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COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	**CASE NO.:** CEPR-AP-2015-0001 Subject: Motions to Intervene and Procedural Schedule.

RESOLUTION AND ORDER

On July 15, 2016, the Puerto Rico Energy Commission ("Commission") issued a Resolution and Order notifying that the Petition for Rate Review ("Petition") filed on May 27, 2016 by the Puerto Rico Electric Power Authority ("PREPA"), as supplemented, was complete for purposes of Regulation 8720[1]. According to sub-section (c) of Section 6A of Act 83[2] and sub-section (b) of Article 6.25 of Act 57-2014[3], the one-hundred and eighty (180) day term for the Commission to review and issue its final ruling regarding PREPA's Petition began on July 15, 2016.

With the purpose of ensuring the transparency of the proceedings and in order to promote ample public participation, through said Resolution and Order the Commission invited any person or entity interested in intervening in this procedure to file a written petition. The term for requesting intervention began on August 1, 2016 and ended on August 5, 2016.

Through such Resolution and Order, the Commission established the requirements by which any petition to intervene had to comply and the criterion to be used by the Commission in evaluating the same. Attachment B of the Resolution and Order provided a set of questions which all intervenors were required to answer, with their intervention petitions. The purpose of such questions was for the Commission to gain sufficient information regarding each petitioner's particular interests in order to adequately evaluate each petition. The Commission further stated that the Commonwealth Energy Public Policy Office ("CEPPO") and the Independent Consumer Protection Office ("ICPO") would be considered as intervenors as a matter of law, subject to timely notification of their intent to participate as intervenors within the aforementioned period of time and compliance with all Commission's directives. Also, the Commission required both entities to file a summary of their legal positions with regards to the Petition along with their

[1] Regulation No. 8720, New Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority's First Rate Case.
[2] Act No. 83 of May 2, 1941, as amended, known as the Puerto Rico Electric Power Authority Act.
[3] The Puerto Rico Energy Transformation and RELIEF Act.

notice of intention to intervene. The Commission received sixteen (16) petitions to intervene, including the petitions from ICPO and CEPPO.[4]

After reviewing each petition to intervene, and pursuant to Regulation No. 8543 of Administrative Procedures[5], the July 15, 2016 Resolution and Order, Section 3.5 of Act No. 170 of August 12, 1988, as amended, known as the Puerto Rico Uniform Administrative Procedures Act ("LPAU", for its Spanish acronym), and applicable jurisprudence, the Commission **GRANTS** the petitions to intervene filed by the following entities:

- **Commonwealth Energy Public Policy Office**
- **Asociación de Consultores y Contratistas de Energía Renovable de Puerto Rico ("ACONER")[6]**
- **CEMEX de Puerto Rico, Inc. ("CEMEX")**
- **Energy & Environmental Consulting Services Corp. ("ESCOPR")**
- **Sunnova Energy Corporation ("Sunnova")**
- **PV Properties, Inc., Windmar PV Energy, Inc., Windmar Renewable Energy, Inc. y Coto Laurel Solar Farm, Inc. ("Windmar Group")**

With regards to the motions filed by ICPO, the Puerto Rico Aqueduct and Sewer Authority ("PRASA") and several industry trade groups, the Commissions determines the following:

A. ICPO

On August 2, 2016, ICPO filed a motion notifying its intention to intervene in the instant proceeding. However, ICPO did not include with its motion a summary or brief of its legal position with regards to the Petition, thus failing to comply with this requirement, as set forth by the Commission through its July 15, 2016 Resolution and Order.

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[4] On August 2, 2016 both the Independent Consumer Protection Office, as well as the Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico, filed their intervention petitions; on August 4, 2016 the Puerto Rico Industrials Association and the Puerto Rico Marketing, Industry and Food Distribution Chamber filed their petitions for intervention; on August 5, 2016 the Puerto Rico Renewable Energy Consultants and Contractors Association, the Commonwealth Energy Public Policy Office, CEMEX, Energy & Environmental Consulting Services Corp., Puerto Rico Hospital Association, Windmar Group, el Centro Unido de Detallistas (Retailers Association), Sunnova Energy Corporation, Puertorrican Association for Green Energy, the Puerto Rico Aqueduct and Sewers Authority, Puerto Rico Construction Association and the Puerto Rico Chamber of Commerce. The petition for intervention filed by the Puertorrican Association for Green Energy will be address by the Commission separately.

[5] Regulation No. 8543, Regulation of Administrative Procedures, Non Compliance Notifications, Rates Review and Investigations.

[6] On August 4, 2016, ACONER filed a motion titled *Urgent Motion to Extent the Term to File Intervention Petition* requesting an extension of the term to file its petition for intervention for lack of access to certain information in the docket. Provided that on August 5, 2016 ACONER filed their petition to intervene in the present case within the period provided to file such request, the petition for extension of time requested to this effect turns academic and therefore is **NOT GRANTED**.

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It should be noted that this is not the first occasion in which ICPO fails to fully comply with the requirements set forth by the Commission. On July 19, 2016, ICPO filed a motion requesting intervention in this proceeding, disregarding the specific directives establish by the Commission through its July 15, 2016 Resolution and Order, issue only four (4) days earlier. In such occasion, the Commission established that petitions to intervene filed before August 1, 2016 would be deemed premature and would not be considered by the Commission. The premature petition filed by the ICPO was denied through Commission's Resolution from July 21, 2016. In said Resolution, the Commission stated that ICPO's petition to intervene failed to include its legal brief, as requested, and cautioned ICPO that compliance with such requirement was expected. For reasons not clear to the Commission, the ICPO ignored such caution.

The purpose of requiring a legal brief of each petitioner is to allow the Commission to thoroughly evaluate the scope of a petitioner's interest in light of the requirements set forth in Section 3.5 of the LPAU, specifically those related to whether a petitioner's interests is duly represented by another party in the case and whether the petitioner's inclusion will result in duplicative or repetitive testimony. In addition, given the complexity and implications associated with the instant proceeding, through such requirement, the Commission sought to promote quality interventions, which is why the Commission needs to ensure that prospective intervenors are thoroughly versed in the subject matter and are able to effectively defend their interests.

Furthermore, the ICPO has the responsibility and non-delegable duty of representing a vast group of electric service consumers, particularly the residential consumers that otherwise wouldn't be adequately represented in this proceeding. Therefore, the Commission, in order to guarantee adequate representation of this group and to ensure due process of law, must ensure that the authorities entrusted with their representation do so properly. This includes full compliance and understanding of the procedures before this Commission and the rules that govern them. In light of ICPO's unique nature as a public entity tasked with representing electric service consumers, the Commission expects full compliance from ICPO with the Commission's orders and directives, abreast with the highest standards of professional conduct. Repeated failure to comply with the Commission's expressed requirements falls short of meeting such standards. Accordingly, the Commission hereby determines that ICPO's request to intervene in the instant proceeding is **INCOMPLETE**. Once ICPO files with the Commission a summary of its legal position and demonstrates a good faith effort at contributing to the evaluation of the Petition, the Commission will be in position of reviewing ICPO's petition to intervene.

B. Puerto Rico Aqueduct and Sewer Authority (PRASA)

PRASA's petition to intervene references several claims related to a certain Inter-Agency Agreement entered into by PRASA and PREPA pursuant to Act 50-2013. According to PRASA, said agreement has the purpose of establishing a special rate at which PREPA will bill PRASA for its electric service consumption. PRASA also argues that PREPA failed

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to comply with certain provisions of the agreement and that it is entitled to a credit of approximately $27.5 million.

Through its motion, PRASA seeks to intervene with the purpose of ensuring that PREPA's proposed rates comply with the provisions of Act 50-2013, which it argues provides for a specific rate applicable to its electric service consumption. In light of the aforementioned, the Commission hereby **GRANTS** PRASA's request to intervene.

Notwithstanding, the Commission cautions PRASA that its intervention in this proceeding will be limited to the review of PREPA's proposed rates to ensure they are just and reasonable, consistent with sound operational and fiscal practices, which result in a reliable service at the lowest reasonable cost, and comply with applicable laws and regulations, including, if applicable, Act 50-2013. The Commission, through this proceeding, will not address any claims PRASA may have with regards to PREPA's alleged non-compliance with the provisions of the aforementioned Inter-Agency Agreement.

C. Industry Trade Groups

The Commission received seven (7) request for intervention from the following industry trade groups:

(i) Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSEPR)
(ii) Puerto Rico Industrials Association (AIPR for its Spanish acronym)
(iii) Marketing, Industry and Food Distribution Chamber (MIDA for its Spanish acronym)
(iv) Puerto Rico Hospital Association (AHPR for its Spanish acronym)
(v) Centro Unido de Detallistas (CUD)(Retailers Association)
(vi) Puerto Rico Chamber of Commerce (CCPR for its Spanish acronym)
(vii) Puerto Rico Construction Association (ACPR for its Spanish acronym)

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Before addressing the petitions of the aforementioned entities, there is a need to point out the striking similarities between the motions filed by each of these associations. The majority of the petitions shared similar content and, in some cases, identical. Also, in several petitions, the only palpable difference was the specific information of each organization. For example, in the case of one of the motions filed, out of a total of thirty-one (31) distinct paragraphs, twenty-six (26) of them were identical (except changes in the name of the organization and other minor alterations) to paragraphs found on the motions filed by the majority of the other organizations. Except for limited exceptions, such as the case of AIPR, AHPR and CUD -who provided brief examples of the impact energy prices have on the operations of its members- the interests identified by the associations and the arguments used by each organization to justify their intervention in the instant proceeding were identical.

Among the criteria for evaluating petitions to intervene, Section 3.5 of the LPAU provides that an agency shall evaluate: (1) whether the petitioner's interests are, or may

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be, adequately represented by another party or intervenor; and (2) whether the petitioner's participation may result in repetitive testimony or may extend or delay the proceeding excessively.

Given the unquestionable similarities of the arguments presented in the filed motions by all of the aforementioned seven (7) industry trade groups, and their proven ability to coordinate effectively and efficiently among themselves, the Commission has determined that these organizations share similar interests and, as such, their interests may be adequately protected through a unified representation before this Commission. Moreover, by filing seemingly identical motions, such organizations caused the Commission to engage in the repetitive task of evaluating seven (7) motions with identical arguments. Accordingly, the Commission has determined that granting each organization's motion to intervene may result in repetitive testimony which may extend or delay the proceedings. Finally, this group did not elaborate arguments that reflect their distinct capabilities nor establish how they can individually contribute to the analysis of the Petition.

Consequently, the Commission **RESOLVES** that this proceeding will benefit by the **joint participation** of the aforementioned industry trade groups and, as such, has determined to consolidate their respective request for intervention under the group denominated "Industrials and Commercial Associations Consortium". Accordingly, the Commission **GRANTS** the intervention of the industry trade groups under such Consortium, and **ORDERS** all entities to coordinate among them and notify the Commission, **no later than August 17, 2016**, through a joint motion, the name and contact information of their legal representative, which could be integrated by more than one lawyer.

Any party adversely affected by this Resolution and Order may file a motion for reconsideration before the Commission, pursuant to Section 11.01 of Regulation 8543 and the applicable provisions of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act (LPAU). Said motion must be filed within twenty (20) days from the date in which copy of the notice of this Resolution and Order has been filed. Said motion must be filed at the Commission's Clerk's Office, temporarily located at the Puerto Rico Telecommunications Regulator Board, 500 Ave. Roberto H. Todd, San Juan, PR 00907-3941. Copy of the motion as filed must be sent by email to all the parties notified of this Resolution and Order.

The Commission shall have fifteen (15) days from the date in which said motion is filed to consider it. If the Commission rejects it forthright or fails to act upon it within said period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Commission notifies such denial or the date in which said fifteen (15) day expires, whichever occurs first. If the Commission considers the motion, the term to seek judicial review shall commence from the date a copy of the notice of the Commission's resolution definitively resolving the motion for reconsideration is filed. Such resolution shall be issued and filed within ninety (90) days after the motion for reconsideration has been filed. If the Commission's considers the motion for reconsideration but fails to take

any action with respect to such motion within ninety (90) days of its filing, it shall lose jurisdiction to consider it and the term to seek judicial review shall commence upon the expiration of said ninety (90)-day term, unless the Commission, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.

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

Be it published and notified.

Agustín F. Carbó Lugo
President

Ángel R. Rivera de la Cruz
Associate Commissioner

José H. Román Morales
Associate Commissioner

I hereby certify that the Puerto Rico Energy Commission has so agreed on August 12, 2016. I also certify that on this date a copy of the Resolution and Order was notified by electronic mail sent to: n-ayala@aeepr.com; c-aquino@aeepr.com; glenn.rippie@r3law.com; michael.guerra@r3law.com; john.ratnaswamy@r3Law.com; codiot@opic.pr.gov; jperez@oipc.pr.gov; cfl@mcvpr.com; ivc@mcvpr.com; mmuntanerlaw@gmail.com; jfeliciano@constructorespr.net; abogados@fuerteslaw.com; jose.maeso@aae.pr.gov; edwin.quinones@aae.pr.gov; nydinmarie.watlington@cemex.com; aconer.pr@gmail.com; epenergypr@gmail.com; jorgehernandez@escopr.net; ecandelaria@camarapr.net; pga@caribe.net; manuelgabrielfernandez@gmail.com; mreyes@midapr.com; agraitfe@agraitlawpr.com; mgrpcorp@gmail.com; y mendozanyx@gmail.com.

María de Mar Cintrón Alvarado
Secretary

CERTIFICATION

I certify that this is a true and exact copy of the Resolution and Order issued by the Puerto Rico Energy Commission. I further certify that today, August ___, 2016, I have proceeded with the filling of this Resolution and Order and I have sent a copy thereof to:

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For the record, I sign this in San Juan, Puerto Rico, today, August ____, 2016.

Rafael O. García Santiago
Clerk of the Puerto Rico
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