

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

**IN RE: ADOPTION OF THE REGULATION
ON RATE FILING REQUIREMENTS FOR
THE PUERTO RICO ELECTRIC POWER
AUTHORITY**

No.: CEPR-MI-2015-0004

ORDER

On July 24, 2015, the Puerto Rico Energy Commission (the Commission) approved Regulation No. 8620, known as the Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority (Regulation 8620). As we have explained, the purpose of Regulation 8620 is to "establish the information [that the Puerto Rico Electric Power Authority (PREPA)] must include in its formal application proposing new rates, as well as the formats and instructions for filing that information, to ensure that the Commission has all the elements it needs to fulfill its statutory mandate to review PREPA's proposal and approve just and reasonable rates."¹ The notice to the public announcing the approval of Regulation 8620 and the thirty (30) day period to submit comments in writing or request an oral hearing, was published on the newspaper *Primera Hora* on July 25, 2015.

On August 24, 2015, PREPA submitted its written comments to the Commission suggesting substantive and substantial amendments to Regulation 8620. Having analyzed PREPA's suggestions, the Commission finds them to be inconsistent with the purpose of Regulation 8620 and, more importantly, with the Commission's fundamental duty to ensure that PREPA's rates are just and reasonable. We issue this Order as part of our regulatory analysis on Regulation 8620.

A. Information Requirements

Although Regulation 8620 establishes the information requirements that are usually required by public utility commissions in rate review applications, PREPA proposes to eliminate nearly all of them.² Instead of the information required in Sections 2.02 to 2.16 and 2.18, PREPA wants to include only those materials it determines are "reasonable [...] to support the application."³

¹ Order issued on July 24, 2015 in the matter *In re: Adoption of the Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority*, CEPR-MI-2015-0004.

² See, PREPA's comments on Regulation 8620, page 3.

³ Id.



The Commission rejects PREPA's suggestion. For rates to be just and reasonable, they must be based on prudent costs. Those costs then must be allocated to customer groups based on explicit, logical methodologies that assign costs to those who cause these costs. Rates designed this way cause the utility (i.e. PREPA) to act efficiently and encourage customers to consume efficiently. Without the information required in Sections 2.02 to 2.16 and 2.18, the Commission would not be able to determine if PREPA's costs are reasonable and if its cost allocation methodologies are cost-effective. Since the Commission has primary and exclusive jurisdiction to review and approve PREPA's rates, this means that -without the information required in Regulation 8620- no change to PREPA's current rates would take place.

In its comments, PREPA complains that "the requested information is too burdensome and seeks information beyond what is reasonably necessary or helpful to the rate modification process."⁴ However, as we have stated, the information requirements are no different from what is customarily required by regulatory commissions throughout the United States from utilities that have a monopoly and are subject to a "just and reasonable" standard, as it is the case with PREPA. Scrutiny and rigor is what Act 57 requires and what the public expects.

1. Waiver Requests

As an alternative to eliminating the information requirements, PREPA proposes that it be allowed to seek a waiver of particular requirements "because the rate structure will not necessarily follow each scheduled item in the Regulation."⁵ This Commission does not anticipate, and PREPA has not described, any rate structure for which the information requirements would be irrelevant.

Section 2.19 of Regulation 8620 already provides for the possibility of PREPA requesting and obtaining a waiver to comply with any of the filing requirements *but only for the limited reasons specified therein*. Should PREPA be able to identify such a situation, it may present a duly founded request to the Commission no later than thirty (30) days prior to submitting the formal application. At that time, the Commission will evaluate the request and determine if there are good cause grounds to waive any of the filing requirements.

PREPA also suggests that we amend Regulation 8620 to eliminate paragraph (C) of Section 2.19, which states the limited circumstances under which PREPA may present a waiver request, or to add a third circumstance "acknowledging that the restructuring process and negotiations with forbearance creditors may require a different approach to the evaluation and approval of the rate structure underlying PREPA's restructuring plan."⁶ PREPA needs to understand that the negotiations between PREPA and its

⁴ Id.

⁵ Id., at page 2.

⁶ Id., at page 3.



creditors shall be adjusted and conducted in light of (i) Act 57-2014 provisions, (ii) the Commission's powers, duties, orders and regulations, and (iii) PREPA's obligations to the Commission; not the other way around.

B. Flexibility in Designing Rates

PREPA asserts that the requirements in Regulation 8620 "should not be imposed without the benefit of considering the proposed rate structure that will result from PREPA's ongoing restructuring efforts."⁷ We disagree. As we discuss in more detail in Part (C) below, this approach would, without any doubt, consume more time rather than save it.

PREPA also states that "the Commission should evaluate the reasonableness of the rate structure PREPA submits as a result of its restructuring plan without any preconceived notions of a particular rate structure."⁸ We must emphasize that the Commission has no preconceived notion of any particular rate structure. In fact, Sections 2.14 and 2.15 of Regulation 8620 establish that the Commission is open to evaluate and assess approaches that are different to what is considered "traditional" within the entire electric power industry. However, regardless of the rates and rate formulas that PREPA proposes, they must be justified by their relationship to PREPA's reasonable costs. The Commission's legal mandates require us to be able to verify, and to explain to the public, that it has subjected the formal application to the detailed scrutiny necessary to protect the public from inefficiency and waste. That is the reason for the information requirements.

Regulation 8620 in no way restricts PREPA's flexibility in designing its proposal. Again, what Regulation 8620 requires is the factual support necessary to allow the Commission to perform its statutory duty to ensure that rates are just and reasonable and not unduly discriminatory. Also, Regulation 8620 does not limit the information PREPA may provide in addition to the minimum information required.

C. "Expediting" the Hearing Process

PREPA suggests that we impose no information requirements now, but rather wait until PREPA proposes its "modified rate structure[, ...] leaving the process open to further determine which information the Commission will need to evaluate the proposal."⁹ As noted above, regardless of what rate structure PREPA proposes, the Commission will need –and PREPA's formal application must contain– at least the minimum information required by Regulation 8620. To delay receiving this minimum required information until after PREPA has proposed its rates, will take more time, not less. When the Commission receives PREPA's formal application, the Commission may

⁷ Id., at page 2.

⁸ Id.

⁹ Id.



determine that it requires more information and detailed explanation.¹⁰ Any post-filing information requirements will be easier for PREPA to heed because it will have already provided essential information on costs with its initial filing of the formal application for new rates. It is in part to expedite the rate application review process that we require the information to accompany PREPA's formal application. To await the formal application and then seek explanations, as PREPA requests, would unnecessarily extend the process. We are aware of no other regulatory commission that operates that way.

PREPA suggests that we amend Regulation 8620 "so that any public hearing process can be completed in no more than thirty (30) days."¹¹ It is the Commission's intention to efficiently complete the hearing process after PREPA's formal application is filed in accordance with Regulation 8620. However, we will not impose arbitrary deadlines on this process. The time it will take the Commission to review PREPA's formal application and to conduct the related hearing process, will depend heavily on PREPA's cooperation: cooperation in supplying the information required by Regulation 8620 in a timely manner; cooperation in complying with Commission information requirements and answering discovery questions promptly and without unnecessary objections; and cooperation in responding under oath to questions posed by the Commission and others during the hearing process.

D. Pre-Filed Testimony

PREPA suggests that we eliminate Section 2.16, which requires PREPA to include Pre-Filed Written Direct Testimony in its formal application. PREPA appears to propose submitting its Application first, after which time the Commission could decide to hold "documented meetings with or verbal testimony by PREPA or its technical advisors."¹² This suggestion is also incompatible with the efficiency in the proceedings, since it would prolong them unnecessarily. Consistent with the practice by the majority of utility regulatory commissions in the United States, pre-filed written testimony shall accompany PREPA's formal application as required in Section 2.16 of Regulation 8620.

E. Documents Allegedly Outside the Control of PREPA

PREPA states that the Consulting Engineers report and PREPA's audited financial statements, both for the fiscal year ending June 30, 2014, that are required by Regulation 8620 are "not available and not under PREPA's control."¹³ Specifically, PREPA suggests that we amend the Regulation to substitute the specific list of

¹⁰ See, Section 2.18 of Regulation 8620.

¹¹ PREPA's comments on Regulation 8620, page 3.

¹² Id.

¹³ Id., at page 4.



requirements in Section 3.02 with a requirement of "periodic updates to the Commission, *as PREPA considers pertinent*."¹⁴ PREPA's suggestion is untenable.

We assume that the Consulting Engineers, and PREPA's auditor, work under a contract that makes them accountable to PREPA. PREPA, in turn, is accountable to the Commission. Therefore, PREPA shall take all necessary actions to require its contractors to provide this information.

Under Act 57, the Commission has obligations to both, the bondholders and the customers. These obligations are not in conflict, because efficient performance, reflected in just and reasonable rates based on prudent cost, is the common goal of both constituencies. These obligations become conflicting only if PREPA chooses to avoid the accountability to regulatory principles that Act 57, and this Commission impose. If PREPA wishes to "avoid unnecessary delay in the review of any modified rate structure",¹⁵ it will heed each provision of Regulation 8620.

Accordingly, the suggestions offered by PREPA in its comments dated August 24, 2015 are rejected.

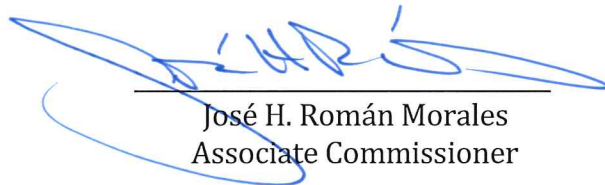
Be it hereby notified and published.



Agustín F. Carbó Lugo
Chairman

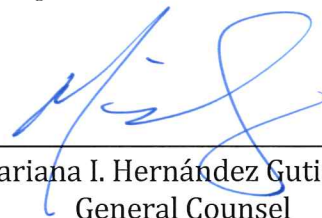


Ángel R. Rivera de la Cruz
Associate Commissioner



José H. Román Morales
Associate Commissioner

I certify that the Puerto Rico Energy Commission has so agreed on September 2, 2015. I also certify that on this date a copy of this Order was notified to PREPA by electronic mail sent to n-vazquez@aeep.com and n-ayala@aeep.com.



Mariana I. Hernández Gutiérrez
General Counsel

¹⁴ Id.

¹⁵ Id., at page 2.