

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



IN RE: INTEGRATED RESOURCE PLAN FOR
THE PUERTO RICO ELECTRIC POWER
AUTHORITY

ORDER No.: CEPR-AP-2015-0002

SUBJECT: PUBLIC PARTICIPATION,
INTERVENORS AND *AMICI CURIAE*

POLICY STATEMENT

On May 22, 2015, the Puerto Rico Energy Commission ("Commission" or "Energy Commission") approved and enacted Regulation No. 8594, known as the Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority ("Regulation 8594"). Pursuant to this Regulation and resulting from a detailed planning process, the Integrated Resource Plan ("IRP") will consider all the reasonable resources to satisfy the demand for electricity services during a twenty (20)-year planning period, taking into account both supply- and demand-side electric power resources. In broad terms, the IRP will include an assessment of the planning environment, a careful and detailed study of a range of future load forecasts, present generation resources, present demand-side resources, current investments in electricity conservation technologies, existing transmission and distribution facilities, and the relevant forecast and scenario analyses in support of the Puerto Rico Electric Power Authority's ("PREPA") selected plan, upon which the Commission shall issue a ruling.

After an initial waiver request by PREPA on June 5, 2015, which the Commission partially granted and partially denied on June 26, 2015, and a request for extension of time, PREPA filed its first IRP on July 7, 2015, with the exception of Volume V, which it filed on July 10, 2015. Copy of the IRP filing is available for the public at <http://www.aeepr.com/Aeees/ley57.asp>. In accordance with the Order issued by the Commission on July 3, 2015, PREPA shall file an updated IRP by August 17, 2015. The updated IRP must include PREPA's analysis and planning in light of the new environmental regulatory state of play after the decision of the Supreme Court of the United States in Michigan, et al. v. Environmental Protection Agency et al., No. 14-46 slip op. (U.S., June 29, 2015), concerning the applicability of the United States Environmental Protection Agency's ("EPA") Mercury and Air Toxics Standards ("MATS") regulation. The aforementioned Commission's decisions are available to the public at <http://energia.pr.gov/documentos/ordenes/>.

At the present stage of this process, the Commission calls upon the broader community in order to seek the participation and assistance of interested persons and groups in the vital task of assessing the IRP. Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act, establishes important energy public policy principles that the Commission must develop and implement. One of the tenets of this policy is the promotion and safeguarding of citizen and stakeholder participation in the proceedings before the Commission, such as the assessment of the IRP.¹ Furthermore, Act 57-2014 specifically requires citizen and stakeholder participation in the IRP assessment procedure, by stating that "every [IRP] shall be devised with broad participation from citizens and other interested groups."²

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PREPA, as the operator and administrator of the electric power system in the Commonwealth of Puerto Rico, which consists of the generation, transmission and distribution infrastructure, is required to undertake its activities in accordance with a participatory and transparent model of governance, as set forth in Act 57-2014, and this Commission's orders and regulations. The IRP is a key instrument towards the implementation of that model of governance. As a planning- and decision-making tool, the IRP will govern PREPA's planning for meeting the electricity needs of Puerto Rico in a least-cost manner consistent with the public policy objectives of ensuring reliability and sustainability of resources. Therefore, the public interest would be best served if the IRP assessment process before the Commission includes an active, central, and informed role on behalf of the citizenry, in order to present the Commission with a more fully developed record of the facts and different perspectives that will be of assistance in rendering a fair, just and reasonable decision on the interlinked processes of generation, transmission, distribution, supply, marketing, research, development, and consumption of electric power in Puerto Rico.

In consideration of the foregoing, the Commission is committed to encourage the participation of citizens, entities, and their intermediary organizations in the assessment and approval of PREPA's IRP. In honor of this commitment, the Commission especially welcomes the participation of academics and experts in the economic, environmental, engineering, and planning fields, as well as other similarly related disciplines and areas of expertise. This commitment involves undertaking a public participation process that is transparent and accountable, supported by information from interested persons and groups that can contribute to the analysis and assessment of PREPA's IRP filing.

This Policy Statement is one of several actions by the Commission intended to safeguard the quality and responsiveness of the IRP assessment process, as part of the Commission's broader mission to ensure that the operation of the electric power service sector in Puerto Rico is guided by the principles of stability, reliability, impartiality, transparency, efficiency, solidarity, non-discrimination, and economic and financial sustainability. Thus, the aim of this Policy Statement is to ensure that all interested persons and groups are afforded the necessary information, tools, and opportunities to make their

¹ See, Section 1.2(o) of Act 57-2014, which provides: "Transparency and citizen participation in every process related to electric power service in Puerto Rico shall be promoted."

² Section 1.3 (ee) of Act 57-2014.



active, timely, informed, and responsible contributions to the IRP assessment process. The mechanisms summarized and explained in this Policy Statement are intended to ensure that the Commission is fully informed when making its determination on PREPA's first IRP. The Commission, therefore, has devised this Policy Statement as a means to ensure that the overall process is effective in providing the appropriate forum where the views of all interested citizens and stakeholders can be taken into account.

I. Intervention

Regulation 8594 establishes a mechanism by which persons can become intervening parties in the Commission's IRP evaluation and approval process. Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act, and interpretive case law also govern the rights and duties of intervenors in administrative procedures.

In order to become an intervenor in the IRP proceeding, a person must file a petition to intervene, which the Commission will evaluate considering the criteria established in Section 3.5 of Act No. 170³ and the interpretive case law. The Commission, at its discretion, may grant the petition to intervene in accordance with all applicable statutes and regulations.⁴

If the Commission grants the petition to intervene, the intervenor becomes a party to the IRP proceeding. Thus, "a [Commission] ruling accepting the petition to intervene shall grant the [intervenor] full rights to participate in the proceeding, including but not limited to the right to conduct discovery, present testimony and cross-examine witnesses, participate in any collaborative process, and file pleadings, in accordance with the Commission's orders and the provisions of Regulation No. 8543."⁵

A) Petitions to Intervene

In light of the Commission's discretion under Section 3.02 (A) of Regulation 8594, and the updated IRP filing due on August 17, 2015, any person having a legitimate interest in the IRP proceeding may file a written, duly grounded petition to intervene, on or before September 1, 2015. Under exceptional circumstances, however, and subject solely to its discretion, the Commission may allow and grant a petition to intervene filed after this date.

The petition to intervene shall address each of the following points:

- 1) The nature and extent of the petitioner's interest in the proceeding;
- 2) The legal positions advanced by the petitioner and its probable relation to the merits of the case;

³ 3 LPRA §2155.

⁴ See, for example, Section 5.05 of Regulation No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings of the Puerto Rico Energy Commission; Section 3.02 of Regulation 8594; and Section 3.5 of Act No. 170, 3 LPRA §2155.

⁵ Section 3.02 of Regulation 8594.





- 3) Whether granting the petitioner intervention will contribute to the full development and just and equitable resolution of the facts in the case; and
- 4) Whether granting the petitioner's intervention will not unduly prolong or delay the proceeding.

At its discretion, the Commission may grant or deny the petition taking the following factors into consideration, among others:

- 1) Whether the petitioner's interests may be adversely affected by the IRP procedure;
- 2) Whether there are no other legal means for the petitioner to adequately protect his interests;
- 3) Whether the petitioner's interests are already or will be adequately represented by PREPA or other intervenors in the IRP procedure;
- 4) Whether the petitioner's participation may help, within reason, to prepare a more complete record of the IRP procedure;
- 5) Whether the petitioner's participation may extend or delay the IRP procedure excessively;
- 6) Whether the petitioner represents or is the spokesperson of other groups or entities in the community; and
- 7) Whether the petitioner can contribute information, expertise, specialized knowledge or technical advice which is otherwise not available in the procedure.

The Commission may require that additional evidence be submitted in order to issue the corresponding determination with regard to the petition to intervene.

B) Petitioner's rights pending evaluation by the Commission

Pursuant to Section 3.02 of Regulation 8594, "[o]nce a petition to intervene is filed, the petitioner shall be accorded full rights as an intervening party until such time as the Commission may issue a ruling denying the petitioner intervention. However, no petitioner shall be entitled to confidential information from PREPA until its petition to intervene has been granted by the Commission."

C) Denial of petition

If the Commission denies a petition for intervention, "it shall give notice of its

determination in writing to the petitioner, its grounds therefor, and the appellate review that is available.”⁶

II. Amici curiae

Any person other than PREPA or any intervenor in the IRP procedure, may present before the Commission a petition to participate in the capacity of friend of the court or *amicus curiae*. As opposed to intervenors, *amici* are not considered parties in administrative procedures like the IRP assessment process.

A) *Amicus petition and brief*

Every petition to participate as *amicus curiae* shall be accompanied by a brief and, for the purposes of the IRP procedure, shall be presented on or before October 26, 2015.

The *amicus* petitioner’s brief shall include:

- 1) A description of the petitioner and its interest in the IRP evaluation and approval proceeding;
- 2) An explanation of the reasons for which its participation in the case is justified;
- 3) An introductory explanation of the contributions that the petitioner will make to assist the Commission to be better informed or in a better position to properly evaluate and approve the IRP;
- 4) A declaration indicating:
 - a) If any of the parties or lawyers in the IRP procedure has helped draft the petitioner’s brief;
 - b) If any of the parties or lawyers in the IRP procedure has contributed funds or any other type of resource for the preparation or submission of the petitioner’s brief; and
 - c) If any other person (that is not a party in the IRP procedure, the petitioner or its lawyer) has contributed funds or any other type of resource for the preparation or submission of the petitioner’s brief, and the name of said person(s).
- 5) Its arguments on the IRP procedure;
- 6) Any other argument the petitioner considers necessary.



⁶ Section 3.6 of Act No. 170, 3 LPRA §2156.

B) Evaluation by the Commission

In accordance with Section 7.02 of Regulation 8543, the Commission will evaluate the petitions to participate as *amicus curiae* and the corresponding briefs, and concede or deny those at its discretion.

Be it hereby notified and published.




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 July 22, 2015.


Mariana I. Hernández Gutiérrez
General Counsel

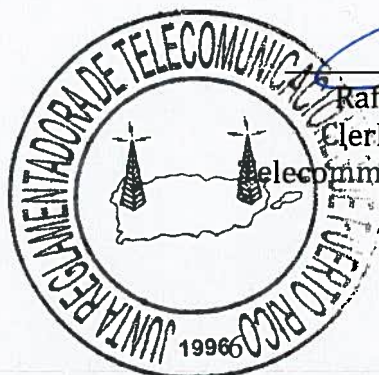
CERTIFICATION

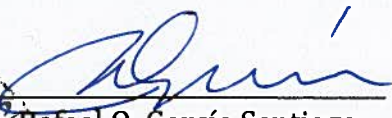
I certify that this is a true and exact copy of the Order issued by the Puerto Rico Energy Commission. I further certify that today July 22, 2015, I have proceeded with the filing of this Order and I have sent a copy thereof to the:

Puerto Rico Electric Power Authority

To the Attention of Nélide Ayala and Nitza D. Vázquez Rodríguez
PO Box 363928
Post Office Headquarters
San Juan, PR 00936-3928

For the record, I sign this in San Juan Puerto Rico, today July 22, 2015.




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