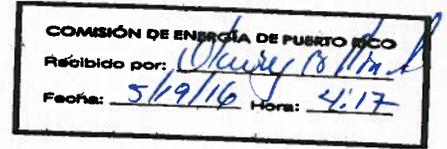


COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION



IN RE:

PUERTO RICO ELECTRIC POWER  
AUTHORITY REVITALIZATION  
CORPORATION,

Petitioner.

NO. CEPR-AP-2016-0001

**SUBJECT:** Motion to Reconsider  
and Revise Order Establishing the  
Technical Hearing Procedure

**THE PREPA REVITALIZATION CORPORATION'S  
MOTION TO RECONSIDER AND REVISE ITS MAY 17, 2016  
TECHNICAL HEARING PROCEDURE ORDER**

Comes now the Petitioner Puerto Rico Electric Power Authority Revitalization Corporation (the "Corporation") and moves the honorable Puerto Rico Energy Commission (the "Commission") to reconsider certain aspects of its Resolution and Order of May 17, 2016 establishing procedures for the Technical Hearing (the "Procedures Order") to be held on May 24-27, 2016. The Corporation respectfully requests that the Commission revise and supplement the Procedures Order to state clearly its jurisdiction and the issues that the PREPA Revitalization Act, Law No. 4-2106 (the "Revitalization Act" or "PRA") authorizes the Commission to address, and to organize the topics assigned to the various witness panels to conform to such issues or, in the alternative, to identify those additional inquiries that are for background purposes only. In support of this Motion, the Corporation states:

1. This is a special proceeding authorized by and conducted under the terms of Article 6.25A of the Revitalization Act. It was initiated by the Corporation's Verified Petition, filed with this honorable Commission, under that Article and seeking a Restructuring Order as authorized therein. Article 6.25A defines the three criteria that the Commission must find and determine to issue a Restructuring Order (Article 6.25A(b)(1)-(3)) and it spells out in detail all of

the information and evidence that the Corporation must submit to support such a request (Article 6.25A(c)-(e)). The law bars the Commission from “by rule or otherwise, requir[ing] additional materials or information to be submitted to support the petition.” Article 6.25A(e)(10)). And, other than determining whether to make “the findings and determinations related to the Corporation’s petition filed pursuant to paragraph (b) of this Article 6.25A, or otherwise required by this Article 6.25A” to issue the Order, the “Commission shall not limit, qualify, amend or otherwise change the Restructuring Resolution” proposed by the Corporation. Article 6.25A(f)(2).

2. The limited nature of the Commission’s jurisdiction matches its specific and limited role in the securitization process and fits with the specific period granted to review the petition. The law does not grant the Commission general regulatory oversight over the Corporation or the proposed securitization transaction. Unlike PREPA and other entities that are broadly regulated by the Commission, the Corporation is not a utility or an electric service company. PRA, Article 39. Rather, the authority to engage in defined securitization transactions is conferred by Chapter IV of the Revitalization Act on the Corporation, itself a government entity separate from PREPA, subject only to the obligation to submit to this honorable Commission a request for a Restructuring Order “accompanied by a proposed Restructuring Resolution and such other information as is required in Article 6.25A of Law No. 57-2014” to support the approval of the calculation methodology to establish the transition charge and related adjustment mechanism (“Transition Charge and Adjustment Mechanism”) that will be the source of repayment of the securitization bonds. PRA, Article 35(b)(i). Chapter IV of the Act reconfirms the defined role of the Commission, stating:

Pursuant to Article 6.25A of this Act, the Commission will review if the proposed Restructuring Resolution and such other information to

determine whether the calculation methodology followed by the Corporation for the Transition Charges, and Adjustment Mechanism to be applied to adjust the Transition Charges is consistent with the cost distribution and other standards set forth in Section 6.25A of Law 57-2014 and is not arbitrary or capricious.

*Id.* The Commission is granted no other regulatory authority over the Corporation. PRA, Chapter IV.

3. It is an established maxim that the specific provisions of a law should be interpreted in conformity with the public policy which inspired it and its legislative intent. *R.E. Bernier & J.A. Cuevas Segarra, Approval and Interpretation of the Laws of Puerto Rico*, 2nd ed. Rev., San Juan, Pubs. J.T.S., 1987, Vol. I. In the administrative field, the law is the medium and legal source which confers an administrative agency the power to watch over compliance with the organic law which created it. The organic law is the legal mechanism which authorizes and delegates to the administrative agency the power to act in accordance with its purpose. Within the delegated scope, administrative agencies have two (2) essential powers: the power to regulate by exercising quasi-legislative functions, and the power to adjudicate controversies by exercising quasi-judicial functions within the agency's expertise. *Puerto Rico Telephone Company v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, *supra*; Act No. 170 of August 12, 1988, as amended. Through said delegation, the Legislature authorizes and allocates on the agency the necessary powers to act in accordance with the legislators intent, and within its areas of specialization or expertise. *Colón Rivera v. Rey Hernández*, 189 D.P.R. 1033, 1050 (2013); *D.A.C.O. v. Servicios Públicos Unidos de Puerto Rico*, 185 D.P.R. 1 (2012). In light of the above, any and all administrative actions that do not obey the power delegated through legislation must be cataloged as contrary to law, and therefore *ultra vires*. *Caribe Comms., Inc. v. P.R.T.Co.*, 157 D.P.R. 203 (2002). As a consequence, all acts and orders executed by an

agency which exceed the authority delegated by way of its organic law are incorrect and null. Caribe Comms., Inc. v. P.R.T.Co., *supra*; D.A.C.O. v. Servicios Públicos Unidos de Puerto Rico, *supra*. To determine its validity, it should be determined whether the administrative action adjusts or not to the delegated powers. Caribe Comms., Inc. v. P.R.T.Co., *supra*. To accomplish this, the agencies organic law must be interpreted while observing the legislative intent and therefore ensuring the legislators intended result. ASG v. Mun. San Juan, 168 D.P.R. 337 (2006); Vázquez v. A.R.P.E., 128 D.P.R. 513 (1991).

4. The Corporation respectfully submits that the Procedures Order sets forth numerous areas of inquiry that go beyond the issues legally within the Commission's jurisdiction in this proceeding. In particular, the description of issues before each panel includes numerous questions that bear no relationship to the Commission's authority to approve or deny the Corporation's Petition. The answers to these questions are of no consequence to the Commission's ultimate Order approving or denying the Petition. That is, the future determination by the Commission of approving or rejecting the Petition will have to be based on the information and scope spelled out by the Revitalization Act, not based on any answers to these other questions. Therefore, their inclusion should clearly be established as for background and context purpose. The Legislative Assembly has already reviewed and considered the need for the financial and operational restructuring of PREPA and the benefits of a securitization transaction as provided in the "Agreement with Creditors." *See* PRA, Art. 3(a); Art. 4(a). In enacting the Revitalization Act, the Legislative Assembly found that PREPA's

... precarious financial situation requires immediate action so that the Authority can achieve financial solvency and meet its obligations in a manner that is orderly and satisfactory to all its stakeholders. In order to cement the Authority's transformation, the Authority has reached an integrated agreement with its creditors (the "Creditors' Agreement") with the aim of balancing the necessities and interests of all affected parties.

PRA, Statement of Motives. As an issue of public policy, the Legislative Assembly evaluated the merits of PREPA entering into such restructuring that contemplates a securitization. In approving the Revitalization Act, it gave the blessing to such securitization, **subject only** to delegating to the Commission the evaluation of the **mechanism** to establish the Transition Charge and Adjustment Mechanism (not the merits of the securitization itself) and conditioning the final issuance of such bonds by the Corporation to obtaining an overall minimum of \$725 million in net present value benefits to Puerto Rico. PRA, Article 33(a)(3). No witness has disputed that the proposed transaction will accomplish that goal, and deliver those expected benefits.

5. To be clear, the Corporation takes no issue with providing any of the information contained in the Commissions proffered topics. Further, the Corporation does not dispute that the Commission has a right to understand and ask questions to further its knowledge of the issues underlying this proceeding. However, in order to avoid confusion, it also is important that the Commission confirm the findings it is required to make and specify that a portion of the inquiry goes to background issues.

6. The Corporation, therefore, respectfully submits that the Commission should structure the Technical Hearing around the specific findings that Article 6.25A requires the Commission to make and the relief that the Corporation requests. In particular, the Technical Hearing should focus on evidence relating to two questions:

- a. Does the evidence before the Commission support each of the findings and determinations specified in paragraph (b) of Article 6.25A, namely that:
  - (1) the provisions of the Restructuring Resolution, including the calculation methodology for the Transition Charges and the Adjustment Mechanism

related to such Restructuring Bonds, are consistent with the criteria set forth in paragraph (d) [of Article 6.25A of the PREPA Revitalization Act], and are sufficient for and provide for adequate protection of the full and timely payment of the Restructuring Bonds in accordance with their terms and other Ongoing Financing Costs;

- (2) the Upfront Financing Costs and Ongoing Financing Costs proposed, to be recovered from the Restructuring Bonds proceeds or the Transition Charge Revenues, are consistent with Article 6.25A and Chapter IV of the PREPA Revitalization Act; and
- (3) the servicing costs proposed, to be recovered by PREPA in its role as the initial Servicer are necessary, reasonable and sufficient to compensate PREPA for the incremental costs of performing its functions as Servicer.

- b. Is the proposed form of Restructuring Order consistent with the Act and otherwise appropriate in form and substance to ensure the timely and full payment of the Restructuring Bonds, and other Ongoing Financing Costs, in accordance with their terms?

7. Focusing the Technical Hearing on the Commission's statutory jurisdiction and the specific findings that it must make will serve several important purposes. It will make clear for the parties what issues and criteria the Commission will consider, and will focus the presentation of evidence on those issues. It will avoid consuming the parties' and the Commission's scarce time and resources on other issues. It will also make the proceedings more understandable, avoid erroneously communicating to third parties that the Commission took evidence on and considered issues beyond its jurisdiction. Notwithstanding, if the Commission

wishes also to hear testimony concerning the background of the transaction or PREPA's circumstances, the Corporation urges the Commission to make that distinction plain and to clearly identify those panels or questions as relating to such background or contextual inquiries.

8. The Corporation, therefore, respectfully suggests that the Commission revise its Procedures Order to refer to the revised Exhibit A (attached hereto). In the alternative, the Corporation requests that the Commission include language in an amended Procedures Order reciting the three findings and determinations that the Commission must make and identifying (e.g., by asterisk) those questions in Exhibit A which will elicit evidence that those findings are, or are not, met, and separately identify those that are questions relating to background or contextual inquiries.

**WE HEREBY CERTIFY** that the foregoing was sent via email to: José Pérez-Velez, Esq., (jperez@oipc.pr.gov); Coral M. Odio-Rivera, Esq., (codiot@oipc.pr.gov); Marc G. Roumain Prieto, Esq., (mgrprcorp@gmail.com); Fernando Agrait, Esq., (agraitfe@agraitlawpr.com); Edwin J. Quiñones Porrata, Esq., (edwin.quinones@aee.pr.gov); José G. Maeso Gonzalez, Esq. (jose.maeso@aae.pr.gov); Victor Luis Gonzalez, Esq., (victorluisgonzalez@yahoo.com); Alicia P. Perez Caballero, Esq., (aperez@fgrlaw.com); and Melissa Hernandez Carrasquillo, Esq. (mehernandez@fgrlaw.com); and Dr. Guillermo M. Riera, PE (guillermo.m.riera@gmail.com).

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 19<sup>th</sup> DAY OF MAY, 2016

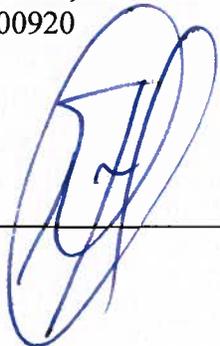
**PUERTO RICO ELECTRIC POWER  
AUTHORITY REVITALIZATION CORPORATION**

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\*\* Pursuant to Moción Suplementaria de Solicitud de  
Admisión por Cortesía (pending)

By: \_\_\_\_\_



By: \_\_\_\_\_

