

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

AMENDED FINAL RESOLUTION¹

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 from the Puerto Rico Electric Power Authority (PREPA). On that same date, the Order was notified to PREPA via electronic mail,² and on February 13, 2015, the Clerk of the Commission also notified it through regular mail.

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Eighteen (18) 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 argued that it "has not had sufficient time to evaluate each such request to present its objections." Second, PREPA argued 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.

In addition, PREPA intended to deem the Order objected in its entirety if the Commission were to deny its request for extension. To that end, without making reference to any particular question or information requirement, PREPA raised 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

¹ This Amended Final Resolution leaves without effect the *finality* of the Final Resolution issued by this Commission on March 9, 2015.

² The electronic mail was sent to counsels Jorge Concepción-Rivera and Maribel Zambrana-García, the designated contact point for PREPA. 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.

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.

Through a Final Resolution issued on March 9, 2015, and recorded on March 10, 2015, this Commission denied PREPA's Motion to Request Extension of Period to Object to Order. The Final Resolution was notified to PREPA via electronic mail,³ as well as via regular and certified mail, in conformity with the provisions of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act. According to the electronic read confirmation, the communication with the Final Resolution enclosed was read on March 11, 2015 at 9:21 a.m. Later that day, specifically at 2:02 p.m., PREPA filed a "Motion to Object to Certain Items of Order" (Motion to Object). Said motion does not take into account the Final Resolution that the Commission issued, which PREPA electronically confirmed to have received and read. We also note that PREPA filed the Motion to Object one day after the additional time requested in its Motion to Request Extension of Period to Object to Order would have expired.

In its Motion to Object, PREPA raises again the same blanket "general objections" raised in its Motion to Request Extension of Period to Object to Order; identifies the information that it plans to produce and submit to the Commission; and raises and relates particular objections to 59 of the questions or requirements of information contained in the February 12 Order.

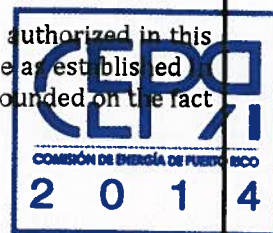
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Pursuant to Sections 6.2 and 6.4 of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act,⁴ Sections 6.3 and 6.24 of Act 57-2014, as amended, and Regulation No. 8543 ("Regulation 8543"), the Commission may conduct 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.*⁵ Accordingly, the February 12 Order

³ The electronic mail was sent to counsels Jorge Concepción-Rivera and Maribel Zambrana-García.

⁴ 3 L.P.R.A. §§ 2192, 2194.

⁵ In addition, see 3 L.P.R.A. § 2192 ("Any person who is requested to give information as authorized in this section may take exception to the agency's request by means of an adjudicatory procedure as established in the special law in question, and in §§ 2151-2168 of this title. The exception may only be grounded on the fact





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.”

I. PREPA's Motion to Request Extension of Period to Object to Order is denied

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, 2015.⁶ 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 objections.

In its Motion to Request Extension of Period to Object to Order PREPA failed to state any of the two 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,⁷ 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.*

II. PREPA's Motion to Object would have also been denied in its merits

Even assuming *arguendo* that the Motion to Request Extension of Period to Object to Order was filed on time and that PREPA showed just cause for the extension of time requested, PREPA's Motion to Object would have also been denied by this Commission. Again, none of the of the objections presented therein by PREPA refer to any of the two permissible objections in this type of proceeding pursuant to Section 6.2 of Act No. 170 and Section 15.05 (B) of Regulation 8543. In other words, PREPA failed to state any legitimate objection. Let us see why.

As Objection #1 PREPA states that 14 requirements seek the production of information that is publicly available. This is no basis for an objection. If PREPA understands that a requirement asks for information that is publicly available through the Internet or any other place, it shall state so and provide the particular link, or identify the

that the requirement for information is unreasonable or exceeds the agency's authority because it is not germane to the range of interest contemplated in the act or acts involved.”)

⁶ 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.

⁷ 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.

place, where the information is available in its response under oath to that requirement of information.

As Objection #2 PREPA states that 13 requirements seek the production of information that is allegedly confidential, mainly under Federal Securities and/or Homeland Security laws and regulations, and “proposes that the Commission and PREPA’s legal teams meet and define a *written procedure* and *agreements* to protect *both parties’* interest and needs.”⁸ PREPA (and its creditors) must understand and acknowledge that the Commission is the regulatory entity of the electric power sector in the Commonwealth of Puerto Rico that also has broad powers to conduct investigations and adjudicate cases and controversies. In addition to the fact that the execution of a confidentiality agreement and the design of a written procedure between the Commission, its employees and consultants, and PREPA would be unnecessary and redundant, there is the underlying reality that the Commission does not make “agreements” with parties. It can, however, issue orders requiring the proper treatment of confidential material.

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The Commission recognizes the importance of the confidentiality protection given by Federal Securities and/or Homeland Security laws and regulations. In view of that, in the next few days, the Commission will issue an order requiring individuals receiving confidential information to sign a nondisclosure agreement that will be attached to the order. We therefore invite PREPA to suggest language for such nondisclosure agreement within 3 days of receiving this Amended Final Resolution. We emphasize that our obligation to maintain confidentiality during an investigation is imposed, unambiguously, by Regulation 8543. We expect, therefore, that PREPA’s suggestions will relate to specific procedures and practices that recipients shall follow in honoring the statutory obligation. We also emphasize that PREPA has a legal obligation to provide the information sought, promptly, regardless of whether PREPA is satisfied with the language the Commission adopts. It must be noted that the Commission is aware of the possibility that some of the information submitted by PREPA may be protected by Federal Securities and/or Homeland Security laws and regulations, and thus, will make sure to take rigorous precautions to keep the protected information secure from disclosure.

As we stated in the February 12 Order⁹, *pursuant to Section 15.10 of Regulation 8543 all the information obtained by the Commission during this investigation is confidential while the investigation is in process.* The investigation ends once the investigation report is issued and notified. However, as we clearly stated in the February 12 Order, “any information that during the course of the investigation [the Commission classifies] as privileged [in accordance to Section 1.15 of Regulation 8543, and Articles 1.4 and 6.15 of Act 57-2014], as well as any information that might infringe fundamental rights of third parties or the privacy of the person under investigation” will be protected by the Commission and withheld from the public.

⁸ (Emphasis provided.)

⁹ See, February 12 Order at page 5.



As PREPA knows, the Commission has begun executing confidentiality agreements with its outside consultants to guarantee they are bound by the same confidentiality rules that bind the Commissions and its employees. If PREPA also wishes to *suggest* language for these agreements in order to include the protection of confidential information pursuant to Federal Securities and/or Homeland Security laws and regulations, PREPA may submit its suggestions within 3 days of receiving this Amended Final Resolution. Furthermore, as stated in page 4, paragraph 10, of the February 12 Order, the Commission has taken measures to carefully control the access that its employees and consultants will have to the information obtained during this investigation depending on the role and functions of each employee or consultant.

In short, PREPA has no legal right to insist on any additional assurance of confidentiality beyond that provided by federal laws and regulations, Act 57's provisions, the Commission's regulations, and the Constitution and laws of the Commonwealth of Puerto Rico. In accordance to Act 57-2014 and Regulation 8543, in the February 12 Order the Commission already established the procedure to address PREPA's confidentiality claims before the investigation ends. The Order, at page 5, reads as follows:

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[I]f PREPA believes that one or more of the requirements made in this Order will require the production of information which, in PREPA's opinion, is privileged or confidential, PREPA shall: (i) produce the information or document requested and mark it as "confidential" or "privileged"; (ii) identify the reason why the document or information is "confidential" or "privileged"; and (iii) state in writing the legal bases and sources to support its argument that such information or document is "confidential" or "privileged". Prior to the issuance and notification of the report on the investigation initiated by this Order, the Commission will examine PREPA's bases for confidentiality and will attend to them under the case law interpreting the Constitution of the Commonwealth of Puerto Rico, the provisions of Act 57- 2014, as amended, and the applicable rules of administrative law. Except for communications covered by attorney-client privilege, **PREPA cannot fail to give any information or document to the Commission on the grounds that it believes it is a confidential or privileged document or information.**

As Objection #3, PREPA states that 5 requirements seek the production of information that "prima facie seems irrelevant to the rate-making and/or outside of the scope of the Commission's authority." This objection has no merit. The February 12 Order specifically states that the purpose of this investigation is "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.*"¹⁰ 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~~. PREPA

¹⁰ (Emphasis provided).



has provided no legal basis to sustain its argument that any of the requirements seek the production of information that is not within the scope of the Commission's authority which in this investigation is not confined to rates. The same goes to every other "objection" made by PREPA about lack of relevance. It is clear that the Commission's February 12 Order was not confined to ratemaking. Furthermore, anything related to the statutory goals of reliable service at just and reasonable rates is "relevant" and within the scope of the Commission's authority.

With regards to the confidentiality argument included in "Objection #3", we reiterate our statements above.

As Objection #4, PREPA states that 8 requirements seek the production of information, analyses, studies, narrative descriptions or opinions that currently do not exist or that in the regular course of business are not kept by PREPA in the manner [required] in the [February 12 Order]". This is no basis for an objection, and PREPA states none. If the Commission asks for an explanation, PREPA must provide it. On the other hand, in accordance to the instructions specifically stated in page 3, paragraph 4, of the February 12 Order, if a requirement asks for information that does not exist, PREPA shall so specify it in its response under oath to that requirement of information. If the information exists, but not in the manner required in the Order, common sense dictates that PREPA shall state so under oath and provide the information in the manner kept by PREPA. 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.

As Objection #5, PREPA states that 17 requirements of information are ambiguous or overly broad. PREPA has provided no basis to sustain its argument as to any of those 17 requirements. If PREPA has any question about any of the requirements of information it shall channel it through the Commission's General Counsel in accordance to this Amended Final Resolution.

As Objection #6, PREPA states that two requirements seek the production of information that is not within the jurisdiction of the Commission, but specifically, within the scope of the Office of Government Ethics and the Department of Justice. This argument lacks merit. The fact that some matters are subject to the Office of Government Ethics or the Department of Justice does not take the information outside the Commission's jurisdiction. The Commission is responsible for assessing PREPA's performance. The requirements in the February 12 Order, and specifically the 2 "objected" requirements, require information about relationships that affect PREPA's performance. With regards to the argument that those two requirements seek the production of information that is irrelevant to the rate making process, we reiterate our statements above about PREPA's Objection #3.

In addition to the listed "objections", we note that PREPA also stated, as "clarifications" or "comments" with regards to particular questions or requirements of information, that it will provide some of the required information later as part of the

Integrated Resource Plan that it will file on or before July 1st 2015, or as part of the rate case that will initiate later this year. PREPA fails again to state a valid "objection". The Commission ordered the information at this time because it is needed for the proper discharge of its duties. Thus, a statement that particular information will be submitted at a later time, such as in the rate case or as part of its Integrated Resource Plan is not a valid objection. We remind PREPA of its continuing duty to update, correct or amend its answers.¹¹

For the reasons stated above, this Commission denies PREPA's Motion to Request Extension of Period to Object to Order, as well as PREPA's Motion to Object. Basic due diligence requires that parties appearing before the Commission prepare themselves by studying the applicable sources of law and the Commission's orders before presenting arguments to the Commission. The Commission expects nothing less from PREPA.

PREPA shall comply with the February 12 Order and produce the information, narrative descriptions and opinions required therein by the Commission.

III. Questions and additional information requirements

If PREPA has any question about any of the requirements of information made in the February 12 Order or any of the requirements of information made by the Commission's General Counsel, it shall state its question or need for clarification in writing and submit it by electronic mail to the General Counsel and copy consultants Scott Hempling, Stephen G. Hill and Ralph C. Smith. While PREPA and the Commission's consultants may have verbal discussions about PREPA's questions for efficiency purposes, *all final questions and answers must be stated in writing*. Verbal expressions and discussions about PREPA's questions will have no evidentiary value or effect.

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

¹¹ See, February 12 Order at pages 3-4.

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.¹²

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."¹³

Be it hereby notified and published.

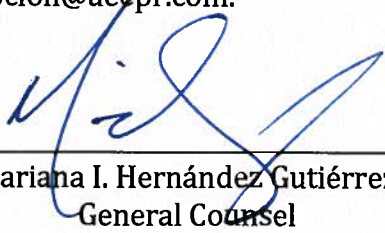


Agustín F. Carbó Lugo
Chairman



José H. Román Morales
Associate Commissioner

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I certify that the Puerto Rico Energy Commission has so agreed on March 20 2015. The Associate Commissioner Mr. Ángel R. Rivera De La Cruz did not intervene. I also certify that on this date a copy of this Amended 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 20 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

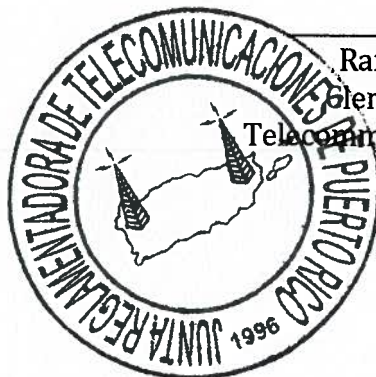
¹² 3 L.P.R.A. § 2165.

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



Post Office Headquarters
San Juan, PR 00936-4267

For the record, I sign this in San Juan Puerto Rico, today March 20 2015.



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

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