

COMMONWEALTH OF PUERTO RICO

PUERTO RICO ENERGY COMMISSION

IN RE:

REVIEW OF RATES OF THE PUERTO
RICO ELECTRIC POWER AUTHORITY

NO. CEPR-AP-2015-0001

SUBJECT: PREPA's Verified Motion for
Reconsideration of Provisions of the Final
Resolution and Order

**PREPA'S VERIFIED MOTION FOR RECONSIDERATION OF
PROVISIONS OF THE FINAL RESOLUTION AND ORDER**

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Nélida Ayala Jiménez
TSPR No. 10896
General Counsel
Carlos Aquino Ramos
TSPR No. 12951
Nitza D. Vázquez Rodríguez
TSPR No. 9311
Executive Advisor
Puerto Rico Electric Power Authority
P.O. Box 363928
San Juan, Puerto Rico 00936-3928
Tel. 787-521-4431; 787-521-4433
Email: n-ayala@aepr.com
Tel. 787-521-4445
Email: c-aquino@aepr.com
Tel. 787-521-4436; 787-521-4433
Email: n-vazquez@aepr.com

E. Glenn Rippie
Admitted by Courtesy
John P. Ratnaswamy
Admitted by Courtesy
Michael Guerra
Admitted by Courtesy
Rooney Rippie & Ratnaswamy LLP
350 W. Hubbard St., Suite 600
Chicago, Illinois 60654
Tel. 312-447-2800
Email: Glenn.Rippie@R3Law.com
Email: John.Ratnaswamy@R3Law.com
Email: Michael.Guerra@R3Law.com

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The Puerto Rico Electric Power Authority ("PREPA") respectfully submits to the honorable Puerto Rico Energy Commission (the "Commission" or "CEPR") this Verified Motion for Reconsideration. On January 10, 2017, the Commission issued its Final Resolution and Order ("Order") in this initial rate review. Under the Order, and the Uniform Administrative Procedures Act, a party may file and serve a motion for reconsideration within 20 days of the Order. Order, p. 185; 3 L.P.R.A. § 2165. This Motion is supported by a Verification.

I. INTRODUCTION AND SUMMARY

1. PREPA appreciates the efforts of the Commission, the Commission's Staff ("Staff"), and intervenors that culminated in the Order. The Order, in many respects, supports PREPA's transformation into a modern, environmentally sound, high-performing, cost-effective utility, as Puerto Rico law intends and as PREPA's customers deserve.

2. PREPA, however, does respectfully seek reconsideration of certain portions of the Order. First and most importantly, PREPA is concerned that in certain important respects the Order treats the roles of PREPA's new Governing Board and officers, as PREPA's management, and the Commission, as PREPA's primary regulator, in ways that depart from the law, the record, and established utility regulatory practice. While PREPA's concerns arise from the Order, PREPA is also concerned that these same issues may frustrate rather than further the

adoption of practical and efficient regulatory solutions going forward. PREPA also believes, however, that those very significant concerns can be addressed by a relatively limited number of changes in the Order, changes that further its ultimate objectives and those of Puerto Rico law. Second, the Order also contains certain other significant items that should be improved or changed for other legal and factual reasons.

3. In brief, PREPA seeks reconsideration of portions of the Order that:

a. relate to, and change, the respective roles of the Commission and PREPA's new Board and management, including certain rulings, findings, conclusions, and directives that go beyond the review and approval of PREPA's rates and of its Integrated Resource Plan ("IRP") (the first instance of which was established in No. CEPR-AP-2015-0002, now pending on rehearing) and extend to other aspects of PREPA's management, budgeting, spending, and operations;

b. modify PREPA's proposed annual rate update and reconciliation processes, including by (i) significantly changing how rates are to be updated and sharply limiting the reconciliation of non-pass through costs, such as debt service, that, at least during PREPA's ongoing transformation, are best recovered through reconciled rates, and (ii) imposing spending caps that have severe practical problems;

c. include a calculation error that results in a \$6.314 million overstatement of the approved revenue requirement (costs to be recovered through rates) and the approved base rate revenue increase;

d. require the new rates to be effective within 60 days after the Order, a date which for important practical and implementation reasons (including those raised in

PREPA's pending Motion for Clarification¹) should be extended and set for the first day of a calendar month, which PREPA recommends be June 1, 2017;

e. make certain decisions regarding cost of service analysis and rate design, although PREPA's points on these subjects are not so much seeking changes in any outcomes under the Order but rather setting forth high level positions and information relating to the upcoming, follow-on rate design proceeding; and

f. make certain factual findings, adopt certain legal conclusions, and issue certain directives relating to other subjects, perhaps most notably findings regarding PREPA's support for the revenue requirement and the Order's decision to continue to hobble work relating to the Aguirre Offshore Gasport ("AOGP").

Paragraphs 4 through 9 of this Introduction and Summary briefly elaborate on those six subjects.

4. **First, PREPA is concerned that the Order, in a number of ways, departs from Puerto Rico law regarding the transformation of PREPA and the respective roles of the Commission and PREPA's new management** and departs from good utility regulatory practice, leading to some impractical and unfortunate results.

a. PREPA is a public power electric utility that, by law, is undergoing a transformation including with respect to the selection and duties of its management and the establishment of the Commission as the primary regulator of specific aspects of its rates and operations. The transformation process is set out in Act 83-1941 as amended and supplemented by Acts 57-2014 and Act 4-2016.

¹ On January 20, 2017, PREPA, in order to be able to comply with the Order, filed an Emergency Motion for Clarification and a Technical Conference. Pursuant to a discussion with Commission Staff during the January 27, 2017 Clarification Conference Call, PREPA will file a motion seeking an extension of the effective date of the new rates.

b. Under the law, PREPA has a Governing Board selected under a new and exacting process that manages PREPA under revised principles and methods. The law also contains new provisions regarding PREPA's officers. For example, Act 4-2016's Statement of Motives, Section B, states in part: "As part of the Authority's revitalization, there have been developed an independent Governing Board that responds to the best interest of the Authority and its customers. This is of utmost importance, since the Authority is the only public corporation in charge of providing Puerto Rico with electric power service, which is essential for its operations." Accordingly, for example, Section 4 of Act 83-1941, as amended by Act 4-2016, states in part: **"The powers of the Authority shall be exercised and its general policy and strategic management shall be determined by a Governing Board, hereinafter the Board."** (Emphasis added.) There are many other relevant statutory provisions regarding the authority and duties of PREPA's new management, as discussed further in Section II.A of this Motion.

c. The law establishes the Commission as PREPA's primary regulator subject to various principles and methods. Under the law, the Commission functions similar to mainland utility regulatory commissions in regulating PREPA's rates. *See* Section 6A of Act 83-1941, as amended by Act 4-2016, and Section 6.25 of Act 57-2014, as amended by Act 4-2016. The Commission also has authority in relation to PREPA's IRP, similar to that vested in regulators in some States, with PREPA preparing the IRP but the Commission then reviewing and establishing the IRP. *See, e.g.,* Section 6B(h) of Act 83-1941, as added by Act 57-2014 and renumbered by Act 4-2016.

d. The Order, however, through a number of rulings, findings, conclusions, and directives, effectively crosses that boundary and in various ways puts the

Commission into the role of the top level of management of the utility, and does so for aspects of utility operations not limited to matters within the scope of the IRP.

e. The Order, for example, goes beyond the Commission's role in setting PREPA's revenue requirement for ratemaking purposes, by putting the Commission in charge of PREPA's budget for operational purposes, and even imposing an annual spending cap, soon to become an even more detailed cap at the level of PREPA's directorates. *See, e.g.*, Order, pp. 2, 7-8, 26, 149-155, 178, 183.

f. The Order appears to reason that the Commission's rate review authority in effect gives the Commission plenary authority to direct PREPA in any and all ways that the Commission believes will reduce the likelihood of PREPA incurring imprudent costs. *See, e.g.*, Order, pp. 24-26, paragraphs 49-56; Order, p. 76, footnote ("fn.") 172, and p. 80, fn. 182.

g. The Order thereby exceeds the prescribed role of the Commission, by going beyond its authority in this rate review, and doing so in manner that also is inconsistent with the law regarding PREPA's new management, the provisions of the law regarding the Commission's IRP authority, and principles of good utility regulatory practice.

h. PREPA wishes to be absolutely clear that it shares the objective of avoiding imprudent costs. PREPA has been engaged in a reform and recovery effort since 2014 that has resulted in very large non-recurring and recurring cost savings, as the law expressly recognizes. *See, e.g.*, PREPA Ex. 3.0, lines 379-381. Moreover, in this rate review, on its own initiative, PREPA proposed an annual rate update process

(sometimes called the “formula rate”² proposal), to give the Commission and stakeholders, including the public, an enhanced advance role in reviewing PREPA forecasted budgets for purposes of setting rates going forward, and to allow the Commission to reconcile PREPA’s costs and revenues looking backward. For example, under PREPA’s proposal, in October 2017, PREPA would file a proposed rate update based on its forecasted budget for Fiscal Year (“FY”) 2019 (July 2018 through June 2019), to be used in setting rates to be in effect in FY 2019. PREPA’s proposal is intended to – and would – enhance greatly the role of the Commission and stakeholders in looking at spending on a forward basis, within the applicable legal framework, recognizing the concern that the Commission is not able to disallow recovery of costs already spent or incurred by PREPA. The Order, however, seriously misunderstands and, perhaps as a result, sharply deviates from PREPA’s proposal, including in ways that cross into utility management.

5. Second, the Order establishes structures for budgeting, annual rate updates, limited reconciliations of non-pass through costs, and spending caps that PREPA believes are inconsistent and flawed for additional reasons.

a. With respect to budgeting and the annual rate updates, the Order imposes a timeline for PREPA budgeting, including Governing Board approval, that is highly problematic and inappropriate, and that is likely to lead to lower quality budgets and increases in the budgets.

² The fact that PREPA described its proposal as a “formula rate” proposal seems to have caused some parties concern that the process somehow would reduce the role of the Commission and stakeholders. The opposite is true. The formula rate gives the Commission and stakeholders an advance look at PREPA’s planned spending. The name of the proposal should not obscure its actual substance.

b. With respect to the limited reconciliations of non-pass through costs, the Order sharply limits the reconciliations, which is especially problematic for IRP and debt costs, and imposes a standard of proof for recovery of upward cost variances that is excessive.

c. With respect to the annual spending cap, and the forthcoming directorate level spending caps, the Order formulates them in ways that are problematic practically as well as legally. PREPA has pointed out some of the problems with the annual cap in its pending Motion for Clarification. To begin with, the annual cap, as stated, is based on PREPA's total revenue requirement, and thus it includes fuel, purchased power, and Contribution in Lieu of Taxes ("CILT") / Subsidy (subsidies) that are pass-through items and that PREPA does not control although it manages some aspects of them. Thus, under the Order, for example, fuel cost increases that push PREPA toward the spending cap could force PREPA to reduce spending on maintaining and improving reliability, so as to comply with the annual cap. Not only that, but the annual cap has no exception, much less a process, for handling emergency spending, such as restoration costs in the event of a major storm or hurricane. With respect to the future directorate level caps, they are counter-productive and inappropriately inflexible as well as again lacking in needed processes.

6. **Third, the figures for the revenue requirement and base rate revenue increase in the Order contain a \$6.314 million overstatement.** More specifically, the Order includes an extra \$6.314 million for CILT / subsidies due to a mathematical error. That is a large enough error that it impedes PREPA's ability to prepare a compliance filing that comports with the Order. PREPA raised that error in its pending Motion for Clarification.

7. **Fourth**, the Order directs the filing of new rates that go into effect 60 days after the Order, which would mean new rates going into effect on March 11, 2017, but the Order also recognizes that application of those rates to actual customer bills will take longer, because PREPA needs time to calculate specific rates for each rate class and obtain Commission approval for the calculations. Order, p. 2; *see also* Order, pp. 10, 101, 177. **The new rates cannot be finalized until the open Order clarification items are resolved, however, and they should go into effect on the first day of a month, for important practical reasons.** PREPA's pending Motion for Clarification identifies items that need to be resolved in order for PREPA to comply with the Order. In addition, new rates for large utilities commonly do and should go into effect on the first day of the month, in order to avoid the complexities and burdens of having two different sets of rates in effect during the same month. PREPA's provisional rates went into effect on the first day of a month, August 1, 2016, for those same reasons. The Commission is authorized to extend past 60 days the date by which the new rates must go into effect under the last sentence of Section 6A(e) of the Act 83-1941 as amended by Act 57-2014. Pursuant to a discussion with Commission Staff during the January 27, 2017 Clarification Call, PREPA will file a motion seeking an extension of the effective date of the new rates.

8. **Fifth**, with respect to **cost of service analysis and the design of the new rates** to be used under the Order pending the upcoming rate design proceeding, the Order includes some problematic rulings and directives. On this subject, however, PREPA's concerns can and largely should be resolved in the upcoming rate design proceeding.

9. **Finally**, the Order contains certain **other rulings, findings, conclusions, and directives** as to which PREPA seeks reconsideration. Discussing each of those items in this Introduction and Summary would make this section too long and thereby defeat its purpose. The

fact that those other items are not discussed in this section does not alter the fact that they are important. The items, in brief, are: (1) a small number of revenue requirement-related decisions and findings, most notably findings regarding PREPA's level of support of the revenue requirement and the Order's decision to continue to constrain work on AOGP; (2) two accounting directives; (3) a finding criticizing PREPA for making an unbundling proposal, a finding which overlooks the Commission's own regulations; and (4) a handful of items relating to other and future proceedings, including the pending performance metrics case (No. CEPR-IN-2016-0002) related to PREPA's IRP, future IRP proceedings, and future rate and other proceedings in general. PREPA continues to believe that the case for AOGP has been made, multiple times, and that the directive that PREPA submit yet more analysis of hypothetical alternatives to AOGP involves options that are not realistic and/or take multiple years to adopt and implement with many serious disadvantages. Such delay exposes PREPA and its customers to prolonged reliance on burning fuel oil, continued pollution, a failure to addressing environmental justice, and serious risks of adding exposure to hundreds of millions of dollars of penalties/fines. The Order recognizes that fines and penalties should be avoided (Order, pp. 54, 172), and Staff member Mr. Smith testified to that effect at the technical hearing. All of those concerns would be avoided if AOGP were fully approved.

10. PREPA believes that, if the Commission adopts the corrections and changes proposed by this motion for reconsideration, then the result will place PREPA even more firmly on the path to successful transformation for the benefit of its customers, and will allow the Commission, PREPA, and other stakeholders, including the public, to work together to that end going forward in the manner contemplated by the law and consistent with good utility regulatory

practice. Customers will get the enhanced utility service that they deserve, at a cost that is no greater than it needs to be.

II. DISCUSSION

A. The Respective Roles of the Commission and PREPA's Management in General and With Respect to Specific Subjects

1. PREPA and the Commission Are Committed to the Transformation of PREPA, and to That End They Must Work Together in a Manner that Comports With Their Respective Roles Under Puerto Rico Law

11. The objectives of Puerto Rico law are clear. In brief, PREPA must be transformed into a modern, environmentally sound, high-performing, cost-effective utility as the law intends and as PREPA's customers deserve. Therefore, Puerto Rico law: (1) made significant changes in the selection, authority, and duties of PREPA's management; and (2) created the Commission to regulate PREPA in certain important, but defined, respects.

12. Since the enactment of Act 57-2014, PREPA's management and the Commission have shown that they are each committed to the transformation of PREPA. They must work together to that end, however, in accordance with their respective roles under Puerto Rico law.

13. The Order instead appears to reason that the Commission's rate review authority in effect gives the Commission plenary authority to direct PREPA in any and all ways that the Commission believes will reduce the likelihood of PREPA incurring imprudent costs that later will be recovered through rates. *See, e.g.*, Order, pp. 24-26, paragraphs 49-56; Order, p. 76, fn. 172, and p. 80, fn. 182.

14. PREPA is concerned that the Order's treatment of the respective roles of the Commission as a regulator and of PREPA's new Governing Board and officers as utility management, on certain subjects, departs in important respects from the law, the record, and

established utility regulatory practice, and also may frustrate rather than further the adoption of practical and efficient regulatory solutions.

15. PREPA also believes, however, that those very significant concerns can be addressed by making a relative limited number of important changes in the Order that will further the objectives of the Order.

a. **The Role of PREPA's Management**

16. PREPA's Governing Board has specific authority vested by the Legislative Assembly that include the management and operation of PREPA. PREPA will not quote or cite here all of the language in Acts 83-1941, 57-2014, and Act 4-2016 on this subject, because that would make this Motion unduly lengthy. PREPA will note that the following statutory provisions, among others, govern and outline this role:

- Section 3 of Act 83-1941, in creating PREPA, provides among other things, that "[t]he Authority hereby created is and shall be a governmental instrumentality subject, as provided herein, **to the control of its governing board**, but it is a corporation having legal existence and personality separate and apart from that of the Government." (Emphasis added) That language was not changed by Acts 57-2014 and 4-2016.
- Section 4 of Act 83-1941 also already provided, among other things, that "[t]he powers of the Authority shall be exercised and its general policy shall be determined by the Governing Board, to be known hereafter as "the Board". That language was repeated in Acts 57-2014 and 4-2016.
- Act 4-2016's Statement of Motives, Section B, states in part: "As part of the Authority's revitalization, there have been developed an independent Governing Board that responds to the best interest of the Authority and its customers. This is of utmost importance, since the Authority is the only public corporation in charge of providing Puerto Rico with electric power service, which is essential for its operations."
- Acts 57-2014 and 4-2016 amend Section 4 of Act 83-1941 to create a newly selected Governing Board that manages PREPA, subject to new and revised principles and methods.

- More specifically, Section 4 of Act 83-1941, as amended by Acts 57-2014 and 4-2016, delineates how the Governor, with the advice and consent of the Senate, shall appoint Governing Board members along with defining their respective terms, and contains provisions on the authority and duties of the Governing Board.
- Section 4 of Act 83-1941, as amended by Act 4-2016, states in part: **“The powers of the Authority shall be exercised and its general policy and strategic management shall be determined by a Governing Board, hereinafter the Board.”** (Emphasis added.)
- Section 4(a) contains highly detailed provisions about the selection and composition of the Board. Section 4(b) contains highly detailed provisions about the organization of the Board and about designation of the Executive Director. Section 4(c) details the procedure to elect representatives of customers’ interests. Section 4(e) establishes an audit committee. Section 4(f) contains lengthy provisions about performance and conduct, including dismissal by the Governor. Section 4(g) addresses responsibilities of Board members and officials. Section 4(h) contains provisions against interference by elected officials.
- Section 4(d) addresses the role of the Board, ethics, and fiduciary duties. Section 4(d)(1) provides in part: **“The main role of the Governing Board is to lead the strategic management of PREPA and, at the same time, delegate to the Executive Director the administrative duties and works of the public corporation.”** (Emphasis added.)
- Section 4(d)(1)(vi) (emphasis added) provides that the role of the Governing Board includes the following:

Implement the operational measures and savings specified in the Creditors’ Agreement in relation to each one of the items included therein, as well as any other identified savings and opportunities, **comply with the Authority’s rate as authorized by the Commission**, and achieve operational efficiency, as well as the diversification and modernization needed to provide customers with reliable energy at the lowest reasonable cost.

The following are among the duties and responsibilities of the Board: (i) **Define, in collaboration with the Executive Director, the strategic management of PREPA, its top priorities and values, and oversee compliance therewith, without involving itself in the daily administrative affairs of PREPA, which are delegated to the Executive Director. Each value and goal shall be linked to performance benchmarks and objectives, and mechanisms to oversee compliance therewith[.]** ****

- Section 5 of Act 83-1941, as amended by Act 4-2016, addresses PREPA's Executive Director and Executive Officers. Section 5 addresses, in detail, appointment of the Executive Director; Executive Officers; and Performance and Conduct.
- Act 4-2016's Statement of Motives (emphasis added) discusses the PREPA governance reforms. The Statement, among other things, refers to "reform[ing] its operations and governance structure thus ensuring its **independence**...."

17. The legislature passed legislation signed by the Governor that clearly vested the authority to manage and operate PREPA with its Governing Board.

18. None of the sections mentioned above provide any general exception for Commission authority to overtake those functions. There is no statutory basis to infer that the legislature meant to provide the Commission with the general authority to manage PREPA. Nowhere is the Commission provided with the authority, for example, to approve total or detailed departmental budgets or to cap spending in total or at the directorate level. Statutes should be read in a manner that harmonizes all of its provisions, in order to achieve the most sensible, logical, and reasonable result. *E.g., Andino v. Fajardo Sugar Co.*, 82 D.P.R. 85, 94 (1961).

b. The Role of the Commission

19. The law establishes the Commission as PREPA's primary regulator, also subject to various principles and methods. While having a separate regulator of a public power electric utility is unusual, the model is not. The Statement of Motives in Act 57-2014 states in part that: "[t]he Energy Commission shall use as model the structure of energy commissions established in European and Latin American countries and of the public utilities regulatory commissions established in various states of the United States."

20. PREPA and its advisors are not aware of any other jurisdiction in the United States where the utility regulatory commission imposes a requirement that it must approve

detailed department budgets before those budgets can be used for operating purposes or that imposes spending caps that cover the entirety of the utility's operations based on such budgets. If, however, such an example exists, it would undoubtedly be an isolated exception, rather than the rule.

21. There is an entire body of case law recognizing that utilities must be allowed to manage their businesses. There also is a body of regulatory and policy that addresses the distinct role of utility commissions as regulators versus management's authority and discretion to operate the utility. *See, e.g.,* PREPA's Brief on Legal Issues, pp. 6-9 (discussing the role of utility management in relation to prudence principles), 9-10, 13-16. If the legislature intended a more intrusive model, it would have stated so and not specified a more standard regulatory model. The legislature did not do so, although it did give the Commission enhanced authority specifically regarding the IRP.

22. The Commission's powers and duties are delineated in detail in Section 6.3 of Act 57-2014, as amended by Act 4-2016. The list is exhaustive (with 42 items) and nowhere states that the Commission has the power to manage PREPA. None of the powers include the plenary authority to overstep the Governing Board's authority or create the responsibility for approving PREPA's budgets or spending.

23. It is a well-established maxim of statutory construction recognized and adopted by the Supreme Court of Puerto Rico that the grant of specific powers to an agency should be interpreted as only applying in the instances set forth explicitly. *See Raimundi v. Productora*, 2004 PR Sup. LEXIS 93, 2004 TSPR 106 (PR 2004) (*as a creature of the Legislature, acts or orders that transcend the provisions of its enabling law are not only erroneous but also void*); *See also, R. Lighterage Co. v. Caribe Tugboat Corp.*, 111 D.P.R 686, 1981 PR Sup. LEXIS 175

(PR 1981), (holding that the Public Service Commission cannot assume jurisdiction over any kind of activity that is not clearly authorized by law to do so). In other words, because the Legislature gave the Commission board specific authority over PREPA's IRP with specific review of policies and strategic plans with respect to energy resource integrated planning – it did not give the Commission the same authority to approve PREPA's overall strategic plans – or for that matter PREPA's budgets. If it meant to give the Commission such plenary authority, it would have stated so. *See, e.g.*, PREPA's Brief on Legal Issues, pp. 14-15. Neither need, utility, nor convenience can replace the status as a source of power for an administrative agency and any doubt as to the existence of such power must be resolved against the exercise of it. *Raimundi v. Productora*, 2004 PR Sup. LEXIS 93, 2004 TSPR 106 (PR 2004).

24. Two of the delineated items are especially relevant:

- Section 6.3(h) of Act 57-2014, as amended by Act 4-2016, gives the Commission the power and duty to “[r]eview and approve policies and strategic plans, as well as short-, medium-, and long-term plans in connection with energy resources integrated planning in Puerto Rico, and oversee compliance therewith.” This also includes a role in setting and assessing performance metrics. *See also* Section 6B(h) of Act 83-1941, as added by Act 57-2014 and renumbered by Act 4-2016. This requirement is specific and only applies to the Commission's authority over the Integrated Resource Plan (IRP), including the setting of performance metrics.
- Section 6.3(p) of Act 57-2014, as amended by Act 4-2016, allows the Commission to “[r]equire any electric power service company certified in Puerto Rico to keep, maintain, and regularly submit to the Commission those records, data, documents,

and plans that are necessary to attain the objectives of this Act.” This is a specific grant of the authority that allows the Commission to “maintain and submit” documents such as PREPA’s “plans.” It is notable that this language does not include PREPA’s budgets and makes no mention of any approval.

25. Similarly Section 6.4 of Act 57-2014, as amended by Act 4-2016, outlines the Commission’s jurisdiction. This Section provides details with respect to the Commission’s “primary and exclusive jurisdiction” along with its “general jurisdiction.” None of these sections mentions the types of management contemplated by the Order, as both discussed in general by the Order and reflected in specific items discussed further below. Section 6.4(b) relating to general jurisdiction, provides that the Commission shall have “...regulatory, investigative and adjudicative jurisdiction over PREPA...”, but this does not in any way convey plenary authority to manage PREPA by, for example, requiring approval department level budgets and capping spending. Administrative agencies only have the powers expressly granted by their enabling law and those that are indispensable to carry out the conferred. *Caribe Communications, Inc. v. Puerto Rico Telephone*, 2002 T.S.P.R. 83; *See also, Com. Vec. Pro-Mej., Inc. v. J.P.*, 147 D.P.R. 750, 762 n. 24 (1999);

26. Consistent with Sections 6.3 and 6.4 of Act 57-2014, as amended by Act 4-2016, the Commission has jurisdiction over PREPA’s rates.³ Section 6A of Act 83-1941, as amended by Act 4-2016, provides that:

Every rate proposed by the Authority shall be reviewed by the Energy Commission prior to taking effect, subject to the terms provided in the Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014, and this Section.

³ Section 6 of Act 83-1941, as amended by Act 4-2016, provides authority to both entities over rates with PREPA having the power to “...determine, fix, alter, charge, and collect reasonable and just rates, fees, rents, and other charges” but only subject to Commission’s approval.

The rate review process shall ensure that all rates are just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service, at the lowest reasonable cost.

27. Additionally, the Commission's authority in this initial rate review proceeding is explained as approving PREPA's proposed rates. The process for the "initial rate review" is outlined in Section 6A(c) of Act 83-1941, as added by Act 57-2014 and amended by Act 4-2016, and explains the Commission's role in this proceeding:

The Commission shall approve a rate that: (i) is sufficient to guarantee the payment of principal, interest, reserves, and all other requirements of bonds and other financial obligations that have not been defeased as part of the securitization provided in Chapter IV of the Electric Power Authority Revitalization Act and reasonable costs of providing the services of the Authority; (ii) complies with the terms and provisions of the agreements entered into with or in benefit of buyers or holders of any bonds or other financial obligations of the Authority; (iii) covers the costs of the contribution in lieu of taxes and other contributions and subsidies required to the Authority under special laws; (iv) remains in effect during three (3)-year cycles, except for periodic adjustments authorized by the Commission as part of the rate approved, and unless the Commission *motu proprio* decides to conduct a review; (v) takes into consideration the operational and administrative efficiencies and savings provided in the Creditors' Agreements as reasonably estimated in good faith by the Authority and determined as of the filing date of the proposal with the Commission. As part of every rate proposal, the Authority may propose one or more charges in the rate that show in a transparent manner the amounts to be paid by customers on account of the obligations of the Authority to bondholders and other creditors. Except for the Transition Charge of the securitization structure, which shall be governed by the provisions of Chapter IV of the Electric Power Authority Revitalization Act and Section 6.25A of Act No. 57-2014, the Commission shall review such charges according to the financial obligations of the Authority so that they may be sufficient to guarantee the annual payment of the debts contracted with bondholders.

Nowhere in this section is there any mention of budget approval or capping of costs, for example, or in any way managing PREPA's business.

28. Also, Act 4-2016's Statement of Motives, Section B, describes the Commission's oversight over rates, in part, as follows:

The Energy Commission was created upon the approval of Act No. 57-2014, as amended, known as the "Puerto Rico Energy Transformation and RELIEF Act." Said Commission is in charge of overseeing and following up the services

received by customers, as well as rate reviews, among others. It is worth noting that the Commission continues to be empowered to approve any rate review, a power that was granted thereto under Act No. 57-2014, supra. It is also hereby granted additional review and approval powers to ensure that the Authority's transformation is carried out fully and transparently.

29. Moreover, the Order's major provisions regarding the roles of the Commission and PREPA management were not addressed in testimony and PREPA has had no reasonable opportunity to respond to the relevant Staff/Order proposals. That goes against the clear mandates of the legislature, which determined the purpose and nature of this proceeding along with the Commission's role and obligations to be addressed in an Order. This situation is especially problematic as to budgeting and spending caps given the problems described in Section II.B of this Motion with the feasibility of budgeting far into the future.

30. The final paragraph of Section 6.3 of Act 57-2014 does contain some general language:

All orders issued by the Energy Commission shall be on behalf of the "Puerto Rico Energy Commission." All actions, regulations, and determinations of the Commission shall be governed by the applicable laws, the public interest and the interest of protecting the rights of customers or consumers. The provisions of this Act shall be construed liberally in order to achieve its purposes, and whenever a specific power or authority is granted to the Energy Commission, the same shall not be construed as to exclude or impair any other power or authority otherwise conferred to it. The Energy Commission created herein shall have, in addition to the powers specified in this Act, all those additional, implicit and incidental powers that are pertinent and necessary to enforce and carry out, perform, and exercise all the aforementioned powers and to attain the purposes of this Act.

However, that paragraph must be read for what it says and in context. The third and fourth sentences of this paragraph do not add jurisdiction or powers not consistent with the actual statutory provisions regarding the Commission and PREPA's management. To read these two sentences in such a manner would be to override the extensive, detailed language of Act 57-2014 and the later Act 4-2016. The statutory provisions must be harmonized in order to achieve the most sensible, logical, and reasonable result, as noted earlier. A law must never be interpreted

taking into consideration an isolated sentence, but rather fully taking into consideration its entire context. *E.g., Municipio de San Juan v. Banco Gubernamental de Fomento*, 140 D.P.R. 873 (1996); *Delgado v. D.S.C.A.*, 114 D.P.R. 177 (1983); *Marina Ind. Inc. v. Brown Boveri Corp.*, 114 D.P.R. 64, 90 (1983); *Cirino v. Fuentes Fluviales*, 91 D.P.R. 608, 616 (1964). Interpreting those sentences to usurp the express statutory duties and obligations of the PREPA Governing Board would conflict with all of provisions that place the power to manage PREPA with the Board. To read those two sentences in such a manner would constitute a violation of the law and would be reversible error.

2. **PREPA's Annual Rate Update and Reconciliation Proposals Would Enhance the Roles of the Commission and Stakeholders, Including the Public**

31. As indicated earlier, PREPA believes that its transformation requires good faith and cooperation between the Commission, PREPA and all stakeholders, including the public. Consistent with this philosophy, PREPA proposed an annual review process that gives the Commission a transparent view of the planning and budgeting process. As reflected in the testimony of Dr. Ross Hemphill (PREPA Exs. 7.0, 16.0, 17.0, 25.0), PREPA's proposal contains an unprecedented level of Commission and stakeholder participation in the process of planning PREPA's future beyond what is provided for by the IRP regulatory structure. PREPA felt that was desirable because of the need for consistent rate relief in order to continue on the path to transformation with necessary system investment and upgrades to its processes and systems. PREPA realized that this would not be possible under any traditional rate case approach with years between rate reviews, particularly when the first rate review was based on Fiscal Year 2014 with known and measureable adjustments through FY 2017, when the bulk of near term IRP spending would commence in FY 2018 and there would be significant developments in debt costs in FY 2018.

32. PREPA's proposal also provides for reconciliations of non-pass through costs (separate from the reconciliations of pass-through costs). The reconciliations also make sense, perhaps most notably again because of IRP spending and developments in costs of debt that will occur after the Order in this case.

3. **The Order Seriously Misunderstands PREPA's Proposal, Contrary Not Only to PREPA's Evidence But Also to Staff Member Woolf's Report**

33. The Order seems to have misunderstood both the mechanics of PREPA's proposal and its objectives, disregarding or misunderstanding not only PREPA's evidence but also the Report by Staff member Woolf, and characterizing the proposal, especially the reconciliations, as if they were vehicles simply to pass through costs, with no role for the Commission, and with no benefits for customers. All of that is mistaken.

34. For example, the Order recognizes that PREPA proposes to use "budget forecasts" as the Order calls it, but the Order also finds that that approach does not synchronize with the timeline under PREPA's proposal. Order, p. 148, paragraph 435. That is not correct. There is nothing whatsoever that is inconsistent with making a filing in October that reflects the projected spending for the next Fiscal Year (the budget forecast) while recognizing that the final budget will not be finalized and approved by the Governing Board until much closer to the start of the next Fiscal Year in accordance not only with PREPA's practices but with good utility practice.⁴ The timeline does not synchronize only if the Order insists upon a premature, final Governing Board-approved budget nearly a year before the start of the Fiscal Year. See the further discussion in Section II.B of this Motion.

⁴ There is not a single document anywhere that memorializes all aspects of "good utility practice". It is an industry term of art that routinely is used, including in innumerable orders of the Federal Energy Regulatory Commission and other regulators.

35. At p. 151, paragraph 448, the Order implies that the Commission must approve budgets, but again profoundly misunderstands PREPA's proposal: "To set revenue requirements in the succeeding October would be setting them after the budget already has been approved and gone into effect - too late to prevent imprudent costs." The Order here assumes that PREPA proposes to set the rates for a Fiscal Year after that Fiscal Year already has begun. That is not correct. That is not what PREPA's evidence or the Woolf Report said. They said the opposite. PREPA's proposal sets rates for a Fiscal year before the Fiscal Year starts, using a projection of spending for that Fiscal Year. The budget forecast is filed in October of the preceding Fiscal Year.

4. **The Order Includes Some Rulings, Findings, Conclusions, and Directives that Cross the Line Into Management of PREPA**

a. **Budgeting and the Annual Rate Updates**

36. The details of the Order's provisions regarding budgeting and the annual rate updates are discussed in Section II.B of this Motion. In brief, however, the Order places the Commission in the position (1) not just of reviewing PREPA's budgets or budget forecasts in the context of assessing its proposed revenue requirement, but rather (2) in the position of compelling PREPA to prepare, and its Governing Board to approve, a budget far in advance of normal processes, and to do so at the directorate level, and (3) then to have the Commission not only consider that budget as part of the task of setting a revenue requirement for rate update purposes, but also to have the Commission govern the budget as a budget, and (4) even to go beyond that and to make the compelled premature budget binding at the total level and at the directorate level, unless PREPA obtains Commission approval for changes.

37. PREPA does not see authority or precedent for such a regulatory management regime regarding utility budgeting in Puerto Rico law or in the experience of utility regulation

anywhere else in the United States. The law of Puerto Rico, as discussed earlier, does not support but rather precludes this structure.

38. Nor is that structure justified or necessary based on the record. PREPA's proposals, on its own initiative, would give the Commission and stakeholders a much enhanced roles that would go far to involve them -- in advance -- in PREPA's budgeting and thereby help reduce the risks of imprudent spending. Those proposals, however, cannot be taken as license for the very different regulatory management regime described above.

39. All of those concerns could be avoided if the Commission, in the annual update process, used forecasted budgets, as proposed by PREPA, and did not purport to impose requirements on budgeting as such. See also the discussion in Section II.B of this Motion.

b. Spending Caps and the Limited Reconciliations

40. The Order's provisions regarding spending caps and the limited reconciliations of non-pass through costs are discussed in more detail in Section II.B of this Motion. In brief, the Order: (1) imposes an overall spending cap based on the most recent approved revenue requirement; (2) also imposes spending caps at the directorate level in the future; and (3) allows only limited reconciliations of non-pass through costs, with PREPA being required to make an "extraordinary" showing to warrant deviation from the caps.

- At page 2, the Order states as follows: "Most important among those directives is this one: PREPA shall treat the revenue requirement established in this Order as a **cap on annual spending** until the Commission changes such revenue requirement and shall prepare departmental budgets that conform to that cap. There will be no over-spending by PREPA." (Emphasis added.)
- At page 8, the Order states that PREPA shall have no expectation of spending more than its approved revenue requirement, then charging ratepayers for the excess.
- At page 26, the Order states: "As we make clear in Part Four, **prospective spending by PREPA must be confined to budget figures that the Commission approves in advance**. This approach prevents imprudent costs not yet incurred

(and therefore disallowable by the Commission) from being incurred (and thus not practically disallowable by the Commission).” (Emphasis added.)

- At pp. 149-150, paragraph 442, the Order states with respect to actual budget examinations (emphasis supplied): “the Commission will review budgets in advance, adjust them to eliminate any waste and to require all feasible cost savings opportunities, then set revenue requirements consistent with those modified budgets. **PREPA’s spending must adhere to those budgets.**” (Emphasis added.)
- At p. 150, paragraph 445, the Order makes the statement (emphasis added) that “...the Commission will have **capped** spending at the budgeted levels.”
- At p. 151, paragraph 447, the Order states (emphasis added): “We reiterate: PREPA must have budgets, and **it must live with those budgets.** Any expectation PREPA has that it can readily spend above the revenue requirement in one year, then charge ratepayers for the difference in a later year, is emphatically rejected. The objective of all these proceedings is to cause PREPA to make realistic budgets, and then live within those budgets. Without this discipline, PREPA’s budget overruns become its customers’ budget burdens”.
- At p. 151, paragraph 448, the Order implies that the Commission must compel and approve early budgets (and misunderstands PREPA’s proposal) stating: “To set revenue requirements in the succeeding October would be setting them after the budget already has been approved and gone into effect - too late to prevent imprudent costs.”

41. PREPA again does not see authority or precedent for such spending caps in Puerto Rico law or in the experience of utility regulation anywhere else in the United States. Whether reconciliations are performed is not uniform across the States, but PREPA is not aware of any jurisdiction where a reconciliation is performed with an “extraordinary” showing standard of proof.

42. Nor are such caps or such a showing justified or necessary, especially in light of PREPA’s proposals.

43. All of those concerns could be avoided if the Commission did not purport to impose spending caps and it performed reconciliations with a normal standard of proof. See the discussion in Section II.B of this Motion.

c. Other Items

44. The Order also crosses into the role of stepping into the management of PREPA, without justification in the law, outside of its IRP role, and entering into utility management, with respect to the following directives:

a. The directive that PREPA use all reasonable efforts to persuade the PROMESA Board to provide maximum debt service (Order, pp. 96, 176), although PREPA hastens to add that it has been and is working and will continue to work to that end. PREPA supports, and does not object to, the goal and this aspect of achieving the goal, simply to this being a mandate of the Order in this rate review.

b. The directives to keep the position of Consulting Engineer, retain a new one, and follow Commission directions regarding the retention (Order pp. 106-107, 165, 178). The Consulting Engineer is provided for under an agreement to which the Commission is not a party, and there is no legal requirement for the position. PREPA is willing to engage in discussions with the relevant parties and the Commission on this subject, but a mandate is inappropriate.

c. The directives relating to the Irrigation District and PREPA's subsidiaries, other than the directives about providing to the Commission information regarding the subsidiaries' financial records and PREPA's affiliate transactions (Order, pp. 8-9, 161, 183-184). The directives otherwise enter into utility management, with no sound legal or factual basis, and without PREPA having the opportunity to prepare and submit written testimony on these points. The Irrigation District pricing was explained, discussed, and supported in questioning at the technical hearing. The record does not warrant singling out ICPO to participate in negotiations, although PREPA is willing to agree that interested parties may monitor negotiations with the District. The other items raise legal

issues and lack sufficient review. The code of conduct point overlooks existing law governing PREPA's contracting, discussed in the next paragraph of this Motion.

d. The directive to obtain Commission advance approval for contracts with service providers that may go over \$25 million (Order, pp. 76, 175). PREPA notes that the Order here overlooks not only the legal provisions discussed earlier relating to the roles of the Commission and PREPA's management, but also the legal provisions already in place regarding PREPA transactions. There already is substantial law governing many aspects of PREPA's contracting with third parties, as was mentioned during the rate review technical hearing although not discussed in detail. Acts 83-1941, 57-2014, and 4-2016 each contain provisions regarding contracting by PREPA. There also are general laws containing provisions on contracting by Puerto Rico governmental entities. *See, e.g.,* Acts 18-1975, 458-2000, 84-2002, 14-2004, 66-2014.⁵ PREPA, in the interests of cooperation, is willing to provide for a process of notifying the Commission of contracts with service providers that may go over \$50 million.

e. The directive relating to advance Commission approval for fuel additives (Order pp. 59, 173). Circumstances could emerge, such as environmental compliance, where PREPA may need to act promptly to incorporate fuel additives. Moreover, the approval process is not provided by the Order, and, whatever it is, will place demands on resources and impose costs, as well as possibly being too slow.⁶

⁵ PREPA is not attempting to state or identify all statutory provisions relevant to PREPA's contracting or to discuss how they should be read together. That is a very large subject, unsuitable and unnecessary to address here in a full manner. Such a discussion would be very lengthy. In any event, PREPA's point simply is that there is a large body of law on this subject. The Order does not appear to have taken into account any of that body of law.

⁶ Please note that, in the interests of working together, PREPA is not objecting at this time to the requirement to seek advance Commission approval of hedging, without waiving PREPA's position in the future.

f. The directive relating to advance Commission approval for going over 30,000 “smart” meters (Order, pp. 87, 176). PREPA is willing to commit to advance discussion with the Commission in the event of such a plan.

B. Other Concerns With The Order’s Decisions Regarding Budgeting, the Rate Update Process, Reconciliations, and Spending Caps

45. In Section II.A of this Motion, PREPA has discussed concerns under the Order relating to the respective roles of the Commission and PREPA’s management, including but not limited to how those concerns relate to the Order’s decisions relating the subjects of budgeting, rate updates, reconciliations, and spending caps.

46. In this Section II.B of this motion, PREPA discusses additional concerns with the Order’s decisions regarding budgeting, rate updates, reconciliations, and spending caps.

1. Summary of the Order’s Decisions

47. The Order adopts, in brief, a process that includes a series of “one-year budget examinations” to occur between each every three years full rate review. *E.g.*, Order, p. 8, paragraph 2, p. 149, paragraph 441. In these “examinations”, “the Commission will examine PREPA’s proposed departmental budgets for the coming fiscal year, compare them to the prior year’s budgets, then use that information to establish a just and reasonable revenue requirement for the fiscal year beginning on the upcoming July 1.” Order, p. 149, paragraph 441. In both the three-year rate reviews and the annual budget examinations, the Order provides that rate changes will be prospective only with the exception that it will allow reconciliation (backward looking) recovery of actual increases over projected costs “[i]n extraordinary situations, where PREPA proves it had no control of a cost increase...” Order, p. 150, paragraph 443. The Order also requires budgets and ratemaking to be “synchronized” with ratemaking, apparently meaning that the Commission is ordering PREPA’s Governing Board to set the total budget and department

level budgets for a Fiscal Year not approximately one month before the Fiscal Year begins, as is the current and long-standing Board practice, but rather sufficiently far in advance that they can be used as the basis of annual “budget review” proceeding to be commenced in about October preceding the Fiscal year, so something like 9 or 10 months in advance, meaning that work on the budget for a Fiscal year must begin 12 to 24 months in advance, although the Order leaves open some limited room for further discussion of “synchronization”. Order, p. 151, paragraphs 448-449. Finally, the Order not only caps total annual spending at PREPA’s overall approved revenue requirement (Order, pp. 2, 8, 151), but going forward apparently anticipates also doing imposing caps at the department (directorate) level within the revenue requirement, with no flexibility to shift funds between departments to meet contingencies. *See, e.g.*, Order pp. 149-151, paragraphs 441, 443, 444, 448.

2. Summary of PREPA’s Position

48. PREPA (1) generally does not object to a process for annual rate updates filed in about October prior to a Fiscal Year that is founded upon information about PREPA’s planned spending for the Fiscal Year, for that is in fact what PREPA proposed; but (2) PREPA proposed and still advocates using a forecast of the anticipated budget, because performing final budgeting for a Fiscal Year almost a year in advance, with budget work beginning up to two years in advance, is not PREPA’s practice and it is not a good utility practice. PREPA also (1) does not object to language limiting in the first instance PREPA’s *recovery* of its spending to the overall approved revenue requirement, provided that (2) the Order is revised such that the annual spending cap does not include costs recovered on a pass-through basis (*i.e.*, fuel, purchased power, CILT & Subsidies) and that the Order provides for exceptions for expenses outside PREPA’s control, such as spending due to major storms or hurricanes, and for recovery in situations when PREPA shows that the spending was prudent and reasonable (but does not have

to show that the situation was “extraordinary, because that standard is excessive and is not good utility practice). Those points are discussed further in the remainder of this subsection of this Motion. Some of those points also were raised in PREPA’s pending Motion for Clarification. PREPA also has additional concerns regarding some specific items, as is discussed at the end of this Section II.B.

3. Discussion

49. PREPA respectfully requests that the Commission reconsider the Order’s above rulings and directives. The approach set forth in the Order is problematic and not reasonably feasible nor good utility practice, for many reasons, including, in brief, the following:

a. The process has no basis in the record. While PREPA understands that the Commission has substantial leeway in interpreting and modifying proposals appearing in the record, the process set forth in the Order was not discussed anywhere in the record. Thus, the Commission does not have the benefit of a record that addresses its feasibility, problems with budget development timing, good utility practice, and the effects on PREPA’s ability to operate. Other than the instant Motion and a discussion at the Technical Conference held after the Order was issued, on January 27, 2017, the Commission does not have the benefit of PREPA input regarding real world challenges and downsides in developing final, binding, accurate, department level budgets something like a year in the future. PREPA was not afforded the opportunity to provide detailed testimony showing that it cannot effectively and prudently operate with the budgeting approach set forth in the Order. The Commission should reconsider its rulings and directives or, at a minimum, receive additional written testimony and hold an additional hearing so that these challenges and disadvantages can be addressed.

b. **The process is not feasible or good utility practice.** PREPA proposed an annual process that resembles rate cases with forward looking budgets (forecasts of spending, but not final approved line-item budgets) following the specificity of the Commission's rate case future test year filing requirements to be established, as discussed in the testimony of Dr. Hemphill. The Order, however, in paragraphs 441, 443, 444, and 448, apparently requires granular, final Governing Board-approved "department budgets" prior to the filing of the annual rate update, which would occur in the Fall before the Fiscal Year. Order, pp. 149, 150, 151. If so, that would require PREPA to complete its budgeting process for a Fiscal Year with Governing Board approval at least approximately 10 months prior to the commencement of the upcoming Fiscal Year.⁷ Considering that the development of budgets with an internal challenge process and Governing Board approval takes at least three months, the Order would require PREPA Directorates to begin budgeting in a detailed fashion more than 12 months prior to the beginning of that Fiscal Year. At that point, PREPA does not even have the benefit of actual experience in the immediately preceding Fiscal Year because it has not yet begun. That means PREPA would be working on budgeting for events between 12 and 24 months in the future.⁸ Even if those timeframes are compressed somewhat (as the Order may contemplate), that apparently still means, at a minimum, that PREPA would need to begin budget development over a year in advance and finish roughly 10 months in advance. There can be no expectation of accurate budgeting at that point because

⁷ PREPA would need to have department level budgets approved by its Governing Board by no later than September 1st in order to be able to make the October filings. Even the September 1st date is problematic in that it means preparing the filing on a very expedited basis. The quality of the filing may suffer, and may lead to higher costs, as discussed further below.

⁸ For example, PREPA Directorate Directors would need to provide internal budgets to the Executive Director's Office and Chief Financial Officer in June of 2018 for FY 2020.

rather than having granular planning at each department level, the information to be filed will likely have items such as escalators for inflation or reserves and speculation regarding conditions to be faced in the year following the current or upcoming Fiscal Year – or up to two years in the future. This requirement is not good utility practice and it seems to go against the Order’s repeated statements regarding disciplined spending within budgets at the department level.

c. **The process set forth in the Order does not reconcile debt service in FY 2017.** As explained in detail in testimony, one of the major benefits of PREPA’s proposed annual reconciliation process is that it recognizes that restructuring negotiations are ongoing and addresses, in particular, the potential volatility of debt service expense in FY 2017 and thereafter. For example, the timing, terms, and details of creditor participation in any exchange transaction are not final and, thus, it is unlikely that debt service will be synchronized with the revenue requirement approved by the Order based on projected 2017 debt service. Moreover, it also is not clear whether the Order itself meets the requirements of the Creditors as set for in the Restructuring Support Agreement (“RSA”) for future agreements between creditors and PREPA and the Commonwealth of Puerto Rico. PREPA proposed and still proposes that a solution to this dilemma would have the FY 2018 rate update and reconciliation proceeding also reconcile FY 2017 costs including debt service.

d. **The standard for reconciliation of costs is unnecessarily restrictive and counter-productive.** The Order establishes a strict standard for recovery of actual increases over projected costs stating that it only will be allowed in “extraordinary situations, where PREPA proves it had no control of a cost increase.” Order, p. 150,

paragraph 443. That differs from PREPA's proposed annual rate adjustment process that set forth transparent planning and forecasted budgeting with annual reconciliation of expenses where actual costs exceeded, or came in below, projections. PREPA submits that the goal should be accuracy and transparency versus the Order's essentially punitive approach for overages and disregard for possible credits back to customers for spending below the forecasted level. Spending can exceed good faith budgets for good reason and with no fault of PREPA, but the Order's harsh language makes recovery of costs over budget an "extraordinary" occurrence. That will inevitably lead to an inefficient process of covering unexpected contingencies within departments especially because, as discussed below, PREPA cannot shift funds between departments.

e. **If spending limits are imposed, they should be based only on the overall Revenue Requirement, with appropriate exclusions, not "department level" budgets.** The Order (at p. 150, paragraph 443, and other places) contains language that appears to limit PREPA to spending within each departmental budget with no flexibility to shift funds to cover contingencies. *See also* Order pp. 149-151, paragraphs 441, 444, 448. The concept of a business living within its means is not novel -- but PREPA is a business with an obligation to serve, which it must perform on an Island subject to major storms and hurricanes, with no shareholders and no equity balance to serve as a cushion. PREPA agrees that the Commission may limit total recovery of costs beyond the overall revenue requirement, with suitable exclusions for pass through and emergency costs and suitable reconciliations with an appropriate standard of proof. However, the Order apparently goes much further by: (1) not allowing flexibility to shift amounts between department budgets; and (2) requiring those budgets to be prepared and then finalized at

the Governing Board level almost a year before the Fiscal Year begins when there is no real understanding of the particular circumstances to be faced up to 12 to 24 months in the future. Together these draconian requirements will necessarily lead to the development of contingency budgets within departments and/or the need to include a large reserve in the budget. Such a budgeting process could lead to higher overall revenue requirements. The Order's approach is counter-productive, because it seeks to avoid imprudent spending by installing a premature and inflexible budget, one that may be significantly larger than the budget that would be developed closer to the Fiscal Year using good utility practice. That is inconsistent with the overall spirit and intent of the Order.

f. **The Order does not address how pre-approval of spending for contingencies would occur, which should not be required in any event.** The Order language stating that PREPA cannot overspend its budgets (*e.g.*, paragraphs 442 and 443) does not contain any discussion of contingencies, such as major weather events, or how PREPA could and would seek timely (advance / real-time) authorization of spending beyond budgets in such circumstances. See Order, pp. 149-150. PREPA believes that such spending should not be included in the annual cap, as discussed earlier. If such spending nonetheless is to be included in the annual cap, then PREPA believes there should be flexibility to respond to emergencies without filings and emergency requests for approval by the Commission. The Order should outline a process for addressing contingencies with the possibility of a rulemaking regarding the process to provide regulatory certainty to all stakeholders.

50. Accordingly, PREPA suggests the Commission reconsider its decisions regarding the annual budgeting process and reconciliations, and make the following modifications to the Order to correct the deficiencies noted above:

a. The Order should specify that the “budgets” to be provided shall be consistent with the Commission’s future test year filing requirements. These budgets should include department level information that is as specific as reasonably possible given the timeframe. The budgets should be understood to be forecasted (projected) spending, and not final Governing Board-approved budgets.

b. PREPA does not object to language in the Order providing that PREPA should not expect recovery of any overspend of the overall approved revenue requirement, provided that (1) the annual cap does not include pass-through costs [and other costs beyond PREPA’s control], (2) the annual cap does not include spending for contingencies such as major weather events, and (3) there is a reconciliation process with an appropriate “prudent and reasonable” standard of proof and not an “extraordinary” standard of proof. In addition, the Order should state specifically that, while PREPA will provide forecasted department level budgets, PREPA is not bound to a spending cap at the department level and has the flexibility to move funds between departments to meet contingencies and fund unplanned expenditures and otherwise to exercise business judgment.

c. The Order should allow PREPA flexibility to address emergencies without the need for Commission approval, although PREPA agrees that the Commission should receive timely notice of such occurrences. For non-exigent funding issues, the Order should clearly set forth a process for obtaining approval, if the regulatory structure it

going to require advance approval, but such circumstances would better be handled through the annual reconciliations with the appropriate standard of proof.

d. The Order should also allow for the reconciliation of projected expenses to actual without the restrictive “extraordinary” language in paragraph 443, p. 150, of the Order, as discussed earlier. PREPA agrees that the burden remains with PREPA to justify that any additional spending (apart from exclusions from the cap) is prudent and reasonable. This language is important because it allows PREPA to increase spending that benefits its customers with the understanding that it would need to address the prudence and reasonableness of the expenditures before the Commission in the next proceeding (the reconciliation).

e. The Order should specifically acknowledge that PREPA Governing Board’s statutorily mandated role in managing PREPA and the Commission’s role as regulator, as discussed in Section II.A of this Motion.

4. Additional Specific Concerns Relating to Budgeting

51. PREPA also seeks reconsideration on two additional aspects of budgeting. First, the Order requires that “for any major new capital projects (to be defined by the Commission) included in a budget forecast, PREPA shall provide a third-party based estimate.” Order p. 154; Order, p 183, paragraph 115. That requirement, to the extent that it involves projects that are within the scope of the IRP, is something that should be considered in the next IRP case, and is not suitable for this rate review. Moreover, that requirement is vague and does not appear in the record, and thus is does not reflect, for example, discussion of the statutory requirements that might be applicable to a major project, such as competitive bidding, or the likely costs of obtaining a meaningful third party estimate of the costs of a major project. This directive is not clear and should be withdrawn or deferred until the Commission defines the suitable

requirements, if any, in a separate proceeding that allows for consideration of the relevant law and facts. PREPA should have the ability to respond to such a proposal with evidence of the cost and feasibility of complying as well as the legal considerations. Unilateral pronouncements such as this without process or evidence are not in the public interest. PREPA cannot support this vague pronouncement.

52. Second, the Order directs PREPA to “use the most recent Commission-approved IRP as the basis for the budget forecast.” Order, p. 154, and p. 182, Directive 114. That Directive is problematic in multiple respects. The IRP is a plan, as its name states. The next IRP might not be issued for something like up to three or more years from now. In the meantime, PREPA must develop a new budget for each Fiscal Year as part of its regular operations, and, may need to undergo a new budget process (as per the Order) or develop forecasted budgets (as per PREPA’s proposal and position) as part of the annual update process. What it means to use the most recent approved IRP as “the basis” for the budget forecast is highly vague and unclear. Moreover, each budget and budget forecast should be developed on its own merits, and while the approved IRP is very important to consider, there may have been later developments that appropriately warrant or require deviation from the approved IRP, such as a change in law, a court decision, or a development in permitting. This Directive therefore is both excessively vague and, at the same time, whatever it means, once that is clear, will be unduly restrictive and inflexible. The Directive should be removed from the Order.

C. The Order’s \$6.314 Million Overstatement of the Revenue Requirement and Approved Rate Increase

53. The Order provides for a current base rate revenue deficiency of \$177.0 million. *E.g.*, Order, p. 5, and Attachment 1, line 34. PREPA believes that there is an error in the Order’s deficiency calculation that results in an overstatement of the approved rate increase by about

\$6.314 million. PREPA believes that the Order's calculation incorrectly compares the authorized revenue requirement to total expected revenue that includes an amount of CILT & Subsidy revenue, \$182.4 million, that is derived from the 11% gross-up under the original fuel forecast. The expected CILT & Subsidy revenue that should be included in total expected revenue should be equal to the CILT & Subsidy expense, \$188.7 million, because it will be collected as a pass-through, as provided by Act 4-2016. Continuing to use the \$182.4 million CILT & Subsidy revenue figure, even though such revenues will no longer be collected based on gross-up fuel costs, leads to an incorrect understatement of expected revenues and a corresponding overstatement of the revenue deficiency. The difference, \$6.314 million annually, is sufficiently large that it may affect the calculation of charges in the compliance filing. PREPA raised this point in its pending Motion for Clarification.

D. The Effective Date of the New Rates

54. The Order (at pp. 2, 100, 177) requires the new rates to be effective within 60 days. That is a date which, for important practical and implementation reasons (including those raised in PREPA's pending Motion for Clarification), should be extended and set for the first day of a calendar month. The Commission has the authority to extend the effective date under the last sentence of Section 6A(e) of Act 57-2014 as renumbered by Act 4-2016 ("Said provisional rate shall remain in effect during the period of time needed by the Commission to evaluate the rate modification request proposed by PREPA and issue a final order and until the date of the new bill is implemented, which period shall not exceed sixty (60) days after the approval of the rate, **unless the Commission extends such period for just cause.**") (emphasis added). Pursuant to a discussion with Commission Staff on the January 27, 2017 Clarification Call, PREPA will file a Motion requesting an extension of the effective date of the new rates.

E. Cost of Service and Rate Design

55. The Order does not rely on PREPA's embedded cost of service study ("COSS") for revenue allocation stating that the Commission does not have confidence that the studies describe cost causation accurately. Order, pgs. 5-6, 114 paragraph 325. The Order, thus, allocates responsibility for revenue increases using an equal cents/kWh allocator with the exception that the PPBB shall be increased by the average increase in the system revenue requirement (excluding the fuel, purchased-power and Transition Charge). Order, p.116, paragraphs 331-334.

56. The Order does not completely ignore PREPA's ECOSS, stating that it can be viewed as a "guide against which we can test other options." Order, p.117, paragraph 337. PREPA appreciates that along with the recognition that "PREPA is in a transition" and "[a]s PREPA gathers more data and improves its cost causation analyses, we will have a COSS that more surely guides our rate decisions." PREPA notes that it last revised its rates in 1989 and simply does not maintain the type of data referenced in the Order, including load research analyses, distribution system cost breakdowns (primary/secondary), and detailed cost data to support the cost of service studies. The record demonstrates that PREPA's cost of service and rate design proposals are based on the best information available today and includes data that was estimated to the best of its ability.

57. PREPA agrees with the Order that the COSS will improve over time and welcomes the opportunity to work with the Commission and stakeholders in future rate design proceedings to develop additional cost causation information. However, PREPA respectfully disagrees with the Commission's across-the-board approach to revenue allocation, because the COSS and proposed rate design, while based on a combination of actual and estimated data, are a significant step in the direction of improving the cost basis for PREPA's rates. The Order does

not recognize that the record supports a conclusion that PREPA's COSS is directionally correct and the proposed rate design is a significant improvement over PREPA's current rate design which has little, if any, cost basis. Indeed the record does not support the Order's arbitrary approach that perpetuates inequities in the current rate structure. *See, e.g.*, PREPA's Brief on Substantive Issues, pp. 81-83; PREPA Ex. 8.0, lines 271-281; Order, pp. 115-117.

58. Additionally, the Order does not consider the time required to provide the data that the Commission refers to (e.g., load data, primary /secondary studies) in order to develop an ideal rate design. The Order, if not reconsidered, will perpetuate the existing outdated and inefficient rate design for months or even years while seeking a better rate design.

59. PREPA is concerned with the results flowing from the several aspects of the Order. For example, the across-the-board \$/kWh increase will effectively give the highest load factor customers the largest percentage rate increase. That outcome is not only contrary to the results of PREPA's ECOSS but implicitly assumes that an ECOSS exists with a contrary result to PREPA's study. The result is unsupported and inequitable to those customers. PREPA therefore proposes that the existing pricing design be retained to the extent possible with the exception of the creation of the new Fuel Cost Adjustment, Purchased Power Cost Adjustment, CILT Adjustment, Subsidies Adjustment, and Energy Efficiency Adjustment. A percentage increase in base rates will be applied to all designs providing an equal percentage increase. The exception will be Tariff RFR which has a mandated tariff design. An exception will have to be made for RFR in order to comply with Act 22.

60. PREPA also does not agree with other rate design determinations that reject or modify PREPA's recommendations. However, there was ample debate at the technical hearing and PREPA appreciates the Commission's recognition that differences of opinions exist between

knowledgeable experts. Order, p. 119, paragraph 342. Thus, rather than seek reconsideration of each conclusion, without waiving its positions, PREPA will address these issues in the upcoming rate design proceeding.

61. Finally, the Order omits any decision on a load research program. At paragraph 321, the Order states that PREPA lacks “a continuing load-research program”, and funding for a PREPA load research program was discussed in information requests, technical conferences, and the hearings. While PREPA agrees to postpone many of the detailed rate design issues for the upcoming rate design proceeding, PREPA requests that the Commission address a load research program, as quality load research data requires years to develop.

F. Other Rulings, Findings, Conclusions, and Directives

1. Revenue Requirement-Related Items

a. Findings Regarding PREPA’s Level of Support of the Revenue Requirement in Filings and Discovery Responses, PREPA’s Allocation of Costs in Certain Documents, and PREPA’s Benchmarking Evidence

62. **Support.** The Order (e.g., pp. 30-31, paragraphs 67-69) finds that PREPA did not sufficiently support some elements of its proposed revenue requirement by identifying the adjustments to PREPA’s FY2014 data to develop the FY 2017 revenue requirement. Those findings are not warranted and are incorrect.

63. The Commission’s filing requirements mandated that PREPA start with the last year with audited financial statements (which is historical Fiscal Year 2014) and modify it with known and measureable adjustments. Reg. No. 8720, Section 1.08(B)(23), (34), (48).

64. The evidence shows that that regulatory constraint gave PREPA the options of developing known and measureable adjustments based on the budgets for Fiscal Years 2015 and 2016, but not for FY 2017 because it did not exist yet, or of doing something else. Relying on

the budgets for FY 2015 and 2016 would have been stale and would have begged questions about FY 2017 developments, thereby causing unnecessary confusion, discovery, and litigation. So, PREPA chose to bring known and measureable adjustments forward to FY 2017, but using the Business Plan, updated for variances. All of those points are in evidence in written testimony and at the technical hearing. *See, e.g.*, PREPA Ex. 5.0, lines 429-471; PREPA Ex. 5.04.

65. The Business Plan and variances were fully supported by written testimony. *See, e.g.*, PREPA Ex. 3.0. Moreover, the testimony also discussed each of the areas of PREPA and the many reform and recovery initiatives, and associated non-recurring and recurring cost savings. *See, e.g., Id.*

66. PREPA provided a vast array of written testimony, schedules, and work papers in this rate review. Please see PREPA's Sixth and Final Index attached as Appendix B to its Brief on Substantive Issues. PREPA also answered over 600 ROIs with over 2,000 subparts. The narrative answers to those ROIs comprise over 1,000 pages of text, and that does not include their numerous, detailed attachments. The ROIs, including their attachments, were entered into evidence on the Commission's own initiative.

67. PREPA also gave extensive live testimony at the technical hearing supporting its revenue requirement, including, for example, a large panel of operating expense witnesses who testified for an extended period.

68. The revenue requirement panel, in particular Mr. Stathos, also explained at the technical hearing that, while their testimony was not the underlying support for the revenue requirement inputs, so to speak, he had applied his extensive experience to assessing the revenue requirement inputs and he found them to be in reasonable ranges. The testimony of the revenue requirement panel also supported the revenue requirement being reasonable and prudent, in

writing, based on review of other witnesses' testimony. PREPA Ex. 5.0, lines 74-91. While their doing so was questioned at the technical hearing, their reliance on other witnesses seems not to have been understood or at least reflected. Moreover, their reliance is highly similar, in this regard, to the Staff Reports making conclusions, based on other witnesses' testimony, that themselves were received in evidence.

69. The Commission also should take into account that PREPA, in making its known and measureable adjustments, developed a revenue requirement that was LOWER than FY 2014 costs, AFTER removing fuel and purchased power costs. In fact, almost every category of costs was reduced, with the four exceptions being increases in pass through purchased power costs, other operating expense, the Energy Commission assessment, and capital expenditures. Of those items, other operating expense across all functions increased by the greatest amount, \$38.7 million, due primarily to increases in contract labor expenditures, as described in written and oral testimony. .

70. Moreover, PREPA's revenue requirement was validated "after the fact", so to speak, by the FY 2017 budget that was adopted after PREPA made its initial filing. The FY 2017 budgeting process used the revenue requirement as a starting point, but PREPA also went through the full, thorough budgeting process. The FY 2017 budget effectively found the revenue requirement to be appropriate for use in the FY 2017 budget. These points may be found in evidence in testimony and ROI responses.

71. Furthermore, Staff reviewed PREPA's proposed revenue requirement and, after correcting a significant calculation error, and removing \$41.340 million for AOGP (along with another relatively small reduction for smart meters that the Order did not adopt), Staff concluded

that PREPA's proposed revenue requirement was TOO LOW. *E.g.*, Smith / Dady Report, Ex. 4; Order, p. 26, paragraph 55(1).

72. The same is true of the Order. *See, e.g.*, Order, Attachment 1, and compare to PREPA Exs. 5.04 and 23.01.

73. The Staff Reports made criticisms of PREPA's revenue requirement support, principally in the Fisher / Horowitz Report, but it should be noted that while at the technical hearing they withdrew a number of their strongest criticisms, their Report did not cite some pertinent discovery elicited by other Staff witnesses (especially Ralph Smith), and PREPA lacked a meaningful opportunity to prepare and submit a response to their Report.

74. On this record, the Order's criticisms that the level of revenue requirement support was not sufficient in all areas are not warranted. They should be withdrawn or revised.

75. **Allocation.** The Order (at p. 39, paragraph 97) finds that PREPA's consultants did not properly allocate costs and further states that PREPA's consultants acknowledged that their method might not relate to PREPA's budgeting process.

76. The Order misinterprets that statement to reflect inaccuracies by PREPA's consultants when, in fact, it reflects inconsistencies between PREPA's budgeting and accounting methods versus the data categories called for by Reg. No. 8720. Fundamentally, Reg. No. 8720 made assumptions about how PREPA budgets and accounts, including that PREPA budgets in certain functional areas lining up with the FERC Uniform System of Accounts ("USOA"). PREPA accounts in a manner that largely ties to the USOA at a high level, but PREPA is not a "FERC Form. No. 1" filer and it is subject to separate government accounting standards that investor owned utilities are not. Moreover, PREPA does not budget in USOA "buckets" or functional areas (nor is there any norm that mainland utilities do so). How the revenue

requirement for non-fuel operating expenditure was allocated among USOA functional areas for purposes of addressing Reg. No. 8720 did not affect the revenue requirement. PREPA's consultants determined and applied a simple allocation method under which PREPA's costs that were not already in USOA buckets could be put in those buckets. PREPA's budget process was not complete at the time of the rate case filing, and a rigorous and precise assignment of USOA functional area expenditure was deemed inconsequential and costly. The complete PREPA FY2017 budget was provided to the Commission in discovery after it was completed and approved by PREPA's Governing Board. PREPA's consultants explained these issues, doing so most notably and at length at the technical hearing, when, PREPA respectfully submits, it became apparent that PREPA's consultants had done a reasonable job of trying to fit a round peg into a square hole. With the submission of PREPA's approved budget, more precise, though imperfect, assignments of PREPA's cost allocation to USOA functional areas became available.

77. **Benchmarking.** The Order (at pp. 44-46, paragraphs 116-121) questions the value of PREPA's submission of testimony and a benchmarking analysis performed by Dr. Larry Kaufmann. Dr. Kaufmann found that PREPA's cost management compared to other U.S. electric utilities was average, or even good (PREPA Ex. 6.0), and, accordingly that:

Overall, these findings lead me to conclude that PREPA's expenses are not being artificially inflated because of inefficient operations or excessive wage payments to PREPA employees. The evidence suggests that PREPA's internal cost management is not the primary factor in PREP A's financial difficulties. The PREPA figures, however, likely reflect downward pressures on spending due to its financial difficulties.

PREPA Ex. 6.0 at lines 532-536.

78. PREPA respectfully submits that the Order simply misses the point of the benchmarking evidence.

79. Reg. No. 8720, Section 2.17(C), required testimony from PREPA's Executive Director or its Chief Restructuring Officer on whether the proposed revenue requirement included any costs that are not reasonable or prudently incurred. They did so, relying in part on the benchmarking evidence. PREPA Ex. 1.0 at lines 658-663; PREPA Ex. 2.0, lines 107-127.

80. The point of the benchmarking evidence was not to address whether PREPA in the past engaged in imprudence.

81. The point of the benchmarking evidence was that PREPA's expenses were not inflated by inefficiency or excessive wages or poor cost management, as Mr. Kaufmann explained (see above).

82. The benchmarking evidence, therefore, is directly relevant to the question of whether there are imprudent or unreasonable costs in the revenue requirement, a question that the Commission asked.

83. Moreover, ICSEPR submitted (flawed) benchmarking evidence from witnesses Sanzillo and Kunkel, which Mr. Kaufmann's rebuttal (PREPA Ex. 22.0) refuted.

84. Furthermore, the Fisher / Horowitz Report also compared PREPA's costs to those of other utilities, which the Order cites (at pp. 25-26, paragraph 55).

85. The Order's finding that the benchmarking analysis were not useful is mistaken and unsustainable, and its conclusion that PREPA should submit guidelines to the Commission for the judging the usefulness of testimony prior to incurring the costs of drafting it (Order at p. 47, paragraph 121) is unwarranted.

b. Other Findings Regarding PREPA's Capex and Opex Budgets

86. **The Capital Expenditures Budget.** The Order (at p. 64, paragraph 174) makes a finding, relating to PREPA's capital expenditures, that PREPA's responses to Staff ROIs, despite PREPA's making "serious efforts to provide the information we required, answering hundreds of

questions”, were “often insufficient”, and, in particular, did not always provide clear documentation of its capital projects’ purposes, prior spending, progress toward completion, or predicted final cost.⁹ Those findings also are not warranted.

87. The Order correctly reflects, in many spots (*e.g.*, p. 61, fn. 134), that PREPA submitted its capital expenditure projects as Schedule F-3, which it revised in compliance with the Commission’s June 13, 2016, Order and re-submitted as Schedule F-3 REV. The document provided a description of the projects, including whether it was an expansion or improvement of PREPA’s system, and its budget for FY2017 – FY2019. The document also indicated whether a particular project had been included as part of PREPA’s IRP. *See also, e.g.*, PREPA’s Response to ROI CEPR-RS-02-05.

88. There was much follow-up discovery and PREPA answered that discovery. For example, in response to an ROI requesting information about certain capital expenses identified Schedule F-3 REV., PREPA submitted detailed information regarding its budget for the acquisition of meters and auxiliary meeting equipment to be used for PREPA’s residential and wholesale customers. *See* PREPA’s response to ROI CEPR-JF-02-05. In response to an ROI requesting information about PREPA’s maintenance capital expenditures for PREPA’s generating units from FY 2010 through FY 2016, PREPA submitted all of the requested information in a spreadsheet titled, “CEPR-AH-06-12 Attach 01.xlsx”. *See* PREPA’s response to CEPR-AH-06-012. In response to ROIs requesting anticipated capital investments over the next 15 and 20 years, respectively, PREPA provided specific numbers for all of the fiscal years identified. *See* PREPA’s responses to CEPR-JF-01-05 and CEPR-JF-01-09.

⁹ The Order also refers back to that finding on p. 164, in findings 31 and 32. The language on page 164 is much broader than the actual underlying findings on page 64, and, to that extent, if not read in context of p. 64, is not fair to PREPA.

89. PREPA also answered many ROIs relating to its capital budgeting process in addition to answering ROIs about the components of the budget. *See, e.g.*, PREPA's responses to ROIs CEPR-AH-05-01 through CEPR-AH-05-10 and CEPR-AH-02-02.

90. The Order should not find that any of PREPA's ROI responses were insufficient.

91. **The Operating Expense Budget.** PREPA also answered many ROIs about its operating expenses, and its operating expense budget process. PREPA also submitted a compliance filing regarding operating expense budgeting on December 30, 2016, that largely captured testimony by PREPA's then Interim Chief Financial Officer, Ernesto Morales, at the technical hearing.

92. The Order (at p. 40, paragraph 99) finds that PREPA did not disclose a bottom-up, by directorate, operations expense budget for FY 2017 prior to the technical hearing. That is incorrect. PREPA submitted its Governing Board approved FY 2017 budget in response to more than one Staff ROIs. In addition, in particular, PREPA disclosed a bottom-up, by directorate, operations expense budget for FY 2017 on November 10, 2016, as part of its response to ROI CEPR-RS-07-07, which requested the FY 2017 budget in "the most detailed form available". The finding should be withdrawn.

c. **AOGP**

93. The Order follows the Final Resolution and Order in the IRP case by: (1) not fully approving AOGP, (2) limiting certain AOGP-related spending to a \$15 million cap, and (3) requiring PREPA to submit further analysis of what are characterized as alternatives to AOGP. That results in a reduction to the revenue requirement of \$41.340 million. Order, pp. 5, fn. 9; pp. 76-80, 174; and Attachment 3, p. 2, line 3 and Note [B].

94. In this subsection, PREPA first will discuss what the evidence shows, and then will discuss why the Order's rulings and findings are unsound.

95. AOGP should be fully approved for the reasons found in PREPA's IRP case motion for reconsideration (and the underlying IRP case evidence) and the reasons discussed in PREPA's Brief on Substantive Issues in this rate review (at pp. 51-52) (and the underlying evidence here).¹⁰

96. AOGP is a critical and essential part of a PREPA plan that is the only live and timely option for addressing a number of pressing needs, including foremost compliance with federal environmental law (perhaps most notably, the US EPA's Mercury and Air Toxics Standards or "MATS") and associated environmental justice concerns, but also ending PREPA's reliance on a single source of natural gas, and improving reliability, reducing costs, and allowing improved integration of renewables, among other objectives. *E.g.*, PREPA Ex. 2.0, lines 621-622; PREPA's responses to requirements of information ("ROIs") CEPR-SGH-01-011, CEPR-JF-01-08 (including Confidential PREPA Document #141105 "AOGP Business Case" (draft), CEPR-JF-04-05, CEPR-JF-04-08.

97. The material presented in the IRP case and referenced and discussed in the rate review shows how AOGP fits into PREPA's plan, and how other hypothetical options suggested by intervenors or Staff either are not a live option at all and/or are impractical and untimely, and, because they would add years to achieving MATS compliance, expose PREPA and thus its customers to incremental increases of \$280 million of penalties.

98. For example, at the technical hearing, on December 6, 2016, PREPA Executive Director Dr. Javier Quintana discussed why a Costa Sur to Aguirre pipeline is not a real alternative, and PREPA witness Rafael Marrero discussed why the non-AOGP alternatives

¹⁰ In the IRP case, PREPA has a pending motion for reconsideration that includes this subject. The Commission is required to rule on that motion by February 10, 2017. PREPA incorporates here the relevant portions of that motion.

collectively are not realistic options and expose PREPA and its customers to that additional \$280 million in penalties. On December 7, 2016, Dr. Quintana, when being cross-examined by Sunnova, reconfirmed that PREPA had evaluated the alternatives to AOGP for MATS compliance, not only the pipeline but also renewables and storage, for example. *See also, e.g.,* PREPA's responses to ROIs CEPR-JF-01-08, CEPR-JF-04-04. Potential fines and penalties also were discussed again in testimony on December 7, 2016.

99. At the technical hearing, on December 7, 2016, Staff member Dr. Fisher referred to the most recent \$200 million figure for cost savings from AOGP (not reflecting subsequent increases of cost of fuel for PREPA's existing fleet) as "marginal". He suggested that other alternatives were becoming more favorable, but that view is based on changes in fuel prices that are not consistent with Staff's own fuel costs update and the prices reflected therein that the Order itself approves. He also appeared to treat some of the other alternatives as realistic options, even though he admitted they would take about four extra years. He essentially discounted the documented exposure to an extra \$280 million in penalties to zero, claiming there was "no good evidence" of this exposure even though PREPA presented expert evidence, and based on his personal belief founded on some past settlements of which he was aware that the US EPA would agree to waive the increased penalties/fines. He presented insufficient support for his theories, and his speculation is not a sound reason to spend yet more time on undefined hypothetical alternatives with potentially significant downsides.

100. The Order recognizes that fines and penalties should be avoided (Order, pp. 54, 172), and Staff member Mr. Smith testified to that effect at the technical hearing.

101. Finally, PREPA notes that its expenditure of \$41.340 million in question related to AOGP during FY 2017 is realistic, as explained by one of its witnesses on December 6, 2016.

See also, e.g., PREPA Ex. 14.00, lines 52-61; PREPA's responses to October 20, 2016, Clarification Call Staff Request No. 1, CEPR-AH-01-01, CEPR-AH-01-03, CEPR-AH-01-04, CEPR-JF-04-03 (Confidential).

102. Thus, the evidence supports full approval of AOGP, ending the \$15 million cap, and including the \$41.340 million in the revenue requirement.

103. The Order's findings in support of its ruling are unsound and do not negate the above points shown by the evidence in the record.

104. PREPA respectfully submits that the Order's findings minimizing the added exposure to penalties/fines are unsupported by evidence and also are illogical and incorrect.

- The Order at p. 79, paragraph 79, rejects PREPA's penalties/fines argument as unsupported and because PREPA did not include any amount for fines in its proposed revenue requirement.
- That finding incorrectly overlooks the testimony at the technical hearing from PREPA and Dr. Fisher.
- Even more importantly, that finding does not make sense on its face and rests on a false assumption. The revenue requirement in this rate review is based on FY 2014 with adjustments for known and measurable items in FY 2017, which ends on June 30, 2017. That is undisputed. PREPA's evidence is about the Commission's directives exposing PREPA and its customers to the risk of an addition \$280 million in penalties in the future, not in FY 2017, which means any amount for these penalties did not belong in the revenue requirement. That fact was indicated in the technical hearing testimony, and it also was shown in PREPA's IRP case motion for reconsideration, which calculates the extra \$280 million of penalties risk and shows

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it involves penalties after FY 2017. PREPA's IRP case motion for reconsideration at pp. 13-14 and Attachment B.

- The Order also indicates that PREPA did not show the penalties are "imminent". Order, p. 79, paragraph 228. Again, that misses the point. The Order's approach, like the IRP case order, would delay environmental compliance for several years, yielding the risk of much higher penalties in the future.

105. The Order (at pp. 79-80, paragraphs 228-230) makes findings to the effect that PREPA did not show that hypothetical alternatives to AOGP are not optimal. Those findings, too, are unsound.

- The findings implicitly assume that the hypothetical alternatives are practical. That overlooks the technical hearing testimony, which shows that all of the hypothetical alternatives, such as "MATS-compliant new generation" and a southwest to southeast pipeline, would take years longer (if even possible) than AOGP, and thereby would delay compliance (and environmental justice) and yield the penalties risk discussed above. The Order relies here on the Fisher/Horowitz report, but as to this specific point their report does not provide its own evidence and is just their commentary.
- The Order's suggestion that PREPA's emphasis on AOGP was the reason the pipeline was canceled (Order, p. 79, paragraph 230) has no support and is wrong. The pipeline was not canceled because PREPA wished to build AOGP. The pipeline was cancelled after a change in the Commonwealth's administration. *See, e.g.,* PREPA's original response to CEPR-SH-001-012(a)



- Also, the evidence still shows that AOGP is economically preferable, even without the penalties point, as discussed above. See also, e.g., PREPA IRP case motion for reconsideration, p. 29, paragraph 79. What the Order calls for is yet one more analysis to prove that point, failing to consider the relevance here of increases in fuel costs that the Order itself approves, which only further make the case for AOGP. Higher fuel costs led to higher projected savings due to AOGP in earlier analyses.
- The Fisher/Horowitz report also speculates about environmental controls or more renewables as alternatives. They do not point to any evidence of viability, and, again, those undetermined hypothetical alternatives would mean delay.
- Moreover, the facts in the IRP case plainly showed that an environmental controls approach would not work, ignores other types of pollutants, does not support compliance with other environmental laws and objectives, will require more water use, greatly increase ash, and not support other objectives including renewables integration and higher efficiency generation. See, e.g., PREPA IRP case motion for reconsideration, pp.10-12, paragraphs 30-32.
- Further, the evidence in the IRP case shows that a higher level of renewables in the short term is impractical and uneconomic, with one major reason being curtailment costs. See, e.g., PREPA IRP case motion for reconsideration, p. 25, paragraph 62.
- The Fisher/Horowitz report, on this subject, should have reflected and taken into account the above information already presented in the IRP.

106. The “alternatives” are not perfect substitute alternatives. They either cannot be done or they can be done only at the cost of years of delay, much increased penalties risk, and failing to achieve other objectives.

107. With respect to AOGP, the time for delay based on academic and risky hypothetical alternatives and further study of options that are not real options has passed.

108. The Order should be reconsidered, and, on reconsideration, should fully approve AOGP or, at least, approve the full amount for AOGP that was included in PREPA’s proposed revenue requirement. The \$15 million spending cap should be withdrawn and the disallowed \$41.340 million should be added back to the revenue requirement.¹¹

d. The Revenue Requirement Model

109. Although PREPA does not agree with the Order’s conclusion to use the Staff’s Modified DSCR model (Order, pp. 35-36, p. 171, Directives 1-2), PREPA does not seek reconsideration on that conclusion. That is because, in brief, PREPA understands from the Staff’s own testimony (at the technical hearing) and the Order that Staff’s method is to be used on an interim basis and that the method may and will be re-reviewed in the future and will not be used once PREPA returns to financial health.

110. PREPA does have a concern about the application of this ruling in Order, Attachment 1, line 24. Line 24 is labeled as “Ratepayer Funding of Capital Expenditures”.

¹¹ PREPA also wishes to address one other point that relates to AOGP but that does not bear on the merits of the subject but that does warrant revision of certain findings. The Order finds that on September 27, 2016, the Commission required PREPA to file supplemental testimony with a revised revenue requirement to, among other things, reflect the \$15 million cap, and that PREPA did not do so. Order, pp. 78-79, paragraphs 225-226. The September 27th order did make a directive about the \$15 million cap, but it also stated that PREPA should make certain other assumptions. PREPA’s supplemental testimony, filed on October 13, 2016, indicated that it understood the September 27th order in a manner that did not result in a net reduction to the revenue requirement. PREPA Ex. 14.00, lines 33-61. The Order (at pp. 78-79, paragraphs 226-227) references the higher level summary testimony in PREPA Ex. 13.00, lines 106-116, but indicates that it was not supported, apparently overlooking PREPA Ex. 14.00, lines 33-61. In any event, PREPA was not aware, until the Order, that the Commission was of the view that the October 13th supplemental testimony had not correctly interpreted and applied the September 27th order in relation to the cap.

However, it is clear from the Staff Reports and testimony at the technical hearing, and from the Order, that the amount in line 24 is only part of the ratepayer funded capital expenditures, because the amount in line 21 for "Debt Service Coverage"-- i.e., for the Debt Service Coverage Ratio -- also is ratepayer funding of capital expenditures.

111. Although PREPA believes there is no doubt on the above point, the Commission may wish to modify the name of line 24 or add a footnote to Attachment 1 to make clear the above point, so that there is no public confusion on this point.

2. Accounting-Related Items

a. Accounting Reclassification of Certain Maintenance Contracts

112. The Order directs that certain generation maintenance contracts in the amount of \$16 million be accounted for as operating expense instead of capital costs. Order, pp. 48, 75, 164, 171, 174.

113. PREPA requests that the Commission reconsider this directive, for several reasons. First, such treatment adds a level of complication and potential misrepresentation of how these costs will ultimately be reflected on the books of PREPA. These expenses are incurred under long-term service agreement maintenance contracts that have been historically budgeted by PREPA as capital expenditures. The reason for that treatment is that these contracts are generally used for PREPA's overhaul or "turnaround" maintenance on various components of the generation units. This is typical in the industry and is required every five to six years. At the time these amounts are budgeted, it is not known what work will be required, but rather will be discovered as the overhaul is undertaken. As part of that initial evaluation of the condition of the units, it is common to identify and perform work that qualifies as a "betterment" or an actual replacement of major items of property. Capital replacements and betterments require special accounting treatment including recording capital additions depending on the work performed.

Betterments are defined as work that prolongs the life, increases the capacity, or increases the efficiency of the units. So while these costs may have been budgeted as Capex, what actually gets recorded on the books of PREPA is a combination of O&M expense and Capex.

114. Second, this subject is further complicated by the fact that any Commission actions may impact how PREPA is required to account for costs. In many cases, there are differences between Generally Accepted Accounting Principles ("GAAP") and typical utility accounting as prescribed under the Federal Energy Regulatory Commission's ("FERC") Uniform System of Accounts. However, under both Financial Accounting Standards Board ("FASB") and Governmental Accounting Standards Board ("GASB"), exceptions to GAAP can become GAAP if a regulatory body has prescribed accounting treatment that is non-GAAP. Accordingly, this is a circumstance where a Commission pronouncement or action may require that PREPA change the way in which an accounting transaction is recorded.

115. Third, added to these considerations is the fact that such a treatment may put the Commission in a position of having to perform a similar in depth analysis of all Capex budgets in future rate filings, or in the case of a scenario that involves an annual formula ratemaking mechanism or other rate update approach, to be required to identify similar adjustments to Capex. While it may be the Commission's preference to perform this type of analysis at each rate filing, especially in the first rate proceeding before the Commission, this is something that typically falls under the authority of PREPA's Governing Board. See discussion in Section II.A of this Motion.

116. Fourth, this proposed adjustment has no impact on PREPA's revenue requirement, so there does not appear to be any practical reason for the Order to impose a questionable accounting change on PREPA.

117. Finally, the Order presents no good reason for this directive. The Order (at p. 48 and fn. 106) notes that PREPA expressed all of the above concerns, but then nonetheless states that PREPA must use correct accounting and accepts the Fisher / Horowitz Report recommendation to require that the contracts at issue be accounted for as Opex instead of Capex. That assumes, without discussing the underlying merits, that the Report is correct. The Report has only extremely limited, conceptual, non-expert support for its recommendation. *See* Report at p. 85. Neither Dr. Fisher nor Dr. Horowitz is an accountant, nor apparently do they have any other professional training that qualifies either of them as experts on accounting. *See, e.g., -* Report at pp. 9-10.¹² The Order does not present or reference any other support for this directive. Even though PREPA did not have the opportunity to submit written testimony on this subject, there plainly is no sound basis for the Commission to order PREPA to change this accounting, and there are multiple reasons not to do so.

b. Accounting for Customer-Funded CapEx

118. The Order also directs that PREPA account for revenue funded Capex as Contributions in Aid of Construction (CIAC). Order, pp. 34, 178.

119. PREPA believes that, while this directive does not alter the revenue requirement in this initial rate review, the directive nonetheless should be reconsidered.

120. The Order relies on the Smith / Dady Report, Staff members who do have accounting credentials. Their Report provides, however, only a very limited discussion of this subject. Their recommendation seems to have been developed on a speculative or theoretical basis, either to reflect a concept that revenue funding of CapEx is like the situation when an individual customer contributes to the cost of a specific capital item used to serve that customers,

¹² The Smith / Dady Report (at pp. 37, 54-55, 114-115) references the Horowitz / Fisher recommendation, but the Smith / Dady Report does not discuss or support its merits. They simply describe and incorporate it.

or to signify a fact that already is well known, which is that revenue funding is not investor funding. *See Smith / Dady Report*, pp. 21, 53, 117.

121. The directive is not appropriate for the circumstances facing PREPA, and it is not in the interests of customers. This funding should be modeled as recovery of expense and accounted for as operating revenues. Some but not all of the reasons for PREPA's position are reflected in PREPA's response to ROI CEPR-RS-05-29, but, because Staff's recommendation first was presented in a report to which PREPA did not have the opportunity to prepare and rebuttal, the subject was addressed by PREPA in testimony only during Panel A at the technical hearing. PREPA respectfully notes that there is no other support in the record for the Smith / Dady recommendation.

122. The Order and Staff's reports recognize that PREPA's current financial situation is dire enough to adopt a cash basis for determination of revenue requirement, and to include Capex costs in current rates. The Order and Staff also measure the adequacy of PREPA's revenue requirement using a Debt Service Coverage Ratio approach, as discussed earlier, which looks only at cash flow to meet debt requirements during a period where PREPA has regained financial stability and access to capital markets to finance a portion of the Capex requirements, as discussed earlier. Given that approach, there is no special accounting treatment required.

123. Under PREPA's approach, the dollars expended on Capex would be added to the assets used and useful in providing service and would be reflected on the balance sheet or Statement of Financial Position. The revenues received from rates (including the portion funding Capex) would be accounted for as revenues on the income statement. Because there are no Capex expenditures on the income statement, the revenues would flow through to net operating income, and would ultimately show up on the balance sheet as an Increase in Net Position. For

each year that this occurs, PREPA's net position would improve, financial stability would be returned, and at some point, PREPA could return to the capital markets to finance future Capex. This process and the results of PREPA operations would ultimately be reviewed during annual reconciliations, and as part of the rate update mechanism.

124. It has been suggested that a Contribution in Aid of Construction contra account in the electric plant in service account be established to identify those dollars paid through rates. That type of treatment is only of any regulatory value if it is the Commission's intent to use a rate base/rate of return methodology, which is more appropriate for an investor or privately owned utility.

125. All the CIAC approach will accomplish is to create a series of complicated journal entries that would be required of PREPA to track these dollars, and would need ultimately to be accepted by their external auditors. PREPA also is concerned that the CIAC approach would or could imply to bondholders that, as to CapEx, this is not an actual increase in rates, but rather that this is only a temporary rate increase that would at some point in the future be flowed back to customers. If the Commission is not planning on using a rate base/rate of return approach, then the use of a CIAC approach is not only unnecessary, but could be detrimental to PREPA regaining access to capital markets.

126. Under normal situations when a CIAC account is used, it is used as an income account to recognize the value of the assets that a particular customer either partially paid for, or that the customer contributed to the company in the form of money or assets (more common among water utilities). That income then flows to the balance sheet in the form of Contributed Capital in the equity component of the balance sheet. That is the current treatment that PREPA

uses for typical contributions in aid of construction from its customers. *See, e.g.,* PREPA's responses to ROIs CEPR-RS-05-28, CEPR-RS-07-05.

127. In this rate review, however, revenue to offset the Capex investments is being funded currently in rates, with no intention that they will be refunded in the future. This, accordingly, eliminates the necessity of recording future obligations to customers with respect to the revenue involved here. The benefit to the customers accrues when PREPA returns to financial stability and that is accomplished through two means. One is that the equity, or in the case of PREPA, its net position, improves each year that the Modified Cash Basis or Modified DSCR approach is used and Capex revenue funding is used. The Capex funded revenues improve the net operating income which ultimately is reflected in an improved Net Position.

128. In addition, without CIAC accounting, the calculation of DSCR returns to a positive position more quickly. DSCR calculations are simplistically based upon operating income plus depreciation divided by debt service. Because there is no offset to depreciation expense for any Contribution in Aid of Construction in future years, the DSCR returns to a more respectable level more quickly, allowing PREPA to return to the capital markets, which in turn allows PREPA to return to financing a portion of their capital expenditures at reduced interest rates, thereby reducing the need for Capex to be reflected in future revenue requirements.¹³

129. In addition, any action taken by the Commission in adopting a requirement to reflect a Contribution in Aid of Construction and any associated Regulatory Liabilities may have longer term effects on both the accounting treatment under Generally Accepted Accounting Principles ("GAAP"), as well as effects on the taxes that individual businesses in Puerto Rico can deduct. As an example, if at some point in the future, Puerto Rico becomes a State within

¹³ Dr. Frank Pampush testimony on Dec 1, 2016, at the technical hearing, regarding a return to capital markets implies lower interest rate.

the United States and its citizens and businesses become subject to U. S. tax regulations administered by the Internal Revenue Service, certain previously deductible utilities expense could be lost to the commercial customers. A portion of those deductions taken for normal utility expense could be lost. The potential exists for IRS rulings that could require that a portion of those rates previously taken as a business deduction in their totality should be treated as an improvement to land or other assets, thereby losing the deductibility of dollars spent on electric rates. This would especially be true if a portion of the rates paid were broken out as CIAC.

130. Accordingly, PREPA maintains that no special accounting treatment should be accorded for revenue funded Capex, both for the longer term implications on accounting for transactions under GAAP, and for the message or uncertainty that will be presented to bondholders and future investors in PREPA bonds as it relates to PREPA's rates and the Commission's intent to allow PREPA to return to financial stability and access to capital markets.

131. Adopting special treatment will lead to a series of accounting journals that would not only reduce current revenues from rates, and also establish a liability that is not intended to be repaid, but rather be used to reduce long term rates of PREPA customers.

132. There is no upside of the Order's directive. There are many actual and potential downsides. The directive should be reconsidered and withdrawn.

3. Finding that Criticizes PREPA Relating to Proposing Unbundling

133. The Order's finding (p. 129) criticizing PREPA for proposing unbundling should be withdrawn.

134. The Commission's filing requirements mandated that PREPA submit an unbundling proposal. Regulation No. 8720, Section 2.15(B).

135. Moreover, the Commission's June 13, 2016, Resolution and Order (at p. 8) on the Determination of Filing Completeness (the "deficiency" order), issued a deficiency to PREPA that required PREPA to submit additional information on this subject.

136. The finding is not warranted.

4. **Items Relating to, or Redundant With,
Other and Future Proceedings**

a. **The Performance Metrics Investigation**

137. The Order contains a premature, unsupported, unnecessary, and burdensome directive that, in the pending performance metrics case, PREPA identify at least three proposed firms to conduct a management performance review specifically relating to fuel purchase costs and purchased power costs. Order, pp. 59-60, 173.¹⁴

138. The subject of what should be done in the performance metrics case is being addressed in that case. The Commission required that any comments on the Notice of Investigation in that case be filed by January 13, 2017, and PREPA and others complied. The Commission has not yet acted.

139. The Commission, in this rate review, already has been presented with extensive evidence regarding the successful work done by AlixPartners LLP and PREPA to identify improvements in PREPA's management of fuel costs.

140. PREPA presented uncontradicted testimony and other evidence about the reforms it has made in fuel cost management, which have led to significant fuel cost savings passed on to customers and will continue to do so. *See, e.g.*, PREPA Ex. 3.0, lines 356-407; PREPA's

¹⁴ The Order also indicates that, in the performance metrics case, the Commission will consider whether to require PREPA to submit consultant candidates for review of certain maintenance contracts. Order, pp. 76, 175. That appears to be just a statement of the Commission's current intent. Moreover, how the performance metric case will proceed currently is under Commission review in that case, as noted below. PREPA does not believe there is a need to seek reconsideration here at this time.

response to ROI CEPR-RS-05-07. In developing its business plan, PREPA utilized experts in fuel and assessed PREPA's strengths and weaknesses with a focus on, among other things, fuel inventory management, procurement processes and inventory management. The team prioritized the challenges and developed a business plan that addresses PREPA's challenges both in the near and far term. PREPA Ex. 3.0, lines 270-282. PREPA provided evidence that the business plan projects annual run-rate savings of \$135 million as well as one-time liquidity improvements of \$86 million. *See, e.g.*, PREPA Ex. 3.0, lines 379-381. These savings are supported by several key initiatives, including;

a. Implemented an improved fuel forecasting process (embedded in a new Sales and Operations Planning (S&OP) process) that enabled the optimization of fuels inventory levels and capitalize dispatch optimization delivering approximately \$23 million in cost savings (fuel and purchased power);

b. Used a strategic RFP process for fuel oil #2 and #6 and LNG reducing adders and improving credit terms to delivered net fuel adder (residuals and distillates) savings of approximately \$22 million;

c. Improved coordination between functions enabling PREPA to continually optimize dispatch;

d. Analyzed the root causes of forced outages by power plant and implementing mitigation actions to reduce the frequency and severity of forced outages. This will also support the reduction of spinning reserves. On target to deliver approximately \$54 million in annual savings;

e. Key corrective actions focused around training of key personnel, improved preventative maintenance planning and execution. Improving reliability of PREPA

generation fleet is projected to enable reduced spinning reserve which in turn leads to incremental fuel savings; and

f. Negotiated the natural gas for the Costa Sur complex by adding a natural hedge with Henry Hub (“HH”) index and reducing the existing FO based formula for an estimated annual savings of approximately \$33 million.

See, e.g., PREPA Ex. 3.0, lines 21-36, lines 816-846; PREPA ROI response CEPR-SH-001-006.

141. Moreover, Act 4-2016, in its Statement of Motives, Section B, recognized non-recurring and annual savings achieved in relation to fuel and other costs.

142. The record demonstrates PREPA’s is utilizing industry expertise to ensure that planned fuel spending is reasonable and prudently incurred. There is no good reason for a performance management review. Any work and expense borne by PREPA, its customers, third parties, or the Commission would not be resources well spent.

143. In addition, this type of review of fuel costs already is being performed by Siemens who is currently performing a fuel assessment as requested by Act 83-1941, Section 5B, as added by Act 4-2016. The scope of that assessment includes the fuel purchasing process, the fuel quality controls, the fuels office organizational structure and existing controls. An additional review at this time would be unnecessary and wasteful.

144. The directive also should be withdrawn as to purchased power costs.

145. As noted above, the work of Alix and PREPA already has yielded purchase power cost savings as well as fuel cost savings.

146. In addition, PREPA has been working on optimizing dispatch of spot power from EcoElectrica and limiting the use of excess capacity as to AES and renegotiating the excess capacity contract. *See, e.g.,* PREPA’s response to ROI CEPR-JF-01-20.

147. Furthermore, in the IRP case, the Commission currently has before it, on rehearing, the subject of renewables contracts and a possible renewables independent audit. See PREPA's IRP case motion for reconsideration, Section VI(B).

148. Moreover, a performance review inherently will require significant resources from PREPA, the auditors, and the Commission, with costs being passed on to customers.

149. There is no good reason for the above two directives, and they have significant downsides.

b. The Next IRP Process

150. The Order contains several directives that are not suitable for this rate review that involve the next IRP case. Those items include the directives requiring: (1) strategic plans for the San Juan and Palo Seco steam plants and a related reliability study, (2) modeling relating to limited use plants and reliability, and (3) economic analysis relating to maintaining versus retiring limited use units. Order, pp. 74-75, and pp. 174-175, Directives 33-35.

151. Those are not subjects that were addressed in testimony or raised as issues in this rate review, apart from partially being the subject of some Staff discovery and then being proposed in the Fisher / Horowitz Report. As noted earlier, and discussed further below, PREPA had no ability to submit discovery regarding or a written response to the Staff Reports. The Fisher /Horowitz Report appears to tie these items to the subject of the capital budget, but there does not appear to be a sound rationale that leads from the subject of the capital budget to these directives.

152. In PREPA's view, the above directives did not appropriately rise, nor were appropriately vetted, in this rate review, and, moreover, they are not a suitable subject for this rate review, particularly given the procedural circumstances and because they relate most directly to the next IRP, not to future rate proceedings.

153. PREPA is very open to working with Staff and, as permitted, the Commission, on ways to improve the next IRP filing and the next IRP case. However, the issuance of these directives, absent a proper consideration, is not a sound manner in which to proceed.

c. Directive Regarding Test Years in Future Rate Proceedings

154. The Order (at p. 31, in paragraph 69) includes the following sentence: "For future rate proceedings, PREPA's test year must be the most recent fiscal year, adjusted for known and measurable changes from that year."

155. That sentence should be removed from the Order, or, alternatively, clarified that it is limited to cases involving historical test years.

156. The sentence is problematic in several ways. First, a future rate proceeding might involve a future test year, not an historical test year. Reg. No. 8720 requires use of an historical test year, but Reg. No. 8720 expressly is limited to this first rate review. *See also* NARUC Rate Case and Audit Manual, pp. 4, 10 (2003) (jurisdictions vary in test year rules, and some allow future test years). Second, the Order adopts an annual rate update process that will involve use of a forecast and/or budget for the next fiscal year, not an historical test year. Third, the Commission's future regulations and practices should allow PREPA a choice of appropriate test years, consistent with good utility regulatory practice.

d. The Role of Commission Staff Reports in Future Cases

157. PREPA submits this final subsection of its motion for reconsideration to discuss the role of the Staff reports in this and future cases.

158. The Staff Reports were distributed to the parties after the written testimony phase of this case had closed, and only very shortly before the technical hearing. The Staff Reports contain a mixture of evaluation of matters already in evidence and, in some instances, new statements, claims, and recommendations that no other witness raised or addressed. Because of

the timing, PREPA and other parties could not prepare and submit written responses to the Reports, nor conduct discovery relating to the Reports.

159. At the pre-hearing conference, the Hearing Examiner indicated that the Staff Reports were evaluative and would not be treated as substantive evidence, but, during the technical hearing, that ruling was reversed.

160. The parties were allowed to cross-examine the Staff consultants who submitted Reports.

161. PREPA is aware of no intervenor objection to the admission into evidence of the Staff Reports or to the procedures followed relating to the Reports, so intervenors would appear to have waived any such objections.

162. PREPA, however, during the legal panel of the technical hearing, did express concerns with the procedures, in particular with respect to instances in which the Reports raise new claims and issues. *See also* PREPA's Brief on Substantive issues, p. 4, fn. 3.

163. Those concerns are most significant with respect to elements of the Chernick Report, although there were generally isolated instances in some other Reports, such as the Fisher / Horowitz Report's recommendation regarding accounting for certain generation maintenance contracts discussed earlier in this Motion.

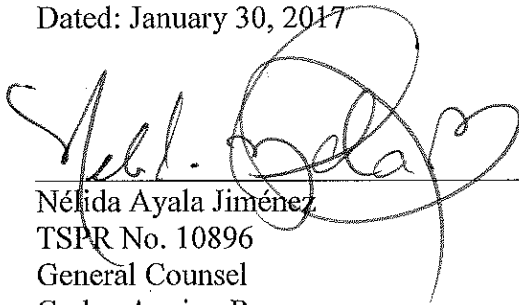
164. PREPA raises this subject not so much because it wishes to seek reconsideration of the Order on this basis, but rather with a view to seeking to improve procedures in future cases. To the extent that the Commission contemplates, or in the future may contemplate, the issuance of Staff Reports that will contain new facts and issues, and that will be admitted into evidence, PREPA suggests that the Reports be issued on such a timeline as will permit the

parties reasonable notice and opportunity to be heard on such subjects. That would mean sufficient time for discovery as well as for a written response, as well as cross-examination.

III. CONCLUSION

165. Wherefore, the Puerto Rico Electric Power Authority respectfully requests that the Puerto Rico Energy Commission grant reconsideration on the items in this Motion for Reconsideration (and in its incorporated Emergency Motion for Clarification), and, upon reconsideration, change the Order and Resolution as requested herein, and grant such other relief as is warranted.

Dated: January 30, 2017



Nérida Ayala Jiménez
TSPR No. 10896
General Counsel
Carlos Aquino Ramos
TSPR No. 12951
Nitza D. Vázquez Rodríguez
TSPR No. 9311
Executive Advisor
Puerto Rico Electric Power Authority
P.O. Box 363928
San Juan, Puerto Rico 00936-3928
Tel. 787-521-4431; 787-521-4433
Email: n-ayala@aepr.com
Tel. 787-521-4445
Email : c-aquino@aepr.com
Tel. 787-521-4436; 787-521-4433
Email: n-vazquez@aepr.com

THE PUERTO RICO ELECTRIC POWER
AUTHORITY

E. Glenn Rippie
Admitted by Courtesy
John P. Ratnaswamy
Admitted by Courtesy
Michael Guerra
Admitted by Courtesy
Rooney Rippie & Ratnaswamy LLP
350 W. Hubbard St., Suite 600
Chicago, Illinois 60654
Tel. 312-447-2800
Email: Glenn.Rippie@R3Law.com
Email: John.Ratnaswamy@R3Law.com
Email: Michael.Guerra@R3Law.com

Counsel for the Puerto Rico Electric Power Authority

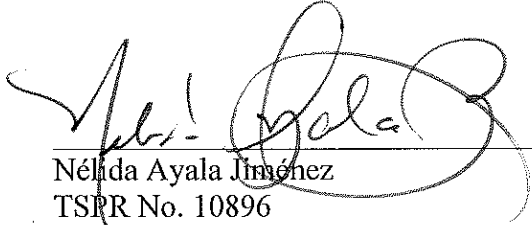
FILIG AND SERVICE

WE HEREBY CERTIFY that this Motion was, on January 30, 2017, before 5:00 p.m., (1) filed at the Puerto Rico Energy Commission's Clerk's office, located at the lobby of 268 Munoz Rivera Ave., San Juan, PR 00918; and (2) sent via email to secretaria@energia.pr.gov and mcintron@energia.pr.gov, and to the Commission's legal counsel at gbonet@energia.pr.gov, afigueroa@energia.pr.gov, tnegron@energia.pr.gov, and legal@energia.pr.gov, and to all parties of record at the following email addresses: codiot@opic.pr.gov; jperez@oipc.pr.gov; cfl@mcvpr.com; ivc@mcvpr.com; mmuntanerlaw@gmail.com; jfeliciano@constructorespr.net; abogados@fuerteslaw.com; jose.maeso@aae.pr.gov; edwin.quinones@aae.pr.gov; nydinmarie.watlington@cemex.com; aconer.pr@gmail.com; eenergypr@gmail.com; jorgehernandez@escopr.net; ecandelaria@camarapr.net; pga@caribe.net; manualgabrielfernandez@gmail.com; mreyes@midapr.com; agratefe@agraitlawpr.com; mgrpcorp@gmail.com; maribel.cruz@acueductospr.com; attystgo@yahoo.com; eirizarry@ccdlawpr.com; and pnieves@vnblegal.com.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 30th DAY OF JANUARY, 2017

PUERTO RICO ELECTRIC POWER AUTHORITY



Néida Ayala Jiménez
TSPR No. 10896
General Counsel
Carlos Aquino Ramos
TSPR No. 12951
Nitza D. Vázquez Rodríguez
TSPR No. 9311
Executive Advisor
Puerto Rico Electric Power Authority
P.O. Box 363928
San Juan, Puerto Rico 00936-3928
Tel. 787-521-4431; 787-521-4433
Email: n-ayala@aepr.com
Tel. 787-521-4445
Email : c-aquino@aepr.com
Tel. 787-521-4436; 787-521-4433
Email: n-vazquez@aepr.com

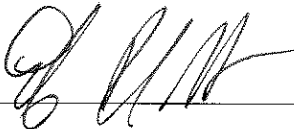
E. Glenn Rippie
Admitted by Courtesy
John P. Ratnaswamy
Admitted by Courtesy
Michael Guerra
Admitted by Courtesy
Rooney Rippie & Ratnaswamy LLP
350 W. Hubbard St., Suite 600
Chicago, Illinois 60654
Tel. 312-447-2800
Email: Glenn.Rippie@R3Law.com
Email: John.Ratnaswamy@R3Law.com
Email: Michael.Guerra@R3Law.com

VERIFICATION

I, Efran Paredes Maisonet, of legal age, engineer, married, and resident of Bayamon, Puerto Rico, in my capacity as Acting Director of Planning and Environmental Protection, of the Puerto Rico Electric Power Authority (PREPA), under oath declare as follows:

1. My name and personal circumstances are those stated above.
2. I have reviewed the foregoing Motion.
3. In my capacity as Acting Director of Planning and Environmental Protection of PREPA, I have been duly authorized to provide this Verification in support of the Motion.
4. The factual information included in the Motion is true on the basis of my personal knowledge or on the basis of the information supplied to me by employees of PREPA and, with respect to legal points, by counsel for PREPA.

In San Juan, Puerto Rico, this 30th day of January, 2017.



Efran Paredes Maisonet

Affidavit No. 1515

Sworn and subscribed before me by Efran Paredes Maisonet of the personal circumstances above mentioned, whom I personally ^{identified by lic conducir # 2162 005} know, in San Juan, Puerto Rico, this 30th day of January, 2017.



Public Notary

EXENTO PAGO ARANCEL
LEY 47
4 DE JULIO 1982

