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**REGULATION ON MEDIATION AND ARBITRATION PROCEDURES OF THE
PUERTO RICO ENERGY COMMISSION**

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COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

**REGULATION ON MEDIATION AND ARBITRATION PROCEDURES OF THE
PUERTO RICO ENERGY COMMISSION**

CHAPTER I - GENERAL PROVISIONS APPLICABLE TO ALL PROCEDURES

ARTICLE 1.- GENERAL PROVISIONS

Section 1.01.- Title

This Regulation shall be known as Regulation on Mediation and Arbitration Procedures of the Puerto Rico Energy Commission.

Section 1.02.- Legal Basis

This Regulation is adopted pursuant to Articles 6.3, 6.31 and 6.34 of Act No. 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act, and Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act.

Section 1.03.- Purpose

The purpose of this Regulation is to establish the rules that shall govern the mediation and arbitration procedures before the Puerto Rico Energy Commission, pursuant to provisions of Article 6.34 of Act No. 57-2014, as amended.

Section 1.04.- Application

This Regulation shall apply to all mediation and arbitration procedures before the Puerto Rico Energy Commission.

Section 1.05.- Interpretation

This Regulation shall be interpreted in a manner that promotes the highest public interest and the protection of the interests of the inhabitants of Puerto Rico. Furthermore, procedures shall be carried out in a quick, fair, and economical manner.

Section 1.06.- Provisions of Other Regulations

The provisions of this Regulation may be complemented by provisions of other regulations from the Puerto Rico Energy Commission, provided they are not

incompatible with provisions of this Regulation or with the nature of the mediation and arbitration procedures.

Section 1.07.- Unforeseen Procedures

In the event a specific procedure is not contemplated in this or another regulation of the Commission, the Commission may conduct the procedure not provided for in whatever form necessary that is not inconsistent with Act No. 57-2014, as amended.

Section 1.08.- Definitions

A) For purposes of this Regulation, the following terms shall have the meaning stated below, except where the context clearly indicates otherwise:

- 1) "AAA" refers to the *American Arbitration Association*.
- 2) "Arbitration" refers to a method of alternative dispute resolution in which an arbitrator adjudicates a controversy by means of an award. The final decision shall have the force and effect of law between the parties.
- 3) "Arbitrator" refers to the person who administers the arbitration forum. Unless a provision specifically refers to either a single arbitrator or a panel of three (3) arbitrators, or unless the context of a provision suggests otherwise, the term "arbitrator" refers to both the arbitration forum composed of one arbitrator, as well as a forum composed of a panel of three (3) arbitrators.
- 4) "Mandatory Arbitration Clause" refers to a written agreement or arrangement whose language suggests or demonstrates that the intention of the signing parties of said agreement or arrangement selected arbitration as the only method of dispute resolution between them, and excludes the possibility of an award being rendered in first instance by any other adjudicating forum.
- 5) "Commission" or "Energy Commission" refers to the "Puerto Rico Energy Commission," as well as its examining officers, administrative judges, and commissioners, when acting in the name of the Commission.
- 6) "Electric service company" includes:
 - a) The Puerto Rico Electric Power Authority or "PREPA;"

- b) Any person or entity, natural or legal, that offers services of generation, storage, billing or resale of electricity;
- c) Any person or entity, natural or legal, that has an electric power generation facility in Puerto Rico, including distributed generators in excess of 1 MW; and
- d) Any person or entity, natural or legal, that is or constitutes an “eligible business”, as defined in Act No. 73-2008, engaging in wheeling.

7) “ICC” refers to the *International Chamber of Commerce*.

8) “Mediation” refers to a voluntary non-adjudicative procedure in which a mediator assists two or more parties among which differences of opinion exist negotiate a settlement that is mutually acceptable to them.

9) “Person” includes any natural person, partnership, or legal person, regardless of how it is organized.

10) “Energy Producer” refers to any person, natural or legal, that owns and electric power facility in Puerto Rico, with the purpose of selling the electric power produced to PREPA, which constitutes an “eligible business” pursuant to Act No. 73-2008, as amended.

B) Any word used in the singular in this Regulation, shall be understood to include the plural, unless the context indicates otherwise. Likewise, the terms used in the masculine gender include the feminine and vice versa.

Section 1.09.- Dates and Terms

In computing any period conceded by this Regulation or order of the Commission, the fixed period shall begin to run on the day following the act, event, or noncompliance that triggers the period. If a period ends on a Saturday, Sunday or legal holiday, said period shall be extended until the next day that is not a Saturday, Sunday or legal holiday.

Section 1.10.- Language

A) If there is a discrepancy between the Spanish version and the English version of this Regulation, the provisions of the Spanish version shall prevail.

B) The mediation and arbitration procedures carried out pursuant to this

Regulation shall be conducted in either Spanish or English, as the parties mutually agree. In the absence of such an agreement, the procedure shall be conducted in the language the mediator or arbitrator determines.

- C) The pleadings, motions, filings and awards must be in Spanish or English, according to the undersigned's preference. Documents submitted by a party or person who does not understand Spanish or English, may be written in the vernacular language of said party or person, as long as it is accompanied by a certified translation to the Spanish or English language.
- D) Documents submitted in English shall not require a translation. However, when the translation of a document is considered indispensable for the fair adjudication of a case, the mediator or arbitrator, as the case may be, shall order the translation of the solicited documents into Spanish.
- E) Any document presented in a language other than Spanish or English shall be accompanied by a certified translation into Spanish or English.

Section 1.11.- Severability Clause

If any article, provision, word, sentence, paragraph or section of this Regulation is challenged, for any reason, before a court and declared unconstitutional or void, such sentence shall not affect, impair or invalidate the remaining provisions of this Regulation, but its effect shall be limited to the article, provision, word, sentence, paragraph or section thus declared unconstitutional or void. The nullification or invalidation of any article, word, sentence, paragraph or section in any specific case, shall not affect or jeopardize in any way its validity or enforceability in any other case, except when it is specifically and expressly invalidated for all cases.

Section 1.12.- Forms

The Commission shall adopt the forms it considers necessary to conduct procedures pursuant to this Regulation, and shall make them available to the public via its website. However, the fact that the Commission has not adopted one or more forms, is in the process of reviewing them, or the website is not in service, shall not relieve any person of his or her obligation to comply with the provisions of this Regulation or with the orders of the Commission.

Section 1.13.- Mode of Presentation

The forms, documents and appearances required by virtue of this Regulation or any order by the Commission or an arbitrator, must be presented before the Commission in electronic format in conformity with the instructions periodically set forth by the Commission by means of an order related to the electronic filing system.

If the electronic filing system is not operating or temporarily out of service, the forms, documents and appearances required by virtue of this Regulation or any order of the Commission, shall be presented before the Commission in compliance with the terms set forth periodically by the Commission through its orders.

Section 1.14.- Effect of Presentation

The presentation of a document that has been prepared or whose content has been formulated by the undersigned party, shall be equivalent to certifying that the content of the document is true and that, according to the signer's best knowledge, information and belief, formed after a reasonable inquiry, the document is based on facts, arguments, legal sources and correct information.

Section 1.15.- Confidential Information

The information, documents and work files concerning a mediation or arbitration procedure are of privileged and confidential nature, pursuant to the provisions of this Regulation and of Rule 516 of the Rules of Evidence.

Section 1.16.- Validity

Pursuant to Article 6.20 of Act No. 57-2014, as amended, this Regulation shall take effect immediately after its presentation in the Department of State and the Legislative Library.

ARTICLE 2.- RULES APPLICABLE TO MEDIATION AND ARBITRATION PROCEDURES BEFORE THE COMMISSION

Section 2.01.- Content and Form Requirements

All documents presented before the Energy Commission must comply with the requirements set forth hereunder. These requirements shall apply to all documents that give rise or may result in a mediation or arbitration procedure, to the extent that they are compatible with the specific rules provided in this Regulation for said documents:

- A) Have a heading or subheading with the name of the Commission, the name(s) of the parties, the case number (assigned by the Commission), and the nature or subject matter of the procedure. The initial document shall include the header with the names of all the parties, but later documents shall only display the name of the first party mentioned in the heading of the initial document, and the abbreviation "et al." shall be used to make reference to the rest of the parties.

- B) Be on U.S. Letter-sized paper, in 12-point font, double-spaced.
- C) The initial document presented before the Commission shall express the first name, last name, physical address, mailing address, telephone, and e-mail address of all appearing parties. During the procedure, all appearing parties must inform the Commission and the mediator or arbitrator, in writing, of any change in their contact information within a period of three (3) days, following the date on which the change occurred. Failure to comply with this requirement will result in the imposition of penalties.
- 1) If the appearing party is a corporation or a limited liability company organized under the laws of the Commonwealth of Puerto Rico, the Department of State registration number shall be included.
 - 2) If the appearing party is a person with a personal business, the name under which the party does business shall be included.
 - 3) Unless the party is represented by an attorney or the Commission determines otherwise by means of an order, the e-mail and mailing address on record, provided in accordance with this paragraph, shall be the addresses used by the Commission to notify the parties of any order or resolution, and the addresses used by the mediator, arbitrator and other appearing parties to notify copy of the filings and documents presented or issued.
- D) Documents shall indicate the date of their presentation.
- E) All documents shall contain a certification from the appearing party, or its attorney if legally represented, indicating that they have served a copy to every other party to the case of said document, as well as the vehicle used to effect said notice.
- 1) Notice to all parties shall be effected on the same day the document is presented before the Commission.
 - 2) When a party is represented by an attorney, notice shall be served to the attorney, unless the Commission, mediator or arbitrator orders that notice be sent directly to the party.
 - 3) Notice shall be sent via email to the address on record. In the event any party or attorney does not have an e-mail account, notice shall be served through personal delivery, fax, or regular mail to the

number or address, as the case may be, appearing on record. Notice shall be considered served upon being sent (via e-mail or fax) or upon being deposited in the mail.

F) The document shall be signed by the appearing party's attorney or by the party itself, if not legally represented. The signature of the party or the party's attorney shall constitute a certification that the undersigned has read the document, and that, to the best of his or her knowledge, understanding and belief, formed after a reasonable examination, the information submitted is true and accurate. The name, last names, physical address, mailing address, telephone, and e-mail address of the undersigned shall be indicated on top or beneath the signature. When an attorney appears in representation of a party, every document must also include the attorney's bar license number.

1) All attorneys who have appeared in representation of a party or petitioner and renounce the legal representation of said party or petitioner during the procedure must provide written notice to the Commission and the mediator or arbitrator on or before the period of ten (10) days before the resignation takes effect. In the case of a sudden resignation, he or she must notify them in or before the end of three (3) days after which the resignation is effective, and specify the reasons why the resignation is unexpected.

G) The appearing parties may attach documents to any request, answer, motion or writing presented, which shall be considered part of the request, answer, motion or writing to which they are annexed. However, its admissibility as evidence and its probative value shall be determined in the corresponding procedural incident.

Section 2.02.- List of Mediators or Arbitrators

Only those identified on the Commission's list of mediators and arbitrators may serve as such, as the case may be, in mediation and arbitration procedures. The mediator or arbitrator shall be selected by the parties, or in the absence of this, by the Commission, from the Commission's above-referenced list. The list of mediators and arbitrators shall be available to the public through the Commission's website.

Section 2.03.- Hiring of a Mediator or Arbitrator; Payment of Fees

The parties in a mediation or arbitration process shall be responsible for the payment of the mediator or arbitrator's fees, subject to the terms and conditions agreed upon between the parties and the mediator or arbitrator, as the case may be.

If the parties have not agreed on how the payment of fees shall be distributed among themselves prior to the start of the mediation or arbitration process, said obligation shall be distributed equally among all parties, lest the Commission determines otherwise.

The Commission shall adopt a contract form for hiring mediation or arbitration services, which shall be available to the public through the website of the Commission. Said contract must be signed by all parties and the mediator or arbitrator selected before the start of the mediation or arbitration procedure. Mediators or arbitrators may not accept or receive gifts, benefits or payments that have not already been agreed upon in the contract with the parties.

Section 2.04.- Appearance; Legal Representation

In all mediation and arbitration procedures, the parties may appear by themselves or represented by an attorney, unless the mediator or arbitrator compels the appearance of a party even though the party is legally represented.

Section 2.05.- Waiver of Objections

When a party does not timely object to a breach, incurred by the mediator or arbitrator, of this Regulation or any part whatsoever of the mediation or arbitration petition, it shall be understood that the party has waived the right to object to said breach, unless the party asserts the existence of just cause for not objecting on time.

Section 2.06.- Agreements to Execute Contracts or Contract Proposals that Result from Mediation or Arbitration Procedures

The parties must comply with the ordinary procedure set forth by the Commission to request the approval of any agreement to execute a contract or contract proposal that results from a mediation or arbitration procedure and that requires the Commission's consent for its adoption and entry into force, by virtue of Act No. 57-2014, as amended, or any other regulation of the Commission.

The concession of an agreement to execute a contract or the concession of a contract proposal, product of a mediation or arbitration process, may in no way be understood as a means to avoid complying with the rules and procedures related to the adoption of contracts by the Commission, that condition the validity and enforceability of said contracts.

Section 2.07.- Frivolous Conduct

The refusal of any party to cooperate or act in good faith during the course of a mediation or arbitration procedure shall be considered frivolous conduct. At the request of a party or *motu proprio*, the mediator or arbitrator, as may be the case,

may inform the Commission of the foregoing behavior at any time during the mediation or arbitration process. In the exercise of its discretion, the Commission may take reasonable measures to protect any party adversely affected by frivolous actions or willful misconduct.

CHAPTER II. PROVISIONS APPLICABLE TO MEDIATION PROCEDURES

ARTICLE 3.- INITIATION OF A MEDIATION PROCEDURE

Section 3.01.- Request for Mediation

- A) Any person negotiating an agreement with PREPA or an energy provider that is related to wheeling, capacity rates, interconnection, power purchase, or any other matter as established by the Commission through regulation, may request the Commission, at any time during the negotiation, to appoint a person to intervene as a mediator, and assist the parties in the solution of any conflict that arises or has arisen during the course of the negotiation.
- B) Any person who has a conflict or disagreement with PREPA or an energy provider, related to the interpretation or compliance of a contract that involves wheeling, interconnection, net metering, power purchase, or any other contract concerning distributed power generation systems, may request the Commission, at any time before an action is filed before the Commission, to appoint a person to intervene as a mediator, and assist the parties in the solution of any conflict that has arisen related to the interpretation or compliance of any contract.
- C) Any or all parties to the negotiation process of any agreement mentioned in paragraph (A) of this Section may file a request for mediation.
- D) All mediation requests must state the subject matter of the negotiation or conflict for which the intervention of a mediator is requested, as well as describe the reasons for the disagreement that up until the date of presentation of the request have arisen between the parties of the negotiation.

Section 3.02.- Notice of the Mediation Procedure before the Commission

- A) When a request for mediation is not signed by every person who is a party to the negotiation of the agreement or that would be a party to the proposed agreement, those who appear in the mediation request are responsible for notifying a true and exact copy of said request to the rest who are part of the negotiation of the agreement or would be part of the proposed agreement and have not appeared in the initial request.

B) The notice referred in paragraph (A) shall be made within ten (10) days following the date of presentation of the request before the Commission. A true and exact copy of the request (with the mark or seal of the Clerk of the Commission), including all attachments, if any, shall be sent via certified mail and e-mail.

1) Notice to an electric service company shall be sent, along with the request and additional documents, to the mailing address that, in compliance with the regulations and orders of the Commission, said company provided as the mailing address where it shall receive notice of claims, requests, or investigations initiated or filed against the company before the Commission. Notice shall be considered satisfied on the date on which, according to the *United States Postal Service* (USPS), it is available for pickup.

2) Notice to a public entity of the Commonwealth of Puerto Rico shall be sent, along with the request and additional documents, to the mailing address said public entity provided, which is published in the Agency Directory available at <http://www2.pr.gov/Directorios/Pages/DirectoriodeAgencias.aspx>. In the case of a municipality, the summons and other documents shall be sent to the mailing address the municipality provided, which is published in the Puerto Rico Directory of Municipalities available at <http://www2.pr.gov/Directorios/Pages/DirectoriodeMunicipios.aspx>. Notice shall be considered satisfied on the date on which, according to the *United States Postal Service* (USPS), it is available for pickup.

3) Notice to any other person shall be sent to their last known mailing address and e-mail address, along with the request and any additional documents.

C) Within a period of ten (10) days following the notification of the mediation request, the appearing parties in the request shall file a motion to inform said notification to the Commission. Copy of proof that notice was served shall be attached to the motion.

Section 3.03.- Response to the Request for Mediation

A) Within a period of twenty (20) days after having been notified of the request for mediation, the persons to whom the request is addressed must present their response to the Commission and notify a copy of said response to each

of the parties who requested the mediation process. In their response, the persons to whom the request is addressed shall inform whether they accept or reject the invitation to participate in the mediation process before the Commission in order to solve their differences and/or execute any contracts or agreements identified in the request.

- B) Upon request of the requested persons, the Commission may extend the terms for responding to the request for mediation.
- C) The request for mediation shall be considered rejected:
 - 1) When any of the requested persons does not respond to the mediation request within the term provided in paragraph (A) of this Section.
 - 2) When any of the requested persons flatly rejects or does not agree to the mediation requested by the requesting persons.

ARTICLE 4.- SELECTION, APPOINTMENT, RECUSATION AND REPLACEMENT OF THE MEDIATOR

Section 4.01.- Selection of the Mediator

The parties may agree to select a mediator from the list provided by the Commission to serve as such in the procedure between said parties. The parties shall inform the Commission of their selection in the request for mediation (if signed by all parties) or through a motion signed by all parties and presented within a period of ten (10) days from the date of presentation of the request for mediation.

If the parties fail to timely agree on the selection of a mediator, the Commission shall make the corresponding selection.

Section 4.02.- Appointment of the Mediator

- A) Within a period of ten (10) days following the written notice of the selection of the mediator, in accordance with Section 4.01 of this Regulation, the Commission shall formally appoint the mediator and notify the parties and the mediator.
- B) The mediator formally appointed by the Commission has ten (10) days following the notice of his or her appointment to inform, in writing, the Commission and the parties of his or her acceptance or rejection of said appointment. If the mediator does not timely respond, it shall be construed that he or she has renounced the appointment.

Section 4.03.- Recusation and Replacement of the Mediator

- A) A mediator shall be replaced in the case of his or her demise, renouncement of the appointment, or recusation by the Commission, pursuant to this Section and Section 5.01 of this Regulation.
- B) The Commission may also order the recusation of a mediator, *motu proprio* or upon request of a party, if an existing impediment hinders the proper performance of the mediator, or if the mediator is failing to comply with his or her duties and responsibilities diligently. Before ordering the replacement of the mediator, as set forth in this paragraph, the Commission shall provide the parties and the mediator an opportunity to make statements concerning the reasons or issues that may give rise to the replacement of the mediator.
- C) When a mediator is recused or his or her position becomes vacant, the procedures set forth in this Regulation for the appointment and replacement of mediators, as well as the continuation of the proceedings, shall be followed.

ARTICLE 5.- COURSE OF THE MEDIATION PROCEDURE

Section 5.01.- Rules of Conduct for the Mediator

- A) In the exercise of his or her duties as mediator and while holding said position, every mediator shall observe a conduct that conforms to the highest ethical standards and shall abstain from engaging in any conflicting actions or omissions, as well as actions or omissions that appear to be improper or put in doubt his or her objectivity and rectitude as mediator. Moreover, mediators shall observe and comply with all obligations applicable to Commissioners, pursuant to Regulation No. 8542, Regulation on the Standards of Ethical Conduct for Employees of the Puerto Rico Energy Commission and the Principles that Should Govern the Commissioners' Actions as Representatives of the Commission, provided they are compatible with the provisions stated herein.
- B) Furthermore, while acting in the capacity of mediator, a mediator shall notify the Commission and the parties, in writing, of any facts or circumstances that that might put in doubt his or her impartiality before the parties. The mediator must issue said notice within the period of ten (10) days from the date on which he or she learns of the facts or circumstances that might put in question his or her objectivity. The parties shall have an opportunity to respond and express their viewpoint in regards to the information presented by the mediator.

- C) If any party learns that the mediator is involved in conduct contrary to the applicable ethical standards, said party shall inform the Commission, the mediator, and the other parties, in writing, within a period of ten (10) days from the date on which the party learned of the facts or circumstances that give rise to the conflict. The mediator and the other parties shall have an opportunity to respond and express their viewpoint with regard to the information presented.
- D) When documents are presented before the Commission pursuant to paragraphs (B) and (C) of this Section, the Commission shall examine the arguments presented by the parties and the mediator, and shall rule on the matter through a reasoned resolution. In its resolution, the Commission may order the recusation and replacement of the mediator if it understands that the objectivity, rectitude and integrity of the procedures would otherwise be affected.

Section 5.02.- Faculties of the Mediator

- A) The mediator shall guide and conduct the procedures in a manner that encourages and facilitates the execution of an agreement or the resolution of a conflict between the parties. The mediator shall create an atmosphere that encourages the prompt resolution of conflicts or disagreements between the parties.
- B) Upon request of all the parties, the mediator may—if he or she deems appropriate and consistent with the nature and effectiveness of the procedure— express his or her opinion, in matters of law as well as fact, with regard to the positions and arguments of the parties. The mediator's opinion shall not bind the parties or the mediator, but shall constitute a mechanism that offers the parties an informed analysis from an independent third party with the sole purpose to aid the parties in finding a solution to their disagreements.
- C) The mediator shall ensure that the procedure is carried out in conformity with the provisions of this Regulation and the parties' common interests.
- D) At the initial phase of the mediation procedure, the mediator and the parties shall discuss and decide how the mediation process will be conducted. Therefore, the parties may agree that the mediation procedure be governed, in addition and supplementary to this Regulation, by the mediation rules of the AAA or ICC.
- E) The mediator shall have complete discretion to manage the mediation process in conformity with the provisions of this Regulation, the agreements

set forth by the parties, if any, and the supplementary mediation rules chosen by the parties to govern the process, if any. Nonetheless, the mediator may not make decisions contrary to the express will of the parties, nor impose his or her criteria above theirs with regard to the determination of a solution to the conflict or the differences addressed in the mediation.

- F) The mediator may not act as arbitrator or attorney of a party in any arbitration, administrative, or judicial proceeding concerning the controversy at issue in the mediation process.

Section 5.03.- Confidentiality

- A) As a general rule, information and documents offered, discussed, submitted or shared during the mediation process, as well as work files produced during the process, are of privileged and confidential nature.
- B) Communications between the parties, communications between the parties and the mediator, and communications issued by the mediator to the parties related to the mediation process shall remain confidential.
- C) The parties shall abstain from making any reference to the procedures and matters discussed during the mediation process either in forums or to persons not involved in the process.
- D) The rules of confidentiality referred to in this Section exclude proceedings made prior to the initiation of the mediation process or after its conclusion, the notice of the conclusion of the process, and agreements reached by the parties as a result of the mediation process.
- E) Throughout the mediation process, the mediator, the parties and their attorneys, as well as experts, witnesses or third parties involved in said process, shall maintain and protect the confidentiality of all information and documentation offered, discussed, presented or shared during the mediation process.
- F) The confidentiality rules set forth herein shall not apply to documents created, obtained or produced by a party prior to the initiation of the mediation process. In light of this, said documents may be used and disclosed by the parties, subject to the limits, privileges and responsibilities set forth in the Rules of Evidence or any other applicable law or regulation.
- G) Unless the parties decide otherwise, meetings conducted during the mediation process shall be private and closed to third parties not involved in the mediation process.

Section 5.04.- Conclusion of the Mediation Process

A) The mediation process shall conclude:

- 1) When any one of the parties withdraws from mediation or informs that he or she no longer wishes to participate in it;
- 2) When the parties and the mediator inform that the parties have not been able to reach an agreement or solve their differences; or
- 3) When the parties reach an agreement to solve all their conflicts and differences.

B) Within the period of ten (10) days from the date on which the mediation process has concluded, the mediator shall inform the Commission, in writing, that the mediation has ended and shall explain the circumstances that led to its conclusion. The mediator shall notify copy of said writing to all the parties that have participated in the mediation process.

ARTICLE 6.- PROCEDURES AFTER MEDIATION

Section 6.01.- Discussion of Conflicts in Other Forums

In the event the mediation process does not result in a solution or agreement satisfactory to the parties involved, these may initiate an arbitration process pursuant to the provisions of Chapter III of this Regulation, provided the dispute is arbitrable according to Section 7.01 of this Regulation.

In the absence of a joint request or a mandatory arbitration clause between the parties, or in the event that the controversy does not arise during the course of the negotiation regarding the agreements mentioned in Section 7.01 of this Regulation, any party may initiate an adjudicative procedure before the Commission by filing a complaint pursuant to Regulation No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings .

CHAPTER III. PROVISIONS APPLICABLE TO THE ARBITRATION PROCEDURES

ARTICLE 7.- INITIATION OF ARBITRATION PROCEDURES

Section 7.01.- Arbitrable Disputes before the Puerto Rico Energy Commission

- A) In the event that controversies arise during the negotiation of an agreement with PREPA or an energy provider related to wheeling, capacity rates,

interconnection, or power purchase, any person part of the negotiation may request, during the course of the negotiation, that the aforementioned controversies be solved through an arbitration process pursuant to the provisions stated herein. Any other controversy may be addressed by the Commission in accordance with Regulation No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings.

- B) The Commission shall be in charge of the administration of all arbitration procedures initiated after the presentation of a request for arbitration.

Section 7.02.- Presentation and Content of Arbitration Request

- A) All requests for arbitration before the Commission shall be submitted via the electronic filing system, in accordance with the instructions set forth by order of the Commission. If the electronic filing system is not operating or temporarily out of service, requests for arbitration shall be presented to the Clerk of the Commission, pursuant to the provisions stated herein and the instructions set forth by order of the Commission.
- B) Every arbitration request shall be presented jointly and shall include the signature and information of all the participants of the arbitration process.
- C) Notwithstanding the provisions of paragraph (B) of this Section, when the parties have signed a mandatory arbitration clause prior to the presentation of the arbitration request, the consent of the parties who granted said clause or arbitration agreement shall constitute the approval necessary to present a joint request for arbitration. By virtue of the foregoing, when the parties have granted a mandatory arbitration clause, the joint request for arbitration shall only need the information and signature of one of the parties of said mandatory arbitration clause.
- D) All joint requests for arbitration presented before the Commission shall specify the following:
 - 1) If the parties have signed an arbitration clause, in which case, a true and exact copy of the clause shall be affixed to the request filing;
 - 2) The matters or disputes the parties wish the Commission to rule upon through an arbitration process;
 - 3) The pleadings for which there is no genuine controversy, and the pleadings for which there is a genuine controversy;

- 4) The arguments of each party in relation to the matters in controversy;
 - 5) Any agreement between the parties regarding the arbitration process; for example, if the process and the controversies shall be heard and ruled upon by one arbitrator or a panel of three (3) arbitrators, the selection of arbitrators, and the selection of the supplementary set of rules from the AAA or ICC that shall govern the process;
 - 6) A list of all the witnesses the parties intend to present in the arbitration process, along with a summary of the testimony of each witness. If the parties intend to present expert witnesses, the *curriculum vitae* of each of them, and their expert report, shall be submitted as well;
 - 7) A detailed list of each document or piece of evidence the parties intend to present in the arbitration process, along with a description of the purpose for its presentation;
 - 8) An explanation, by each party, of the nature and circumstances of the controversy and the grounds that support the remedy requested;
 - 9) The remedy each party requests; and
 - 10) Any other information the parties may consider necessary or convenient in order to facilitate a prompt adjudication of the dispute.
- E) When an arbitration request, not signed by each of the persons intended by the appearing party to be included as parties to the arbitration process, is presented to the Commission, said request shall contain the information required in paragraph (D) of this Section as applicable to each appearing party. In addition, the request for arbitration shall include an explanation of the reasons why any of the persons who signed the mandatory arbitration clause is not an appearing party in the arbitration request.

Section 7.03.- Notice of the Arbitration Request to Parties that Signed the Mandatory Arbitration Clause but Do Not Appear in the Request

- A) The appearing parties in an arbitration request that does not include as appearing parties all the persons who signed a mandatory arbitration clause, are responsible for notifying every person who signed the clause and does not appear in the request the summons issued by the Commission, along with a copy of the filed arbitration request.

B) Within a period of fifteen (15) days following the filing an arbitration request before the Commission, the summons issued by the Commission shall be sent via certified mail and e-mail, along with a true and exact copy of the request (with the mark or seal of the Clerk of the Commission), including any attachment, to every person who signed the mandatory arbitration clause and does not appear in the arbitration request.

1) Notice to an electric service company shall be sent to the mailing address that, in compliance with the regulations and orders of the Commission, said company provided as the mailing address where it shall receive notice of claims, requests, and investigations filed against them before the Commission. Notice shall be considered satisfied on the date in which, according to the *United States Postal Service* (USPS), it is available for pickup.

2) Notice to a public entity of the Commonwealth of Puerto Rico shall be sent to the mailing address of the public entity, which is published in the Directory of Agencies available at <http://www2.pr.gov/Directorios/Pages/DirectoriodeAgencias.aspx>. In the case of a municipality, the summons and other documents shall be sent to the mailing address of the municipality, which is published in the Directory of Municipalities of Puerto Rico available at <http://www2.pr.gov/Directorios/Pages/DirectoriodeMunicipios.aspx>. Notice shall be considered satisfied on the date in which, according to the *United States Postal Service* (USPS), it is available for pickup.

3) Notice to any other person shall be sent to their last known mailing address and e-mail address.

C) Within a period of ten (10) days following their having notified the arbitration request to the non-appearing parties, the appearing parties in the request shall file a motion informing the Commission of the aforementioned notice. Copy of proof that notice was effected or served shall be attached to the motion.

Section 7.04.- Response to the Arbitration Request by Parties that Have Signed the Mandatory Arbitration Clause but Do Not Appear in the Request

A) Within the period of twenty (20) days from the date of having been notified of the arbitration request, the parties who have signed a mandatory arbitration clause but do not appear in the request shall present the Commission their response to said request. The response shall specify:

1) The admission or denial of the pleadings formulated in the request

and the party's version of the facts;

- 2) The arguments regarding the dispute whose adjudication is being requested;
- 3) Any challenge or objection concerning the validity of the arbitration clause or the arbitrability of the controversies whose adjudication is being requested;
- 4) The party's position regarding the agreements referred to in the arbitration request;
- 5) The matters or controversies whose adjudication the parties request to the Commission through an arbitration process;
- 6) A list of all the witnesses the parties intend to present in the arbitration process, along with a summary of the testimony of each witness. If the parties intend to present expert witnesses, the *curriculum vitae* of each of them, and their expert report, shall be submitted as well;
- 7) A detailed list of each document or piece of evidence that the parties intend to present in the arbitration process, along with a description of the purpose for its presentation;
- 8) The party's position on the remedy requested;
- 9) The remedy requested by the party; and
- 10) Any other information the parties may consider necessary or convenient in order to facilitate the adjudication of the dispute.

- B) A copy of the response shall be served to the rest of the parties involved in the arbitration process on the same day of its presentation to the Commission.

ARTICLE 8.- SELECTION, APPOINTMENT, RECUSATION AND REPLACEMENT OF THE ARBITRATOR

Section 8.01.- Nature of the Arbitration Forum and Selection of Arbitrators

- A) In light of the arbitration clause or joint request accorded by the parties, as the case may be, the arbitration process shall be managed by an arbitrator

and the controversies addressed in the request shall be ruled upon either by one (1) arbitrator or a panel of three (3) arbitrators.

- B) When the parties involved in the arbitration process have not agreed, in the arbitration clause or joint request, upon the nature of arbitration forum, the arbitration process shall be managed, and the controversy shall be adjudicated, by one (1) arbitrator.
- C) In any case, the arbitrator or the members of the panel of three (3) arbitrators shall be selected from the Commission's list of arbitrators. The list of arbitrators shall be available to the public on the Commission's website.
- D) When the parties have agreed that the process shall be conducted before a panel of arbitrators, a period of ten (10) days following the date of the presentation of the joint request shall be granted to inform the Commission, in writing, of their selection of two (2) of the arbitrators who shall be part of the panel, unless the parties have stated in their joint request their selection of those two (2) arbitrators.
 - 1) If the parties fail to timely inform the Commission their selection of the two (2) arbitrators, the Commission shall make the corresponding selection;
 - 2) The two (2) arbitrators selected by the parties shall choose the third member of the panel within ten (10) days from their designation as arbitrators. In the event that the two arbitrators fail to timely select the third member of the panel, the Commission shall make the corresponding selection;
 - 3) By a majority decision, the panel of arbitrators shall determine which of the three members shall serve as president of the panel. The panel shall inform the Commission and the parties, in writing, of the designation of the president within five (5) days following the date the third member of the panel was designated. If the panel of arbitrators fails to timely designate its president, the Commission shall make the corresponding determination.
- E) When the parties have agreed that the process shall be conducted by one (1) arbitrator, or when the dispute is to be heard by one (1) arbitrator pursuant to paragraph (B) of this Section, the parties shall inform the Commission, in writing, of the person selected to conduct the procedures. The parties shall inform the Commission their selection of the person who will serve as arbitrator either in their joint request or in a motion signed by all parties

and presented within ten (10) days from the date of presentation of the joint request or the date of presentation of the response to the arbitration request, in accordance with Section 7.04 of this Regulation. If the parties fail to timely inform the selection of the arbitrator, the Commission shall make the corresponding selection.

Section 8.02.- Appointment of the Arbitrator

- A) Upon notice to the Commission of the selection of the arbitrator, in compliance with Section 8.01 of this Regulation, the Commission shall formally appoint each arbitrator within the period of ten (10) days following the date on which notice of the selection of the arbitrator was served to the Commission, and shall notify said appointment to all the parties and arbitrators.
- B) The arbitrators formally appointed by the Commission shall have ten (10) days following the notice of their appointment to inform, the Commission and the parties, in writing, of their acceptance or rejection of said appointment. If the arbitrator fails to timely respond to the designation, it shall be construed that he or she has rejected the appointment.

Section 8.03.- Recusation and Replacement of the Arbitrator

- A) An arbitrator shall be replaced in the case of his or her demise, renouncement of the appointment, or recusation by the Commission pursuant to this Section and Section 9.01 of this Regulation.
- B) The Commission may also order the recusation and replacement of an arbitrator, *motu proprio* or at the request of a party or another arbitrator who is a member of the same panel, when it determines that an existing impediment hinders the proper performance of the arbitrator, or when the arbitrator is failing to comply with his or her duties and responsibilities diligently. Before ordering the replacement of an arbitrator, as set forth in this paragraph, the Commission shall provide the parties and the arbitrator an opportunity make statements concerning the reasons or issues that may give rise to the the replacement of the arbitrator.
- C) When an arbitrator is recused or his or her position becomes vacant, the procedures set forth in this Regulation for the appointment and replacement of arbitrators, as well as the continuation of the proceedings, shall be followed.

ARTICLE 9.- COURSE OF THE ARBITRATION PROCEDURE

Section 9.01.- Rules of Conduct for the Arbitrator

- A) In the exercise of his or her duties as arbitrator and while holding said position, every arbitrator shall observe a conduct that conforms to the highest ethical standards and shall abstain from engaging in any conflicting actions or omissions, as well as actions or omissions that appear to be improper or put in doubt his or her objectivity and rectitude as arbitrator. Moreover, arbitrators shall observe and comply with all the obligations applicable to Commissioners, pursuant to Regulation No. 8542, Regulation on the Standards of Ethical Conduct for Employees of the Puerto Rico Energy Commission and the Principles that Should Govern the Commissioners' Actions as Representatives of the Commission, provided they are compatible with the provisions stated herein.
- B) Arbitrators may not act as mediators or attorneys of a party in any mediation, administrative or legal proceeding related to any controversy in which he or she intervened as arbitrator.
- C) Moreover, while acting in the capacity of arbitrator, arbitrators shall notify the Commission and parties, in writing, of any facts or circumstances that might put in doubt the arbitrator's impartiality and independence before the parties. The arbitrator must issue said notice within the period of ten (10) days from the date on which he or she learns of the concerning facts or circumstances. The parties shall have an opportunity to respond and express their viewpoint with regard to the information stated by the arbitrator.
- D) If any party learns that the arbitrator or any member of the arbitration panel is engaging in conduct contrary to the applicable ethical standards, said party shall inform the Commission, arbitrator, members of the arbitration panel, and other parties, in writing, within a period of ten (10) days following the date on which the party learned of the facts or circumstances that constitute the conflict. The arbitrator, members of the panel, and other parties shall have an opportunity to respond and express their viewpoint with regard to the information presented by the arbitrator.
- E) When documents are presented before the Commission pursuant to paragraphs (B) and (C) of this Section, the Commission shall examine the arguments presented by the parties and the arbitrator, and shall rule on the matter through a reasoned resolution. In its resolution, the Commission may order the recusation and replacement of the arbitrator if it understands that the objectivity, rectitude and integrity of the procedures would otherwise be affected.

- F) The arbitrator shall not be liable for damages before any party for acts or omissions incurred during the legitimate exercise of his or her duties as part of the arbitration process.

Section 9.02.- Seat of the Arbitration Procedures

- A) The seat of the arbitration process shall be the Commonwealth of Puerto Rico.
- B) The arbitrator may hold hearings and meetings anywhere he or she considers appropriate, unless agreed otherwise by the parties in the joint request or in the mandatory arbitration clause.
- C) The arbitrator may rule upon the dispute anywhere he or she considers appropriate.

Section 9.03.- Rules that Govern the Arbitration Procedures

- A) The arbitration procedures before the Commission shall be governed by the provisions stated herein and by the supplementary arbitration rules of the AAA or ICC that the parties may select upon agreement.
- B) The parties to an arbitration procedure before the Commission may select, upon agreement, the AAA or ICC arbitration rules that shall govern the procedures in addition and supplementary to this Regulation and Act No. 57-2014, as amended. Said agreement may be included and thus informed to the Commission:
 - 1) In the arbitration clause granted by the parties;
 - 2) In the joint request for arbitration presented before the Commission;
or
 - 3) In a motion signed by all parties to the arbitration procedure and presented no later than ten (10) days following the date of presentation of the response to the arbitration request, pursuant to Section 7.04 of this Regulation.
- C) When the parties do not select, upon agreement, the aforementioned AAA or ICC arbitration rules that shall apply to the arbitration process, pursuant to paragraphs (A) and (B) of this Regulation, the arbitrator shall make the selection in the exercise of his or her discretion and shall inform the Commission of the selection. In that case, the arbitrator shall make the

corresponding selection within ten (10) days following the date of presentation of the joint arbitration request, if said request does not state the parties' selection, or within ten (10) days following the date on which the term to present the motion has expired, pursuant to sub-paragraph (B) (3) of this Section.

- D) In any case, the provisions of the supplementary AAA or ICC arbitration rules selected by the parties or the arbitrator shall govern the arbitration procedures, provided they are compatible with the provisions of this Regulation.

Section 9.04.- Case Management Order

- A) As soon as the Commission issues the necessary appointments for the functioning of the arbitration forum, the arbitrator shall issue a Case Management Order in which he or she shall notify the initiation of the procedures and set forth the rules that shall govern the arbitration process. Said Order shall contain:

- 1) The name and contact information of each party and the attorneys, if any, acting in representation of each party in the arbitration process;
- 2) The e-mail address or mailing address, in absence of the former, where communications, resolutions, orders or decisions shall be sent in order to notify the parties and arbitrator;
- 3) An exposition on the nature of the controversies that are being addressed in the arbitration process, and the solution requested by the parties;
- 4) An itinerary on the development or progress of the procedures with dates on which the arbitrator expects certain phases or incidents of the procedure to be carried out or completed;
- 5) The places where the arbitrator expects to hold meetings or hearings;
- 6) The identification of the supplementary AAA or ICC rules that shall govern the process in addition to the provisions of this Regulation;
- 7) The month and year the arbitrator expects to pronounce the final award of the case; and
- 8) Any other information the arbitrator considers necessary or convenient.

Section 9.05.- Hearings, Conferences, or Meetings

- A) The arbitrator shall announce or serve summons to all hearings, conferences or meetings at least ten (10) days prior to the date of the hearing, conference, or meeting, unless the parties and any person compelled to appear have waived said notification term.
- B) All the parties to the process shall have the right to appear in any hearing, conference, or meeting convened by the arbitrator represented by an attorney.
- C) The hearings, conferences, and meetings shall be held in private and shall not be open to people who are not party to the procedure, unless agreed upon by the parties.
- D) When a party fails to appear at a conference, meeting, or hearing to which the party has been properly convened and notified, and said party does not timely present a fair cause justifying his or her nonappearance, the arbitrator may proceed with the hearing, conference, or meeting in the absence of said party.

Section 9.06.- Evidence

The parties shall present as evidence the information, testimonies and documents that are pertinent for the adjudication of the controversy in accordance with the instructions and orders of the arbitrator, as prescribed by the provisions of this Regulation and the supplementary AAA or ICC rules that shall govern the process. The arbitrator or panel of arbitrators may, *motu proprio* or upon request of a party, summon witnesses, carry out visual inspections or request the production of documents.

The arbitrator shall determine the relevance, reliability and admissibility of the evidence offered and presented. The matters regarding privileges shall be governed by the Rules of Evidence. All evidence shall be presented in the presence of the arbitrator or panel of arbitrators, as may be the case, and all parties, except when a party is absent or has waived the right to be present, or when the evidence is accompanied by a petition to rule upon the dispute summarily.

Section 9.07.- Provisional or Precautionary Measures

Upon request of any party, the arbitrator may take provisional or precautionary measures to prevent the dispute from becoming academic and/or to provisionally protect the rights of a party.

ARTICLE 10. THE ARBITRATION AWARD

Section 10.01.- Pronouncement of the Award

- A) Following the procedural incidents required to award the dispute for which arbitration is requested, the arbitrator shall formulate the final award as prescribed in this Article.
- B) Before issuing an award, the arbitrator may consult with the Commissioners or the plenary of the Commission on matters related to the public energy policy, the provisions of Act No. 57-2014, any other law that regulates the electric industry, or the Commission's regulations.
- C) Every award issued as a result of an arbitration procedure conducted in accordance with this Regulation shall exclusively rule upon the controversies addressed in the arbitration request raised while negotiating the agreements indicated in Section 7.01 of this Regulation.
- D) The findings and conclusions in any award shall be made in accordance with the law, the regulations governing the electric industry, and the energy public policy of the Commonwealth of Puerto Rico, as set forth by the Energy Commission and the Commonwealth Energy Public Policy Office.
- E) Every award shall expound the grounds on which it is based. In the event that controversies of facts exist between the parties, the award shall also include the findings of fact.
- F) Any award shall be considered pronounced where the arbitration took place and on the date of its issuance.
- G) If the arbitration procedure is conducted by a panel of arbitrators, the award shall be decided by a majority. In the absence of a decision determined by the majority of the members of the panel, the president of the panel shall dictate the award.

Section 10.02.- Award in Absence of a Party

- A) When a party fails to appear during the procedures, the arbitrator may continue with the arbitration process and pronounce the award based on the evidence presented.
- B) Notwithstanding paragraph (A) of this Section, an award shall not be granted based solely on the absence of a party.

Section 10.03.- Time Limit for Issuance of the Award

The arbitrator or panel of arbitrators shall issue a final award within one hundred and eighty (180) days following the date on which the formal arbitration procedure was initiated, unless: (i) exceptional circumstances impair the proper adjudication of the dispute within such term; or (ii) the parties to the arbitration process consent in writing to the extension of such term.

Section 10.04.- Notice of the Award

The arbitrator or the president of the arbitration panel shall submit the original version of the award to the Clerk of the Commission in order for him or her to file and serve notice to the parties and the Commission.

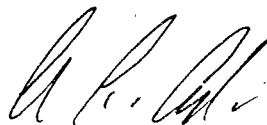
Section 10.05.- Binding Character of the Award

- A) The award shall be a public document.
- B) All awards are binding for the parties. Upon submitting their dispute to arbitration pursuant to the provisions of this Regulation, the parties agree to comply in a prompt manner with the awards pronounced throughout, and at the end of, the arbitration process.

Section 10.06.- Correction of Clerical Errors

The arbitrator may correct clerical errors in the award at any time *motu proprio* or upon request of a party. These corrections shall be notified to the parties and the Commission.

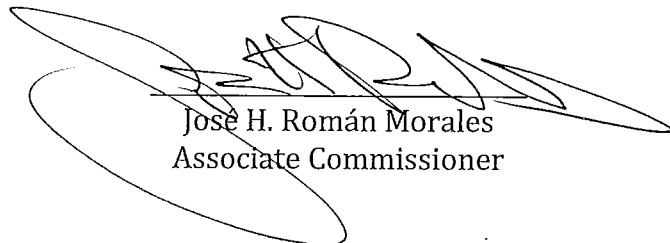
This was agreed upon by the Commission in San Juan, Puerto Rico, the 6 of February of 2015.



Agustín F. Carbó Lugo
President



Ángel R. Rivera De La Cruz
Associate Commissioner



José H. Román Morales
Associate Commissioner