

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION



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

No.: CEPR-IN-2015-00002

SUBJECT: INFORMATION REQUIREMENT
TO THE PUERTO RICO ELECTRIC POWER
AUTHORITY

FINAL RESOLUTION

On February 12, 2015, the Puerto Rico Energy Commission issued an Order 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") and requiring information to the Puerto Rico Electric Power Authority (PREPA). On that same date, the Order was notified to PREPA via electronic mail,¹ and on February 13, 2015 the Clerk of the Commission also notified it through regular mail.

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Eighteen days after the Order was notified by electronic mail, on March 2, 2015, PREPA filed a motion titled "Motion to Request Extension of Period to Object to Order" in which it asks the Commission to extend the ten (10) day period stated in Regulation No. 8543, *Reglamento de Procedimientos Adjudicativos, Avisos de Incumplimiento, Revisión de Tarifas e Investigaciones*, to object the Order, based on two reasons. First, PREPA argues that it "has not had sufficient time to evaluate each such request to present its objections." Second, PREPA argues that "PREPA's rate revision consultants are [. . .] evaluating the Order [. . .] to assist PREPA in responding to the Commission." PREPA also requested to discuss its *possible* objections to the Order and the scope of the Order with the Commission's financial and accounting consultants, during a meeting scheduled for March 4, 2015 between PREPA's advisors and the Commission's consultants.

Finally, PREPA intends to deem the Order objected in its entirety if the Commission denies its request for extension. To that end, without making reference to any particular question or information requirement, PREPA raises several "general objections" to the Order but provides no explanation. Among other things, PREPA claims that the Order is irrelevant to the rate-making process, and, without any basis, it pleads blanket objections such as (i) the information requirements *may be* onerous, vague, ambiguous, too broad, (ii) objecting to any question requiring PREPA to search for documents or information in the possession of unnamed entities and/or third parties outside PREPA's control, and (iii) some of the information required is confidential.

¹ The electronic mail was sent to counsels Jorge Concepción-Rivera and Maribel Zambrana-García. According to the e-mail read confirmation, Mr. Concepción-Rivera read said e-mail on February 12, 2015, while Ms. Zambrana-García read it on February 13, 2015.

Pursuant to Sections 6.2 and 6.4 of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act,² Sections 6.3 and 6.24 of Act 57-2014, as amended, and Regulation No. 8543 ("Regulation 8543"), the Commission may conduct the investigations it deems convenient and necessary to fulfill its duties under Act 57-2014 and to obtain information related to the electric service providers under its jurisdiction. Chapter V, Article XV of Regulation 8543 specifically provides that the Commission may begin an investigation *motu proprio* and may use different mechanisms to conduct an investigation, such as a document production requirement, meetings and depositions, among other mechanisms. The party required to provide information shall cooperate with the investigation and respond diligently to the Commission's requests for information and other investigative mechanisms.

Section 15.05 of said Regulation states that a party to whom the Commission has required information may contest the requirement within a ten (10)-day period, from the date the requirement order was notified. However, in order to be considered by the Commission, any objection filed must be duly substantiated and shall be based on any of the two following arguments: (1) the information requirement is clearly unreasonable; or (2) it exceeds the Commission's authoritative powers.³ Accordingly, the February 12 Order reminded PREPA that it had "the right to present its duly substantiated objections within ten (10) days from the date of notification of [the] Order."

PREPA's Motion to Request Extension of Period to Object to Order was untimely filed. If PREPA wanted to request an extension of time to contest the February 12 Order, it should have filed said motion within the ten (10)-day period to object established in Regulation 8543, that is, on or before February 23, 2015.⁴ In consequence, the Commission denies PREPA's request to extend the period to object to the Order.

Having denied PREPA's motion to request an extension of time to contest the February 12 Order, we proceed to address the issue regarding PREPA's blanket objections.

As we have mentioned, PREPA failed to state any of the permissible objections, pursuant to Act No. 170 and Regulation 8543. Even so, if the Commission were to consider any other argument to contest its February 12 Order, PREPA also failed to support, in law and in fact, the blanket general objections raised in the Motion to Request Extension of Period to Object to Order,⁵ contrary to the provisions of Section 15.05(C) of Regulation 8543. Therefore, pursuant to Section 15.05 (D) of said Regulation, this Commission rejects PREPA's objections.

² 3 L.P.R.A. §§ 2192, 2194.

³ In addition, see 3 L.P.R.A. § 2192.

⁴ Even if the Commission were to count the ten (10)-day period from the date of the postmark of the regular mail notification, PREPA did not include a copy of the envelope with said postmark in order to give proof of the postmark date.

⁵ We also note that some of PREPA's blanket objections refer to issues -such as the treatment and procedures to manage confidential or privileged information, and how to respond to questions that require information not within PREPA's outreach- that are specifically addressed by the Commission in the February 12 Order and the Order issued by the Commission on February 19, 2015 in the matter No. CEPR-MI-2015-0001.



We must stress again that the February 12 Order did not initiate a rate case, but initiated an investigation intended to gather information pursuant the Commission's investigative powers. If there are practical reasons why PREPA cannot comply with the February 12 Order by the deadline, PREPA shall state those facts for the Commission's consideration pursuant to the rules stated in pages 18-19 of said Order.


If PREPA is unsatisfied with this determination, it may file a motion for reconsideration before the Commission. In its motion, PREPA shall explain in detail the bases supporting its motion and the remedy that, to its judgment, the Commission should have granted, pursuant to Section 11.01 of Regulation 8543, and the applicable provisions in Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act. PREPA shall file its motion for reconsideration within the term of twenty (20) days from the date of the filing of this Final Resolution, by personal delivery to the Clerk of the Commission, located temporarily in the Telecommunications Regulatory Board in 500 Ave. Roberto H. Todd, San Juan PR 00907-3941.

The Commission shall consider said motion within fifteen (15) days of its filing. Should the Commission reject it forthright or fail to act upon it within fifteen (15) days, the term to request review shall recommence from the date of notice of such denial, or from the expiration of the fifteen (15)-day term, as the case may be. If a determination is made in its consideration, the term to petition for review shall commence from the date a copy of the notice of the Commission's resolution definitively resolving the motion to reconsider is filed in the record of the case. Such resolution shall be issued and filed in the record of the case within ninety (90) days after the motion to reconsider has been filed. If the Commission accepts the motion to reconsider but fails to take any action with respect to such motion within ninety (90) days of its filing, it shall lose jurisdiction on the same and the term to file 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.⁶

In the alternative, PREPA "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 this Final Resolution was filed in the record of the [Commission] or from the applicable date of those provided in [Section 3.15 of Act No. 170, 3 L.P.R.A. § 2165], of when the term to petition for judicial review has been interrupted by the timely filing of a motion to reconsider."⁷

Be it hereby notified and published.


Ángel R. Rivera De La Cruz
Associate Commissioner


José H. Román Morales
Associate Commissioner

⁶ 3 L.P.R.A. § 2165.

⁷ 3 L.P.R.A. § 2172; *see also* Regulation 8543, Section 11.03.



I certify that the Puerto Rico Energy Commission has so agreed on March 9 2015. The Chairman, Mr. Agustín F. Carbó Lugo, did not intervene. I also certify that on this date a copy of this Final 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

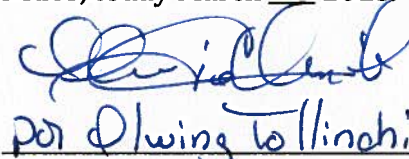
CERTIFICATION

I certify that this is a true and exact copy of the Order issued by the Puerto Rico Energy Commission. I further certify that today March 10 2015, I have proceeded with the filing of this Order and I have sent a copy thereof to the:

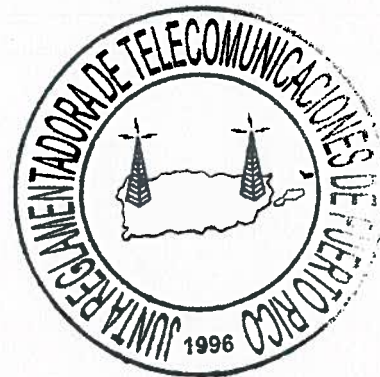
Puerto Rico Electric Power Authority

To the Attention of 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 March 10 2015.



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



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