

COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION



**IN RE: INTEGRATED RESOURCE PLAN  
FOR THE PUERTO RICO ELECTRIC POWER  
AUTHORITY**

**MATTER NO.: CEPR-AP-2015-0002**

**SUBJECT: TECHNICAL CONFERENCE,  
PROCEDURAL TIMETABLE, AND  
CONFIDENTIALITY CLAIMS**

**PROCEDURAL ORDER**

On September 30, 2015, the Puerto Rico Electric Power Authority ("PREPA") will complete the filing of its Integrated Resource Plan ("IRP") with the Puerto Rico Energy Commission ("the Commission" or "the Energy Commission"), as required by the orders issued by this Commission pursuant to Regulation No. 8594, Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority ("Regulation 8594"), and Act 57-2014, as amended, Puerto Rico Energy Transformation and RELIEF Act.

Regulation 8594 and the orders issued in this IRP procedure are intended to guarantee public participation and input in PREPA's utility resource planning, which requires PREPA to meet specific procedural and substantive requirements. In the context of this framework and the requirements of this process, the Commission issues the following Order, setting forth a timetable and procedural framework for the next stages in the process of assessment of PREPA's IRP. Specifically, this Order (1) schedules a technical conference; (2) gives further detail into the participation requirements for intervenors and *amici curiae*; and (3) establishes the procedural timetable for the remainder of the process.

**I. Technical conference**

Regulation 8594 requires the Commission to schedule a technical conference once PREPA has filed its IRP. Accordingly, the Commission hereby schedules the technical conference to be held on **November 2, 2015, at 10:00 a.m.** in the hearing room of the Puerto Rico Telecommunications Regulatory Board located at 500 Roberto H. Todd Ave., San Juan. In this technical conference, PREPA will essentially present its IRP and answer questions from the Commission. Intervenors will also have an opportunity to participate in a question and answer session with PREPA concerning the details of the IRP. The technical conference will be open to the public.

Public information and consultation are critical aspects of the planning and decision-making process. The technical conference will promote discussion and allow for

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an early overview of PREPA's proposed IRP to intervening parties and the general public. It especially seeks to provide an opportunity for smaller organizations, consumer representatives, and other interested members of the general public, to gain insight into PREPA's proposed IRP and its assessment process.

With this technical conference, the Commission seeks to foster the greater sense of awareness among the different interested persons and stakeholders. The long-term planning of the whole range of Puerto Rico's electric resources is a significant concern for both the electric power industry and the general public. It is crucial that all interested persons and stakeholders have an opportunity to participate in a structured forum in order to obtain details and facts of forthcoming guiding document of the electric power industry, as proposed by PREPA.

Further details about the IRP technical conference will be published on the Commission's website, <https://www.energia.pr.gov/>, in advance of this event.

## II. Intervenors and petitioners

As described in the Commission's Order No. CEPR-AP-2015-0002 of July 22, 2015, any person may file a petition for intervention in the IRP process. For the purposes of this process, the Commission will make the following distinction between persons who request intervention in the IRP process:

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- (A) "Intervenors" shall refer to those persons who, pursuant to an order issued by the Commission, have been admitted as intervenors in the IRP process, and are thus considered parties to that process, with all rights and responsibilities set forth by the provisions of Regulation 8594 and Act No. 170 of May 12, 1988, known as the Uniform Administrative Procedure Act, and its interpretative case law.
  - (B) "Petitioners" shall refer to all persons who submit a valid and timely petition for intervention on or before the deadline of October 15, 2015, as set forth in the Commission's Amendment to the Policy Statement of August 31, 2015. We must emphasize that, in accordance to Section 3.02 (C) of Regulation 8594, "[o]nce a petition to intervene is filed, the petitioner shall be accorded full rights as an intervening party" until the Commission issues a ruling denying the petitioner intervention. However, contrary to intervenors,<sup>1</sup> petitioners are not entitled, and will not have access, to confidential information from any party (i.e. PREPA and intervenors) until its petition to intervene has been granted by the Commission.

All petitions to intervene must comply with the provisions of Section 3.02 (B) of Regulation 8594; Sections 2.02 and 5.05 of Regulation 8543, known as the Regulation on

<sup>1</sup> Subject to the rules and orders issued by the Commission. See Part V below.



Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings of the Puerto Rico Energy Commission; Section 3.5 of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act, 3 LPRC §2155; and the orders issued by the Commission.

### III. Participation of persons who are not parties to the IRP process

The Commission wishes to remind the general public that a person need not intervene as a party in order to participate in the IRP process. Participation may also take the form of presenting a brief as a friend of the forum or *amicus curiae*. Any person who wishes to participate in the process without engaging in the responsibilities of intervention, may do so by submitting an *amicus curiae* petition and brief to the Commission. The instructions and norms guiding the submission of *amicus* briefs are set forth in the Commission's Policy Statement of July 22, 2015, the Amendment to the Policy Statement of August 31, 2015 and the provisions in Article VII of Regulation 8543. Every petition to participate as *amicus curiae* must be accompanied by a brief and must be presented on or before November 3, 2015.

As opposed to intervenors and petitioners,<sup>2</sup> *amici* are not considered parties in administrative procedures like the IRP evaluation and approval process, and therefore, have no procedural rights in the proceeding. For example, *amici* have no right to participate in discovery or to request appellate review.

### IV. Procedural timetable

**August 18 to November 16, 2015:** Time period for conducting discovery in accordance to compatible provisions of Article VIII of Regulation 8543. In addition to PREPA and intervenors, petitioners may participate in discovery pursuant to Section 3.02 (C) of Regulation 8594. In addition, pursuant to Section 8.01(H) and (I) of Regulation 8543, the Commission may participate in the discovery process. We remind the parties that they shall send a copy to the Commission, and to all other parties, of any request of information or any other method of discovery served to a party in this proceeding. The responses to such discovery shall be sent to the Commission by the responding party at the same time it sends its responses to the party who issued the discovery requests. At its discretion, the Commission may, *motu proprio* or upon request, modify the time period for conducting discovery.

**October 15, 2015:** Deadline for the submission of petitions for intervention.

**November 2, 2015:** Technical conference.

**November 23, 2015:** Deadline for the submission of amicus and intervenor's briefs.

<sup>2</sup> See Part II (B) above.



Unless the Commission issues an order granting an extension, all existing procedural dates shall remain in effect without exception.

## **V. Confidentiality claims**

The Commission recognizes that PREPA or any other party to the proceeding may assert that a document or piece of information required by the Commission or requested by another party warrants confidential treatment. Section 1.15 of Regulation No. 8543, together with the provisions of Articles 1.4 and 6.15 of Act 57-2014, as amended, govern the information that may be unavailable for public access because it is privileged or confidential, as well as the general guidelines for the Commission to determine which information is privileged and confidential and the treatment to be given to protect such information.

Specifically, Section 1.15 of Regulation 8543 provides that when a person has the duty to submit to the Commission information that, in his or her view is privileged or confidential, that person shall (i) identify the information which he or she considers to be privileged or confidential, (ii) request the Commission to protect this information, and (iii) state in writing the arguments in support of his or her request for protection. Once the request is submitted to the Commission, it shall proceed as provided in Article 6.15 of Act 57-2014 in order to determine if the information contained in the request is privileged or confidential, and as a consequence deserves protection.

### **A. Confidentiality claims during discovery**

#### **1) Discovery conducted by the Commission**

If, during discovery, the Commission requires any party to submit information that said party believes is confidential or privileged, the following instructions shall be observed:

- i) When submitting the information, the party shall (1) mark or identify the information as "confidential" or "privileged"; and (2) identify the reason why the document or information should be classified as "confidential" or "privileged".
- ii) No later than ten (10) days after submitting the information, the party shall submit a memorandum of law to the Commission stating in writing the legal basis and sources to support its argument that the information or documents identified should be classified as "confidential" or "privileged". In its memorandum, the party must reference each claim to a particular document or piece of information. The party shall serve a copy of its memorandum of law to all the other parties participating in the proceeding.



- iii) Except for communications covered by attorney-client privilege, a party cannot withhold any information or document from the Commission on the grounds that it believes it is confidential.
- iv) The Commission will protect and maintain secure any and all information marked by PREPA or any other party as "confidential" or "privileged" unless the Commission rules otherwise.<sup>3</sup>
- v) The Commission will address the confidentiality claim and proceed in accordance to Part V (B)(2)-(5) below.

## 2) Discovery conducted between parties

If, during discovery, any party is requested by another party to submit information the former believes is confidential or privileged, the following instructions shall be observed:

- i) When responding to the request, the party shall (1) identify the requested information that it believes is "confidential" or "privileged"; and (2) state the legal basis of the confidentiality claim.
- ii) On that same date, the responding party shall file a memorandum of law before the Commission stating in writing the legal basis and sources in support of its argument that the information or documents identified in its response should be classified as "confidential" or "privileged". The response submitted to the requesting party together with the purportedly "confidential" or "privileged" information shall be attached with the memorandum of law. The party shall serve a copy of its memorandum of law to all the other parties participating in the proceeding, excepting the information object of the confidentiality claim.
- iii) The Commission will protect and maintain secure any and all information marked by PREPA as "confidential" or "privileged" unless the Commission rules otherwise.<sup>4</sup>
- iv) The Commission will address the confidentiality claim and proceed in accordance to Part V (B)(2)-(5) below.

<sup>3</sup> See, Normas Internas para el Manejo de Información Confidencial en la Comisión de Energía, available at <http://energia.pr.gov/wp-content/uploads/2015/05/20150512141506478.pdf>.

<sup>4</sup> Id.



## B. Confidentiality claims during any other stage of the proceeding

If during any other stage of this IRP assessment procedure the Commission requires from PREPA, or any other party participating as intervenor, information that the producing party believes is confidential or privileged, the following procedure shall be observed:

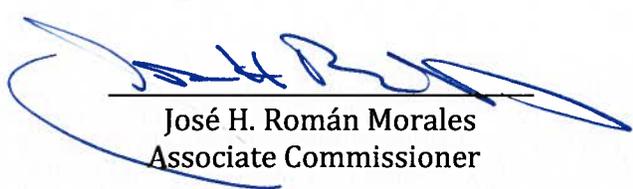
- 1) When submitting the information to the Commission in full compliance with the Commission's requirement, the producing party shall (i) mark or identify the information that it alleges is "confidential" or "privileged"; (ii) identify the reason why the document or information should be classified as "confidential" or "privileged"; and (iii) state in writing the legal basis and sources to support its argument that such information or document should be classified as "confidential" or "privileged". The producing party must reference each confidentiality claim to a particular document or piece of information.
- 2) The producing party shall serve a copy of its filing to all the other parties participating in the proceeding, excepting the information for which it has made a confidentiality claim. Unless the Commission states otherwise, the other parties may respond to the filing within seven (7) days from the date of the filing.
- 3) Every employee and contractor of the Commission having access to the information marked as "confidential" or "privileged" by the producing party, shall comply with the protocol for the proper handling of confidential documents in paper form, in accordance with the *Normas Internas para el Manejo de Información Confidencial en la Comisión de Energía*.
- 4) The Commission will decide each confidentiality claim expeditiously. In its decision, the Commission will state (i) which information and documents are confidential or privileged, if any; and (ii) the rules that shall be observed to duly safeguard the information and allow access, on a need to know basis, to the other parties in the procedure. Among other measures, the Commission will require the parties' representatives to sign a confidentiality agreement provided by the Commission, in order for them to have access to information marked as "privileged" or "confidential" by the Commission.
- 5) If the Commission denies a confidentiality claim, the Commission will also state the time period after which the document or information will be available to the general public. Such time period will give the producing party sufficient time to seek reconsideration or any other legal recourse in order to prevent disclosure if said party disagrees with the Commission's decision.



Be it hereby notified and published.

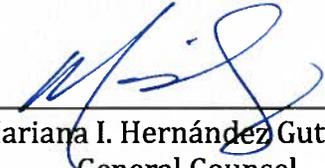
  
\_\_\_\_\_  
Agustín F. Carbó Lugo  
Chairman

  
\_\_\_\_\_  
Ángel R. Rivera de la Cruz  
Associate Commissioner

  
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José H. Román Morales  
Associate Commissioner

I certify that the Puerto Rico Energy Commission has so agreed on September 30 2015. I also certify that on this date a copy of this Resolution was notified by electronic mail sent to n-vazquez@aepr.com; n-ayala@aepr.com; victorluisgonzalez@yahoo.com; mgrpcorp@gmail.com; carlos.reyes@ecoelectrica.com; ccf@tcmrslaw.com.



  
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Mariana I. Hernández Gutiérrez  
General Counsel

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CERTIFICATION

I certify that this is a true and exact copy of the Order issued by the Puerto Rico Energy Commission. I further certify that today, october 1, 2015, I have proceeded with the filing of this Order and I have sent a copy thereof to the:

**Puerto Rico Electric Power Authority**

To the Attention of Nélica Ayala and Nitza D. Vázquez Rodríguez  
PO Box 363928  
Post Office Headquarters  
San Juan, PR 00936-3928

**Windmar Group**

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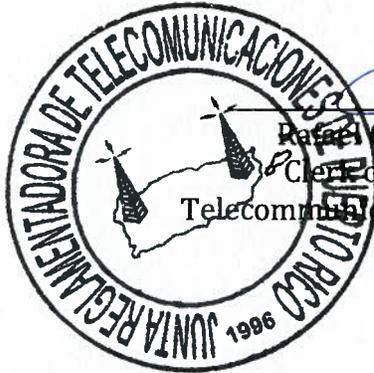
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PO Box 195383  
San Juan, PR 00919-5383

For the record, I sign this in San Juan Puerto Rico, today, *October 1*, 2015.



*Rafael O. García Santiago*  
Rafael O. García Santiago  
Chief of the Puerto Rico  
Telecommunications Regulatory Board