

**FIDDLER GONZALEZ & RODRIGUEZ, P.S.C.**  
ATTORNEYS AND COUNSELORS AT LAW  
PO BOX 363507  
SAN JUAN, PR 00936-3507

TELEPHONE (787) 753-3113  
FAX (787) 759-3123  
Pedro J. Reyes Bibiloni  
Direct Dial (787)759-3208  
Fax No. (787)759-3108  
preyes@fglaw.com

254 MUÑOZ RIVERA AVENUE  
CORNER CHARDÓN STREET  
HATO REY, PR 00918

September 25, 2015

**VIA EMAIL:** [comentarios@energia.pr.gov](mailto:comentarios@energia.pr.gov)

Agustin F. Carbó-Lugo, Esq.  
President  
Puerto Rico Energy Commission  
268 Muñoz Rivera Avenue  
World Plaza Suite 400  
San Juan, Puerto Rico 00918

Re: Comments to Puerto Rico Energy Commission (PREC) Amendments to  
the Regulation on Certification, Annual Fees, and Operational Plans for  
Electric Power Companies in Puerto Rico (Regulation No. 8618)

Dear Mr. Carbó-Lugo,

We hereby make reference to the PREC's Order No. CEPR-MI-2015-0006 (Order), dated September 4, 2015, extending the period to submit written comments with regards to Regulation No. 8618, and establishing revised deadlines for compliance with Regulation No. 8618. On behalf of our client, AES Puerto Rico, Inc. (AES), we hereby submit comments to Regulation No. 8618 for the PREC evaluation and consideration.

AES is one of a limited number of independent power producers operating in the island, who owns and operates a 454MW cogeneration facility located in Puente Jobs Ward, Guayama, Puerto Rico. Our operation generates approximately 15% of the electricity sold by PREPA in the island, by virtue of an exclusive 25-year Power Purchase and Operating Agreement with our sole off-taker, the Puerto Rico Electric Power Authority (PREPA), expiring in October 2019 (PPOA). The PPOA is the document that

establishes the relationship between AES and PREPA, including those related to the payment for the services provided to PREPA and the people of Puerto Rico.

Section 4.03(C) of Regulation No. 8618 establishes:

*"No electric power company that...has entered into a power purchase agreement,...may claim from PREPA the reimbursement of expenses for the annual fee payable to the Commission, or include said expenses in the calculation of its rates, capacity fee, energy fee, or any other fee or amount of money that said electric power company charges PREPA under the referred agreements.*

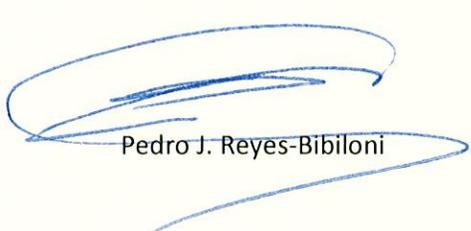
- 1) *Any clause or condition of a power purchase agreement...that contravenes the prohibition established in this subsection shall be understood as excluded and, once this Regulation has entered into force, shall cease to have effect solely with regard to the reimbursement from or charge to PREPA of the expenses for the annual fee, and so long as it does not constitute an impairment to contractual obligations as is prohibited under Article II, Section 7 of the Constitution of the Commonwealth of Puerto Rico or Article I, Section 10 of the United States Constitution."* (Emphasis ours)

As it reads, Regulation No. 8618 will impact AES operation by adding substantial costs that were not specifically included in the 1994 PPOA, or anticipated by the PREPA or AES. The practical effect of the language in 4.03(C) is that impairs existing contractual obligations under the PPOA and impedes AES to recover its costs. Further, the current language of Section 4.03 of Regulation No. 8618 challenges the basic concepts underlying all forms of economic regulation regimes, and the opportunity for a regulated entity to recover its costs and a reasonable return on its investments.

Based on the above, we respectfully suggest Section 4.03 to be amended to exclude independent power producers that have existing power purchase agreements with the PREPA, or in the alternative for the PREC to issue an interpretative order in this regard.

AES appreciates the opportunity to present the foregoing comments, and recognizes the PREC efforts to establish its operations and regulatory scheme in a prompt fashion.

Sincerely,



Pedro J. Reyes-Bibiloni