

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION



IN RE: INVESTIGATION ON THE RATES OF
THE PUERTO RICO ELECTRIC POWER
AUTHORITY

No.: CEPR-IN-2015-0002

SUBJECT: INFORMATION REQUIREMENT
TO THE PUERTO RICO ELECTRIC POWER
AUTHORITY

RESOLUTION

I. PREPA's Motion to Reconsider

The Moción de Reconsideración de Resolución Final Enmendada ("motion to reconsider"), filed on April 9, 2015 by the Puerto Rico Electric Power Authority ("PREPA") is *denied, excepting the request made in part II(C) of said motion*. PREPA's motion to reconsider failed to address the issues listed in the Resolution and Order of March 30. See Resolution and Order, pages 2-3. Furthermore, the arguments presented by PREPA in said motion were addressed by this Commission in the Resolution and Order issued on March 30, 2015, the Amended Final Resolution issued on March 20, 2015, and the Order issued by this Commission on February 12, 2015 initiating the investigation in the matter In re: Investigation on the Rates of the Puerto Rico Electric Power Authority, CEPR-IN-2015-0002 (the "Order" or "February 12 Order"). For this reason, PREPA's objections to the February 12 Order are unsubstantiated.

PREPA's statements regarding its alleged partial compliance with the February 12 Order are incorrect. As we stated in the Resolution and Order of March 30, "PREPA's comments, arguments and statements presented in its Motion to Object to Certain Items of Order do not suffice. In consequence, they are not considered by this Commission as partial responses to the February 12 Order, since those comments, arguments and statements do not comply with the Commission's orders and instructions." See, Resolution and Order, page 7; February 12 Order, pages 3-5. Moreover, various of the websites provided by PREPA in its Motion to Object to Certain Items of Order in response to several requirements do not contain all the information originally requested.

II. Clarification of rulings and instructions related to the treatment and classification of confidential information

As to PREPA's concerns with the protection of confidential information, the record shows that this Commission has recognized the possibility that some information may be privileged or confidential and has stated the procedure to be followed to address PREPA's arguments of confidentiality and determine which information shall continue to be protected by the Commission as confidential or privileged after the investigation concludes.

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That is, the confidential nature of a document or information is not a valid reason to object a requirement of information. In sum, the procedure stated by the Commission for the treatment and classification of confidential information is:

- (1) PREPA must provide the information required in the February 12 Order, which initiated an investigation "to obtain necessary information on the operations and performance of PREPA, from the technical, administrative, financial, accounting and tax perspective, to adequately carry out the Commission's powers and duties, and to evaluate the existing rates of that electric power company."¹
- (2) PREPA shall communicate informally with the Commission's General Counsel to determine which material should be in paper form and which in electronic form, and precisely to whom the information should be submitted. The General Counsel will give PREPA instructions in accordance to the Commission's protocols, orders, rules and systems of information.
- (3) Pursuant to Regulation No. 8543, *Reglamento de Procedimientos Adjudicativos, Avisos de Incumplimiento, Revisión de Tarifas e Investigaciones*, during the investigation, the Commission will maintain the confidentiality of (i) all documents and information provided or submitted to the Commission during the course of the investigation, and (ii) all the information contained in the investigation file.
- (4) Every employee and contractor of the Commission receiving or having access to information produced by PREPA or any other party during this investigation, and/or to the information contained in the investigation file, shall sign a confidentiality agreement with the Commission, in accordance with the Order Governing Confidential or Privileged Information issued on April 24, 2015.
- (5) Every employee and contractor of the Commission receiving or having access to information produced by PREPA or any other party during this investigation, and/or to the information contained in the investigation file, shall comply with the protocol for the proper handling of confidential documents in paper form, in accordance with the Order Governing Confidential or Privileged Information issued on April 24, 2015.
- (6) No later than 10 days after submitting the information, PREPA shall (i) mark or identify the information as 'confidential' or 'privileged'; (ii) identify the reason why the document or information should be classified as 'confidential' or 'privileged'; and (iii) state in writing the legal bases and sources to support its argument that such information or document should be classified as 'confidential' or 'privileged'. PREPA must connect each claim to a particular document or piece of information.

¹ February 12 Order, page 2.



- (7) The Commission will decide each confidentiality claim, no later than 30 days prior to the end of the investigation. In its decisions, the Commission will state (i) which information and documents are confidential or privileged; and (ii) the rules that shall be observed to duly safeguard the information or document after the investigation ends. The 30-day period gives PREPA and any other party sufficient time to seek reconsideration and go to court to prevent disclosure if PREPA disagrees with the Commission's decision, before the Commission issues and notifies the report to the public.
- (8) In conformity with Article 6.15 (c) of Act 57-20154, only lawyer-employees and consultants of the Commission (i) who have signed the confidentiality agreement, and (ii) who need to know the information, will have access to (a) information and documents marked by PREPA or any other party as "confidential" or "privileged" and to (b) information and documents classified by the Commission or by the court as "confidential" or "privileged".

Any instruction or provision of the February 12 Order inconsistent with the above, shall be considered amended by this Resolution. In addition, this Commission amends paragraph (10) of Part III(A) of the February 12 Order, as follows:

- "10. **Delivery to the Commission in Digital Format:** Any document submitted or delivered in digital format to the Commission shall be uploaded onto the Commission's electronic confidential document management system. The Commission will treat all information and documents delivered and stored within this system as confidential. During the course of the investigation, the information and documents submitted will be maintained and protected in said system. The Commission will identify and authorize those persons who will have access to the system, according to the specific categories of roles and functions defined for the use of said system. Each person's access to the confidential documents contained and protected in the system will depend on the rights that the Commission assigns to that person. All persons identified and authorized by the Commission to access the electronic confidential document management system will be subject, furthermore, to the terms and conditions established in their respective confidentiality agreements."

III. PREPA's request for an extension of time to submit information

The Commission grants PREPA a final term of ten (10) days to submit the information requested on the February 12 Order or to propose a precise schedule to submit the information, to be considered and approved by the Commission. If PREPA does not comply with this final term, the Commission will seek all applicable remedies including but not limited to, fine PREPA for non-compliance in accordance with Article 6.37 of Act 57-2014.



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As we stated in the Resolution and Order issued on March 30, 2015: "If PREPA has a genuine interest in defending and aligning its actions with the public interest, it shall submit the information required by the Commission in accordance to the Commission's orders and fully cooperate with this Commission in this investigation of unprecedented value for the People of Puerto Rico and of such significance to execute Act 57-2014 policies, mandates and objectives, instead of withholding information and delaying the investigation process." See, Resolution and Order, page 7. The February 12 Order stands and PREPA must submit the information required therein in accordance with the orders, procedures and instructions stated by this Commission.

More than sixty (60) days have gone by since the Commission issued the February 12 Order without PREPA complying -not even partially- with the information requirements, and without PREPA providing a precise schedule to submit the information that it has not been able to obtain so far. Through its objections, PREPA has been delaying this investigation and the Commission's work plan, a behavior that is inconsistent with its own interests, the interests of its employees and creditors, the interests of its customers, and the public interest.

Any party which is adversely affected by a final order or resolution of an agency and who has exhausted all of the remedies provided by the agency or by the corresponding administrative appellate body may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date the copy of the notice of the order or final resolution was filed in the record of the agency, or from the applicable date of those provided in Section 3.15 of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act, when the term to petition for judicial review has been interrupted by the timely filing of a motion to reconsider. The party shall serve the filing of the petition for review to the agency and all the parties within the term to request such review. The notice may be sent by mail. Provided, that if the date in which the copy of the notice of the order or final resolution is filed in the record of the agency or the corresponding administrative appellate body is different from the mailing date of said notice, the term shall be calculated as of the mailing date thereof.

Be it hereby notified and published.

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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 April 24 2015. I also certify that on this date a copy of this Resolution was notified to PREPA by electronic mail sent to m-zambrana@aepr.com and j-concepcion@aepr.com.


Mariana I. Hernández Gutiérrez
General Counsel

CERTIFICATION

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 April ____ 2015, I have proceeded with the filing of this Resolution and I have sent a copy thereof, through certified and regular mail, to:

Puerto Rico Electric Power Authority

To the Attention of Jorge Concepción Rivera and Maribel Zambrana García
PO Box 363928
Post Office Headquarters
San Juan, PR 00936-3928

Puerto Rico Electric Power Authority

To the Attention of Eng. Juan Alicea Flores, Executive Director
PO Box 364267
Post Office Headquarters
San Juan, PR 00936-4267

For the record, I sign this in San Juan Puerto Rico, today April ____ 2015.

Handwritten initials: M, H, R



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

