

July 7, 2016

VIA ELECTRONIC AND REGULAR MAIL:
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Ms. Néida Ayala Jiménez
General Counsel
Puerto Rico Electric Power Authority (PREPA)
PO Box 363928
San Juan, PR 00936-3928

Re: *In re*: Review of Rates of the Puerto Rico Electric Power Authority, No. CEPR-AP-2015-0001; 3rd Requirement of Information

Dear Ms. Ayala,

Pursuant to the provisions in Article VIII of Regulation No. 8543, known as the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings (Regulation 8543), the staff of the Puerto Energy Commission (Commission Staff) is conducting discovery in the matter *In re*: Review of Rates of the Puerto Rico Electric Power Authority, No. CEPR-AP-2015-0001.

Through this letter, the Commission Staff issues its third round of requirements of information. Except as otherwise provided in Part II(A) below, PREPA shall submit, **on or before July 14th, 2016**, the information, data or documents, as appropriate, in digital format, required herein. PREPA shall submit such information, data or documents in accordance with the following instructions:

I. Instructions

A. In General

1. Unless the context requires otherwise, all words used in the singular shall be deemed to also include the plural.
2. Responses to questions must be made in writing, separately and under oath. Questions should be answered by supplying any information which PREPA has knowledge of or information obtained by their representatives, employees, contractors, agents or representatives, or as a result of any investigation conducted. Each response shall state the person responsible for that response.
3. When production of a document is required, the response should identify the document produced, the format or formats in which the document was

produced, and the method and date it was delivered to the Commission Staff. The identification of the document shall include: the name or title of the document, the document date, and the name of its author.

4. If information, data or documents required for any requirement do not exist, the person to whom this request for information is directed shall so specify in his or her reply to that request.
5. Except where the context indicates otherwise, the term "any" includes "all," and vice versa.
6. PREPA shall have a continuing duty to update, correct or amend its answers and notify the Commission Staff of any additional information obtained after said request and which is the subject of this requirement of information.
7. For purposes of this requirement of information, the term "document" means any material, no matter the form, type, nature or description, whether electronic, handwritten or typed, printed, engraved, photographed or copied, and no matter by whom it was originated, prepared, produced, reproduced, published or disseminated. The term "document" includes all types of publications, reports, magazines, books, pamphlets, brochures, folders, records, and/or volume set of attached or unattached papers.
8. For purposes of this requirement of information, the term "information" includes data and documents.
9. Digital Format: **All documents must be submitted in the Word or searchable PDF format.** Analyses prepared using an electronic spreadsheet program such as Excel will be provided in native format with formulas and cross-references intact. Under no circumstances may a printed document, scanned and converted to an image in Personal Document Format (PDF), be presented if there is already a version in digital text. In view of this, the presentation of PDF images of documents that were originally produced in digital text will not be allowed. The presentation of PDF images will only be allowed for those documents that do not exist in a digital version, or for which PREPA does not have a digital version.
10. If PREPA finds it necessary to request an extension of time for the production of part of the required information, it shall do so in writing and submit its request to the Commission's Staff on or before *July 14th, 2016*. In its request, PREPA shall state the efforts undertaken thus far in order to produce the required information, and the reasons pursuant to which it will not be able to produce it within the original period, and which, according to PREPA, justify the granting of the requested extension, along with the specific date by which PREPA commits to provide a full response. However, on or before *July 14th, 2016*, PREPA shall produce all the required information that, up until that date, it has been diligently able to obtain, organize, and process in accordance with the instructions established in this letter.

B. Allegedly Confidential or Privileged Information and Documents

The Commission Staff recognizes that PREPA may assert that some of the documents responsive to these questions warrant confidential treatment. Section 1.15 of Regulation No. 8543, together with the provisions of Articles 1.4 and 6.15 of Act 57-2014, as amended, govern the information that may be unavailable for public access because it is privileged or confidential, as well as the general guidelines for the Commission to determine what information is privileged and confidential and the treatment to be given to protect such information.

Specifically, Section 1.15 of Regulation 8543 provides that when a person has the duty to submit to the Commission information that, in his or her view is privileged or confidential, that person shall (i) identify the information which he or she considers to be privileged or confidential, (ii) request the Commission to protect this information, and (iii) state in writing the arguments in support of his or her request for protection. Once the matter is submitted to the Commission, it shall proceed as provided in Article 6.15 of Act 57-2014 if the Commission determines that the information produced and identified deserves protection.

With this background, if any of the requirements of information require PREPA to submit information it understands is confidential or privileged, the following instructions shall be observed:

1. When submitting the information, PREPA shall (i) mark or identify the information as “confidential” or “privileged”; and “(ii) identify the reason why the document or information should be classified as “confidential” or “privileged”.
2. Along with the filing, PREPA shall submit a memorandum of law stating in writing the legal basis and sources to support its argument that the information or documents identified should be classified as “confidential” or “privileged”. In its memorandum, PREPA must connect each claim to a particular document or piece of information.¹ PREPA shall serve a copy of its memorandum of law to the intervenors currently participating in the proceeding.
3. Except for communications covered by attorney-client privilege, PREPA cannot fail to submit any information or document to the Commission on the grounds that it believes it is a confidential or privileged document or information. If PREPA claims that the information is attorney-client privileged, it must state the basis for this claim and affirmatively state that there is no other alternative way for PREPA to provide the information that would not be attorney-client privileged.

¹ When handling “confidential” or “privileged” information, the Commission Staff will observe all the applicable rules from the *Normas Internas para el Manejo de Información Confidencial en la Comisión de Energía de Puerto Rico*. See, <http://energia.pr.gov/wp-content/uploads/2015/05/20150512141506478.pdf>

4. The Commission Staff will protect and maintain secure any and all information marked by PREPA as “confidential” or “privileged” unless the Commission rules otherwise.

C. Questions about the Requirements

If PREPA has any question about any of the requirements of information made in this letter, it shall state its question or need for clarification in writing and submit it by electronic mail to the Commission Staff. While PREPA and the Commission Staff 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.

II. Requirements of Information

A. PREPA’s Organizational Chart

1. Please provide, **on or before July 11th, 2016**, a chart detailing PREPA’s organizational structure, identifying all key management positions, departments or directorates and detailing the hierarchical structure currently in place.

B. Questions for Witness Quintana

1. CEPR-SH-001-001: Direct Testimony at 8-9 - You state that PREPA’s “operational and support areas” are: Generation, Transmission and Distribution, Customer Service; Finance; Environmental Protection and Planning; Human Resources and Labor Affairs; Legal Affairs; and Infrastructure and Operations Administration.
 - a. What is distinct mission for each of these areas?
 - b. For the top manager within each of these areas: (a) state the position title, (b) identify the person who holds the position, (c) provide the mission statement for that position, and (d) describe the procedures currently in place for performance reviews, including but not limited to: (i) criteria by which the manager is reviewed, (ii) frequency of review, (iii) who conducts the review, and (iv) consequences for the manager if the review is not satisfactory.
 - c. For the sub-managers who report directly to the person identified in response to the preceding sub-question, provide the same information described in the preceding sub-question.
2. CEPR-SH-001-002: Direct Testimony at 9 - Concerning the four labor unions mentioned there: (a) provide a copy of the current union contract; and (b) state when the contract expires.
3. CEPR-SH-001-003: Describe and assess the flexibility that PREPA’s top management has to calibrate the compensation of PREPA employees based

on the quality of performance. Answer separately for executives, managers and line employees. Your answer should evaluate the extent to which PREPA's flexibility is constrained by Section 11 of Act 66-2014 and Act 66-2013.

4. CEPR-SH-001-004: Describe, objectively, the working relationship between the Chief Restructuring Officer and the Executive Director, addressing without limitation the following questions:
 - a. Does one of you report to the other, or do you both report to the Board?
 - b. Precisely what authority is held by each, the Executive Director and the Chief Restructuring Officer, including but not limited to the authority to issue orders to, and hire and fire, PREPA's managers and other employees?
5. CEPR-SH-001-005: Describe any succession plans that exist to address the hypothetical departures of Dr. Quintana and Ms. Donahue.
6. CEPR-SH-001-006: Direct Testimony at 12-13 - You describe the business plan as containing the following elements: "implementing revenue improvement and cost reduction plans, overseeing cash and liquidity management activities, improving PREPA's ability to analyze, track, and collect accounts receivable, improving PREPA's capital expenditure plan, and developing plans to improve PREPA's generation, transmission, distribution, and other operations." With respect to each of these elements (and any others not mentioned):
 - a. Describe the quantitative and qualitative goals for improvement;
 - b. Identify the managers responsible for achieving the improvement;
 - c. Describe the consequences for such managers if the improvement is achieved or not achieved; and
 - d. Describe the procedures by which Dr. Quintana or Ms. Donahue assess the performance of the managers responsible for achieving the improvement.
7. CEPR-SH-001-007: Direct Testimony at 13 - You state that an integrated resource plan (IRP) "is vital to whether PREPA will succeed with its recovery."
 - a. What is your assessment of PREPA's performance in preparing its IRP and presenting it to the Commission?
 - b. What individual(s) made the decision to hire Siemens to prepare the IRP?

- c. Before selecting Siemens, did anyone at PREPA assess Siemens's experience in energy efficiency, demand-side management or renewable energy?
 - d. Does PREPA believe that Siemens had a conflict of interest because it was responsible for preparing the IRP while having a profit interest in potentially supplying generating plants that would be called for by the IRP?
 - e. At what point did PREPA's leadership learn that Siemens had both roles?
 - f. How much has Siemens charged PREPA for its work on the IRP?
 - g. Of that amount, how much has PREPA paid thus far?
 - h. What is your assessment of Siemens's performance regarding the IRP?
 - i. Knowing what you know now about Siemens's performance, would PREPA hire Siemens again--either to prepare an IRP or to supply generating plants?
8. CEPR-SH-001-008: Direct Testimony at 21 - Dr. Quintana states that "PREPA is seeking a revenue requirement of approximately \$3.5 billion." But the Miranda panel testimony at 39 states that the revenue requirement is \$2.959 billion. Explain the difference, and propose a means of describing PREPA's revenue requirement, and the increase from the status quo, that will be consistent across all witnesses and all discussions.

C. Questions for Witness Donahue

- 1. CEPR-SH-001-009: Concerning Ms. Donahue's relationship with PREPA:
 - a. What is the likely termination date? Is that date based on a contract term or is it based on some measurement of progress by PREPA?
 - b. Assess in detail, with attention to each area of PREPA's management, PREPA's readiness to succeed once your relationship with PREPA ends.
- 2. CEPR-SH-001-010: Describe and assess the flexibility that PREPA's top management has to calibrate the compensation of PREPA employees based on the quality of performance. Answer separately for executives, managers and line employees. Compare and contrast such flexibility with that which exists in other companies with which you are familiar.
- 3. CEPR-SH-001-011: Donahue Direct Testimony at 18-19 - You state that "[c]onsistent with Schedule VI to the RSA," PREPA is seeking approval of, among other things, a formula rate mechanism. Does the RSA specifically require a formula rate mechanism, in that if the Commission does not approve one, or approves one not to PREPA's liking, the bondholder

signatories to the RSA will not be bound by the RSA? Your response should cite any relevant clauses in the RSA.

4. CEPR-SH-001-012: Donahue Direct Testimony at 20 - You state: "Management and other strategic decisions, including staffing and capital investment, too often have been based on political considerations rather than best practices or sound business judgment."
 - a. Describe all examples of such decisions of which you are aware.
 - b. Do any of the individuals responsible for such decisions remain at PREPA, as employees or as members of the Board?
 - c. To what degree has this situation been remedied?
 - d. Have any such decisions been made since you assumed the position of PREPA's CRO?
5. CEPR-SH-001-013: Donahue Direct Testimony at 20 - You state: "Staffing decisions have been made often without regard for prior experience or expertise given the nature of PREPA." Does PREPA today still employ individuals who have been hired "without regard for prior experience or expertise"?
6. CEPR-SH-001-014: The Miranda *et al.* Direct Testimony at 31 states that "the executive directorate and executive team is oversized." Do you agree? What specific actions are being taken, by whom, to address this situation?
7. CEPR-SH-001-015: The Miranda *et al.* Direct Testimony at 33 states that PREPA's "organizational structure was redesigned with staffing levels to support operational priorities." Dr. Quintana (Direct Testimony at 8-9) states that PREPA's "operational and support areas" are: Generation, Transmission and Distribution, Customer Service; Finance; Environmental Protection and Planning; Human Resources and Labor Affairs; Legal Affairs; and Infrastructure and Operations Administration." Are these areas stated by Dr. Quintana the result of the redesign referenced by Ms. Miranda, or are they structure that needed to be redesigned?

D. Questions for Witness Miranda

1. CEPR-SH-001-016: Donahue Direct Testimony at 19-20 refers to "decades of mismanagement and poor decision making." Your Direct Testimony at p.6 echoes these concerns.
 - a. For your two and a half decades at PREPA, describe specific examples of mismanagement and poor decision-making that you observed.
 - b. For each example you described, what actions did you personally take to address these problems? What were the outcomes of your efforts?

2. CEPR-SH-001-017: Miranda *et al.* Direct Testimony at 13 - You refer to "PREPA's CRO and PREPA's management team understanding and agreeing on a path to address PREPA's challenges." For the members of "PREPA's management team," identify the individuals and their position titles.
3. CEPR-SH-001-018: Miranda *et al.* Direct Testimony at 31 - You state that "the team encountered outdated human resource processes that were not conducive to a safe and productive workforce. Among the problems were inflexible work rules and high absenteeism."
 - a. Please describe what you mean by "inflexible work rules."
 - b. What is Ms. Miranda's understanding of the root causes of these two problems?
 - c. What actions have been taken, by whom, to address these root causes?
4. CEPR-SH-001-019: Miranda *et al.* Direct Testimony at 31 - You state: "The team encountered low accountability and lack of leadership from top management. Often leaders and managers were placed in positions based on political affiliation vs. job qualifications."
 - a. For Ms. Miranda (since she was an employee under the conditions described in the quote): What do you mean by "low accountability"? What type of "accountability" would not be "low"?
 - b. Referring to the "leaders and managers [who] were placed in positions based on political affiliation vs. job qualifications": What steps have been taken to remedy this situation? To what extent is this situation an on-going problem within PREPA?

Responses to the requirements of information shall be submitted electronically by electronic mail to the following addresses: afigueroa@energia.pr.gov, tnegron@energia.pr.gov, and gbonet@energia.pr.gov. If responses are too voluminous to be sent by electronic mail, the responses shall be saved in a USB device and sent by mail with return receipt to: Cecilia Sánchez, 268 Muñoz Rivera Ave., World Plaza Suite 703, San Juan, PR 00918.

Cordially,

/s/Alejandro J. Figueroa Ramírez, Esq.

/s/Tania M. Negrón Vélez, Esq.