**COMMONWEALTH OF PUERTO RICO**
**PUERTO RICO ENERGY COMMISSION**

CEPR
COMISIÓN DE ENERGÍA DE PUERTO RICO
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| IN RE: REVIEW OF RATES OF THE PUERTO RICO ELECTRIC POWER AUTHORITY | **CASE NO.:** CEPR-AP-2015-0001 |
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# RESOLUTION AND ORDER

## *I. Introduction*

On March 30, 2016, in anticipation of its formal application for rate review, the Puerto Rico Electric Power Authority ("PREPA") filed a motion requesting the Puerto Rico Energy Commission ("Commission") to waive compliance with certain filing requirements of Regulation No. 8620 on Rate Filing Requirements for the Puerto Rico Electric Power Authority ("Regulation 8620"). PREPA's motion was filed pursuant to Section 2.19 of Regulation 8620 and requests: (i) approval of waivers of the filing requirements under Subsections 1.08(43), 2.10(A) and 3.02(D) of Regulation 8620; and (ii) clarifications of requirements under Subsections 2.10(C) and 3.02(A) of Regulation 8620.

## *II. Applicable Regulation*

On March 16, 2016, the Commission approved Regulation No. 8720, known as the New Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority's First Rate Case ("Regulation 8720"), pursuant to Act 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act ("Act 170"). On March 19, 2016, the Governor of Puerto Rico, Hon. Alejandro J. García Padilla, pursuant to Section 2.13 of Act 170, certified that, given the public interest in achieving meaningful reform of PREPA's rates, Regulation 8720 should enter into effect immediately upon its filing at the Department of State. Regulation 8720 was filed at the Department of State and entered into effect on March 28, 2016.

Section 1.06 of Regulation 8720 repealed Regulation 8620 in its entirety. Given that PREPA's motion was filed after Regulation 8720 went into effect, the Commission's review of PREPA's request will be made based upon the provisions of Regulation 8720.

## *III. Analysis and Discussion of PREPA's Application for Waivers and Clarifications*

a. Subsections 3.02(D) and 2.10(A)[1]

Subsection 3.02(D) of Regulation 8620 required PREPA to provide the Consulting Engineer's Report for Fiscal Year 2013-2014 ("FY 2014"). PREPA seeks waiver from this

[1] Subsection 2.10(A) of Regulation 8620 is now Subsection 2.11(A) of Regulation 8720.

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requirement since such report is unavailable to PREPA. According to its motion, the most recent year for which PREPA has a Consulting Engineer's Report is Fiscal Year 2012-2013 ("FY 2013").

Subsection 3.02(D) of Regulation 8720 requires PREPA to provide the most recent Consulting Engineer's Report, rather than the Consulting Report for FY 2014 as required by Subsection 3.02(D) of Regulation 8620. **Therefore, PREPA's request for waiver is moot.** PREPA shall provide the most recent Consulting Engineer's Report available on the date in which its application for rate review is filed. As a consequence, a waiver of this requirement is unnecessary.

Subsection 2.10(A) of Regulation 8620 required PREPA to provide the Consulting Engineer's Report for the historic test year, which, according to PREPA, will be FY 2014. Subsection 2.11(A) of Regulation 8720, which corresponds to Subsection 2.10(A) of Regulation 8620, requires PREPA to provide the same information. Given that PREPA has stated that the Consulting Engineer's Report for FY 2014 is unavailable and that, under Subsection 3.02(D) PREPA is only required to provide the report for FY 2013, PREPA's **request for a waiver is hereby granted**. PREPA shall file the most recent Consulting Engineer's Report available on the date of its application for rate review.

b. Subsection 1.08(43)[2]

PREPA seeks a precautionary or protective waiver under Subsection 2.19(C)(2) of Regulation 8620, which is the precursor of Subsection 2.20(C)(2) of Regulation 8720, arguing that the requested information corresponding to FY 2015 is not available to PREPA.[3] Subsection 1.08(47) of Regulation 8720, which corresponds to Subsection 1.08(43) of Regulation 8620, defines "Test Year" as "the most recent twelve (12) month period for which audited financial statements exist." PREPA argues that, although the period to be used as a test year will be FY 2014, the most recent fiscal year for which audited financial statements are available, certain information and data pertaining to Fiscal Year 2014-2015 ("FY 2015") will be used in developing its application. As such, PREPA is concerned that the use of information pertaining to FY 2015 may be misconstrued as signifying that the historic test year used for its application is FY 2015, rather than FY 2014.

The Commission is concerned that as of today, approximately nine (9) months after FY 2015 ended, PREPA's audited financial statements are still not available. Timely production and availability of performance, operating and financial information is a key element of sound administrative practices. Lack of updated information hinders this

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[2] Subsection 1.08(43) of Regulation 8620 is now Subsection 1.08(47) of Regulation 8720.

[3] As discussed in Part II of this Resolution and Order, PREPA's requests are addressed pursuant to the provisions of Regulation 8720. Subsection 2.20(C)(2) of Regulation 8720 —which substitutes Subsection 2.19(C)(2) of Regulation 8620— provides that, when requesting a waiver because a particular required information is not available, PREPA shall: (a) describe the reasons the information is not available, all the actions taken by PREPA to obtain the information, and [provide] a date by which PREPA commits to provide the information; and (b) provide, if available, a reasonable substitute for the required information."(Emphasis added.)

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Commission's ability to comply with its statutory mandate and denies PREPA's customers just and reasonable rates. **PREPA's request for waiver is unnecessary.** The definition of "Test Year" in Regulation 8720 is clear. PREPA shall use as a test year the most recent twelve (12) month period for which audited financial statements are available.

PREPA shall comply with Section 2.20(C)(2) of Regulation 8720, which requires PREPA to: (i) describe the reasons for which the information is not available; (ii) describe the actions undertaken by PREPA to obtain the required information; (iii) provide a date by which PREPA commits to provide the information; and (iv) provide a reasonable substitute for the required information. PREPA may use alternate methods to comply with its duty to provide all available information in relation to its application, including: (i) providing sworn statements from a knowledgeable PREPA officer concerning the current status of their audited financial statements for FY 2015, including the necessary steps to complete the audit and a date by which the audited FY 2015 financial statements will be available; and (ii) providing a list of all auditor-proposed adjusting journal entries to PREPA's audited financial statements for FY 2015.

With respect to any "known and measurable adjustments" that rely on financial information from FY 2015, PREPA must include a sworn statement from PREPA's Chief Financial Officer, or senior executive with equivalent responsibilities, certifying that the accounting information corresponding to FY 2015, that is being presented and used by PREPA in its application, is accurate and that PREPA's Chief Financial Officer is not aware of any necessary adjustments to such information.

c. Subsections 3.02(A) and 2.10(C)[4]

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PREPA seeks clarification of Subsection 3.02(A) of Regulation 8620, which required PREPA to submit, prior to the filing of its application, any and all reports made by PREPA's Chief Restructuring Officer to PREPA's Governing Board regarding its restructuring. PREPA also seeks clarification of Subsection 2.10(C) of Regulation 8620 which required PREPA to provide a copy of any and all reports made by its Chief Restructuring Officer to PREPA's Governing Board from September 2014 until the date of PREPA's filling, and onwards.

Contrary to PREPA's argument, the requirements set forth in Subsections 3.02(A) and 2.11(C) of Regulation 8720, which correspond to Subsections 3.02(A) and 2.10(C) of Regulation 8620, are not limited to documents "relevant to PREPA's current or proposed rates and its applicable costs and revenues." The requirements include any documents or information related to PREPA's overall performance and operation. This information is relevant as it allows adequate review of PREPA's actual costs. Furthermore, assessing PREPA's overall performance and operation is fundamental since it affects the value to customers of the service for which PREPA seek costs recovery. PREPA's financial and operational viability depends on a meaningful reform of its performance and operations and the establishment of rates which are just and reasonable and consistent with proven and sound fiscal and operational practices that result in a reliable service at the lowest possible

[4] Subsection 2.10(C) of Regulation 8620 is now Subsection 2.11(C) of Regulation 8720.

cost. Any limitation on the information regarding PREPA's performance and operation may impair the Commission's ability to comply with its statutory mandate. Thus, PREPA is ordered to provide the information requested by the Commission.

To avoid the possibility of the Commission rejecting PREPA's application as incomplete, PREPA shall treat this Resolution and Order as an information requirement and shall submit the documents and information required herein expeditiously. In responding to the Commission's information requirement, PREPA must comply with Section 4.02 of Regulation 8720 if it claims any confidentiality privileges over the information hereby requested.

It is so ordered. Be it 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 April 12, 2016. I also certify that on this date a copy of this Resolution was notified via email to n-ayala@aeepr.com.

Brenda Liz Mulero Montes
Interim Clerk

CERTIFICATION

I Certify that the foregoing is a true and exact copy of the Resolution and Order issued by the Puerto Rico Energy Commission. I further certify that on April _____, 2016 I have proceeded with the filing of this Order and I have sent a copy thereof to:

**Puerto Rico Electric Power Authority**
Attn.: Nélida Ayala Jiménez
P.O. Box 364267
Correo General
San Juan, PR 00936-4267

For the record, I sign this in San Juan, Puerto Rico, today, April _____, 2016.

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