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COMISIÓN DE ENERGÍA DE PUERTO RICO
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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:** Request for Reconsideration filed by APEV

RESOLUTION

On September 1, 2016, the *Asociación Puertorriqueña de Energía Verde* ("APEV"), filed a request for reconsideration asking the Puerto Rico Energy Commission ("Commission") to reconsider its August 15th, 2016 Resolution and Order whereby the Commission rejected APEV's intervention request. In such occasion, the Commission determined that APEV lacked the necessary credentials to intervene in this proceeding and that its intervention would not grant the Commission access to expert or technical knowledge that would not be otherwise available. The Commission supported its determination on that fact that the majority of the discussion and analysis provided by APEV in its request for intervention consisted of a far-reaching reproduction of an article published by the Berkley National Laboratory.[1]

After examining APEV's request, the Commission will address the merits of APEV's motion for reconsideration pursuant to Section 3.15 of the Administrative Procedure Act ("APA").[2] Initially, the Commission notes that APEV's request for reconsideration fails to comply with several formality requirements set forth in Regulation 8543[3]. Specifically, APEV failed to certify having sent copy of its request to all parties in the present case[4], fails to include the signature of its legal or authorize representative[5] and seems to be incomplete, given it abruptly ends after including a table summarizing APEV's participation in other proceedings outside the Commission.

In its request for reconsideration, APEV argues that the inclusion of portions of the article published by the Berkley National Laboratory did not consist of an un-authorized reproduction, but a mere involuntary omission to include adequate references to such article. APEV also contends that such a mistake was caused, in part, by its intention of complying with format required by the Commission, which, according to APEV, did provide section for consulted bibliographical references. APEV further contends that the content of

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[1] The article is titled *The Tariff Analysis Project: A database and analysis platform for electricity tariffs* and was authored by Katie Coughlin, Richard White, Chris Bolduc, Diane Fisher y Greg Rosenquist. APEV's request failed to include any reference to the original document and did not include any quotation marks or other signs that would suggest that APEV was referencing said article.
[2] Act 170 of August 12, 2988, as amended. 3 L.P.R.A. § 2165.
[3] Regulation Num. 8543, Regulation on Adjudicative Proceedings, Notices, Rate Reviews and Investigations.
[4] As required by Section 2.02 of Regulation 8543.
[5] *Id.*

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their request is the product of knowledge accumulated throughout the years and that its analysis is not based on only one article, but that such article was presented as a mere example. Similarly, APEV clarified that it was not their intention to pass the content of the aforementioned article as their own, particularly when APEV is an active participant in the discussion of energy issues in Puerto Rico and is well versed on the subject matter.[6]

Pursuant to Section 3.5(d) of the APA and the July 15, 2016 Resolution and Order, any party who filed a request for intervention was required to, among other things, identify the information, expertise, technical or specialized knowledge that it would contribute through its participation and which would otherwise not be available to the Commission. In analyzing a request for intervention, the Commission identified and reviewed the scope of each petitioner's credentials, skills, technical knowledge and expertise and how such skills and knowledge would contribute to the evaluation of the Petition for Rate Review ("Petition") filed by the Puerto Rico Electric Power Authority ("PREPA").

As part of its analysis of APEV's request for intervention, the Commission accepted all of APEV's arguments regarding to the involuntary omission of the citations and the bibliographical references. However, even with the benefit of the aforementioned assumptions, is not possible nor responsible for the Commission to conclude that APEV has the necessary credentials to intervene in the instant proceeding. Unlike what it argues in its reconsideration, APEV's request for intervention did not provide an integrated analysis of the different sources of information it relied on nor it provides an analysis which is the result of its accumulated knowledge. The information provided by APEV in part 1.A of its request for intervention consist of a compilation of paragraphs taken, in their entirety, from the article published by the Berkeley National Laboratory.

Accordingly, the Commission **DETERMINES** that the technical expertise included in its request for intervention cannot be attributed to APEV, since it does not consist of an analysis attributable to the petitioner, nor it explains how the article, and the information contained in it, is relevant to the review of the Petition. The mere reproduction of an article cannot be considered as knowledge or expertise on a specific subject attributable to the party who reproduces such information.

Pursuant to the above, the Commission **DENIES** APEV's request for reconsideration and **CONFIRMS** its determination of August 15, 2016.

The Commission's determination herein does not limit APEV's ability to continue making effective use of any other available public participation mechanism. The Commission notes that APEV has participated in the public comment hearing recently held and has filed

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[6] In addition to APEV's arguments regarding the involuntary omission of citations and bibliographical references and its experience and knowledge, APEV also argued that the Commission failed to comply with its own regulations and the APA when it notified its resolution via email, without including the certification of the date in which the resolution was notified. The Commission clarifies that the copy sent via email is a courtesy copy, and that it subsequently notifies through regular mail copy of the resolution with required certification of notice. Such practice does not affect APEV's rights, since any term to seek reconsideration or judicial review would not begin until the date in which it copy of the resolution in notified via regular mail.

written comments. The Commission wishes to extend APEV an invitation to continue making use of such mechanism and wishes to notify that the Commission will accept written comments until December 26, 2016. Said comments may be sent via email to comentarios@energia.pr.gov or may be sent via regular mail or hand delivery to the Commission Offices at Seaborne Building, 268 Muñoz Rivera Ave., Suite 702, San Juan, Puerto Rico 00918. Furthermore, the Commission wishes to notify that all the information related to the Petition filed by PREPA and the instant proceeding is accessible through the Commission's website (www.energia.pr.gov). You may access any information not available through the Commission's website by sending an email to legal@energia.pr.gov or calling the following number: 787-523-6231. Finally, the Commission's determination herein does not limit APEV's ability to coordinate with any other intervenor in the instant proceeding, including the Independent Consumer Protection Office.

Any party adversely affected by this Resolution may request judicial review before the Puerto Rico Court of Appeals within thirty (30) days from the date in which copy of this Resolution was notified. Copy of any request for judicial review shall be notified to the Commission and to any other party in the instant proceeding within the term available for seeking judicial review. The filing of a request for judicial review shall be governed by the applicable provisions of the APA and the Regulation of the Court of Appeals.

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

Be it notified and published.

Agustín F. Carbó Lugo
President

Ángel R. Rivera de la Cruz
Associate Commissioner

José H. Román Morales
Associate Commissioner

CERTIFICATION

I hereby certify that the Puerto Rico Energy Commission has so agreed on September 15, 2016. I also certify that on this date a copy of this Resolution was notified by electronic mail to the following: 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,

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María del Mar Cintrón Alvarado
Clerk

I certify that this is a true and exact copy of the Resolution issued by the Puerto Rico Energy Commission. I further certify that today, September ___, 2016, I have proceeded with the filing of the 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, September ___, 2016.

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Jessica Fuster Rivera
Clerk of the Puerto Rico
Telecommunications Regulatory Board