

COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION

COMISIÓN DE ENERGÍA DE PUERTO RICO	
Recibido por:	<i>Sherry Allrich</i>
Fecha:	<i>5/14/16</i>
Hora:	<i>3:09</i>

IN RE: REVIEW OF RATES OF THE  
PUERTO RICO ELECTRIC POWER  
AUTHORITY,

Petitioner.

No.: CEPR-AP-2015-0001

**SUBJECT:** PREPA's Verified  
Motion for Clarification / Waiver of  
Certain Provisions of Regulation  
No. 8720 Regarding Provisional  
Rates

**PREPA'S VERIFIED MOTION FOR CLARIFICATION /  
WAIVER OF CERTAIN REQUIREMENTS OF REGULATION  
NO. 8720 REGARDING PROVISIONAL RATES**

TO THE HONORABLE PUERTO RICO ENERGY COMMISSION:

Comes now the Puerto Rico Electric Power Authority ("PREPA", also known as "AEE" and the "Authority"), a public power entity of the government of the Commonwealth of Puerto Rico, and seeks clarification and/or waiver of certain provisions of the Puerto Rico Energy Commission's (the "Commission") Regulation No. 8720, New Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority's First Rate Case ("Regulation 8720"). The regulations that are the subject of this Motion involve the design and reconciliation of "provisional" rates. PREPA seeks clarification and/or waiver of those regulations in the interests not only of PREPA but also of its customers and the Commonwealth, as explained below. This Motion is supported by the attached Verification.

**Introduction and Executive Summary**

1. PREPA anticipates that, later this month, it will file a Verified Petition asking the Commission to approve proposed new "permanent" rates for PREPA's electric service as well as "provisional" rates to be in place until the new permanent

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rates go into effect.<sup>1</sup> New permanent rates are needed, and are in the interests of PREPA's customers and the Commonwealth, for reasons that are beyond the scope of this Motion and that will be presented and addressed in the Verified Petition and the materials supporting it (the "Rate Filing").

2. Provisional rates are authorized by statute and are addressed by Regulation 8720, as discussed later in this Motion. The need for provisional rates will be addressed fully in the Rate Filing. In order to provide context for this Motion, however, PREPA will state, in brief, that it anticipates seeking provisional rates because of its imminent severe liquidity (cash flow) problems. PREPA is facing a liquidity crisis with over \$1.1 billion due to creditors on or before July 1, 2016, and only approximately \$480 million on hand to make the payments. Moreover, approximately \$146 million of that \$480 million was held at the Government Development Bank, which at a result of the Moratorium Act PREPA cannot now rely on accessing. Such a liquidity crisis can jeopardize PREPA's ability to provide adequate, safe, and reliable electric service, as a prior liquidity crisis threatened to do in the summer of 2014.

3. Regulation 8720 contains certain language regarding the design of provisional rates and other language relating to the reconciliation of provisional rates against permanent rates, once those rates are approved. There also is statutory language regarding the reconciliation. PREPA has three categories of potential concerns with the Regulation's language.

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<sup>1</sup> By "permanent", PREPA means simply that the new rates will remain in effect until revised by a formula rate or other mechanism approved by the Commission or revised in a later rate review by the Commission.

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4. First, depending on how the language of Section 2.02(A) of Regulation 8720 (set forth later in this Motion) is interpreted, it might be read to require, inflexibly, a rate design that is extremely rigid, departs excessively from cost causation analysis, and is thus likely to create a larger than necessary or appropriate departure from the permanent rates likely to be approved. That kind and degree of inconsistency would be a significant problem from a ratemaking perspective, for PREPA and for its customers.

5. Second, such a rigid design would be an even worse problem when the provisional rates are reconciled with the new permanent rates. While provisional rates cannot be "fine-tuned" in advance of the Commission's consideration of permanent rates, adopting provisional rates that are required to ignore significant changes in cost of service between classes will create larger differences than necessary between provisional and permanent rates and could require large, complicated, expensive, and difficult to administer surcharges and refunds that also are in no one's interests and that could unintentionally but significantly exacerbate PREPA's liquidity problems.

6. Finally, the Regulation's reconciliation language also raises other significant questions of interpretation. The required methodology might be interpreted so inflexibly as to necessitate a highly complicated, onerous, and expensive process that serves no one's interests.

7. Accordingly, PREPA proposes clarification and/or waiver of the language at issue, as set forth later in this Motion. PREPA believes that its interpretations are authorized within the applicable statutory and regulatory framework and are in the best interests of its customers, the island of Puerto Rico as well as of PREPA.

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**Statutory and Regulation 8720 Provisions**

8. Article 6A(e) of Act 83-1941 as amended by Article 9 of the PREPA Revitalization Act (the "Revitalization Act"), Act 4-2016, states as follows:

(e) Provisional Rate. - Within thirty (30) days after the filing of rate modification request, the Commission may, *motu proprio* or at PREPA's request, perform a preliminary evaluation to determine whether a provisional rate should be established. The Commission shall exercise its discretion in establishing the provisional rate. If the Commission establishes a provisional rate, such rate shall take effect sixty (60) days after the approval of the provisional rate, unless the Commission determines, at the request of PREPA, to enter into force before this, but will never be a period of less than thirty (30) days from the approval of the provisional rate. Said provisional rate shall remain in effect during the period of time needed by the Commission to evaluate the rate modification request proposed by PREPA and issue a final order and until the date of the new bill is implemented, which period shall not exceed sixty (60) days after the approval of the rate, unless the Commission extends such period for just cause.

9. Article 6A(f) states in part as follows:

After issuing a final order, after the rate review process, the Commission shall order PREPA to adjust customers' bills to credit or charge any difference between the provisional rate established by the Commission and the new approved rate as a result of the rate review process. In the case that a person ceases to be a customer during the period of validity of the interim rate, PREPA will be required to reimburse and will be entitled to recover any difference between the provisional rate established by the Commission and the new rate approved as a result of the rate review process.

10. Article 6.25(d) of the Puerto Rico Energy Transformation and RELIEF Act, Act 57- 2014 (the "RELIEF Act"), as amended by Article 18 of the Revitalization Act, states as follows:

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(d) Provisional Rate. - Within thirty (30) days after the filing of rate modification request, the Commission, *motu proprio* or by petition of the Authority or applying certified company, may conduct a preliminary evaluation of the application to determine whether a provisional rate should be established. The Commission shall exercise its discretion in establishing a provisional rate, unless the Authority, or the applying certified company objects to the establishment of the provisional rate or the amount thereof, in which case the Commission shall determine if it proceeds or not to review the amount of the provisional rate or not establish it. If the Commission establishes a provisional rate, such rate shall take effect sixty (60) days after the approval of the provisional rate, unless the Commission determines, by PREPA's petition, that it take effect beforehand, but it shall never be a period less than thirty (30) days after the approval of the provisional rate. Said provisional rate shall remain in effect during the period of time needed by the Commission to evaluate the rate modification request proposed by PREPA or the applying certified company and until the date on which the new bill is implemented, which period shall not exceed sixty (60) days after its approved.

11. Article 6.25(e) states in part as follows:

After issuing a final order after the revision of the rate, the Commission shall order PREPA to adjust the customers' invoices so as to credit or charge any difference between the provisional rate established by the Commission and the approved rate established by the Commission.

12. Section 2.02 of Regulation No. 8720 also addresses how provisional rates should be calculated. Section 2.02(A) states:

A) The Provisional Rates shall be calculated by applying a specific percentage uniformly to the then-existing base rates, not to any new rate design proposed by PREPA for permanent rates. Such percentage shall be applied to the per-kilowatt hour (kWh) rate and to each other component of the existing base rate structure, including without limitation, the fixed customer charge and any demand charge. The Provisional Rate shall not modify the rider that recovers the cost of fuel and purchased power.

13. Section 2.02(C) states:

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- C) It shall include a mechanism for tracking any increase or decrease resulting from the Provisional Rates, so as to ensure compliance with Article 6.25(e) of Act 57-2014 and Section 6A(f) of Act 83-1941 (which require PREPA to credit or collect any difference between the Provisional Rate and the permanent rate established by the Commission accrued during the term in which the Provisional Rate remained in effect).

14. Section 2.02 also includes other subsections, and concludes with three unnumbered paragraphs. The second to last paragraph states:

Pursuant to Article 6.25(e) of Act 57-2014 and Section 6A(f) of Act 83-1941, when issuing a final order establishing permanent rates, the Commission shall order PREPA to adjust its customer's bills in order to credit or collect any difference between (a) the Provisional Rate charged by PREPA during the time period in which such Provisional Rate remained in effect and (b) the permanent rate which the Commission determines should have applied during such time period, so as to ensure that the Provisional Rates were just and reasonable. Such order shall reflect any upward or downward adjustment, effective as of the date the Provisional Rates were established, necessary to ensure the Provisional Rates were just and reasonable.

The final paragraph addresses a public announcement relating to the provisional rates, and requires, in part: "(i) a detailed description of the Provisional Rate authorized by the Commission, including the percentage change in relation to then current base rates...."

15. PREPA notes that, alternatively, provisional rates may be imposed or authorized under the temporary or emergency rate language of 27 L.P.R.A. § 261c ("Section 261c"), and that, standing alone, Section 261c does not mandate any particular rate design or a reconciliation.

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**Discussion**

**Provisional Rates Design and How This Affects the Reconciliation**

16. PREPA does not believe that the “specific percentage uniformly” language in Section 2.02(A), on its face, should be read so inflexibly as to require a rate design that applies the exact same percentage increase to existing rates for all customer classes. PREPA has approximately 70 customer classes in its existing rates, some of which are subsidized. Instead, PREPA believes that Section 2.02(A) should be read to allow different percentage increases for different customer classes, so long as the treatment is uniform for each charge of each rate within each class. Of course, PREPA will file and support the request for provisional rates, including its design, in the Rate Filing, and the Commission will review that request in the rate review. Nothing in this Motion is intended to mean that PREPA will not make and support the request, including the design, in the rate review.<sup>2</sup>

17. PREPA advances the above interpretation of Section 2.02(A) for two different kinds of reasons. First, nothing in the statutes requires PREPA to impose an “across the board” percentage increase that is the same for all customer classes, or otherwise imposes any specific rate design.

18. Second, and even more importantly, a single “across the board” percentage increase for all approximately 70 customer classes would have significant adverse consequences for PREPA and its customers, in two different ways. The

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<sup>2</sup> PREPA may have the ability to impose a temporary or emergency rate under Section 261c, but PREPA is not relying in the first instance on that authority in this Motion.

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permanent rates will not have a single "across the board" increase for all customer classes. Rather, the permanent rates will reflect cost analysis subject to the application of other ratemaking principles, such as gradualism. Thus, a single "across the board" percentage increase design of the provisional rates would deviate excessively from cost of service considerations and thus from the later, permanent rates. That is not sound ratemaking.

19. Moreover, reading the Regulation to require that all elements of all rates for all classes must be increased based on a single "across the board" percentage would tend to maximize the differences between the provisional and permanent rates. Moreover, because the provisional rates must later be reconciled in relation to the permanent rates, use of a single percentage increase would also maximize the risk that large, complicated, expensive, and difficult to administer surcharges and refunds would be required. No matter the specifics of the reconciliation, a single across the board percentage increase likely will magnify the differences that otherwise would exist between better designed provisional rates and the permanent rates. The bill impacts of such surcharges and refunds are in no one's interests and could unintentionally, but significantly, exacerbate PREPA's liquidity problems. The bigger the differences, the bigger the surcharges or refunds that will be required later. Not only that, but larger refunds could exacerbate PREPA's liquidity problems, which already are severe. The provisional rates thus would do the opposite of what is intended.

20. Accordingly, PREPA seeks clarification that Section 2.02(A) permits different percentage increases for different customer classes, as long as the treatment

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is uniform within each class, and subject to review by the Commission of the support PREPA provides in its Rate Filing. If the Commission were to conclude, however, that Section 2.02(A) on its face is inflexible and requires a single across the board percentage increase for all approximately 70 customers classes, and regardless of subsidization status, then PREPA, alternatively, requests that the Commission authorize a waiver of Section 2.02(A) or amend (on an emergency basis) Section 2.02(A) to that effect. Again, PREPA is not seeking a waiver from the requirement that it present, and understands that it must support, its proposals in its Rate Filing.

**Other Concerns About the Reconciliation**

21. Respectfully, in PREPA's view, the statutory provisions regarding reconciliation of provisional rates lack detail and, further, could be very problematic and extremely expensive to implement with regard to customers who are on, but then leave, PREPA's system during the period in which provisional rates are in effect ("former customers"). PREPA believes, however, that the Commission, in interpreting Regulation 8720 in combination with the statutes, can achieve an outcome that is as sound, reasonable, and practical as the statutes permit for customers and PREPA, and is in everyone's best interests.

22. The statutes require reconciliation of "any difference" between the provisional rates and the permanent rates. The statutes do not define the nature or specifics, however, of that analysis. The second to last paragraph of Section 2.02 appears to recognize that the statutes do not mandate the specifics of this subject, that the statutes are intended to achieve a result that is just and reasonable, and, further,

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that the reconciliation may include adjustments to achieve a result that is just and reasonable.

23. Among other things, the statutes, standing alone:

- a. require credits or surcharges to former customers, but do not specify the details of how they are to be calculated or of how they are to be applied;
- b. do not indicate whether the calculations can be performed as to former customers within a given customer class, and then applied ratably, or whether PREPA must perform an individual analysis of each former customer's data, which would not only be laborious and expensive itself, but could also impose significant additional expenses on PREPA to add functionality to PREPA's information systems that it does not have);
- c. as to all customers, do not specify whether credits must be paid in cash instead of the normal and more reasonable method of applying a credit on later bills (setting aside the added complexity as to former customers); and
- d. do not specify over what period credits or surcharges are to be applied.

24. PREPA believes that the Commission, through Regulation 8720 or otherwise, can help to ensure that the reconciliation process is as fair to customers, and as practical, as circumstances permit. The reconciliation process should not be a construct that unnecessarily adds burdens and processing and administration expenses or, worse, potentially jeopardizes PREPA's liquidity, all while benefitting no one.

25. More specifically, PREPA requests that the Commission clarify its interpretation that the statutes and Regulation 8720 permit:

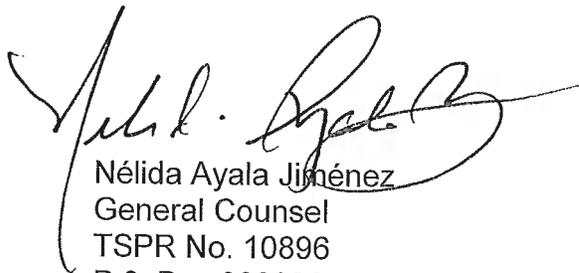
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- a. reconciliation of the provisional rates versus the permanent rates in a manner that is overall just and reasonable, including adjustments if needed to achieve that purpose;
- b. refunds, if any, to be made in the form of bills or credits, at least as to current customers;
- c. refunds or surcharges to be credited or billed, in PREPA's discretion, but subject to Commission approval, over an up to 12 month period; and
- d. as to former customers, calculation on a ratable customer class basis, without individualized research and back-billing.

26. PREPA believes that its requests in this Motion are fair and are in the best interests of its customers and Puerto Rico.

**WHEREFORE**, PREPA respectfully requests that the Commission approve the requested clarifications, or alternatively waiver(s), as set forth above, and grant such other relief as is appropriate.

**RESPECTFULLY SUBMITTED**, on May 4, 2016.



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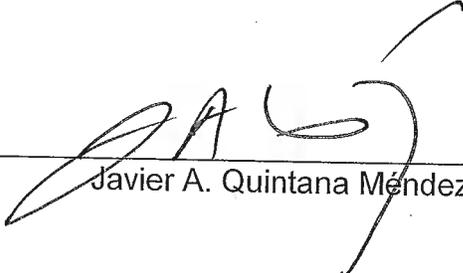
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**VERIFICATION**

I, Javier Quintana Méndez, of legal age, engineer, married, and resident of Guaynabo, Puerto Rico, in my capacity of Executive Director of the Puerto Rico Electric Power Authority ("PREPA"), under oath declare as follows:

1. My name and personal circumstances are those stated above.
2. I have reviewed the foregoing Motion.
3. In my capacity as Executive Director of PREPA, I have been duly authorized to provide this Verification in support of the Motion.
4. The information included in the Motion is true on the basis of my personal knowledge or on the basis of the information supplied to me by employees of PREPA and, with respect to legal points, by counsel for PREPA.

In San Juan, Puerto Rico, this 4th day of May, 2016.

  
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Javier A. Quintana Méndez

AFFIDAVIT NO.: 1869

Sworn and subscribed before me by Javier Quintana Méndez, of the personal circumstances above mentioned, whom I personally know, in San Juan, Puerto Rico, this 4th day of May, 2016.

  
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Public Notary



EXENTO PAGO ARANCEL  
LEY 47  
4 DE JUNIO DE 1982

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CERTIFICATION

I hereby certify that I have sent the above document to the Puerto Rico Energy Commission, through its President Agustín Carbó Lugo at [acarbo@energia.pr.gov](mailto:acarbo@energia.pr.gov) and through its General Legal Counsel at [gbonet@energia.pr.gov](mailto:gbonet@energia.pr.gov) on May 4, 2016.



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