

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION



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

CASE NO.: CEPR-AP-2015-0001

SUBJECT: Motion for Reconsideration filed by ICSEPR, the Manufacturers Association, the Hospitals Association and the Puerto Rico Chamber of Commerce.

RESOLUTION

Through this Resolution the Puerto Rico Energy Commission (“Commission”) addresses the motions for reconsideration filed by the *Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico* (“ICSEPR”), the Puerto Rico Manufacturers Association (“AIPR”), the Puerto Rico Hospitals Association (“AHPR”) and the Puerto Rico Chamber of Commerce (“CCPR”).

I. Procedural Background Relative to the Motions for Reconsideration

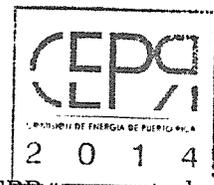
Pursuant to Act 57-2014¹, on July 15, 2016, the Commission issued a Resolution and Order (“July 15 R&O”) through which it determined that the Petition for Rate Review (“Petition”) filed on May 27, 2016 by the Puerto Rico Electric Power Authority (“PREPA”), as supplemented, was complete for purposes of Regulation 8720.²

Through the July 15 R&O, the Commission invited any person or entity interested in intervening in the instant proceeding to file a written motion requesting intervention. On said occasion, the Commission established the requirements with which any request for intervention would need to comply and the criteria to be used by the Commission in addressing such requests. Attachment B of the July 15 R&O included a series of questions which were required to be answered along with the request for intervention. Said questions had the purpose of allowing the Commission to gather sufficient information with regards to each petitioner’s particular interest, so as to allow the Commission to adequately evaluate each request for intervention.

ICSEPR filed its request for intervention on August 2, 2016. The AIPR and the Puerto Rico Chamber of Marketing, Industry and Food Distribution filed their corresponding requests for intervention on August 4, 2016. Finally, on August 5, 2016, the Puerto Rico

¹ The Puerto Rico Energy Transformation and RELIEF Act.

² Regulation No. 8720, New Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority’s First Rate Case.



Constructors Association, the AHPR, the Retailers Association and the CCPR requested intervention.³ Hereinafter, collectively referred to as the “Associations”.

On August 12, 2016, the Commission issued a Resolution and Order (“August 12 R&O”) through which it granted intervention to the Associations, subject to them coordinating their joint participation through a group denominated “Commercial and Industrial Associations Consortium.” Accordingly, the Commission granted said Associations until August 17, 2016 to notify the results of such coordination. The Commission based its determination on the unquestionable similarities between the motions filed by each of the Associations, in which, in some occasions, the only palpable difference were those portions of the document which described or provided information specific to each Association. The motions filed by the Association did not show the existence of a particular interest distinguishable from those of other Associations. On the contrary, said motions did show the existence of common interests with regards to the expected results of this proceeding.

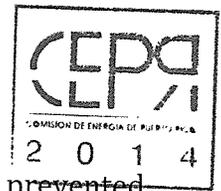
On August 16, 2016, ICSEPR filed a motion for reconsideration of the aforementioned Commission determination. ICSEPR argued, in essence, that (i) it is not an industrial or commercial association, rather an “independent institute [...] not committed to any particular sector’s interests” and (ii) that the Associations should be allowed to intervene independently given the possible future existence of a conflict of interest. However, ICSEPR affirmed that it did not dismissed the possibility that, during the course of the proceedings, the Associations would make joint use of resources and witnesses.

On August 17, 2016, AIPR filed a brief motion requesting reconsideration, stating that it adopted ICSEPR’s motion for reconsideration “with regards to its content and arguments and the remedies requested therein.”⁴ On that same date, CCPR filed a motion requesting an extension of time to notify the result of its efforts to coordinate with other Associations, pursuant to the August 12 R&O. In support of its request, CCPR attached copies of several emails sent to the representatives of the other Associations with the purpose of coordinating their participation and for which CCPR received no response.

On August 18, 2016, AHPR filed a motion requesting reconsideration of the Commission’s determination arguing, in essence, that the hospital industry was unable to adjust to the new rates. AHPR also adopted the arguments set forth by ICSEPR in its request for reconsideration. In support of its intervention, AHPR repeated the argument already included in the requests for intervention filed by all the Associations, including ICSEPR, stating that “its members have a legitimate interest in ensuring that, in order to guarantee competitiveness in local and international markets, PREPA must provide an electric service

³ The following persons or entities also filed motions for reconsideration: The Independent Consumer Protection Office, the Puerto Rico Renewable Energy Consultant and Contractors Association, the Commonwealth Energy Public Policy Office, CEMEX, Energy & Environmental Consulting Services, Corp., Windmar Group, Sunnova Energy Corporation, the *Asociación Puertorriqueña para la Energía Verde* and the Puerto Rico Sewer and Aqueduct Authority.

⁴ See, Motion requesting reconsideration filed by AIPR on August 17, 2016.



which is stable, reliable, at accessible prices, and also ensure that the same is not prevented by a rate scheme.”⁵

On August 22, 2016, the Commission issued a Resolution and Order (“August 22 R&O”) through which it granted CCPR’s request and provided all Associations until August 24, 2016 to coordinate their joint participation.

On August 24, 2016, AIPR filed a motion requesting the Commission to suspend the term for notifying the result of any coordination efforts until the Commission addressed the motions for reconsideration. On this same date, CCPR filed a motion notifying the Commission that, despite its best efforts, none of the Associations responded to its attempts for coordination and, accordingly, requested the Commission to authorize its separate intervention.

On August 25, 2016, ICSEPR filed a motion through which it expressed its surprise over the Commission’s determination with regards to CCPR’s motion requesting an extension of time, since the Commission had yet to address its motion for reconsideration. ICSEPR also reiterated the possibility of a future conflict of interest among the Associations and their respective legal representatives. However, it once again emphasized the possibility of such Associations jointly using legal and technical resources.

II. Applicable Law

Pursuant to Section 5.05 of Regulation No. 8543 of Adjudicative Proceedings, any request for intervention in a procedure before the Commission shall be evaluated and addressed pursuant to the provisions of the Uniform Administrative Procedure Act (“LPAU”)⁶ and the case law set forth by the Puerto Rico Supreme Court. Section 3.5 of the LPAU⁷ sets forth the criteria to be used by an agency when evaluating and granting or denying a request for intervention.

Said requirements, as established by the Commission through its July 15 R&O, includes: (i) whether the petitioner has a legitimate and specific interest which may be adversely affected by the instant proceeding; (ii) whether there are no other legal means through which the petitioner may adequately protect its interest; (iii) whether the petitioner’s interest is already adequately represented by PREPA, the Commonwealth Energy Public Policy Office, the Independent Consumer Protection Office or any other intervenor in the proceeding; (iv) whether the petitioner’s intervention, in light of his/her professional and/or academic credentials, may reasonably assist in preparing a complete case file; (v) whether the petitioner’s intervention will result in repetitive testimony or will extend or excessively delay the proceeding; (vi) whether the petitioner represents or is the spokesperson for other groups or entities in the community; and (vii) whether the petitioner

⁵ See, Motion requesting reconsideration filed by AHPR on August 18, 2016.

⁶ Act No. 170 of August 12, 1988, as amended; 3 L.P.R.A. §2101 et seq.

⁷ 3 L.P.R.A. §2155.

is able to contribute specialized or technical information, expertise, knowledge or advice which is not already available in the proceeding.

When evaluating a request for intervention “the agency must examine whether it benefits from the petitioner’s intervention and whether his/her interest are adversely affected. The debate [...] lies on whether there is an adversarial interest and whether the procedure may adversely affect his/her interest without his/her participation.”⁸ Similarly, the agency must evaluate whether “the intervention extends or delays the procedure [...] paying close attention when evaluating this aspect [...] to the ability to maintain control over the procedure, avoiding the filing of irrelevant or accumulative evidence.”⁹

None of the requirements is crucial when determining whether to grant or deny an intervention, rather they are to be considered in light of the benefit the agency will derive from the intervention or whether the petitioner’s interests are adversely affected through his/her absence.¹⁰ The right to intervene in an administrative proceeding is predicated in that the petitioner has a an interest that will be adversely affected by the agency’s determination.¹¹ When requesting to intervene, the petitioner must state specific facts which allow the agency to evaluate his/her interest and relevance to the process and file a formal request which clearly demonstrates how his/her interest will be impacted by the agency’s determination, given that it is in light of a possible damage to his/her interests that a person who is not a party may request intervention.¹²

Therefore, the determination with regards to a request for intervention in an administrative proceeding must be made taking into consideration the interests to be protected by the petitioner and in light of the arguments set forth in support of his/her request. The petitioner must justify his/her intervention through the filing of a duly grounded written request, in compliance with the rules and procedures set forth, so that the agency is in the position of evaluating the merits of such request.

III. Discussion and Analysis

The Commission based its evaluation of the motions requesting intervention filed by the Associations on the arguments and the information included therein. In as much as each Association reproduced the same arguments in support of their intervention, it is impossible to identify different interests nor, much less, identify conflicting interests among them. It is not the Commission’s responsibility to speculate with regards to what are the interests or legal arguments that each petitioner seeks to further through their intervention. It is the responsibility of each petitioner to file a duly grounded request, which provides a detailed explanation of the interest or legal argument it wishes to promote. Far from identifying

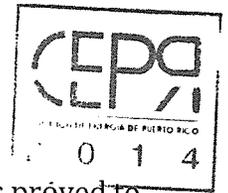
⁸ See, D. Fernández Quiñones, *Derecho Administrativo y la Ley de Procedimiento Administrativo Uniforme*, Colombia, Ed. Forum, 2001, §4.2, p. 147. Translation provided.

⁹ *Id.* Translation provided.

¹⁰ *Id.*

¹¹ 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).

¹² *Id.*



conflicting interests, the motions requesting intervention filed by the Associations proved to be in agreement with regards to the common objectives which motivated their respective interventions.

The aforementioned becomes particularly relevant in light of the evaluation criteria related to whether the petitioner's interest is already represented by another party in the proceeding and whether the petitioner's intervention may extend or excessively delay the proceedings. Act 57-2014 provides a limited period of time for the Commission to conclude its evaluation of the Petition and issue a final determination. The inherent complexity of the procedure and its importance to Puerto Rico's economic and energy future requires the Commission to act swiftly, ensuring an orderly proceeding which guarantees a thorough participation and avoids unnecessary delays.

By applying the evaluation criteria set forth in Section 3.5 of the LPAU to the abovementioned requests for intervention, the Commission noticed the undisputable similarities in the arguments brought forth by each Association and determined that, based on the arguments used throughout each Association's request, the common interests shared among them did not warrant separate participation. Similarly, the Commission determined that the separate participation of each Association may result in repetitive testimony or the filing of accumulative evidence. Such conclusion is the result of the application of the criteria set forth in the LPAU to the circumstances and content of each Association's request for intervention.

Although Section 3.5 of the LPAU provides that such evaluation criteria would be used to determine whether to accept or deny a request for intervention, when considering the requests made by the Associations, the Commission opted for a flexible course of action which recognized the contribution of such Associations to the procedure, while avoiding duplicity in the evaluation of the Petition. Accordingly, the Commission did not deny their request, rather it recognized each Association as an intervenor. However, given the absence of clear arguments in support of the existence of adverse or conflicting interests among them, the Commission ordered the joint participation of the Associations in an effort to save resources and avoid the Commission, the Associations and the remaining parties from incurring in duplicative efforts.

Nonetheless, the Commission considers it sensible to grant the Associations a new opportunity to participate and file testimony individually. This, given that the motions requesting reconsideration argue the existence of a possible, albeit unclear, conflict of interest. In reaching this determination, the Commission expect full commitment from the Associations to ensure that their intervention is up to the challenges posed by the complexity and the implications surrounding this procedure. The Commission will ensure that the separate intervention by the Associations does not have the effect of hindering the procedures and will require at all times the highest degree of coordination possible among Associations, so that shared interests are addressed efficiently and effectively.

As such, the Commission will not tolerate the filing of information requirements and/or testimony which is repetitive or provides cumulative evidence, of which its

aggregated value does not justify the additional effort required for its review. Particularly, the Commission will reject any document filed of which its content is substantially similar to any other document filed by any other party.

Furthermore, the Commission condemns the conduct, inaction and lack of cooperation exhibited by the Associations in response to the coordination and communication attempts made by the CCPR. The efforts made by CCPR are precisely the types of efforts which the Commission wishes to encourage in this proceeding.

Any party who fails to comply with this Resolution, or with any other order issued by the Commission with regards to the order of the proceedings shall be exposed to the imposition of sanctions and administrative penalties. Similarly, the Commission reserves the power to, at any moment during the proceeding, adopt any measures necessary to protect the integrity of the procedures and ensure the orderly conclusion of the proceedings.

IV. Conclusion

In light of the aforementioned, the Commission **DETERMINES** to reconsider its August 12, 2016 determination with regards to the joint appearance by the Associations. Accordingly, the Commission **CAUTIONS** that all parties must ensure the highest possible degree of coordination, so as to avoid duplicity in the procedures and the filing of cumulative evidence. The Commission will ensure strict compliance with the aforementioned and shall take all necessary measures to ensure an effective and efficient proceeding.

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 notice of this Resolution is filed. Copy of such request must be notified to the Commission and all other parties in this case within the term to seek judicial review. The filing of the request for judicial review shall be pursuant to the provisions of the LPAU and the Regulation of the Court of Appeals.

For the benefit of all parties involved, the Commission publishes the present Resolution in Spanish and English. If there is any discrepancy between both versions, the Spanish version shall prevail.

Be it notified and published.



Agustín F. Carbó Lugo
President



Ángel R. Rivera de la Cruz
Associate Commissioner

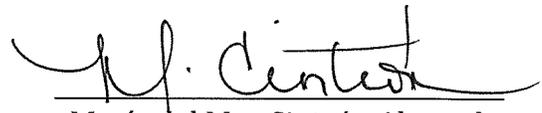


José H. Román Morales
Associate Commissioner



CERTIFICATION

I hereby certify that the Puerto Rico Energy Commission has so agreed on September 6, 2016. I also certify that on this date a copy of this Resolution was notified by electronic mail sent to: n-ayala@aepr.com, c-aquino@aepr.com, glenn.rippie@r3law.com, michael.guerra@r3law.com, john.ratnaswamy@r3law.com, michael.guerra@r3law.com, cfl@mcvpr.com, ivc@mcvpr.com, mmuntanerlaw@gmail.com, jfeliciano@constructorespr.net, abogados@fuerteslaw.com, jose.maeso@ae.pr.gov, edwin.quinones@ae.pr.gov, nydinmarie.watlington@cemex.com, aconer.pr@gmail.com, epenerypr@gmail.com, jorgehernandez@escopr.net, ecandelaria@camarapr.net, pga@caribe.net, manuelgabrielfernandez@gmail.com, mreyes@midapr.com, agraitfe@agraitlawpr.com, mgrpcorp@gmail.com, codiot@oipc.pr.gov, maribel.cruz@acueductospr.com y jperez@oipc.pr.gov.


María del Mar Cintrón Alvarado
Clerk

Puerto Rico Electric Power Authority
Attn.: Nélide Ayala Jiménez
Carlos M. Aquino Ramos
P.O. Box 363928
Correo General
San Juan, PR 00936-4267

Rooney Rippie & Ratnaswamy LLP
E. Glenn Rippie
John P. Ratnaswamy
Michael Guerra
350 W. Hubbard St., Suite 600
Chicago Illinois 60654

Grupo Windmar
p/c Lcdo Marc. G. Roumain Prieto
1702 Ave. Ponce de León, 2do Piso
San Juan, Puerto Rico 000909

Sunnova Energy Corporation
p/c McConnell Valdés, LLC
Lcdo. Carlos J. Fernández Lugo
Lcdo. Ignacio J. Vidal Cerra
PO Box 364225
San Juan, Puerto Rico 00936-4225

Autoridad de Acueductos y Alcantarillados
p/c Lcda. Maribel Cruz De León
PO Box 7066
San Juan, Puerto Rico 00916

Asociación de Hospitales de Puerto Rico
p/c Lcda. Marie Carmen Muntaner Rodríguez
470 Ave. Cesar González
San Juan, Puerto Rico 00918-2627

Asociación de Constructores de Puerto Rico
p/c Lcdo. José Alberto Feliciano
PO Box 192396
San Juan, Puerto Rico 00919-2396

Centro Unido de Detallistas, Inc.
Lcdo. Héctor Fuertes Romeu
PMB 191 – PO Box 194000
San Juan, Puerto Rico 00919-4000



**Oficina Estatal de Política Pública
Energética**

p/c José G. Maeso González
Lcdo. Edwin J. Quiñones Porrata
P.O. Box 413314
San Juan, Puerto Rico 00940

CEMEX de Puerto Rico, Inc.

p/c Enrique A. García
Lcda. Nydin M. Watlington
PO Box 364487
San Juan, Puerto Rico 00936-4487

**Asociación de Consultores y
Contratistas de Energía Renovable de
Puerto Rico**

p/c Edward Previdi
PO Box 16714
San Juan, Puerto Rico 00908-6714

**Energy & Environmental Consulting
Services Corp.**

Jorge Hernández, PE, CEM, BEP
560 C/ Aldebarán, Urb. Altamira
San Juan, Puerto Rico 00920

Cámara de Comercio de Puerto Rico

p/c Eunice S. Candelaria De Jesús
PO Box 9024033
San Juan, Puerto Rico 00902-4033

**Asociación de Industriales de Puerto
Rico**

p/c Manuel Fernández Mejías
2000 Carr. 8177, Suite 26-246
Guaynabo, Puerto Rico 00966

**Cámara de Mercadeo, Industria y
Distribución de Alimentos**

p/c Lcdo. Manuel R. Reyes Alfonso
#90 Carr. 165, Suite 401
Guaynabo, Puerto Rico 00968-8054

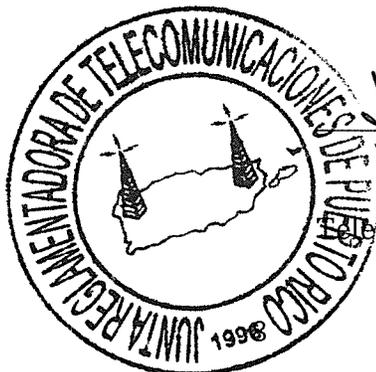
**Instituto de Competitividad y
sostenibilidad Económica de Puerto
Rico**

p/c Fernando E. Agrait
701 Ave. Ponce de León
Edif. Centro de Seguros, Suite 401
San Juan, Puerto Rico 00907

**Oficina Independiente de Protección al
Consumidor**

p/c Lcdo. José A. Pérez Vélez
Lcda. Coral M. Odiot Rivera
268 Hato Rey Center, Suite 254
San Juan, P.R. 00918

For the record, I sign this in San Juan, Puerto Rico, today, September 9, 2016.



Jéssica Fuster Rivera
Clerk of the Puerto Rico

Telecommunications Regulatory Board