

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION



NATIONAL PUBLIC FINANCE GUARANTEE
CORP., Petitioner

V.

PUERTO RICO ELECTRIC POWER
AUTHORITY, Respondent

No.: CEPR-QR-2015-0002

SUBJECT: ORDER TO SHOW CAUSE; RATE
REVIEW; TEMPORARY RATE

RESOLUTION

On September 17, 2015 National Public Finance Guarantee Corporation (National), which describes itself as the successor in interest to MBIA Insurance Corporation and insurer of payment of principal and interest of nearly \$1.4 billion dollars of bonds issued by the Puerto Rico Electric Power Authority (PREPA), filed before the Puerto Rico Energy Commission (Commission or Energy Commission) a *Petition for Rate Review and Establishment of Temporary Electricity Rate* (Petition). In the Petition, National requests this Commission to: (1) order the consolidation of its Petition with the matter *In re: Review of Rates of the Puerto Rico Electric Power Authority*, No. CEPR-AP-2015-00001; (2) establish a temporary base rate increase of at least 4.2 cents per kilowatt hour (kWh) over PREPA's existing rates while the Commission's rate review is pending; (3) order PREPA to respond to the Petition within fourteen (14) days of service; and, (4) complete the consolidated rate review proceeding within four months of the filing of National's Petition.

For the reason set forth in this Resolution, National's Petition is DENIED.

I. Request for Temporary Base Rate Increase

On May 29, 2015, the Commission issued a First Order on Rate Case Proceeding (First Order) stating, among other things, that the Commission will issue a regulation on rate filing requirements to ensure it has the information needed to establish just and reasonable rates.¹ On July 24, 2015, the Commission enacted Regulation 8620, known as Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority (Regulation 8620). The purpose of Regulation 8620 is to establish the information PREPA must include in its formal application proposing new rates to ensure that the Commission has all the elements it needs to fulfill its statutory mandate to approve just and reasonable rates.²

¹ First Order on Rate Case Proceeding No. CEPR-AP-2015-0001 of May 29, 2015 at pages 1-2.

² Order No. CEPR-MI-2015-0004 of July 24, 2015, at pages 1-2.

Any rate review by the Commission, including a temporary rate, must be based on sufficient substantial evidence assessed in an adjudicatory proceeding. In its rate review process, the Commission must thoroughly evaluate PREPA's entire financial and operational condition in order to be in a position to approve just and reasonable rates. In order to meet this goal, the Commission established specific procedures and information requirements through Regulation 8620, detailing the information it needs to fulfill its statutory mandate. As we stated on Regulation 8620 Purpose and Executive Summary, PREPA's formal application must include detailed information related to PREPA's plant investment, income statements, financial statements, projections and forecasts, and the cost of service, among other things.³

The information submitted as part of National's Petition does not meet the standards and submission requirements set forth on Regulation 8620. As a consequence, it does not constitute sufficient evidence to substantiate National's request for a temporary base rate increase. The information provided by National is mostly focused on PREPA's obligations to its bondholders and creditors, which does not represent PREPA's entire financial condition. Similarly, National did not provide the complete information of PREPA's operational condition. Furthermore, although the data underlying the Petition originates from PREPA's negotiations with its bondholders and creditors, the provided information is not final nor it is necessarily representative of the costs that PREPA will face in the "rate year" (i.e. the first year in which PREPA's new rates will go into effect, as defined on Regulation 8620). Therefore, National's request for a temporary base rate increase is denied.

II. Request to set a completion date for the rate review proceeding

The Commission will not establish a completion date for the rate review proceeding at this time. As stated in the First Order, the Commission will establish procedural dates, including the dates for technical and public hearings, after it has received PREPA's formal application and has determined that it is complete. Moreover, it would be irresponsible for the Commission to establish a completion date for the rate review proceeding without knowing the number of witnesses and intervenors that will participate in the process. However, once the Commission determines that the formal application is complete, it will issue an order inviting organizations and individuals wishing to participate in the technical hearings, to submit a petition to intervene by a specified date. The petitions to intervene shall include a proposed schedule for the technical hearings, taking into account the steps set forth in the First Order. Moreover, Petitions to Intervene must comply with Sections 2.02 and 5.05 of Regulation 8543; Section 3.5 of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act, 3 LPRA §2155; and the orders issued by the Commission. We encourage National to use this mechanism in order to have an active participation in the rate review process as an intervening part.

³ Section 1.03 of Regulation 8620, Regulation on Rate Filing Requirements for the Puerto Rico Electric Power Authority.



III. Request to order PREPA to respond to the Petition within fourteen (14) days of service

In light of our determinations in this Resolution, it is unnecessary to require PREPA to respond to each point in National's Petition. Moreover, National's notice of service to PREPA about the filing of the Petition is contrary to the provisions of Section 4.02 of Regulation 8543, and therefore, null and void. In the absence of an order issued by the Commission, the parties cannot modify the time period of twenty (20) days to respond to a claim established in Section 4.02 of said Regulation.

IV. Request to consolidate its Petition with the matter *In re*: Review of Rates of the Puerto Rico Electric Power Authority, No. CEPR-AP-2015-00001

Since we have denied each of National's requests, there is no remaining issue to consolidate with the existing rate review procedure. See, *In re*: Review of Rates of the Puerto Rico Electric Power Authority, No. CEPR-AP-2015-00001. Therefore, National's request to consolidate its Petition with the matter *In re*: Review of Rates of the Puerto Rico Electric Power Authority, No. CEPR-AP-2015-00001, is denied.

If National is unsatisfied with this determination, it may file a motion for reconsideration before the Commission. In its motion, National 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. National shall file its motion for reconsideration within the term of twenty (20) days from the date of the filing of this Resolution, by personal delivery to the Clerk of the Commission, located temporarily in the Telecommunications Regulatory Board in 500 Ave. Roberto H. Todd, San Juan PR 00907-3941.

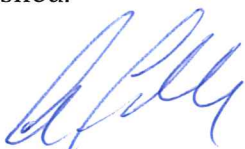
The Commission shall consider said motion within fifteen (15) days of its filing. Should the Commission reject it forthright or fail to act upon it within fifteen (15) days, the term to request review shall recommence from the date of notice of such denial, or from the expiration of the fifteen (15) day term, as the case may be. If a determination is made in its consideration, the term to petition for review shall commence from the date a copy of the notice of the Commission's resolution definitively resolving the motion to reconsider is filed in the record of the case. Such resolution shall be issued and filed in the record of the case within ninety (90) days after the motion to reconsider has been filed. If the Commission accepts the motion to reconsider but fails to take any action with respect to such motion within ninety (90) days of its filing, it shall lose jurisdiction on the same and the term to file judicial review shall commence upon the expiration of said ninety (90)-day term, unless the Commission, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.⁴

⁴ 3 L.P.R.A. § 2165.



In the alternative, National "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 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."⁵

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 30, 2015. I also certify that on this date a copy of this Resolution was notified to PREPA by electronic mail sent to n-vazquez@aepr.com; n-ayala@aepr.com; epo@amgprlaw.com; acasellas@amgprlaw.com; marcia.goldstein@weil.com.





Mariana I. Hernández Gutiérrez
General Counsel

CERTIFICATION

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

Puerto Rico Electric Power Authority

To the Attention of Nélida Ayala Jiménez and Nitza D. Vázquez Rodríguez
PO Box 363928
Post Office Headquarters
San Juan, PR 00936-3928

⁵ 3 L.P.R.A. § 2172; see also Section 11.03 of Regulation 8543.

Adsuar Muñiz Goyco Seda & Pérez Ochoa, P.S.C.

To the Attention of Eric Pérez Ocha and Alexandra Casellas Cabrera
P.O. Box 70294
San Juan, PR 00936-8294

Weil, Gotshal & Manges LLP

To the Attention of Jonathan Polkes and Marcia Goldstein
767 Fifth Avenue
New York, NY 10153

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



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