

COMISIÓN DE ENERGÍA DE PUERTO RICO
Recibido por: A. Valeriano
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COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

IN RE: REVIEW OF RATES OF THE PUERTO RICO ELECTRIC POWER AUTHORITY	CASE NO. CEPR-AP-2015-0001 SUBJECT: MOTION FOR RECONSIDERATION
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INSTITUTO DE COMPETITIVIDAD Y SOSTENIBILIDAD ECONOMICA DE
PUERTO RICO (ICSE-PR) MOTION FOR RECONSIDERATION

TO THE ENERGY COMMISSION:

NOW COMES the Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE-PR) represented by appearing counsel and respectfully alleges and prays:

1. On January 10th, 2017 the Commission notified its final order on the Rate case. In accordance with the order and applicable law, the parties have a 20 days term to file for reconsideration.

2. This motion is a request for reconsideration and clarification:

First:

a) At page 98, footnote 218, the Commission states:

“Rejecting the proposed revenue requirement, as ICSE-PR recommends, would cause a shortfall of \$177,000,000 in PREPA's revenues-at a time when PREPA needs much more, as detailed by Drs. Fisher and Horowitz.”

The record is clear that ICSE did not proposed to reject the proposed revenue requirement. ICSE specifically requested a “temporary” increase and not a permanent increase.

On November 29, 2016 ICSE filed a motion entitled ICSE-PR Motion Requesting to Commission to Entertain Utilizing a Consent Order Model to Control PREPA'S operation.

It states:

a. ICSE-PR understands the need of approving the necessary revenues for PREPA's operation. However, the ICSE-PR understand

that it is not on the best interest of PREPA consumers, nor of PREPA itself, to approve a **permanent rate increase** at this time.

- b. The approval of a **permanent rate increase** of around 26% will send the wrong signal to PREPA, to governmental entities, the markets and the PREPA consumers with detrimental effects. Granting a permanent rate increase, promotes a false sense of stability of the Public Utility (PREPA); an incorrect sense of financial recuperation of PREPA; and at the same time it would be unreasonable to the PREPA consumers (residential, commercial and industrial) and to the Puerto Rico population as a whole. The consequences of wrong signals to governmental entities, the markets, the Financial Control Board, PREPA and PREPA consumers could result in inevitable long term consequences to the detriment of the public interest. We understand of course, that such is not the intention of this Honorable Commission.

It addede:

- i. The disapproval of the PREPA's Proposed Rate Increase is not intended to block any source of additional revenues to PREPA. On the contrary, such a decision will allow to conclude this initial proceeding orderly and in compliance with the Commissions own regulations and the **immediate commencement** of a new Rate Review Proceeding, inclusive of a new **provisional rate**, without the time constrains that the **Initial Rate Review** required per Act 4, 2016.

Second:

ICSE respectfully believes that the statements and the analysis of the Commission concerning Dr. Ramón Cao, is wrong and superficial.

The Commission statement is:

57. Multiple intervenors raised concerns about whether any rate increase is affordable. The most sophisticated argument came from Dr. Cao on behalf of ICSE-PR. He offered a multi-factor regression analysis to estimate the economic impact on Puerto Rico of a rate increase by PREP A. He estimated that a 4.2 cent/kWh increase in electric prices would reduce real GNP in Puerto Rico by 1.05%. Based on that estimated GNP reduction, Dr. Cao estimated a loss of approximately 11,000 jobs, an increase in the inflation rate, and a kWh demand reduction for PREP A of approximately 0.83%.

58. We do not dispute the proposition that higher electric prices can affect an economy negatively. If that were the only consideration, the Legislature would require PREPA to provide electricity for free¹. But there are other considerations. The first is statutory. The Commission must set rates sufficient to get PREPA the funds to provide reliable service². The second is practical. Until PREPA returns to financial health, it will have no access to new outside capital. Without that access, Puerto Rico faces two choices: continue to make current ratepayers pay for long-term capital expenditures (as explained in Part Two-II.B), or fail to make the investments that are necessary to fix a deteriorated physical system and prepare it for a future of renewable energy. The first choice is painful; the second choice is untenable. Making current ratepayers pay for long-term capital expenditures, rather than allocating responsibility for those expenditures over the long lives of the associated assets, is one of the reasons rates must rise today. Deferring necessary investments will lead to more and longer outages-events no less likely to dampen Puerto Rico's economy than a rate increase. Arguments against the rate increase fail to address the effects of no rate increase. The Commission cannot make that error.

59. Returning to Dr. Cao's analysis: Commission consultant Hill points out that the variables in Dr. Cao's regression model (economic growth in the U.S., the prime rate of interest, the average price of electricity, and a factor that adjusts for serial correlation between variables in the regression) are not the only variables that matter.⁶⁹ Mr. Hill noted that when PREPA's prices dropped due to the drop in oil prices from 2012-2016 (causing PREPA's electricity price to decline by much more than the increase assumed by Dr. Cao), there was not an increase in GNP, employment and kWh sales comparable to the decreases that Dr. Cao's model predicted for a rate increase in 2017.⁷⁰ But the dramatic drop in electricity price produced no economic gains³. As shown on Dr. Cao's Table S-1, the Puerto Rico GNP actually declined from 2012 to 2016 by around 3.4-3.5%. From this data, Mr. Hill concluded that Dr. Cao's "model did not accurately predict the actual changes in economic growth." Mr. Hill also concluded that: "A

Specific Comments to Commission Statements:

¹ This statement is a non sequitur. Nobody is arguing that electricity is free nor that such is the legislative intent.

² At what level of efficiency? To send money to an inefficient operation is equivalent to drop money in a bottomless pit, especially in light of the Commission's own consultants' conclusions on PREPA's substantial limitations.

³ Assertions not supported by empirical data. The rate of decline in real GNP between FY2012 and FY2015 was less than in previous years. Indeed, in FY2012 it shows a small increase of 0.5% (mainly due to an increase in federal transfers) but more important is the level of decline in the economy of Puerto Rico that required additional tools and incentives to get back on a positive direction.

relatively high correlation of the variables used in the regression [...] does not necessarily imply causation, i.e., the variables selected are not necessarily those that precisely determine the value of the dependent variable (in this case, GNP in Puerto Rico)[...]" Mr. Hill also notes that Dr. Cao did not take into account the effects on Puerto Rico's economy of the continued deterioration of PREP A's physical plant, or the effects on lenders' willingness to lend in the absence of a rate increase. Dr. Cao implicitly assumed that PREPA's quality of service and lender willingness would be unaffected by the absence of a rate increase.

60. While we appreciate the quality of Dr. Cao's contribution to this proceeding, we must look at the full picture. That picture includes the consequences of no rate increase. Those consequences, we have determined, are more negative for Puerto Rico than the consequences of a rate increase. In sum, the arguments against a rate increase ignore its consequences. Without higher rates, PREPA will be unable to make contractual debt payments—even as those payments have been reduced by the bondholders. That means default and lawsuits in the short term, and reduced lender confidence in the long-term...

Ramon Cao-García response to the Commission's consultant arguments during the Technical Hearings, were that Puerto Rico's economy did not improved when electricity prices decline substantially during oil prices plummet in 2015, because Puerto Rico's economy has been in decline for the past 10 years, any increase in cost will propel the already existing trend; notwithstanding, going against the existing economic decline trend requires additional and stronger elements.

Dr. Hill has no evidence, nor there is any study to conclude that there exists a direct correlation between the drop in oil prices and the fact that there was no increase in economic activity. Elements such as the disappearance of 936 industries, extended economic contraction in the Island and Government Fiscal situation are just three factors which could have determined what happened with the economy.

Truth is that the Commission has no evidence on the record of economic impact other than Dr. Cao's testimony and reply.

Third: The Commission state at pages 153 paragraph 459:

"One track will include one or more independent audits of PREP A's performance. Another track will include a rulemaking process under which the Commission will prepare proposed rules to guide the Commission future oversight of PREP A's performance. Areas to

cover could include PREPA's internal organization, executive and employee compensation, budgeting and spending, outsourcing of services where PREPA routinely under-performs, board governance, resource planning, operations, resource acquisition, visibility and transparency, and use of external experts.”

Other than this cursory statement, the Rate Order fails to present or discuss any option of private investment or private operation to substitute PREPA's operations and services, with implications in the revenue requirements, even when the Commission itself concludes, that PREPA might be beyond reform. This incapacity of PREPA of properly operating the public utility would produce a higher revenue requirement than using the private sector investment and operation.

Fourth: On several occasion the Commission acts as pretending to put the onus, or the “burden of proof” on the intervenors and not in PREPA. The duty and obligation to justify its claimed revenue requirements is PREPA's not to intervenors. Much less are intervenors obligated to demonstrate whether PREPA could have negotiated better terms with the bond creditors.

This is specifically true when the Commission itself has instructed PREPA to use, as forcefully as possible, the PROMESA Law powers of the Fiscal Board.

Fifth: The Commission's order is solely based on “saving PREPA” and no discussion nor any emphasis on the issue of the Electric System of Puerto Rico as a whole, of which PREPA is but a part.

We can't deny that Law 57 has strong language on helping revitalize, modernize and make PREPA an efficient operation. But this is not an end on itself but a mean to obtain a modern, open electric system for the Island. PREPA is part of it but It, is not the electric system of the Island.

Law 57 Statement of Motives expresses:

1. There is a broad consensus on the need to evolve from our dependence on fossil fuels and use to the maximum extent possible the Island's energy resources, such as the sun and the wind, conservation, and efficiency.

2. The high cost of energy limits our ability to stimulate the economy, strengthen small- and medium-sized business, as well as to attract private investors from abroad, develop commercial, industrial and manufacturing activities, and improve the quality of life of all Puerto Ricans. This prevents our Island from becoming a competitive and attractive place in all aspects. We have been held as hostages of a poorly efficient energy system that excessively

depends on oil as fuel, and that does provide the tools to promote our Island as a place of opportunities in the global market. The current cost per kilowatt-hour of approximately twenty-seven cents (\$0.27) is extremely high when compared to other jurisdictions that compete with Puerto Rico to attract investors and severely affects the pockets of local consumers.

3. Therefore, it is imperative and compelling to enforce a thorough reform of the energy sector that promotes the operation and administration of an efficient system at just and reasonable costs, considering that we are an isolated jurisdiction that needs to have a safe and stable electric power grid. We need to adopt a regulatory and legal framework through the creation of a robust independent entity that will ensure the transformation of the electric power system of our Island for the benefit of present and future generations.

As a summary the Statement of Motives states:

This Legislative Assembly reasserts its commitment to the People of Puerto Rico through the creation and implementation of an Energy Reform consisting of multiple initiatives that are all related to common goals such as permanently reducing the cost of energy and provide the People of Puerto Rico with a reliable, affordable, efficient, and transparent electric power service.

At that time, our Legislative Assembly stated that Act No. 114-2007 resulted, among other things, from the need to incentivize the generation of electric power through renewable energy sources due to our excessive dependence on fossil fuels to generate electricity and their well-known polluting effect on the environment, as well as the high costs reflected on electricity bills. However, in spite of the subsequent amendments to the Act, the regulations adopted by PREPA with regard to systems with a nameplate capacity in excess of 1 MW, far from supporting the development of renewable energy alternatives, have had the practical effect of obstructing the development thereof.

And on the Public Policy of the Law in section 1.2 of Law 57, it states:

“(c) The implementation of the public policy on energy shall be an ongoing planning, consultation, execution, evaluation, and improvement process in all energy-related matters.”

It is for this reason that Law 57 seeks to incentivize private production by “fair” interconnection rates and the use of wheeling.

“Section 9.- Public Policy on Interconnection. It shall be the public policy of the Commonwealth of Puerto Rico to ensure that the procedures for the

interconnection of distributed generators to the electric power system of the Electric Power Authority are effective in terms of costs and processing time, in order to promote the development of these types of projects and incentivize economic activity through the reduction of energy costs in the residential, commercial, and industrial sectors. For such reasons, it is hereby established that the procedures for the interconnection of distributed generators with a generating capacity of up to five (5) megawatts (MW) which shall participate in the Net Metering Program, shall be consistent with the Small Generator Interconnection Procedures (SGIP) and the Small Generator Interconnection Agreement (SGIA), provided in Order No. 2006 of the Federal Energy Regulatory Commission (FERC), as amended, and any other future amendments thereto that are adopted by the Energy Commission. PREPA shall uniformly follow the interconnection procedures in all of its regions.

This last issue takes particular importance and pertinence based on the Commission's own conclusion concerning PREPA's incapacity, lack of transparency, lack of basic studies, like the cost of service study (coss), marginal costs, elasticity of demand, load analysis, sales forecasts among others, but above all for the very strong conclusions of the Commission of PREPA's condition.

SIXTH: Concerning Renewable Energy and Net Metering, ICSE strongly, and respectfully believes that the Commission has misunderstood the interaction of laws' 57 (2015), 4 (2016) and 114 (2007).

The Commission's insistence that the rates cannot impose different burdens on different users (renewables and net meeting costumers different from other costumers) is simply wrong. All rate design processes, all subsidies, and all incentives legislated are based on the Legislature, duly elected by the people and the Governor also duly elected, making policy judgments on what to promote or incentivize and what not to promote what should be disincentivezed.

Such is the case of tax exemption laws, tax credits laws and such is the case of metering and promotion of renewables. If the law treats different classes of consumers, it is not for the Commission to eliminate such difference which are specific legislated incentives and mandates.

The Commission is legitimately worried that it complies with the mandate of "just and reasonable rates".

But "just" and "reasonable" are not words to be understood on a "dictionary" sense. Its meanings must necessarily come from the legislative interest, and the context in which they are legislatively mandated.

As was stated on our legal brief.

“It is basic that when the Legislature and the Governor approve legislation, its interest is in obtaining a particular result, which is typically called the legislative intent. It has been consistently interpreted that when the law is clear, the obligation of those interpreting the law is to put into effect the intent, which is found by looking at what the law says.

Law 57, as we have mentioned before, enumerate in a very detailed format what is the legislative interest with the transformation mandated for Puerto Rico’s Electric System.

Rates are reasonable only when they, are an instrument to comply with the laws mandates. A rate is reasonable only when it is an instrument to obtain the results intended.

Rates are reasonable only where they are an efficient instrument that will not self-destruct by generating less economic development, less electricity demand and the corresponding reduced earnings for PREPA itself. Nothing is reasonable, when it take you to the exact opposite situation than the one you intended.

A rate that will unravel, due to economic conditions, elasticity of demand, among other factors is not reasonable.

Just is a more complex term. Coming from “justice” it talks about balance, fairness, when the benefits out weights the costs and when it does not harm anyone in a serious manner.

Just is not a synonym of equality, it would be more a synonym of fair. A progressive tax system is considered to be just when those who have more pay more, in other words you pay in relation of your capacity of bearing such taxes. A rate which in a similar mode recognize the capacity of society to comply with such, is just.”

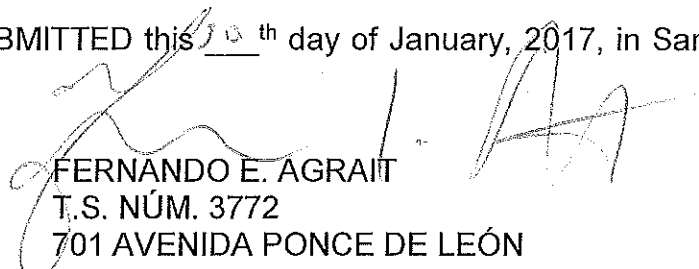
ICSE-PR reaffirms that it strongly endorses, supports, and hereby adopts Windmar Group Motion for Reconsideration on the issues of Renewable Energy and Net Metering.

RESPECTFULLY SUBMITTED.

WHEREFORE, ICSE respectfully request that the Commission incorporate the corrections, changes, and arguments presented on the motion.

I HEREBY CERTIFY: that today a true and exact copy of this document and its attachments was notified sent via e-mail to the following persons: n-ayala@aeep.com; n-vazquez@aeep.com; c-aquino@aeep.com; glenn.rippie@r3law.com; michael.guerra@r3law.com; john.ratnaswamy@r3Law.com; codiot@oipc.pr.gov; jperez@oipc.pr.gov; cfl@mcvpr.com; ivc@mcvpr.com; mmuntanerlaw@gmail.com; ifeliciano@constructorespr.net; abogados@fuerteslaw.com; jose.maeso@aae.pr.gov; edwin.guinones@aae.pr.gov; nydinmarie.watlington@cemex.com; aconer.pr@gmail.com; epenergypr@gmail.com; jorgehernandez@escopr.net; ecandelaria@camarapr.net; pga@caribe.net; manuelgabrielfernandez@gmail.com; mreyes@midapr.com; mgrpcorp@gmail.com; attystgo@yahoo.com; afigueroa@energia.pr.gov; tnegron@energia.pr.gov; legal@energia.pr.gov; mcintron@energia.pr.gov; eirizarry@ccdlawpr.com; pnieves@vnblegal.com; maribel.cruz@acueductospr.com.

RESPECTFULLY SUBMITTED this 15th day of January, 2017, in San Juan, Puerto Rico.


FERNANDO E. AGRAIT
T.S. NÚM. 3772
701 AVENIDA PONCE DE LEÓN
OFICINA 414
SAN JUAN, PUERTO RICO 00907
TELS 787-725-3390/3391/FAX 787-724-0353
EMAIL: agraitfe@agrailawpr.com