINGS

Section 2.01.- Applicability of the Rules of Civil Procedure and the Rules of Evidence

The Rules of Civil Procedure and the Rules of Evidence may apply, in a supplemental manner to this Regulation, in any judicial proceeding before the Commission when, in the exercise of its discretion to handle cases before it, the Commission determines it by way of an order.

Section 2.02.- General Requirements of Written Appearances

Every pleading, motion or document presented before the Energy Commission must comply with the following requirements:

- A) Have a heading or subheading with the name of the Commission, the name of the parties, the case number (assigned by the Commission), and the nature of the complaint. The initial document shall include the names of all petitioners and respondents. However later documents shall only display the name of the first parties mentioned in the initial document, and the abbreviation "et al." shall be used to reference the other petitioners and respondents.
- B) Be on U.S. letter-sized paper, in 12 point font, double-spaced.
- C) The initial document presented before the Commission shall include the name, last name, physical address, mailing address, phone number and email address of every appearing party. During the adjudicative proceedings, all appearing parties must provide written notice to the Commission of any change in their contact information within a period of three (3) days, counted from the date on which the change occurred. Failure to meet this requirement will result in the imposition of penalties.
 - 1) If the appearing party is a corporation or a limited liability company organized under the laws of the Commonwealth of Puerto Rico, the Department of State registry number shall be included.
 - 2) If the appearing party is a person with a personal business, the name under which the person does business shall be included.

- 3) Lest the party is represented by a lawyer or the Commission establishes otherwise by way of an order, the mailing address and email address provided pursuant to this paragraph shall be the addresses that the Commission will use to notify the parties of its orders and resolutions, and the addresses all appearing parties in the case will use to notify copies of all documents presented before the Commission.
- D) Include the date of presentation of the document before the Commission.
- E) With the exception of claims that result in the initiation of an adjudicative proceeding before the Commission, every document shall contain a certification from the appearing party or the appearing party's lawyer, in the case of being represented, indicating that they have served a copy to every other party to the case of said document, and the vehicle used to effect said notice.
- 1) Notice to all parties shall be effected the same day the document is presented before the Commission.
 - 2) When a lawyer represents a party, notice shall be served to the lawyer, unless the Commission orders that notice be sent directly to the party.
 - 3) Notice shall be sent via email to the address on record. In the event any party, or lawyer, does not have an email account, notice shall be personally delivered, faxed or mailed to the number or address, as may be the case, appearing on record. Notice shall be considered served upon being sent (via email or fax) or upon being mailed.
- F) The document shall be signed by the appearing party's lawyer, or by the party themselves, if not legally represented. The signature of the party or the party's attorney shall constitute a certification that the undersigned has read the document and, to the best of his knowledge, understanding and belief, formed after reasonable examination, the information submitted is true and accurate. The name, last names, physical address, mailing address, telephone number and email address of the undersigned shall be indicated on top or beneath the signature. When a lawyer appears in representation of a party, all writings must also include the attorney's registration number.
- 1) Every lawyer who has appeared before the Commission in representation of a party and resigns as legal counsel of said party during proceedings must provide written notice to the

Commission on or before the period of ten (10) days prior to the resignation becoming effective. In case of a sudden resignation, written notice shall be served within a period of three (3) days from the date the resignation becomes effective.

- G) The appearing parties may annex documents to any claim, pleading, or motion presented, which shall be considered as part of the claim, pleading, or motion to which they are annexed. Notwithstanding, the Commission shall determine its admissibility as evidence and its probative value in the corresponding procedural phase.

Section 2.03.- Summons

When the Commission summons any person to a deposition, visual inspection, hearing or any other proceeding before the Commission, the summons shall inform the summoned party of their obligation to appear, under penalty of contempt, on the date and time ordered. In the case of noncompliance, the Commission may turn to the General Court of Justice for aid.

ARTICLE III.- INITIATING ADJUDICATIVE PROCEEDINGS

Section 3.01.- Standing

Every person with standing may file a claim before the Energy Commission in relation to any matter under its jurisdiction.

CEPPO shall have standing to file claims before the Commission against any person who is allegedly engaging or has engaged in actions or omissions contrary to the public energy policy of the Commonwealth of Puerto Rico. Also, ICPO shall have standing to file claims before the Commission, pursuant to Article 6.44 of Act No. 57-2014, as amended.

Section 3.02.- Content of Claims, Counterclaims or Legal Actions before the Commission

All claims, counterclaims or legal actions before the Commission shall contain, the least:

- A) The full name of the appearing petitioners, subject to the following:
 - 1) If natural persons, both last names shall be included, and in the case of persons married under a joint marital partnership regime, the spouse's name shall be included, as well as the marital partnership they constitute;
 - 2) If legal entities, the name and registry number, if applicable, as it appears in the Department of State.

- B) The physical address, mailing address, phone number and email address of all appearing petitioners;
- C) The complete name of all respondents, as known by the petitioner;
 - 1) If natural persons, both last names shall be included, and in the case of persons married under a joint marital partnership regime, the spouse's name shall be included, as well as the marital partnership they constitute;
 - 2) If legal entities, the name and registry number, if applicable, as it appears in the Department of State.
- D) The physical address, mailing address, phone number and email address of all appearing respondents, as known by petitioners;
- E) A brief summary of the alleged facts that demonstrate petitioner has a right to relief;
- F) The remedy or remedies petitioner seeks. Petitioners may request relief for damages as part of the remedy sought;
- G) An appraisal of the remedies sought;
- H) If petitioner requests more than one remedy, he shall indicate if said remedies are sought together or as an alternative;
- I) When a party requests review of a decision made by an electric service company, copy of said decision and evidence of the date on which it was notified shall be included as part of the complaint, as well as every document that was submitted and received as part of the process before the company. Notwithstanding, the omission of these shall not be reason to dismiss the petition for review. In such cases, the Energy Commission may require the electric service company to produce and deliver the documents related to the process addressed before it.

Section 3.03.- Filing a Claim or Legal Action before the Commission

Claims before the Commission are filed via its electronic filing system, in conformance to the instructions established by order of the Commission. If the electronic filing system is temporarily not in service, claims giving rise to an adjudicative action or proceeding before the Commission, shall be conducted accordingly with this Section and the instructions established by order of the Commission.

- A) Every claim giving rise to an adjudicative action or proceeding before the

Commission shall be presented to the Clerk of the Commission—with at least four copies—together with a proposed summons for each of the respondents, in the format adopted by the Commission.

- B) The Clerk of the Commission shall mark or stamp the claim and their copies as received, keep the original and three copies, and return the rest of the marked copies to the petitioner or person who has delivered the documents. The mark or stamp of the Clerk of the Commission shall indicate the date and time in which the claim was presented before the Commission.
- C) Upon receiving and marking or stamping the original claim and all three copies, the Clerk of the Commission shall issue the summons for each respondent, marked or punched with the date of issuance of said summons. The summons shall advise respondent of his obligation to respond to the pleadings within a period of twenty (20) days, starting from the date of notice of the summons and copy of the claim, and that if respondent does not submit a timely response, the Commission may take note of their contempt and grant the remedy sought in the claim.

Section 3.04.- Period for Filing Claims Requesting Review of a Decision Issued by an Electric Service Company

Every claim requesting the Commission review of (i) the invoices of PREPA or any other electric service company (ii) the decisions of PREPA regarding the process of interconnection, (iii) the decisions of PREPA regarding participation in the net mediation program or any other related program, or (iv) the decisions of any other company regarding the provision of electrical services to customers, shall be presented within a period of thirty (30) days, starting from the date on which PREPA or the electric service company issued its final decision on the matter. If PREPA or the electric service company has not issued a final decision, the abovementioned period shall start on the date the decision should have been issued.

Section 3.05.- Notice of Claims Giving Rise to an Adjudicative Action or Proceeding before the Commission

The petitioner or petitioners of an adjudicative action or proceeding before the Commission shall be responsible for serving respondents with the summons issued by the Commission and a copy of the claim filed against them.

- A) When respondent is a certified electric service company, notice shall be served according to the following standards:
 - 1) On or before the period of fifteen (15) days after having filed the claim giving rise to the adjudicative action or proceeding before the Commission, the summons issued by the Commission shall be sent to the petitioned company via certified mail, along with a true and exact

copy of the filed claim (with the mark or stamp of the Clerk of the Commission), including all annexes, if any. The summons and documents shall be sent to the mailing address that, in fulfillment with the regulations and orders of the Commission, said company provided as the mailing address at which it shall receive copy of any claims, requests, or investigations initiated against the company before the Commission.

- 2) It shall be assumed that the petitioned electric service company was duly notified of the claim against them, provided the petitioner certifies notice was sent to the correct mailing address, as provided by the company to the Commission for the receipt of any claims, requirements, or investigations initiated against them before the Commission. Notice shall be considered finalized on the date it is available for pickup according to the *United States Postal Service* (USPS).
- 3) Either through the Commission's Internet portal or any other means, the Commission shall provide access to the mailing address of each electric service company in order to facilitate notice of claims, motions, requirements, orders or investigations.
- 4) On or before the period of ten (10) days of having notified the petitioned electric service company of the claim initiated against them, petitioner shall inform the Commission of this through motion. Petitioner shall attach to the motion proof that it effected said notice.

B) When the respondent is a public entity of the Commonwealth of Puerto Rico:

- 1) On or before the period of fifteen (15) days after having filed the claim giving rise to the adjudicative action or proceeding before the Commission, the summons issued by the Commission shall be sent to the public entity via certified mail, along with a true and exact copy of the filed claim (with the mark or stamp of the Clerk of the Commission), including all its annexes, if any. The summons and other documents shall be sent to the mailing address of the public entity petitioned, which is published in the Agencies Directory, available at <http://www2.pr.gov/Directorios/Pages/DirectoriodeAgencias.aspx>. If it is a municipality, the summons and other documents shall be sent to the mailing address of the municipality, which is published in the Municipalities Directory, available at <http://www2.pr.gov/Directorios/Pages/DirectoriodeMunicipios.aspx>.

- 2) It is assumed that the petitioned public entity was duly notified of the claim presented against it, provided the petitioner certifies notice was sent to the mailing address published, as may be the case, in the Agencies Directory available at <http://www2.pr.gov/Directorios/Pages/DirectoriodeAgencias.aspx>, or in the Municipalities Directory at <http://www2.pr.gov/Directorios/Pages/DirectoriodeMunicipios.aspx>. Notice shall be considered effected on the date in which, according to the *United States Postal Service* (USPS), it is available for pickup.
- 3) On or before the period of ten (10) days of having notified the petitioned electric service company of the claim initiated against them, petitioner shall inform the Commission about this fact through motion. The petitioner shall attach to the motion proof that it effected said notice.

C) When respondent is a natural person, notice shall comply with the following standards:

- 1) Petitioner shall send each respondent the summons and a true and exact copy of the filed claim (with the mark or stamp of the Clerk of the Commission), including all attachments, if any, by certified mail with return receipt, to the known mailing address of each respondent, or the last known mailing address of the respondent; or
- 2) Petitioner shall serve respondent with a summons, via a person over eighteen years of age, who knows how to read and write, is not a party in the action, nor a lawyer to any of the parties, along with a true and exact copy of the filed claim (with the mark or stamp of the Clerk of the Commission), including all attachments, if any. The petitioner shall certify said delivery, and shall record the date, time and physical address of the place where it was served, as well as the name of the person to whom they delivered it.
- 3) If in the period of forty-five (45) days from the date on which the claim was presented, petitioner is still not able to serve the respondent or respondents of the proceeding begun against them, petitioner shall diligently inform the Commission, through motion, of all their efforts to serve said respondents. In the motion, petitioner shall certify that all efforts related are true.
- 4) After evaluating petitioner's motion, the Commission shall issue an order indicating any additional efforts petitioner should perform to serve respondent, and the period in which the petitioner shall complete said efforts.

ARTICLE IV.- DEFENSES, PLEADINGS AND VOLUNTARY DISMISSAL

Section 4.01.- Responsive Pleadings

In responding to a pleading, every respondent shall admit or deny the allegations asserted against him by the opposing party, state defenses to each claim, as well as the supportive facts regarding each allegation or claim, as may be the case. Respondents may not deny the allegations generally. When a respondent intends to deny only part of an allegation, he shall specify the part of the statement that is true and deny the rest.

A respondent may formulate, together with or alternatively, as many defenses as he believes he has a right, regardless if they are incompatible with each other.

Every allegation of fact that is not conclusive, does not refer to the remedy sought and is well formulated in a claim, counterclaim, third-party claim or cross-claim, shall be considered admitted if not denied.

Sections 4.02.- Time to Serve a Responsive Pleading

Every respondent against whom allegations are formulated in a complaint or action giving rise to a proceeding against them, shall respond to the allegations within a period of twenty (20) days, counted from the date on which summons was served and the complaint received.

Respondents against whom a counterclaim or cross-claim has been presented, shall respond to the allegations within a period of ten (10) days, counted from the date on which they have been given a copy of the complaint.

Section 4.03.- Voluntary Dismissal

A) Petitioners may renounce their claim:

- 1) By submitting a motion for voluntary dismissal at any time before respondent files an answer to the complaint, motion to dismiss or motion for summary judgment, whichever occurs first; or
- 2) By stipulation, signed by all parties to the case, at any time during the proceedings.

B) Voluntary dismissal shall be without prejudice unless the motion or stipulation states otherwise.

C) Voluntary dismissal shall be with prejudice if petitioner had previously filed for dismissal of the same claim or respondent has fulfilled his obligation.

ARTICLE V.- SUBSTITUTION OF PARTIES, AMENDMENTS TO THE PLEADINGS, INTERVENTION, JOINDER AND SEVERANCE OF CLAIMS

Section 5.01.- Substitution of Parties

Substitution of parties is allowed at any time during the proceedings, pursuant to the Rules of Civil Procedure.

Section 5.02.- Amendments

- A) A party may amend its pleadings at any time before having been served an answer to the complaint, or if an allegation does not require a responsive pleading and the case has not been assigned for an administrative hearing, a party may amend its pleadings, in the same manner, at any time within twenty (20) days after serving it.
- B) In any other case, the parties may amend their pleadings only with permission of the Commission or written consent of the opposing party. The motion to amend the pleadings shall be accompanied by the complete amended allegation.
- C) Unless the Commission orders otherwise, a party shall serve their response to an amended pleading within the time remaining to answer the original pleading or within twenty (20) days after service of the amended pleading, whichever is later.

Section 5.03.-Amendments to Conform the Pleadings to the Evidence

When matters not included within the original pleadings are presented during the administrative hearing, with express or implicit consent of the parties, these shall be considered, for all effects, as if they had been included in the pleadings. Amendments to conform the pleadings to the evidence may be requested on motion by any party during the proceedings; albeit, any omission to amend shall not affect the result of the administrative hearing in relation to such matters. If a party objects to the evidence during the administrative hearing on the grounds it is not within the issues raised in the pleadings, the Commission may allow the amendments, provided these aid in presenting the merits and the party requesting said amendments demonstrates fair cause for not amending the pleadings on time during the proceedings, and that admitting such evidence will not jeopardize the claim or defense of the other party. Upon resolving the motion, the Commission shall take into consideration the effect of the amendment on the result of the case and the prejudice caused to the opposing party.

Section 5.04.- Retroactive Effect of Amendments

- A) Provided the claim or defense shown in the amended pleading arises from

the conduct, act, omission or event presented in the original pleading, the amendments shall relate back to the date of the original pleading.

- B) An amendment that changes the party against whom a claim is asserted shall relate back to the date of the original pleading if, besides satisfying the aforementioned requirement and being presented within the period prescribed, the party to be brought in by the amendment:
 - 1) Was aware of the pending complaint and will not be prejudiced in defending on the merits; and
 - 2) If not for an error regarding the proper party's identity, the action would have been originally brought against it.
- C) An amendment to add a petitioner shall relate back to the date of the original complaint if it contains a claim that arises from the same conduct, act, omission, or event as the original action and respondent had knowledge of the existence of the cause of action of the petitioner to be brought in by the amendment and of their participation in the original action. Also, the amendment shall fall within the period of prescription of the action.
- D) When the pleadings are amended to request new or additional remedies against a respondent who has been noted for contempt, notice of the pleadings must be sent to the respondent according to what is set forth in Section 3.04 of this Regulation.

Section 5.05.- Intervention

Any person with a legitimate interest in a case before the Commission may present a duly grounded petition to intervene or participate in said case.

The Commission shall evaluate and attend to the petition according to the criteria established in Act No. 170 of the 12 of August of 1988, as amended, known as the Uniform Administrative Procedure Act, and its interpretive case law.

Section 5.06.- Joinder of Claims

When cases that encompass common questions of fact or law are pending before the Commission, the Commission may hold one hearing relating to any or all litigious matters within such claims, order the consolidation of all claims and issue, in this respect, orders to avoid unnecessary costs and delays.

When a claim depends on the completion of another action, the Commission may consolidate said claims into the same case.

Section 5.07.- Severance of Claims

At any time, in the exercise of its discretion to handle the proceedings before it, the Commission may segregate the accumulated or consolidated actions into as many cases it deems necessary to ease the proceedings and promote the quick adjudication of these. Upon segregating actions, the Commission shall assign a number to each case.

ARTICLE VI.- SUMMARY JUDGMENT

Section 6.01.- Dismissal Petitions and Orders to Show Cause

Instead of, or in addition to filing a response to a claim, counterclaim, third-party claim, or cross-claim, any respondent may petition the Commission for dismissal of the action through a duly founded motion. Respondent may argue on motion that the Commission lacks personal or subject-matter jurisdiction to address the controversies raised in the complaint, that the complaint filed against them lacks merit, that it fails to state a claim upon which relief may be granted, or any other applicable ground in accordance with Law.

In any case, the Commission may, *motu proprio* or at the request of a party, order petitioner to show cause for which they should not dismiss the claim, counterclaim, third-party claim, or cross-claim.

Section 6.02.- Motion for Summary Judgment and Orders to Show Cause

- A) At any time after the period of twenty (20) days from the date on which respondent is duly served with summons, a petitioner may move for summary judgment based on sworn statements or evidence that demonstrates the non existence of a genuine controversy as to any material fact. The Commission may summarily dictate a final resolution in favor of petitioner on the totality of or any part of the claim.
- B) A respondent may move for summary judgment after being served with the complaint based on sworn statements or evidence supporting the non-existence of a genuine controversy as to any material fact. The Commission may summarily dictate a final resolution in favor of respondent on the totality or any part of the claim.
- C) All motions for summary judgment must include the following:
 - 1) A short introduction on the pleadings of the parties;
 - 2) The controversies pending adjudication;
 - 3) A concise summary, organized in numbered paragraphs, of all essential and pertinent facts for which there is no substantial

controversy, indicating the paragraphs or pages of the sworn statements or supplementary evidence that support these facts;

4) The legal basis for granting summary judgment; and

5) The relief sought.

D) The party against whom a motion for summary judgment is addressed may not rest solely on the assertions or negations contained in their pleadings, but is obligated to answer the motion for summary judgment in a detailed and specific manner, according to what is established in this paragraph, under penalty of the Commission deciding the case summarily, if dictated by Law. The response to the motion for summary judgment must be presented within a period of twenty (20) days, from the date of its service, and must contain the following:

1) A brief introduction on the pleadings of the parties and the controversies pending adjudication;

2) The controversies pending adjudication;

3) A concise and organized summary, with reference to the numbered paragraphs in the motion for summary judgment, of all essential and pertinent facts for which there is a genuine dispute, with an indication of the paragraphs or pages of the sworn statements or additional evidence that support these facts;

4) A list of the facts not in controversy with reference to the paragraphs or pages of the sworn statements or other supportive material; and

5) The legal basis for denying summary judgment.

E) If the opposing party does not file a response to the summary judgment in the period provided for in this Section, it shall be understood that the motion for summary judgment is submitted for the consideration of the Commission.

F) Every relation of the facts presented in the motion for summary judgment or its response shall be considered admitted if it indicates the paragraphs or pages of the sworn statements or supplementary evidence that establish these facts, unless duly disputed as provided in this Section.

G) The requested summary judgment shall be dictated immediately if the pleadings, depositions, answers to interrogatories and admissions, together with the sworn statements, if any, or supplementary evidence, demonstrate that there is no real genuine controversy regarding any essential and pertinent fact and that, as a question of Law, the Commission shall grant

summary judgment in favor of the moving party.

- H) The Commission may, *motu proprio* and without a request for summary judgment, order a party to show cause for not adjudicating the case as Law dictates—and without holding an administrative hearing—when, following the parties’ argumentation and presentation of evidence, no substantial controversy of essential and pertinent facts arises.

Section 6.03.- Cases Not Summarily Decided

If by virtue of a motion or an order issued pursuant to the provisions of this Article, the case is not adjudicated and it is necessary to hold an administrative hearing, the Commission shall resolve the motion through a determination of the essential and pertinent facts not in controversy and the essential and pertinent facts in genuine and good faith controversy, provided the remedy sought is not in dispute, and order the proceedings that are just in accordance with law, including an evidentiary hearing limited to the matters in controversy. Upon holding the evidentiary hearing, the facts properly specified shall be considered ascertained and the proceedings shall continue accordingly.

ARTICLE VII.-AMICI CURIAE

Section 7.01.- Petition to Participate as *Amicus Curiae*

- A) Any person that is not party to a case may present before the Commission a petition to participate in the capacity of friend of the court or *amicus curiae*. Unless the Commission decides otherwise by order, every petition to participate as *amicus curiae* shall be accompanied by a brief and be presented at least thirty (30) days before the date on which the administrative hearing shall be held.
- B) The petitioner’s brief shall include:
- 1) A description of the petitioner and his interest in the controversy(s) pending adjudication;
 - 2) An explanation of the reasons for which his participation in the case is justified;
 - 3) An introductory explanation of the contributions that he will make to assist the Commission to be better informed or in a better position to adjudicate the case properly;
 - 4) A declaration indicating:
 - a) If any of the parties or lawyers in the complaint has helped

draft the petitioner's brief;

b) If any of the parties or lawyers in the complaint has contributed funds or any other type of resource for the preparation or submission of the petitioner's brief; and

c) If any other person, not a party in the complaint, the petitioner or its lawyer, has contributed funds or any other type of resource for the preparation or submission of the petitioner's brief, and the name of said person(s).

5) Its arguments on the controversy(s) pending adjudication;

6) Any other argument the petitioner considers necessary.

Section 7.02.- Concession or Refusal of the Petition

The Commission shall evaluate the petition to participate as *amicus curiae* and the attached brief, and shall concede or deny subject to its discretion.

Section 7.03.- CEPPPO and ICPO Appearances as *Amicus Curiae*

A) CEPPPO.- In any case pending before the Commission, CEPPPO may appear in the capacity of *amicus curiae* and present the corresponding brief, without having to present a petition. Unless the Commission decides otherwise by order, CEPPPO must present its brief at least thirty (30) days before the date on which the administrative hearing will be held.

B) ICPO.- In any case pending before the Commission, ICPO may appear in the capacity of *amicus curiae* and present the corresponding brief, without having to present a petition. Unless the Commission decides otherwise by order, ICPO must present its brief at least thirty (30) days before the date on which the administrative hearing will be held.

C) At its discretion, the Commission may compel the appearance of CEPPPO in any case that is before its consideration.

D) In its brief as *amicus curiae*, CEPPPO and ICPO shall include:

1) A declaration indicating:

a. If its appearance is *motu proprio*, at the request of a party, or by order of the Commission. If it was at the request of a party, it shall identify the party that petitioned its appearance;

- b. If any of the parties or lawyers in the complaint, has participated in the drafting of the brief or contributed any other type of resource for the preparation or submission of the petitioner's brief; and
 - c. If any other person, or any other person that is not employee of or lawyer for CEEPO or ICPO, as may be the case, has participated in the drafting of the brief or contributed any other type of resource for the preparation or submission of the petitioner's brief. The name of said person(s) shall be identified.
- 2) Its arguments on the controversy(s) pending adjudication;
 - 3) Any other argument the petitioner considers necessary.

ARTICLE VIII.-DISCLOSURE OF EVIDENCE

Section 8.01.- General Standards

The parties may disclose any material, that is not privileged and that is pertinent to the matters in dispute in the pending case. Unless the Commission decides otherwise by order, the parties to the case shall conduct the discovery process subject to the following:

- A) The mental impressions, conclusions, opinions or legal theories of the lawyer or any other representatives of the party regarding the case are out of reach of the discovery process.
- B) In addition to any other pertinent information, as part of the disclosure of evidence the parties may request:
 - 1) A list of the witnesses whose testimony the party to whom the disclosure is addressed may present in the administrative hearing, as well as a short summary of what each plans to declare;
 - 2) A copy of all witnesses' statements in the power of the party to whom the request is addressed.
 - 3) A copy of all documents and objects that have been prepared—either before commencement of the action or for the administrative hearing—by or for another party, or by or for the representative of said party, including their lawyer, consultant, guarantor, insurer or agent.
 - 4) The name and address of the expert witnesses the party to whom

the request is made has consulted;

- 5) The name and address of the expert witnesses the party to whom the request is made intends to present in the administrative hearing, the subject matter said experts shall testify about, as well as a summary of their opinions and a brief statement on the theories, facts or arguments that support their opinions.
- C) A copy of every expert report, prepared by an expert hired by a party for the analysis of a matter related to a case before the Commission, must be delivered to the Commission and all other parties to the complaint within the period of ten (10) days from the date the expert delivers said report to the contracting party.
- D) When an expert study is required, the Commission shall order the party seeking discovery to pay the expert reasonable fees for the time invested during the discovery phase. If the party interested in the disclosure of expert evidence demonstrates to the Commission that it lacks the economic means to pay said fees, the Commission may order discovery under the terms and conditions it deems just and reasonable.
- E) Every person advised of a possible claim against him or her is obliged to preserve evidence. Furthermore, said obligation exists if a legal or ethical duty requires the preserving of evidence, if the obligation is voluntarily assumed or if it arises from the particular circumstances of the case. Likewise, a party has the obligation to preserve evidence that may be subject to discovery, even if it has not been formally requested.
- F) A party who has responded to a discovery request has the duty to continue updating, correcting or amending their answers and notifying the other parties of any additional information obtained after the initial request that is related to said discovery.
- G) Failure of the parties to preserve, update and correct evidence, and to comply with all other obligations during the discovery process, shall be subject to the imposition of any sanction the Commission deems appropriate.
- H) At its discretion, the Commission may summon witnesses other than a party's witnesses (including expert witnesses), subject to the conditions the Commission deems appropriate, including the possibility of ordering compensation by one, some or all of the parties involved in the case.
- I) The Commission may, *motu proprio* or upon request, conduct visual inspections, order the holding of public hearings and request the production and inspection of objects, records, inventories or documents.

- J) The disclosure of evidence shall begin after the presentation and notice of the responsive pleadings and shall conclude within sixty (60) days. However, the Commission may, at its discretion, reduce this term, as deemed necessary, in view of the circumstances and the nature of the case. Similarly, the Commission may, at its discretion, limit the methods for disclosure of evidence that the parties may use and the terms to respond to them.
 - 1) The referred term of sixty days can only be extended with just cause and upon request of a party. The party requesting the extension shall substantiate its request and prove the existence of circumstances that, in their view, warrant the extension.
- K) The parties shall provide notice to the Commission and all other parties of a copy of any interrogatories, requests of documents or objects, admissions or any other method of disclosure of evidence served to any other party or person.

Section 8.02.- Protective Orders

- A) The Commission may also limit the scope of the methods of discovery if it determines that, among other circumstances: (i) the evidence sought is unreasonably cumulative or duplicative; (ii) it can be obtained from some other source that is more convenient, less burdensome or less expensive for the party who requests it; or (iii) the costs for obtaining the proposed evidence outweighs its likely benefits.
- B) At the request of the party or person from whom discovery is sought, on motion certifying that it has attempted in good faith to resolve the controversy over the disclosure of evidence and for just cause, the Commission may issue any order which justice requires to protect the party or person from harassment, disturbance or oppression, and any discomfort or undue expense. The order of the Commission may include one or more of the following measures, among others:
 - 1) Forbidding discovery;
 - 2) Specifying terms and conditions, including the designation of time and place for the discovery;
 - 3) Prescribing a discovery method other than the one selected by the party seeking discovery;
 - 4) Forbidding the disclosure or discovery of certain materials;
 - 5) Requiring discovery to take place in the presence of persons designated by the Commission.

- C) The granting of any protective order shall be consonant with the aim of seeking truth and having an efficient and economical discovery process.

Section 8.03. - Interrogatories

- A) A party may serve written interrogatories to any other party, to be answered by the party to whom it is addressed, or if it is a public or private corporation or a partnership, association or government agency, by any authorized representative, who shall provide all information that is available to the party.
- B) Each interrogatory shall be fully answered in writing, separately, and under oath, unless it is properly objected.
 - 1) If the interrogatory is objected, the grounds for objecting shall be presented in place of the answer, and must be accompanied by a copy of the objected interrogatory.
 - 2) If the interrogatory is objected only in part, the objecting party shall include the question, as is, and the grounds for objecting. In this case, the objecting party shall notify the party the answers to the questions not objected to.
- C) The answers must be signed and sworn to by the person who offers them. The party being served the interrogatory shall provide a copy of the answers or objections, if any, or both together, to the party seeking the interrogatory within twenty (20) days from the date of service. The Commission, at its discretion, may extend or reduce this term.
- D) When the responses to an interrogatory can be found in books, documents, records or electronically stored information, by the party which has been requested the interrogatory and the weight to be accorded to such response is substantially equal to the questioning party as for the questioned party, it shall constitute a sufficient answer to pinpoint the specific part of the record, book, document or electronically stored information where the answer can be obtained and offer the questioning party a reasonable opportunity for examination, inspection or audit of these and for the preparation of copies, compilations, summaries or print outs.
- E) Notwithstanding the provisions of subsection (D), when the specific part of a record, book, document or electronically stored information from which the answer to an interrogatory may be obtained has a specialized technical content, the Commission may order the party to whom the interrogatory has been directed to also formulate a reply using common language.

- F) A party serving an interrogatory may object the answers on motion to the Commission, which shall include a transcript, verbatim, of the question and answer concerned, as well as the grounds for objecting. The objecting party may also request the imposition of sanctions in said motion.

Section 8.04.- Production of Documents; Site Inspections

- A) A party may notify the other a request to:
 - 1) Produce and allow to inspect, copy or photograph certain documents, papers, electronically stored information (converted into information comprehensible to the requesting party, if necessary), books, accounts, letters, photographs, objects or tangible things, of non-privileged nature that constitute or contain evidence relating to any matter relevant to the issues in dispute in the pending case, which are in or under the custody or control of the party; or:
 - 2) Permit entry onto land or other property under its possession or ownership, in order to inspect, measure, take readings or photographs of the property or any object or operation.
- B) The request shall specify the date, time, place and manner of conducting the inspection, taking photographs and making copies, and may prescribe the terms and conditions deemed just.
- C) The party being served with the request shall respond to the serving party within ten (10) days. The response shall indicate for each object specified in the request whether the party allows or objects to the inspection. If objected, the grounds for objection must be indicated.
- D) The party who produces the documents shall present them as ordinarily kept in the course of business, and can only organize and identify them to match each object specified in the request.
- E) If the application requires electronically stored information, the requested party may produce information in the form or forms that are ordinarily maintained or in the form or forms that can be used or reasonably understood. A party that has electronically stored information in more than one way shall only produce it in one of these ways.

Section 8.05.- Depositions by Oral Examination

- A) Any party interested in taking a deposition as part of the discovery process shall seek authorization from the Commission. In its application for authorization, the requesting party shall:

- 1) Identify the person interested in deposing.
 - 2) Specify the information to be obtained as a result of the deposition;
 - 3) Explain the reasons why it is not possible to obtain that information through other mechanisms for discovery of evidence.
- B) The parties may only take depositions authorized and ordered by the Commission. When the Commission authorizes a deposition, it shall determine the rules governing the process of conducting a deposition.

Section 8.06.- Requests for Admission

- A) A party may serve any other party a written request to admit, for the sole purpose of the pending action, the veracity of any matter pertinent to the issues in dispute, relating to facts, opinions or the application of law to facts, including the genuineness of any document described in the request.
- 1) Copies of documents shall be served together with the request, unless they have been delivered or made available for inspection and copying.
- B) Each matter for which an admission is requested shall be separately stated.
- C) A matter for which an admission is requested shall be deemed admitted, unless within twenty (20) days after being served or within the period ordered by the Commission, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed under oath. All requests for admissions should advise the party to whom it is directed that, if not answered in the period established in this Regulation or ordered by the Commission, the matter shall be deemed admitted.
- D) The answer must specifically deny the matter or state in detail why the answering party may not admit or deny what was requested. Any denial must respond fully to the substance of the matter, and when good faith requires that a party qualify an answer or deny only a part of the matter, the answer should specify the part admitted and deny the rest. A party from whom an admission is requested may not invoke lack of information or knowledge as a reason for failing to admit or deny a matter, unless the answering party shows to have made reasonable inquiry to obtain such information and that the information known or obtained is insufficient to enable it to admit or deny.

- E) If the request for admission is objected, the grounds for it must be stated. A party may not object solely on the ground that the request presents a justiciable controversy.
- F) The requesting party may object, on motion, the sufficiency of an answer or objection. Unless the Commission determines that an objection is justified, it shall order that a question be answered.
- G) If the Commission determines that a response does not meet the established requirements, it may order either that the matter be admitted or that an amended answer be served.
- H) The Commission may permit the admission to be withdrawn or amended when there is just cause, or the admission contributes to the resolution of the case on the merits.
- I) Any admission of a party under this section shall have effect solely for the purposes of the pending case and shall not constitute an admission under any other purpose, nor may it be used against the party in any other proceeding.

ARTICLE IX ADMINISTRATIVE HEARINGS

Section 9.01.- Prehearing Conference

- A) The Commission may convene a conference prior to the hearing in order to explore the possibility of a settlement between the parties, simplify matters to be considered at the administrative hearing, provide facts, stipulate and mark evidence, take other appropriate measures to lighten and simplify procedures and establish a plan for the administrative hearing.
- B) When the Commission convenes a prehearing conference, the parties shall meet before the conference and prepare a report which shall include:
 - 1) Stipulations about facts, documents and issues on which there is no dispute, in order to avoid unnecessary proof;
 - 2) A detailed list of the documental evidence each party intends to submit, duly identified, including depositions or other evidence to be offered, for which there is no dispute regarding its admission.
 - 3) A list of the documental evidence each party will offer, for which there is controversy regarding its admission, including a brief statement on the grounds for objection;
 - 4) A list of the names and addresses of each party's witnesses, and a

summary of what each will testify about;

- 5) A list of the witnesses who are not parties to the case, and whose subpoena is requested to the Commission. Along with the report, the parties shall include a proposed subpoena for the Commission to summon the witnesses;
 - 6) A list of the names of the expert witnesses whose testimony each party will present during the administrative hearing, and a summary of what each expert will testify about;
 - 7) The possibility of a settlement;
 - 8) Any other measure the parties propose to facilitate a prompt adjudication of the case; and
 - 9) Any other matter which the Commission ordered the parties to attend to or address in the report.
- C) The parties shall submit the report to the Commission at least ten (10) days prior to the date set for the prehearing conference, unless the Commission orders otherwise.
- D) The Commission shall issue an order reciting the action taken at the conference and summon the witnesses deemed necessary, in response to the request of one or more parties. Once issued, the order shall govern the course of the action, unless modified in the administrative hearing to prevent unfairness.

Section 9.02.- Scheduling of the Administrative Hearing and Notice to the Parties

The Commission shall set the date and time of the hearing, and notify the parties in writing at least fifteen (15) days prior to the scheduled date, unless the parties agree to hold the hearing before the scheduled date. The Commission's order shall advise the parties that failure to appear at the hearing may result in the dismissal of the claim (in the case of petitioners) or the removal of pleadings. Moreover, the Commission may issue any order it considers appropriate.

Section 9.03.- Presentation of the Evidence

The parties may submit documental and testimonial evidence subject to the Commission's orders or directives on the method used for the presentation of evidence.

- A) The Commission may take judicial notice, *motu proprio* or upon request, on

those facts and circumstances of public interest that are generally known, or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

- B) The Commission may question witnesses in the manner it deems appropriate, in accordance with the nature of the case, the nature and amount of evidence, and the agility and efficiency of the proceedings.
- C) If a prehearing conference is held, the Commission shall not allow the presentation of those documents, witnesses or experts not identified in the prehearing conference report, unless the interested party demonstrates just cause.

Section 9.04.- Motion for Suspension of a Hearing

Any motion for suspension of a hearing must be submitted to the Commission: (1) as soon as the grounds for its suspension are known; and (2) no less than five (5) working days prior to the date of the hearing, unless unforeseeable events or incidents beyond the control of the petitioning party occur.

The motion for suspension shall be duly substantiated and affixed with evidence stating the reasons thereof. In its request, the petitioning party shall propose three (3) alternate dates for holding the hearing, which must be within fifteen (15) days from the scheduled date of the hearing for which suspension is sought.

Any suspension of a hearing entails a fee of one hundred dollars (\$ 100.00) for the petitioning party. If the motion is granted, the petitioner shall pay within a period of ten (10) days from the date the Commission's order is notified. The Commission may waive this fee when justice so requires.

Section 9.05.- Proposals on the Findings of Fact and Conclusions of Law

The Commission may grant the parties a period, not exceeding seven (7) working days after the conclusion of the administrative hearing, to submit written proposals on the findings of fact and conclusions of law.

Section 9.06.- Brief

Upon conclusion of the administrative hearing, the Commission may request the parties to submit a brief on the case stating the facts proven during proceedings, as well as its applicable law.

ARTICLE X. - REMEDIES

Section 10.01.- In General

A) In its final decision, the Commission shall grant the appropriate relief in law even if the moving party has not requested it. The Commission shall have discretion to formulate and provide the remedies it deems appropriate to ensure implementation and compliance with the public energy policy of the Commonwealth of Puerto Rico, Act No. 57-2014, as amended, the Commission's regulations, and any other law whose interpretation and implementation is under the jurisdiction of the Energy Commission. Among the remedies the Commission may grant are:

- 1) Ordering the cessation of activities or acts in violation of any provision of Act No. 57-2014, as amended, the Commission's regulations, or any other legal provision whose interpretation and enforcement falls under the jurisdiction of the Commission;
- 2) Ordering that any act or operation is carried out in compliance with the provisions of Act No. 57-2014, as amended, the Commission's regulations, or any other legal provision whose interpretation and enforcement falls under the jurisdiction of the Commission. When the remedy provided is an order to do or comply with a particular law, the final resolution shall indicate the valuation of said order, provided that (i) it forms part of the record or (ii) judicial notice may be taken. If the compelled party fails to comply with the mandate, the Commission may order the payment of the valued act;
- 3) Imposing fines no less than five hundred dollars (\$ 500.00) nor greater than five thousand dollars (\$ 5,000.00), at the discretion of the Commission. Upon repetition, the Commission may impose fines no less than ten thousand dollars (\$ 10,000.00) nor greater than twenty thousand dollars (\$ 20,000.00), at their discretion;
- 4) Imposing up to twenty-five thousand dollars (\$ 25,000.00) per day in administrative fines for violating Act No. 57-2014, as amended, or the Commission's orders and regulations. These fines shall never exceed five percent (5%) of the gross sales, fifteen percent (15%) of the net income or ten percent (10 %) of the net assets of the person to whom the fine is imposed. Of these, the greatest amount for the most recent tax year shall be the amount subjected to the fine. If violations of said regulations persist, the Commission may impose fines of up to twenty-five thousand dollars (\$ 25,000.00) per day. In these cases, the Commission may impose, by unanimous consent, up to twice the limits of the fines based on the sales, income or assets set out in this subsection and up to five hundred thousand dollars (\$ 500,000.00).

B) Any decision ordering the payment of fees shall also include the payment of

interest, which shall be calculated from the issuance of the order until payment of the principal is satisfied, at the current rate fixed by the Financial Board and certified by the Commissioner of Financial Institutions of Puerto Rico.

- C) The Commission may also order the payment of expenses, costs and attorney fees.
- D) Notwithstanding the provisions of this Section, a default judgment shall not differ in nature nor exceed in amount to what has been requested in the proposed resolution.

Section 10.2 Temerity

When a party acts temerarily, the Commission may order the full or partial reimbursement of expenses incurred by the Commission for professional services hired during the adjudicative proceedings, as well as the reimbursement of any expenses incurred by other parties or the Commission as the result of frivolous conduct.

Section 10.3.- Collection of Debt by the Commission

When a party to the case has a liquid, due and payable debt with the Commission, and upon adjudication of the case the Commission grants as relief the disposition of a sum of money to that party, the Commission may order the full or partial payment of debt to the Commission, rather than to the party for which relief is granted as means of fulfilling the resolution.

ARTICLE XI.- PROCEDURES AFTER THE FINAL RESOLUTION

Section 11.01.- Motion for Reconsideration

Any party dissatisfied with the Commission's final decision may file a motion for reconsideration before the Commission, which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the Commission should have granted.

The request for review shall be filed and served in accordance with the terms and provisions set forth in Act No. 170 of the 12 of August of 1988, as amended, known as the Uniform Administrative Procedure Act.

Section 11.02.- Relief from Resolution

Before the period for requesting judicial review expires, the Commission may, upon request or on its own, vacate its final decision, relieve a party from complying with said resolution, and order a new administrative hearing for any of the following

reasons: (i) newly discovered evidence that, despite reasonable diligence, could not have been discovered in time or presented at the hearing; (ii) fraud or misrepresentation by an opposing party; or (iii) any other reason that justifies relief.

Section 11.03.- Judicial Review

Any party dissatisfied with the Commission's final decision may bring an action for judicial review before the Court of Appeals, pursuant to Act No. 170 of the 12 of August of 1988, as amended, known as the Uniform Administrative Procedure Act.

Section 11.04.- Correction of Structural Errors

The Commission may correct at any time, *motu proprio* or upon request of a party, any clerical error or error arising from oversight or omission found in a decision or record. Said corrections shall be notified to the parties.

Such errors may be corrected during judicial review proceedings only before the case has been formally referred to the Court of Appeals.

Section 11.05.- Harmless Errors

Errors in the admission or exclusion of evidence and errors or faults in any ruling, order, act or omission made by the Commission or any of the parties, shall not result in a new administrative hearing or in the annulment or modification of a decision, unless the Commission, or when appropriate, the General Court of Justice considers that refusal to take such action is inconsistent with substantial justice.

ARTICLE XII.- NONCOMPLIANCE WITH THE PROVISIONS OF THIS REGULATION OR WITH THE COMMISSION'S ORDERS OR RESOLUTIONS

Section 12.01.- In General

The Commission may issue any order or resolution it deems necessary to give effect to the purposes of Act No. 57-2014, as amended, to compel compliance with any law whose interpretation and implementation is subject to the jurisdiction of the Commission, and to enforce its rules, regulations, orders and decisions.

In the place of any fine or order indicated in this Article or in addition thereto, the Commission may impose on the party, counsel for the party or both, reimbursement of the expenses incurred, including attorney fees, unless the Commission determines that noncompliance was justified or that, under the circumstances, payment would result in unfairness.

Section 12.02.- Fines

As a result of a party's noncompliance to the provisions of Act No. 57-2014, as

amended, the Commission's regulations, any law whose interpretation and implementation is subject to the jurisdiction of the Commission, or any order issued by the Commission, the Commission may:

- A) Impose a fine not less than five hundred dollars (\$ 500.00) nor more than five thousand dollars (\$ 5,000.00) at the discretion of the Commission. Upon repetition, the Commission may impose a fine not less than ten thousand dollars (\$ 10,000.00) nor more than twenty thousand dollars (\$ 20,000.00) at the discretion of the Commission.
- B) Impose administrative fines of up to twenty-five thousand dollars (\$ 25,000.00) per day. Such fines shall never exceed five percent (5%) of gross sales, fifteen percent (15%) of net income or ten percent (10 %) of the net assets of the person to whom payment of the fine is imposed. Of these, the greatest amount according to the most recent tax year shall constitute the fine. If the person persists in the violation, the Commission may impose fines of up to twenty-five thousand dollars (\$ 25,000.00) per day. In such a case, and by unanimous decision, the Commission may impose fines twice the amounts set out in this subsection and up to five hundred thousand dollars (\$ 500,000.00).

Section 12.03.- Noncompliance with the Duties to Disclose Evidence

If a party, officer or managing agent of a party, or a person designated to testify on their behalf, fails to comply with an order to perform or permit disclosure of evidence, the Commission may issue all orders as are just, among which the Commission may:

- A) Issue an order so that the matters dealt with in the aforementioned orders or any other facts designated by the Commission be regarded as proven for the purposes of the case, in accordance with the claim of the party obtaining the order;
- B) Issue an order to prevent a party from noncomplying, from supporting or opposing certain claims or defenses, or from presenting evidence on certain matters;
- C) Issue an order to write down the default, remove pleadings or part thereof, suspend all further proceedings until the order is satisfied, dismiss the case or proceeding or any part thereof, or issue a default judgment against the party in breach.
- D) Issue an order, under the conditions it deems just, to impose any party, witness, or attorney a financial penalty as a result of their actions.

Section 12.04.- Default

- A) When a party against whom a decision for affirmative relief has failed to plead, comply with orders of the Commission, or defend itself in another manner, as provided in this Regulation, the Commission may, *motu proprio* or upon request of a party, enter the party's default. The entry of default will result in the admittance of the affirmative allegations. However, failure to record the default shall not affect the validity of a default judgment.
- B) The party entitled to a default judgment shall request it to the Commission, which shall proceed accordingly to determine the specific amount, if any, the defaulted party shall pay, or check the veracity of any statement required to enter a default resolution.
- C) If the party against whom a default judgment is sought has appeared, the party shall be served with written notice of any scheduled hearing.
- D) Written notice of the final resolution to the party against whom default was entered shall not be necessary.

CHAPTER III – PREPA RATE REVIEW PROCESS

ARTICLE XIII RULES GOVERNING THE PROCESS

Section 13.01.- Nature of the Process

PREPA rate review process shall be of adjudicative nature; therefore, the provisions of Chapter II of this Regulation that are compatible with said process shall apply.

Section 13.02.- Review Process Started by PREPA

When PREPA initiates a rate review process by filing a Petition for Approval of the Adjustment of PREPA Rates before the Commission, the proceedings shall be conducted as *ex parte* proceedings. Nonetheless, the participation of interveners and *amici curiae* shall be allowed pursuant to the provisions of Chapter II of this Regulation.

After the Petition for Approval of the Adjustment of PREPA Rates has been submitted, the Commission shall publish said petition on its Internet portal and indicate the period in which the requests to intervene and appear as *amicus curiae* shall be submitted. The process of discovery of evidence shall conform to the Commission's orders and the provisions of Chapter II of this Regulation.

Section 13.03.- Review Process by Order of the Commission

- A) When OIPC, OEPPE or any other interested party presents to the Commission a well-founded request to review PREPA rates, in order to initiate a rate

review process, the requestor must affix along with the petition all information and documentation in support of its arguments stating that the existing PREPA rate is not fair or reasonable, and that in the best interests of its clients said rate shall be reviewed and modified.

- B) When evaluating a petition to initiate a rate review process, the Commission may compel the requestor to submit additional information in support of its arguments. The Commission's order requesting additional information shall indicate the mechanisms through which the requestor must provide said information and the period provided to respond to the Commission's requests for information.
- C) After evaluating the petition for a rate review process, the Commission may dismiss said request if it concludes it lacks merit, or issue an Order to Show Cause requesting PREPA to express its viewpoint within the period established by the Commission in the aforementioned order. When the Commission issues an Order to Show Cause, PREPA must affix to the response all information and documentation in support of its position.
 - 1) If in the response to the Order to Show Cause, PREPA acknowledges the need to review one or more of its rates or agrees to initiate a review process, the Commission shall order PREPA to publicly announce the changes proposed, and will initiate the adjudicative process of rate review. The Commission may also order PREPA to undertake a process of public hearings in accordance with the Commission's specifications and within the period established by order.
 - 2) If in the response to the Order to Show Cause, PREPA opposes the rate review process, and in view of PREPA's response, the Commission determines the petition lacks merit, it shall dismiss said petition. However, if the Commission determines that the request is based on reasonable grounds, it shall initiate an adjudicative rate review process. In addition to providing notice to PREPA and the requesting party, the Commission shall publish its determination on its website and indicate the period in which applications to intervene and appear as *amicus curiae* shall be submitted.
- D) When the Commission has reason to believe that one or more of PREPA's electricity service rates is not fair or reasonable, it may issue an Order to Show Cause to PREPA stating the reasons why it considers PREPA's rates unfair and unreasonable and requiring PREPA to express its substantiated position within the period established by the Commission in said order.
 - 1) If in the response to the Order to Show Cause, PREPA

acknowledges the need to review one or more of its rates or agrees to initiate a review process, the Commission shall order PREPA to publicly announce the changes proposed, and will initiate the adjudicative process of rate review. The Commission may also order PREPA to undertake a process of public hearings in accordance with the Commission's specifications and within the period established by order.

2) If in its response to the Order to Show Cause, PREPA argues that review of one or more rates is not in order, and the Commission determines that said position warrants merit, the Commission shall close the case. However, if the Commission is not satisfied with the response of PREPA, the Commission may initiate adjudicative proceedings for rate review. In addition to providing notice to PREPA, the Commission shall publish its determination on its Internet portal and indicate the period in which applications to intervene and appear as *amicus curiae* shall be submitted.

E) Once adjudicative proceedings for rate review start, pursuant to this section, PREPA has the burden of proof to demonstrate, according to the case, (i) that the rate proposed by PREPA is just and reasonable; therefore, the rate must be modified as requested, or (ii) that the current rate is just and reasonable; therefore, the rate shall not be adjusted. A process of discovery of evidence shall be carried out pursuant to the Commission's orders and the provisions of Chapter II of this Regulation. Pursuant to the provisions established in Articles 6.3 and 6.25 of Act No. 57-2014, as amended, in any rate review process, the Commission may order as remedy the adjustment and approval of the rate as requested by the petitioner, the adjustment and approval of the rate considered fair and reasonable by the Commission, or dismissal of the petition for rate review and the issuance of an order stating that the current electricity rate shall remain unaltered.

CHAPTER IV - NOTICE OF NONCOMPLIANCE

ARTICLE XIV.- PROCEEDING

Section 14.01.- Issuance by the Commission; Notice

The Commission may issue a Notice of Noncompliance if it learns that a person has incurred, is or may be incurring in a violation of the public energy policy of the Commonwealth of Puerto Rico, Act No. 57-2014, as amended, any regulation of the Commission, or any other law whose interpretation, implementation or enforcement falls under the jurisdiction of the Commission.

The Commission shall issue a Notice of Noncompliance by summoning the person to whom it is addressed, using the mechanisms established in Section 3.04 of this

Regulation.

Section 14.02.- Content of Notice and Duty to Respond

The Notice of Noncompliance shall state the alleged breach, according to public information or the information obtained by the Commission that forms part of the administrative record, as well as the facts that give rise to the Notice of Noncompliance. In its notice, the Commission shall order the person to whom it is addressed to respond in writing and provide the party's defenses and position regarding the alleged violation. The notice shall also state the period within which the advised person must present a response from the date of the Notice of Noncompliance under penalty of the imposition of fines, penalties or orders as may be specified in the Notice.

Similarly, the Notice of Noncompliance shall inform the person of his right to address the Commission to examine the information and documentation in the administrative record before responding to the allegation.

Section 14.03.- Response to the Notice of Noncompliance

A) Any response to a Notice of Noncompliance shall contain the following information:

- 1) The full name (in case of a natural person), physical address, mailing address, telephone and email address of the notified party, as well as the lawyer, should the party be represented. When a notified party is represented by an attorney, the response must also include the attorney's registry number;
- 2) The assigned case number (as indicated in the Notice);
- 3) The notified party's position in respect to the alleged breach, as well as the party's defenses, if any;
- 4) Reference to any information and documentation in support of the notified party's position and defenses;
- 5) The name, surname, physical address, mailing address, telephone and email address, if known, of anyone who may provide information in support of the defenses that, according to the response, assist the notified party. A summary of what each person will testify about, should they be subpoenaed by the Commission, must be included;
- 6) The date the response was submitted to the Commission;
- 7) The signature of the notified party or its attorney, if represented. The

signature of the party or his lawyer shall constitute a certification that he has read the undersigned writing and, to the best of his knowledge, information and belief formed after reasonable inquiry, the content of the letter is true or correct.

- B) Every response to a Notice shall include an affixed copy of all the documents in support of the notified party's arguments and defenses.
- C) Upon presentation of the response in the Office of the Clerk of the Commission, the notified party must bring the original and at least four copies of the response to the Notice. The notified party must also affix to the response the proposed summons of the people identified as having knowledge of information in support of the arguments of the notified party.
- D) Any lawyer who has appeared before the Commission as part of a Notice of Noncompliance proceeding on behalf of a notified party, and renounces legal representation of such party during the proceedings, shall notify by written appearance to the Commission on or before ten (10) days before the resignation becomes effective. In case of a sudden resignation, counsel shall notify within a period of three (3) days from the date the resignation becomes effective.
- E) If during the Notice of Noncompliance proceedings, the contact information of a notified party or its counsel changes, the party shall inform the Commission about the corresponding change within a period of three (3) days from the date on which the change occurred.

Section 14.04.- Testimonies

When the response to the Notice of Noncompliance has identified any person whose testimony (i) seems to be necessary to prove the truth of the arguments submitted by the notified party, (ii) appears to be necessary to demonstrate that the notified party has not committed the alleged breach, or to demonstrate the existence of an adequate and reasonable justification for the breach, and (iii) is not a redundancy of the documental evidence identified and annexed to the reply, the Commission shall subpoena such persons for their testimony. These subpoenas shall comply with the provisions of Section 2.03 of this Regulation.

The Commission shall notify copy of the subpoenas issued. The notified party is entitled to be present during the Commission's interrogatory to those summoned for testimony. As part of the process of receiving testimony, the Commission may allow the notified party or his attorney to ask questions to the summoned party.

Section 14.05.- Remedies for Noncompliance

After providing the notified party an opportunity to be heard, if the Commission

determines that said party has engaged in one or more of the breaches alleged in the notice, it may impose the appropriate remedy, in accordance with law, including the remedies set out in Article X of this Regulation.

Section 14.06.- Noncompliance with the Commission's Orders or the Provisions of this Regulation

When the notified party fails to comply with any of the Commission's orders issued during a Notice of Noncompliance proceeding or with any provision of this Article, the Commission may impose any fine or sanction it deems appropriate, including fines and penalties set forth in Article XII of this Regulation.

Section 14.07.- Petition for Reconsideration

When the notified party is dissatisfied with the decision issued by the Commission to end a proceeding of Noncompliance, the notified party may file a request for reconsideration before the Commission, stating in detail the grounds for said request, and the relief that, according to the notified party, the Commission should have granted.

The request for review shall be filed and served in accordance with the terms and provisions set forth in Act No. 170 of the 12 of August of 1988, as amended, known as the Uniform Administrative Procedure Act.

Section 14.08.- Judicial Review

When the notified party is dissatisfied with the Commission's decision, to end a Notice of Noncompliance process, it may move for judicial review in the Court of Appeals, as provided in Act No. 170 of the 12 of August of 1988, as amended, known as the Uniform Administrative Procedure Act.

CHAPTER V - INVESTIGATIONS AND INSPECTIONS

ARTICLE XV. - INVESTIGATIONS

Section 15.01.- Scope

As set forth in Articles 6.3 (y), 6.4 (b) (1) and 6.24 of Act No. 57-2014, the Commission, on its own or through a designated person, may conduct investigations to make certain the energy public policy of the Commonwealth of Puerto Rico is being met efficiently, and to ensure compliance with the laws and regulations it administers. Furthermore, the Commission may also investigate any matter related to the electric power industry, as well as any matter within its jurisdiction.

Section 15.02.- Start of the Investigation

At its discretion, the Commission may initiate, *motu proprio* or upon request, an investigation in accordance with the rules laid down in this Article.

Section 15.03.- Mechanisms to Carry Out the Investigation

- A) The Commission may conduct the investigations it deems appropriate and necessary, for which it may use mechanisms such as request for production of documents, requests for admissions, interrogatories, depositions, subpoenas, meetings, interviews, inspection of objects, visual inspections in facilities, tests with measuring instruments or specialized equipment, or any other mechanism the Commission considers appropriate and establishes by order.
- B) Each request shall specify the term the requested party has to appear or produce the requested information, as appropriate, under penalty of contempt, and shall instruct the requested party that the Commission will only allow extensions of time presented opportunely and for just cause, within the scope of Section 15.04 of this Regulation.

Section 15.04.- Duty to Cooperate; Sanctions for Default on this Duty

- A) The person under investigation is obliged to cooperate in any way necessary to enable the Commission to conduct investigations promptly in an environment of respect and cordiality. It shall be their duty to respond diligently to subpoenas, requests for information and other data collection mechanisms used by the Commission.
- B) It is considered that a party has incurred in conduct constituting in the obstruction of the Commission's investigative power when, among others, a party:
 - 1) Does not allow entrance to the offices of the investigated person;
 - 2) Does not allow free access to documents under its custody relating to the subject matter of the investigation;
 - 3) Offers or produces the required documents in an incomplete or fragmented manner or is inaccurate, disorganized, excessive, or unidentified;
 - 4) Does not instruct employees or subordinates to comply with the obligation to fully cooperate with the investigation;
 - 5) Offers meritless excuses or reasons to forbid access to documents;
 - 6) Does not respond or does not respond promptly to requests for

information;

- 7) Does not attend convened meetings, or disobeys a subpoena issued by the Commission, failing to appear at the time and place ordered;
 - 8) Prolongs, hinders or complicates the investigation;
 - 9) Does not facilitate entrance to the facilities or offer the necessary cooperation to conduct the investigation;
 - 10) Demonstrates an attitude or conduct characterized by stubbornness or recklessness, with the intention to threaten, intimidate, or otherwise delay, hinder, obstruct, frustrate or impede the completion of the investigation;
 - 11) Presents frivolous and meritless approaches to object the investigation;
 - 12) Commits any act or omission that thwarts the investigation.
- C) Any failure to comply with the provisions of this section and any conduct constituting obstruction or hindrance of the Commission's investigative power shall be stated in the investigation report. The Commission may impose sanctions against the noncomplying party in light of Sections 12.01 and 12.02 of this Regulation.
- D) Furthermore, when a person duly summoned or compelled to comply with an investigation requirement fails to appear, does not produce the evidence requested, or refuses to answer or allow an inspection, the Commission may request the assistance of the General Court of Justice.

Section 15.05.- Objections

- A) The person under investigation may object to the mechanisms used by the Commission to conduct the investigation within a period of ten (10) days from the date of service of the order, resolution, or written notice to that effect:
- B) Objections must conform to any of the following approaches:
- 1) The request for information is clearly unreasonable; or
 - 2) The request for information exceeds the investigative authority of the Commission.

- C) Any objection must be in writing and duly substantiated. The Commission shall evaluate the objection, and if found to have merit, shall grant it. Otherwise, the Commission shall hold an administrative hearing and adjudicate the matter under Articles IX, X, XI and XII of Chapter II of this Regulation.
- D) Any objection (i) not substantiated shall be deemed not filed; or (ii) based on frivolous and meritless arguments shall be fully rejected by final resolution. If the person under investigation is not satisfied with the Commission's decision, the person may file a motion for reconsideration or move for judicial review before the Court of Appeals, as provided in Sections 11.01 and 11.03 of this Regulation.

Section 15.06.- Extensions of Time and Transfers of Investigative Proceedings

- A) At its discretion, the Commission may, *motu proprio* or upon request, grant extensions of time to answer requests for information, or requests for the production of objects or documents. Similarly, the Commission may alter any summons issued or transfer investigative proceedings.
- B) When the Commission grants a transfer of investigative proceedings, the requesting party shall pay the Commission the sum of one hundred (\$ 100.00) dollars, unless the transfer is a result of extraordinary or unforeseen circumstances.

Section 15.07.- Investigation Report

Upon completion of an investigation, the Commission itself or its designated person shall prepare a detailed report on the investigation. The report shall inform the investigated person of his right to answer or object to the report, and shall specify the corresponding time periods.

However, when it comes to cases of statistical studies, legislation, regulations and incidental investigations of less importance, which do not imply an adverse outcome, the Commission shall not have to prepare a written report.

In cases where the Commission prepares an investigation report, a copy shall be served on the person investigated.

Section 15.08.- Objections and Comments on the Report

All investigated persons have the opportunity to submit, in writing, duly substantiated objections, arguments or comments on the Commission's report. Said objections, arguments or comments shall be submitted within a period of twenty (20) days following receipt of the report.

Section 15.09.- Investigation Results

When the result of the investigation reveals a violation or breach of the public energy policy of the Commonwealth of Puerto Rico, Act No. 57-2014, as amended, of any rule of the Energy Commission or any other law whose interpretation or implementation falls under the jurisdiction of the Commission, the Commission may, at its discretion, issue a Notice of Noncompliance to the noncomplying party or refer the report to OEPPE or OIPC for the filing of a complaint or corresponding action before the Commission.

Section 15.10.- Confidentiality of Ongoing Investigation Records

The Commission's record shall remain confidential while the investigation is in process.

The record shall be available to the general public once the investigation report is notified to the investigated party or upon conclusion of any investigation that does not require the Commission to prepare a report, as set forth in Section 15.07 of this Chapter. However, any information classified as privileged during the course of the investigation, or any information that may violate the fundamental rights of third parties or the right to privacy of the person investigated, shall be duly protected.

ARTICLE XVI.- INSPECTIONS

Section 16.01.- In General

On occasion and during reasonable hours, the Commission may visit the facilities of electric service companies for the purpose of (i) investigating documents necessary to verify compliance of said companies with the orders and regulations of the Commission, the provisions of Act No. 57-2014, as amended, or any other law whose interpretation or implementation falls under the jurisdiction of the Commission; or (ii) conducting tests and audits. The Commission may place and use any instrument needed to carry out their responsibilities and may perform the necessary measurements to ensure compliance of electric service companies with orders, regulations and laws.

Section 16.02.- Procedure

As a general rule, the Commission shall notify the electric service company of the inspection at least ten (10) days prior to the date of the inspection. The notice shall specify the purpose of the inspection, the person designated to perform it, the time and place where it will be conducted, and the documents, facilities or objects to be examined.

Section 16.03.- Other Inspections

The provisions of this Article shall not limit, restrict or otherwise affect the powers

of the Commission to carry out inspections pursuant to Section 6.1 of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act.

Furthermore, the provisions of this Article shall not limit, restrict or otherwise affect the powers of the Commission to carry out inspections pursuant to the norms set forth in Act No. 57-2014, as amended, or other regulations by the Commission.

This was agreed upon by the Commission in San Juan, Puerto Rico, the 18 of December of 2014.



Agustín F. Carbó Lugo
President



Ángel R. Rivera De La Cruz
Associate Commissioner



José H. Román Morales
Associate Commissioner