



**COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION**

**IN RE: THE PERFORMANCE OF THE PUERTO  
RICO ELECTRIC POWER AUTHORITY**

**CASE NO.:** CEPR-IN-2016-0002

**SUBJECT:** Investigation Procedure  
Description.

**RESOLUTION AND ORDER**

**I. INTRODUCTION AND BACKGROUND**

On November 15, 2016, the Puerto Rico Energy Commission (“Commission”) issued a “Notice of Investigation to Identify Opportunities to Improve Performance of the Puerto Rico Electric Power Authority” (“NOI”) and began this proceeding. In that NOI, the Commission noted the concern of the Legislature over the inefficiencies and lack of oversight in the operations of the Puerto Rico Electric Power Authority (“PREPA”).<sup>1</sup> The NOI also set forth the Commission’s statutory authority to conduct this inquiry.<sup>2</sup> Further, the Commission established a sequence of events which consisted in part of a Commission investigation, independent audits and rulemakings.<sup>3</sup>

In addition to the Commission setting forth its vision for the investigation, the Commission requested that interested stakeholders provide comments by December 15, 2016, on a series of questions posed by the Commission to aid it in framing the scope of its investigation.<sup>4</sup> Comments were received from PREPA, Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (“ICSE-PR”); Enlace Latino de Acción Climática-El Puente de Williamsburg, Inc. y el Comité de Diálogo Ambiental, Inc. (“ELAC”); and, the Independent Consumer Protection Office (“ICPO”). The Commission appreciates the filed comments and has carefully reviewed them as part of this investigation. The comments are being taken into consideration as the Commission continues to develop the scope and subject areas of the investigation to identify opportunities to improve PREPA’s performance.

The Commission has decided to make some modifications to the process which was set forth in the NOI. These changes are designed to aid the Commission in considering all aspects of PREPA’s performance in a more efficient manner. The modified process will also better permit concurrent activities so as to afford more progress earlier in the process. The

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<sup>1</sup> In Re: The Performance of the Puerto Rico Electric Power Authority, Case No. CEPR-IN-2016-0002, “Notice of Investigation to Identify Opportunities to Improve Performance of the Puerto Rico Electric Power Authority,” November 15, 2016, p. 3.

<sup>2</sup> *Id.*, p. 3-4.

<sup>3</sup> *Id.*, p. 4-5.

<sup>4</sup> *Id.*, p. 10-11.

major change is that the Commission will be considering PREPA’s performance in three separate and distinct proceedings which will be discussed in more detail below. The Commission emphasizes that these changes are procedural and not substantive, meaning they will not impact the scope of the investigation. Rather, they are designed to create a more thorough and efficient review.

Through this Resolution and Order, the Commission further clarifies the process it is undertaking and will further define the subject matter of the investigation.

**II. THE PROCESS**

The Commission plans to have three separate proceedings to address PREPA’s performance improvements: the Commission investigation; the independent audits; and, the rulemaking, each of which are discussed below.

**A. The Commission Investigation**

The purpose of this first proceeding is to provide the Commission with the opportunity to conduct an internal investigation and assessment of the efficiency and quality of PREPA’s current performance, in order to better understand the areas for which improvement is needed. It will also help the Commission establish the current baseline from which progress can be measured.

Under Act 57-2014<sup>5</sup>, the Commission has broad investigatory powers in the discharge of its duties to regulate PREPA. Specifically, Article 6.24 sets forth the Commission’s authority to, among other things: visit PREPA’s facilities and investigate the necessary documents to verify compliance with Commission orders, rules and regulations; conduct tests and audits, including the installation of any device needed to carry out its duties;<sup>6</sup> examine under oath, whether through a formal interview or summons, all officials and employees of PREPA and require the production of documents;<sup>7</sup> and, to investigate any matter related to the compliance with the laws that apply to the enforcement of public policy on energy and the purposes of Act 57-2014.<sup>8</sup> Through Section 6.3 of Act 57-2014, the Legislature reiterated its support for providing the Commission with investigatory powers to conduct investigations and audits to attain the purposes of Act 57-2014 along with the

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<sup>5</sup> Puerto Rico Energy Transformation and RELIEF Act, as amended.

<sup>6</sup> Act 57-2014, Section 6.24(a); *See also*, Commission Regulation No. 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, Chapter 5, §15.03.

<sup>7</sup> *Id.*, Section 6.24(b).

<sup>8</sup> *Id.*, Section 6.24(e).

authority to delegate this power through resolution.<sup>9</sup> Further, under its general jurisdiction, the Commission has regulatory, investigative and adjudicative authority over PREPA.<sup>10</sup> Thus, the Commission has ample authority to carry out this investigation.

As part of its investigation, it is the intent of the Commission to communicate directly and independently with PREPA and stakeholders to gather relevant information which will be useful in drafting proposed rules. The Commission will issue a report once its investigation is concluded.<sup>11</sup> PREPA will be afforded the opportunity to provide comments on the report.<sup>12</sup> This report will be part of the information the Commission will consider during the rulemaking process.

This investigation will include:

- Input from PREPA, including through a technical conference and report;
- Consultation with other stakeholders;
- Synthesis of PREPA and stakeholder input to inform possible metrics and reporting structures; and
- Further input from PREPA and stakeholders following that synthesis.

Section III of this Resolution and Order describes the components of this investigation in greater detail. The investigation will conclude with the publication of a final report.

## **B. The Independent Assessments**

In its Notice of Investigation for this proceeding, the Commission indicated that one of the primary steps of the investigation would be independent audits of PREPA's performance. However, after considering comments from the public and from PREPA, the Commission must clarify that it intends to use all available tools to conduct independent assessments of PREPA's performance, which might be in the form of audits. The Commission expects that such assessments will be a useful tool in evaluating PREPA's performance and identifying areas in which that performance is lacking and the causes thereof. Also, we find that it may be more appropriate to conduct such assessments under the auspices of a separate proceeding.

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<sup>9</sup> *Id.*, Article 6.3(y).

<sup>10</sup> *Id.*, Article 6.4(b)(1).

<sup>11</sup> *See* Regulation No. 8543, §15.07.

<sup>12</sup> *Id.*, §15.08.

Therefore, concurrent with the investigation under this proceeding, the Commission may open a second proceeding to begin the process of procuring independent assessments of PREPA. As pointed out in the NOI, the Commission may seek independent expert assessments that could investigate some or all of the following:

- Performance: PREPA’s internal operations, including management and staff performance, training, and retention;
- Financial: PREPA’s management of its budget including revenues and expenditures; and
- Engineering: including the operation and maintenance of PREPA’s generation, transmission, and distribution infrastructure.<sup>13</sup>

If the Commission decides to open such a proceeding, the process and timelines for the retention of external experts will be outlined in more detail in a separate Order. However, the Commission contemplates a timeline for such a proceeding that would include one or more Request(s) for Proposals, Expert Report(s) and an opportunity for comments on the Expert Report(s).

### **C. The Rulemaking**

The rulemaking will proceed from the Commission’s investigation and will be conducted in a separate proceeding. The procedure for the rulemaking will be set forth in more detail in the Commission’s Order initiating the proceeding.

The Commission will revise the initial rules based on the assessment report(s) and the comments from interested parties and PREPA. Thus, interested stakeholders will have multiple opportunities to provide input into the final rules. The rulemaking will set the process going forward for evaluating PREPA’s performance on a host of criteria.

## **III. THE COMMISSION’S INVESTIGATION**

This investigation will focus on (a) PREPA’s current status with respect to its performance, improvements that PREPA has made in the recent past, and improvements that are currently in progress; and (b) initial investigation into the performance areas and potential actions identified in the NOI. The Commission envisions this investigation will include at least the following components: input from PREPA comprising, among other things, an understanding of the status and specifics of PREPA’s ongoing reform and recovery efforts; consultation with other stakeholders; issuance of and public feedback on possible performance metrics and reporting structures; and a final report on the investigation.

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<sup>13</sup> Commission’s NOI, pp. 9-10.

## A. Input from PREPA

The Commission appreciates PREPA's references to the "significant effort" it has expended "to identify and implement reform and recovery efforts."<sup>14</sup> The Commission agrees with PREPA that it would be of benefit to "... obtain a strong understanding of the specifics and status of PREPA's reform and recovery efforts that began in September 2014 and are ongoing, and the improvements and changes in PREPA's data collection, reporting, and operations that are already underway."<sup>15</sup> The Commission expects that such an understanding will be useful to provide context for potential future Commission requirements regarding performance, metrics, and reporting.

The Commission expects to discuss with PREPA both:

- a) its current status and recent progress, including its plans for the incorporation of data, metrics, and reporting in its reform and recovery efforts and any metrics reported to PREPA's Board of Directors, along with any performance expectation the Board has established regarding those metrics; and
- b) at least the following topics:
  1. PREPA's corporate operations, including allocation of responsibility and decision-making powers and maintenance of critical institutional knowledge;
  2. PREPA's financial operations, including accounting and recordkeeping practices and risk management practices and procedures;
  3. PREPA's engineering operations, including safety practices, preventative maintenance practices, recordkeeping practices, and adherence to standards;
  4. PREPA's planning operations;
  5. PREPA's interactions with vendors;
  6. PREPA's interactions with customers; and
  7. PREPA's interactions with regulatory agencies, including but not limited to this Commission, and adherence to the regulations of all these regulatory agencies.

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<sup>14</sup> "PREPA's Comments on Notice of Investigation", January 13, 2017, p 2.

<sup>15</sup> *Id.*, p. 1.

The Commission appreciates PREPA's offer to "prepare detailed briefings for the Commission and stakeholders in a relatively limited amount of time."<sup>16</sup> To that end, the Commission intends to hold a two-day technical conference with PREPA's executive management as well as its division directors the week of March 6<sup>th</sup>, 2017. Further details will be provided at a later date. PREPA's Board of Directors will also be invited to attend the conference. In preparation for the Technical Conference, the Commission is issuing a Requirement of Information concurrently with this Resolution and Order. The following shall apply to all discovery requests and corresponding responses:

1. When answering any discovery request, the responding party shall notify its responses to the Commission via email. Responses to any discovery request must be filed in searchable PDF format. All answers may only be notified by the responding party's authorized representative.

2. If, due to its size, a document is unable to be sent via email, the responding party shall deliver to the Commission, through a pendrive or a cloud-based storage service (e.g. Dropbox, OneDrive, Google Drive, WeTransfer, etc.).

3. With the purpose of easing the discovery process, the Commission has determined to exempt all parties in the instant proceeding from the requirement that all answers to a discovery request be physically signed and notarized.

4. Each discovery response must clearly identify the person providing the answer to each question or requirement and include a certification regarding that, to the best of his/her knowledge, all answers provided are true and correct and none of the information provided is willingly misleading.

5. Physical copies of responses to discovery request need not be filed with the Commission's Clerk.

6. Should any party claim confidential treatment of the information provided in response to a discovery request, or a portion thereof, said party shall follow the guidelines set forth by the Commission in its August 31, 2016 Resolution, CEPR-MI- 2016-0009.

7. All emails addressed to the Commission shall be sent to the following addresses: [tnegron@energia.pr.gov](mailto:tnegron@energia.pr.gov), [viacaron@energia.pr.gov](mailto:viacaron@energia.pr.gov), [afigueroa@energia.pr.gov](mailto:afigueroa@energia.pr.gov) and [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov).

PREPA should plan to attend the Technical Conference ready to discuss in detail and answer questions on each of the above topics. The Commission welcomes PREPA's input regarding any topics, beyond those identified above, to be addressed in the conference. PREPA should also be ready to provide the Commission with at least five (5) paper copies of all documents it plans to discuss or refer to in the Technical Conference along with an

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<sup>16</sup> *Id.*, p. 11.

electronic copy of all materials. In order to facilitate the uninhibited flow of information during this phase of the investigation, the attendance at this technical conference will be limited to the Commission and its consultants, and PREPA.

The Commission directs PREPA to provide a written report one week from the conclusion of the technical conference covering in detail PREPA's current status and recent progress, and including any relevant information requested at the technical conference but not available at that time. The Commission expects that PREPA will refine its report based on feedback, topics, and discussion at the conference, including responding to specific Commission requests, prior to submission to the Commission. The Commission would welcome in this report PREPA's suggested "specific metrics by which [its] performance can and should be assessed now (as a baseline) and going forward"<sup>17</sup> along with PREPA's baseline understanding of its performance on those metrics.

PREPA's report shall also include a section that describes in detail any and all recommendations or directives made by AlixPartners to PREPA to improve its performance, along with the status of implementing each of the recommendations or directives. The Commission requests that PREPA include in this section:

- a) A thorough description of the state of PREPA's operations and management in each area of PREPA's operations before the implementation of any AlixPartners initiatives, the goal of the initiatives, PREPA's current state in the relevant area, and PREPA's anticipated future state.
- b) Any insights with regards to impediments or barriers to progress that are preventing PREPA from achieving the expected improvements, as they were forecasted by AlixPartners or PREPA, and proposals of how these impediments might be remedied.
- c) Any other information, including supporting documents on the above topics, that PREPA believes is relevant to the Commission's investigation.

## **B. Consultation with other stakeholders**

The Commission appreciates the comments submitted in response to the NOI by other stakeholders. The Commission is committed to engage with those commenters as well as other stakeholders who may have particular perspectives regarding possible metrics and areas of PREPA's performance. This engagement may take the form of additional technical conferences or meetings with those stakeholders, individually or in groups, within the next several months.

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<sup>17</sup> *Id.*, p. 1.

### **C. Synthesis of input to create possible metrics and reporting structures**

Following the information-gathering procedures described above, with both PREPA and stakeholders, the Commission intends to share with PREPA and stakeholders a summary of potential metrics that could be used to assess PREPA's performance, along with a proposed structure for transparently reporting on those metrics. For consistency, these potential metrics, along with their reporting structure, will be designed to incorporate existing metrics and reporting requirements established by law, and in the recent IRP and rate case Final Resolution and Orders. The Commission intends to petition PREPA and stakeholder feedback on these potential metrics and reporting structure to inform any subsequent rulemaking process.

### **D. Final report**

This investigation will conclude with the publication of a final report summarizing the gathered information and findings. This report may be used as input to subsequent proceedings regarding rulemaking on performance or other topics.

For the benefit of all the parties involved, the Commission issues this Resolution and Order in both English and Spanish languages. Should any discrepancy between each version arise, the English version shall prevail.





Be it notified and published.

  
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Agustín F. Carbó Lugo  
Chairman

  
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Ángel R. Rivera de la Cruz  
Associate Commissioner


  
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José H. Román Morales  
Associate Commissioner

### CERTIFICATION

I hereby certify that the Puerto Rico Energy Commission has so agreed on February 17, 2017. I also certify that a copy of this Resolution and Order regarding Case No. CEPR-IN-2016-0002 was notified by electronic mail to the following: n-ayala@aepr.com, n-vazquez@aepr.com, and c-aquino@aepr.com. I further certify that on February 17, 2017, I have proceeded with the filing of this Resolution and Order and I have sent a copy thereof to:

**Autoridad de Energía Eléctrica de Puerto Rico**

Attn.: Nélide Ayala Jiménez  
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María del Mar Cintrón Alvarado  
Clerk