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

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| IN RE: PETITION FOR APPROVAL OF TRANSITION ORDER FILED BY THE PREPA REVITALIZATION CORPORATION | **CASE NO.:** CEPR-AP-2016-0001<br><br>**SUBJECT:** PETITION TO INTERVENE FILED BY APEV |

# RESOLUTION

## I. Introduction

On April 19, 2016, the *Asociación Puertorriqueña de Energía Verde, Inc.* ("APEV") filed before the Puerto Rico Energy Commission ("Commission") a motion requesting intervention in the current proceeding.[1] APEV sated that on November 20, 2015, the Commission granted APEV the right to intervene in the proposed Integrated Resource Plan ("IRP") of the Puerto Rico Electric Power Authority and proceeded to list the four main principles of its mission and objectives.

In light of the above, APEV requested the Commission to: (i) "take into consideration the aforementioned"; (ii) "consider the procedure complete and the petition made"; (iii) "consider APEV in compliance with the Resolution and Order"; and (iv) "GRANT this Motion for Consideration and Supplemental Petition." After reviewing APEV's motion, pursuant to the criteria set forth for the presentation and evaluation of a petition to intervene in the procedure for the review of the Verified Restructuring Order ("Petition") filed by the Puerto Rico Electric Power Authority Revitalization Corporation ("Corporation"), the Commission hereby **DENIES** APEV's petition to intervene for the reasons stated below.

## II. Criteria for the Evaluation of a Petition to Intervene

Pursuant to Section 5.05 of Regulation No. 8543 on Adjudicative Proceedings, any petition to intervene in a proceeding before the Commission shall be evaluated and addressed pursuant to the provisions of the Uniform Administrative Procedure Act ("LPAU", for its Spanish acronym)[2] and its interpretation by the Puerto Rico Supreme Court.

The right to intervene in an administrative proceeding is based in that the party seeking intervention has an interest which will be adversely affected by the agency's

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[1] Although, as discussed in this Resolution, APEV's petition was filed under an incorrect case number and the same makes reference to a procedure which is separate and independent from the current proceeding, the Commission construes APEV's petition to seek intervention in the procedure for the evaluation of the Petition filed by the Corporation.

[2] Act No. 170 of May 12, 1988, as amended.

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determination.[3] When requesting intervention, the petitioner must state "sufficient facts as to allow the agency to evaluate his/her interest and its relevance to the case [and file a] formal request which clearly demonstrates how the petitioner's interest will be affected by the administrative determination, [since it is as a result of] said possibility that a person which is not a party in the proceeding may seek to intervene."[4]

The determination regarding a petition to intervene in an administrative proceeding must be made on a case by case basis, taking into consideration the interests which the petitioner seeks to protect and in light of the arguments provided in support of his/her intervention. For each proceeding in which the petitioner seeks to intervene, he/she must justify his/her intervention through the filing of a duly grounded written request, pursuant to the rules and procedures set forth.

Pursuant to the aforementioned, through the April 13, 2016 Resolution and Order, the Commission adopted the guidelines that would apply to the filing and evaluation of a petition to intervene in case number CEPR-AP-2016-0001 for the review of the Petition filed by the Corporation on April 7, 2016. As such, the Commission stated that any petition to intervene would need to discuss a series of items which would be used by the Commission to evaluate a petition to intervene. Accordingly, any person or entity requesting to intervene in the current proceeding would be required to, as part of his/her request, discuss the following:

(i) The nature and scope of the petitioner's interest in the current proceeding and how that interest is relevant to the limited purposes of Act 4-2016[5];

(ii) To the extent known, a summary of the petitioner's legal position in relation to the merits of the case;

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(iii) A detailed explanation describing how the intervention will contribute to the Petition's evaluation and to a just determination by the Commission pursuant to the parameters set forth on Act 4-2016. Where the petitioner is a business or other entity, such contribution can be described in terms of petitioner's unique experience or position in an industry; where the petitioner is a person, such contribution can be described in terms of the person's relevant professional and/or academic credentials; and

(iv) A determination of how the petitioner's intervention in the case will not result in repetitive testimony or an unreasonable delay of the proceedings.

The purpose of said criteria is to guarantee that the Commission has sufficient information to: (i) fully evaluate the merits of the petition; (ii) reach a balance among

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[3] *See*, Fund. Surfrider y otros v. A.R.Pe., 178 D.P.R. 563 (2010); J.P. Plaza Santa Isabel v. Cordero Badillo, 177 D.P.R. 201 (2009); San Antonio Maritime v. P.R. Cement Co., 153 D.P.R. 374 (2001).

[4] Fund. Surfrider y otros v. A.R.Pe., *supra.*

[5] Act No. 4 of February 16, 2016, known as the Puerto Rico Electric Power Authority Revitalization Act.

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different interest in the case; (iii) and issue a determination which conforms to the public policy which promotes public participation and the particular rules applicable to evaluation of the Petition. The discussion and analysis by the petitioner of the aforementioned criteria provides the Commission with the necessary context to issue an informed and accurate determination, promote an orderly interaction among the parties involved and ensure that the administrative procedure complies with its purposes and objectives.[6]

## III. Deficiencies and Non-Compliance by APEV

A review of APEV's motion reveals that it failed to address all of the evaluation criteria set forth by the Commission through the April 13, 2016 Resolution and Order. APEV argues that compliance with said requirements is unnecessary and states that it has a right to intervene in the current procedure simply because it has been authorized to intervene in the IRP evaluation proceeding.[7] We disagree.

During the IRP evaluation proceeding, and in compliance with the applicable guidelines, APEV requested to intervene in said proceeding and the Commission granted said request.[8] However, it must be stated that the IRP evaluation proceeding is a separate and independent proceeding from that for the evaluation of the Petition. As such, intervention in one proceeding does not have the effect of granting the right to intervene in this proceeding, or in any other administrative proceeding before the Commission. In order to intervene in this proceeding, APEV was required to clearly and sufficiently identify the existence of a particular and relevant interest in the evaluation of the Petition, which it failed to do. By omitting any discussion regarding the criteria set forth by the Commission, APEV's petition lacks sufficient and clear facts to support its intervention, which results in the Commission lacking any justification for approving APEV's request.

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Furthermore, the criteria used by the Commission to evaluate a petition to intervene include whether the petitioner's intervention would have the effect of unreasonably delaying the proceedings.[9] This criterion requires, among other things, for the Commission to evaluate the petitioner's ability to exercise his/her right to intervene within the parameters set forth by the Commission and applicable legal and regulatory provisions. As

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[6] As stated in our April 13, 2016 Resolution and Order, the particular nature of the procedure for the evaluation of the Petition, as established by Act 4-2016, requires the Commission to issue a determination within seventy-five (75) days. As such, the Commission would be adopting the necessary guidelines to ensure that it is able to review the Petition pursuant to the parameters set forth in the aforementioned statute. The Commission's inability to comply with said term would deny the citizens of Puerto Rico the benefit of having the Commission pass judgment and ensure that the Petition and the Corporation have fully complied with Act 4-2016.

[7] A conclusion which finds no support in any legal or regulatory provision applicable to interventions in procedures before the Commission.

[8] When requesting to intervene in the IRP proceeding, APEV complied with all rules and procedures for intervening in said process, thus APEV is not unfamiliar with the rules and procedures set forth by the Commission with regards to petitions to intervene in administrative proceedings.

[9] See, Section 3.5 of the Uniform Administrative Procedure Act, Act No. 170 of August 12, 1988, as amended, 3 L.P.R.A. §2155.

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such, full compliance with the rules and procedures applicable for requesting intervention serves as an indicator into whether the petitioner has the ability to participate in an orderly fashion.

APEV's petition does not allow the Commission to reach such a conclusion. In addition to failing to address any of the criteria set forth by the Commission through the April 13, 2016 Resolution and Order, APEV filed its petition under case number CEPR-AP-2015-0002, which corresponds to the IRP evaluation process. Furthermore, throughout its petition, APEV refers to its intention to intervene in the rate review case procedure, although the current procedure does not constitute a rate case under Act 57-2014.[10] Finally, APEV notified its petition to the intervenors in the IRP procedure, regardless of the fact that said parties are not intervenors in the current proceeding, and failed to notify the Corporation, an indispensable party in the current process.

Although the Commission recognizes APEV's good faith attempts at contributing to the development of Puerto Rico's energy market, APEV's petition: (i) fails to include sufficient facts which allow the Commission to evaluate it's particular interest in the case; (ii) fails to clearly identify how its interests will be affected by the Commission's determination; and (iii) leaves doubts as to whether APEV has the ability to act in conformity with applicable rules and regulations so as to not cause an unreasonable delay in the proceedings.

## IV. Conclusion

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In light of APEV's failure to comply with the rules and procedures established by the Commission and its refusal to discuss the reasons in support of its intervention, the Commission has no other choice but to deny APEV's petition to intervene. The specific nature and limited scope of the subject matter under evaluation, as provided by Act 4-2016, requires any person or entity seeking to intervene to demonstrate having the adequate abilities, aptitude, knowledge and capacity to assist the Commission in the evaluation of the specific parameters identified in the statute. APEV's petition, lacking any discussion or analysis in support of its intervention, inhibits the Commission's ability to evaluate whether APEV has the aforementioned traits. As such, the Commission hereby **DENIES** APEV's petition to intervene.

Notwithstanding the aforementioned, the Commission encourages APEV to make use of the alternate public participation mechanisms available in this proceeding, which include filing public comments on or before June 6, 2016. Furthermore, APEV is encouraged to participate during the Public Comments Hearing to be held on May 31, 2016. The April 25, 2016 Resolution and Order provides the manner in which any person or entity who is not an intervenor in the current proceeding may file written comments and/or participate during the Public Comments Hearing.

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[10] Act. No. 57 of May 27, 2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act.

Pursuant to Section 3.6 of the LPAU[11], any party adversely affected by this Resolution may request judicial review before the Court of Appeals within thirty (30) days beginning on the date in which the Commission certifies that a copy of this Resolution was notified. If the date in which the Commission certifies that the Resolution was notified differs form the date in which the Resolution was deposited in the mail, the aforementioned thirty (30) day term shall begin on the date in which the Resolution was mailed, as evidenced by the postmark. Any party electing to exercise his/her right to seek judicial review must notify a copy of his/her request to the Commission and to any other party notified of this Resolution within the term for seeking judicial review. The filing and notification of the request for judicial review shall be made pursuant to the LPAU and the Regulation of the Court of Appeals, 2004 TSPR 121.

For the benefit of all the parties involved, the Commission issues this Resolution in both Spanish and English languages. Should any discrepancy between each version arise, the content and provisions of the Spanish version shall prevail.

Be it notified and published.

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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 May 9, 2016. I also certify that on this date a copy of this Resolution was notified via email to: energiaverdepr@gmail.com, ingenieromattei@gmail.com, guillermo.m.riera@gmail.com, mgrpcorp@gmail.com, agraitfe@agraitlawpr.com, edwin.quinones@aae.pr.gov, codiot@oipc.pr.gov, equinones@qalawpr.com, glenn.rippie@r3law.com.

Brenda Liz Mulero Montes
Interim Clerk

[11] 3 L.P.R.A. §2156.

CERTIFICATION

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

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

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