COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

IN RE: REVIEW OF RATES OF THE PUERTO RICO ELECTRIC POWER AUTHORITY	**No.:** CEPR-AP-2015-0001 **SUBJECT:** PUBLIC PARTICIPATION, DISCOVERY AND ACCESS TO CONFIDENTIAL INFORMATION

POLICY STATEMENT

Pursuant to its authority under Section 6.25 of Act 57-2014, as amended, known as the Energy Transformation and RELIEF Act ("Act 57-2014"), and Section 13.03 of Regulation No. 8543, known as the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings ("Regulation 8543"), on May 29, 2015 the Puerto Rico Energy Commission ("Commission") initiated this first rate review proceeding in the history of the Commonwealth of Puerto Rico to establish just and reasonable rates to be charged by the Puerto Rico Electric Power Authority ("PREPA").

This Policy Statement is one of several actions taken by the Commission intended to safeguard the quality and responsiveness of this rate review procedure, as part of the Commission's broader mission to ensure that the operation of the electric power service sector in Puerto Rico is guided by the principles of economic and financial sustainability, stability, reliability, impartiality, transparency, efficiency, solidarity, and non-discrimination. More specifically, the aim of this Policy Statement is to ensure that all interested persons and groups are afforded the necessary information, tools, and opportunities to make their active, timely, informed, and responsible contributions to this first rate case. The mechanisms summarized and explained in Part III of this Policy Statement are intended to ensure that the Commission is fully informed when making its final determination on PREPA's rates. The Commission, therefore, has devised this Policy Statement as a means to ensure, in full compliance with the public policy on transparency and citizen participation, that the overall process is effective in providing the appropriate forum where the views of all interested citizens and stakeholders can be taken into account.

I. Background: Commission's Legal Authority to Set Rates and Its Initial Steps

Pursuant of the Commonwealth of Puerto Rico's public policy principles on energy, this Commission was created as an independent regulatory entity with broad powers and duties to ensure, among other things, "that energy costs are just and reasonable by

overseeing and reviewing the rates of PREPA and any other electric power service company."[1] The provisions of Act 57-2014 establish the general requirements applicable to ratemaking and rate review procedures. Section 6.4 of Act 57-2014 specifically provides the Commission with primary and exclusive jurisdiction to establish and approve, in accordance with the general rules in Section 6.25, rates and charges proposed by PREPA in connection with any electric power service.

Considering its mandate to review PREPA's rates, on February 12, 2015 this Commission initiated an investigation in the matter In re: Investigation on the Rates of the Puerto Rico Electric Power Authority, CEPR-IN-2015-0002, to "obtain necessary information on the operations and performance of PREPA, from the technical, administrative, financial, accounting and tax perspective, to adequately carry out the Commission's powers and duties, and to evaluate the existing rates of that electric power company." During that investigation –which is still ongoing– we have issued a number of data requirements, to which PREPA has responded for the most part, although not yet fully. Pursuant to Section 15.10 of Regulation 8543, all documents and information provided or submitted to the Commission during the course of an investigation, and all the information contained in the investigation file, are confidential while the investigation is in process.

On May 29, 2015, the Commission initiated the first rate review proceeding to establish just and reasonable rates, by issuing the First Order on Rate Case Proceeding, CEPR-AP-2015-0001, ("First Order"), which (i) described the procedural steps the Commission will take to manage the rate case, and (ii) directed PREPA to file a request for new rates consistent with the requirements therein, and with the rate filing regulation to be enacted in the near future. As we explained in that First Order, the reason to continue the investigation CEPR-IN-2015-0002 responds to the Commission's need to obtain information from PREPA –and from any other person– that may assist the Commission in complying with its work plan,[2] attaining the purposes of Act 57-2104[3] and adequately carrying out its duties.[4] In light of the difference in nature of this rate review procedure and the investigation CEPR-IN-2015-0002, and the different rules that apply to adjudicative procedures and to investigation procedures, the Commission has kept the investigation CEPR-IN-2015-0002 procedures and records separate from the rate review procedures and records.

On July 24, 2015 the Commission approved and enacted Regulation No. 8620, known as the Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority.

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[1] Section 1.2(r) of Act 57-2014.

[2] In addition to the first rate case, the work plan of the Commission for years 2015-2016 includes evaluating and approving (or modifying) PREPA's first Integrated Resource Plan, enacting a regulation on the Energy Relief Plan, evaluating and approving (or modifying) PREPA's Energy Relief Plan, enacting a regulation on power purchase agreements, enacting a regulation on procedures for power supply bidding requests for proposals, and enacting a regulation on wheeling.

[3] See, Section 6.3 (y) of Act 57-2014, as amended.

[4] See, Order of February 12, 2015 in the matter *In re: Investigation on the Rates of the Puerto Rico Electric Power Authority*, CEPR-IN-2015-00002

The provisions of Regulation 8620 establish the information that PREPA must include in its formal application proposing new rates, as well as the formats and instructions for filing that information, to ensure that the Commission has all the elements it needs to fulfill its statutory mandate to review PREPA's proposal and approve or establish just and reasonable rates. The Regulation is available at http://energia.pr.gov/wp-content/uploads/2015/07/Regulation.pdf.

On August 24, 2015, PREPA submitted its written comments to the Commission suggesting substantive and substantial amendments to Regulation 8620. After analyzing PREPA's suggestions, the Commission issued an Order on September 2, 2015 rejecting PREPA's suggestions. The Commission concluded, in sum, that PREPA's suggestions were inconsistent with the purpose of Regulation 8620 and, more importantly, with the Commission's fundamental duty to ensure that PREPA's rates are just and reasonable.

II. Organization of the Rate Case Proceeding

With the Commission having approved and enacted the Regulation on Rate Filing Requirements, the part of the proceeding leading to PREPA's new rates will begin once PREPA files its formal application and the Commission determines that the application is complete. The rate case proceeding will include, but will not necessarily be limited to, the following steps: (a) the Commission issues an order announcing the filing of the complete formal application and setting a deadline for petitions to intervene; (b) the Commission issues a "hearing order" specifying a schedule, establishing procedures on discovery, confidentiality and pre-filed testimony, identifying issues requiring special attention, and granting or denying petitions to intervene; (c) the parties (i.e. PREPA and intervenors) conduct discovery; and (d) the Commission holds separate citizen input hearings (where citizens can express their views) and technical hearings (where expert witnesses will be cross-examined on their pre-filed testimony).

III. The Importance of Public Participation

At this stage of the first rate review proceeding, the Commission calls upon the community to seek the participation and assistance of interested persons and groups in the Commission's vital tasks of reviewing the formal application that PREPA will file and establishing new just and reasonable rates. The public policy principles of Act 57-2014 require the Commission to develop and implement the promotion and safeguarding of citizen and stakeholder participation in the rate case proceedings before the Commission.[5] PREPA, as the operator and administrator of the electric power system in the Commonwealth of Puerto Rico, is also required to undertake its activities in accordance with a participatory and transparent model of governance, as set forth in Act 57-2014, and this Commission's orders and regulations.

[5] See, Section 1.2(o) of Act 57-2014, which provides: "Transparency and citizen participation in every process related to electric power service in Puerto Rico shall be promoted."

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According to our First Order, the provisions of Section 6.25 of Act 57-2014 and the common practices in other jurisdictions of the United States of America, the rate review procedures are administrative adjudicative procedures before regulatory agencies –like this Commission– that result in the approval of the rates that a given utility company –like PREPA– is authorized to charge its customers for the services it provides. In these times of crisis, the review and establishment of PREPA's rates is a matter of profound public interest because of the direct and indirect effects that energy costs have on the economic development and competitiveness of Puerto Rico. Therefore, the public interest would be best served if the rate case includes an active, central, and informed role on behalf of the citizenry, in order to present the Commission with a more fully developed record of the facts and different perspectives that will be of assistance in approving and establishing just and reasonable electricity rates.

In consideration of the foregoing, the Commission is committed to encouraging the participation of citizens, entities, and their intermediary organizations in the first rate case in Puerto Rico. In honor of this commitment, the Commission especially welcomes the participation of academics and experts in the economic, financial, environmental, engineering, and planning fields, as well as other similarly related disciplines and areas of expertise. Our commitment involves undertaking a public participation process that is transparent and accountable, supported by information from interested persons and groups that can contribute to the analysis and assessment of PREPA's formal application for new rates.

A. Intervention

Regulation 8543 and the First Order establish a mechanism by which persons can become intervening parties in a rate case. Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act, and interpretive case law, also govern the rights and duties of intervenors in administrative procedures like this one.

In order to become an intervenor in the first rate case, a person must file a petition to intervene, which the Commission will evaluate considering the criteria established in Section 3.5 of Act No. 170[6] and the interpretive case law. The Commission, at its discretion, may grant the petition to intervene in accordance with all applicable statutes and regulations.[7] If the Commission grants the petition to intervene, the intervenor becomes a party –as PREPA will be– to the rate case. Thus, a Commission ruling accepting a petition to intervene grants the intervenor full rights to participate in the proceeding, including but not limited to the right to conduct discovery, present testimony and cross-examine witnesses, participate in any collaborative process, and file pleadings, in accordance with the Commission's orders and the provisions of Regulation 8543.

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[6] 3 LPRA §2155.

[7] See, for example, Section 5.05 of Regulation No. 8543; and Section 3.5 of Act No. 170, 3 LPRA §2155.

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Petitions to Intervene

As we stated in the First Order, after receiving PREPA's formal application, the Commission will determine if PREPA's submission has satisfied the regulation on filing requirements. If PREPA's application is sufficient, the Commission will issue an order formally accepting the application, directing PREPA to publish a notice to the public on the rate case, and setting a deadline for the filing of petitions to intervene and of *amicus* petitions.

Petitions to intervene must comply with Sections 2.02 and 5.05 of Regulation 8543; Section 3.5 of Act No. 170, and the orders issued by the Commission. Specifically, a petition to intervene shall address each of the following points:

1) The nature and extent of the petitioner's interest in the proceeding;

2) The legal positions advanced by the petitioner and its probable relation to the merits of the case;

3) Whether granting the petitioner intervention will contribute to the full development and just and equitable resolution of the facts in the case; and

4) Whether granting the petitioner's intervention will not unduly prolong or delay the proceeding.

Petitions to intervene shall also include a proposed schedule for the technical hearings, taking into account the steps mentioned in the First Order. Petitioners may opt to submit their proposed schedules individually or jointly.

At its discretion, the Commission may grant or deny the petition taking the following factors into consideration, among others:

1) Whether the petitioner's interests may be adversely affected by the rate case proceeding;

2) Whether there are no other legal means for the petitioner to adequately protect his interests;

3) Whether the petitioner's interests are already or will be adequately represented by PREPA or other intervenors in the rate case proceeding;

4) Whether the petitioner's participation may help, within reason, to prepare a more complete record of the rate case proceeding;

5) Whether the petitioner's participation may extend or delay the rate case proceeding excessively;

6) Whether the petitioner represents or is the spokesperson of other groups or entities in the community; and

7) Whether the petitioner can contribute information, expertise, specialized knowledge or technical advice, which is otherwise not available in the procedure.

The Commission may require that additional evidence be submitted in order to issue the corresponding determination with regard to the petition to intervene.

Petitioner's rights pending evaluation by the Commission

Once a petition to intervene is filed, the petitioner will be accorded full rights as an intervening party until such time as the Commission may issue a ruling denying the petitioner intervention. However, no petitioner shall be entitled to confidential information from PREPA until its petition to intervene has been granted by the Commission.

Denial of petition

If the Commission denies a petition for intervention, "it shall give notice of its determination in writing to the petitioner, its grounds therefor, and the appellate review that is available."[8]

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B. *Amici curiae*

Any person, other than PREPA or any intervenor in the rate case, may present before the Commission a petition to participate in the capacity of friend of the court or *amicus curiae*. As opposed to intervenors, *amici* are not considered parties in administrative procedures like rate cases, and therefore, have no procedural rights in the proceeding. For example, *amici* have no right to participate in discovery or to request appellate review. However, unlike the general public, an amicus may participate in the technical hearing by giving testimony and participating in any questions and answers session. The technical hearing will be open to the public, except for portions including confidential information as approved by the Commission.

Amicus petition and brief

Every petition to participate as *amicus curiae* shall be accompanied by a brief and, for the purposes of the rate review procedure, shall be presented on or before the date set by the Commission in the order formally accepting PREPA's application for new rates.

The *amicus* petition shall include:

[8] Section 3.6 of Act No. 170, 3 LPRA §2156.

1) A description of the petitioner and its interest in the rate case;

2) An explanation of the reasons for which its participation in the case is justified;

3) An introductory explanation of the contributions that the petitioner will make to assist the Commission to be better informed or in a better position to properly evaluate PREPA's formal application, and approve new just and reasonable rates;

4) A declaration indicating:

   a) If any of the parties or lawyers in the rate case has helped draft the petitioner's brief;

   b) If any of the parties or lawyers in the rate case 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 (that is not a party in the rate case, 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 rate case;

6) Any other argument the petitioner considers necessary.

The arguments made in an *amicus* brief may not rely on facts that are not in the record of the rate review proceeding.

Evaluation by the Commission

In accordance with Section 7.02 of Regulation 8543, the Commission will evaluate the petitions to participate as *amicus curiae* and the corresponding briefs, and concede or deny them, at its discretion.

IV. Discovery: Information that the Commission has obtained during the investigation CEPR-IN-2015-0002

Since the investigation CEPR-IN-2015-0002 is still ongoing, the administrative file of the investigation is confidential in accordance to Section 15.10 of Regulation 8543. For this reason, the administrative file of the investigation will not be part of the administrative record and files of the rate review procedure. Due to its confidential nature, the information contained in the administrative file of investigation CEPR-IN-2015-0002 will not be used by the Commission to assess PREPA's formal application and set new rates,

therefore, it will not be shared with the parties in the rate case. Notwithstanding, the Commission will have an active participation in the discovery process of the rate case.[9]

For the reasons explained above, the Commission, at its discretion, may require PREPA to provide, as part of the discovery process, information that PREPA has already submitted to the Commission during the course of investigation CEPR-IN-2015-0002. PREPA will be required to submit the requested information during discovery, regardless of whether the information was already submitted to the Commission during the investigation.

Any intervenor that wishes to obtain any information relevant to the rate case, shall request PREPA to provide it by using the discovery mechanisms established by the Commissions orders and regulations. The Commission will share with PREPA and the intervenors the information submitted in response to discovery requirements from the Commission, subject to the restrictions applying to information marked as "confidential" by any party, and to information classified as "confidential" by the Commission or by a court with jurisdiction. Likewise, PREPA and the intervenors will share with the Commission the information submitted in response to discovery requests.

Confidentiality controversies between PREPA and intervenors arising from the discovery process will be addressed by the Commission in an expedient manner, in accordance with the provisions of Section 6.15 of Act 57-2014. We remind the parties that, pursuant to Section 6.15 of Act 57-2014, whenever the Commission requires them to submit information related to the rate case, they must provide it to the Commission even if they deem such information confidential.

Be it hereby notified and published.

Agustín F. Carbó Lugo
Chairman

Ángel R. Rivera de la Cruz
Associate Commissioner

José H. Román Morales
Associate Commissioner

I certify that the Puerto Rico Energy Commission has so agreed on December 3, 2015. I also certify that on this date a copy of this Order was notified to PREPA by electronic mail sent to n-vazquez@aeepr.com and n-ayala@aeepr.com.

[9] See Article VIII of Regulation 8543.

Brenda Liz Mulero Montes
Interim Secretary

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 _____ 2015, I have proceeded with the filing of this Order and I have sent a copy thereof to:

Puerto Rico Electric Power Authority
To the Attention of Nélida Ayala and Nitza D. Vázquez Rodríguez
PO Box 364267
Post Office Headquarters
San Juan, PR 00936-4267

For the record, I sign this in San Juan Puerto Rico, today _____ 2015.

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