



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

**IN RE:** PUERTO RICO ELECTRIC POWER  
AUTHORITY RATE REVIEW

**CASE NO.:** CEPR-AP-2015-0001

**SUBJECT:** Ruling on PREPA's Motion for  
Reconsideration and Motion for  
Clarification

**FINAL RESOLUTION**

## Table of Contents

<b>I. Procedural Background.....</b>	<b>1</b>
<b>II. PREPA’s Motion for Clarification .....</b>	<b>1</b>
A. Correction to Base Rate Revenue Requirement and Rate Increase.....	1
B. Clarification of Spending Cap Language .....	2
C. Questions Regarding Rate Design .....	3
D. Questions regarding the rate update process .....	10
E. Revenue Decoupling Mechanism .....	12
<b>III. PREPA’s Motion for Reconsideration .....</b>	<b>14</b>
A. Principles applicable to delegation of powers to administrative agencies.....	14
B. The Commission’s Authority under Act 57-2014 .....	15
C. Every Commission directive is supported by its legal authority.....	17
1. <i>The Commission is empowered to address "all types of operations, processes and mandates."</i> ..	18
2. <i>The Commission's obligation to set just and reasonable rates necessarily includes the authority to limit the costs that are recovered through rates .....</i>	20
3. <i>PREPA incorrectly views detailed statutory provisions as shrinking the boundaries of broader provisions.....</i>	20
4. <i>The PREPA Board's statutory duties do not limit the Commission's statutory obligations.....</i>	21
D. The Commission will control PREPA's spending, but the method of control remains flexible—if PREPA engages with the Commission forthrightly .....	23
E. Accounting issues .....	27
1. <i>Clarification of Attachment 1: Ratepayer funding of capital expenditures.....</i>	27
2. <i>Accounting for ratepayer funding of capital expenditures as Contribution in Aid of Construction</i>	28
3. <i>Accounting for costs incurred under maintenance contracts.....</i>	29
4. <i>Test years in subsequent rate proceedings .....</i>	29
F. Rate design and load research issues .....	29
1. <i>Rate design treatment of the revenue increase .....</i>	29
2. <i>Load research program .....</i>	30
G. Miscellaneous issues .....	31
1. <i>Third-party estimates for major capital expenditures.....</i>	31
2. <i>The relationship between revenue requirements and IRP.....</i>	32
3. <i>Fuel costs: Additives, delays and hedging .....</i>	32
4. <i>AOGP.....</i>	33
H. The expert staff reports were a benefit to PREPA and to the public.....	33
<b>Attachment 1 Revised: Determination of Total Revenue Requirement and Change in Base Rates .....</b>	<b>38</b>
<b>Attachment 2 Revised: Summary of Commission Adjustments to FY2017 Revenue Requirement .....</b>	<b>39</b>
<b>Attachment 3 Revised: Commission Adjustments to FY2017 Revenue Requirement</b>	<b>40</b>
<b>Attachment 4 Revised: Contribution in Lieu of Taxes and Subsidies Adjustments ....</b>	<b>50</b>

Through this Final Resolution, the Puerto Rico Energy Commission (“Commission”<sup>2</sup>) addresses two motions filed by the Puerto Rico Electric Power Authority (“PREPA”): (i) *PREPA’s Verified Emergency Motion for Clarification and a Technical Conference* (“Motion for Clarification”) and (ii) *PREPA’s Verified Motion for Reconsideration of Provisions of the Final Resolution and Order* (“Motion for Reconsideration”). Part I provides a brief procedural background. Part II will address the portions of PREPA’s Motion for Clarification not addressed in its Motion for Reconsideration, while Part III will address PREPA’s Motion for Reconsideration.

## I. Procedural Background

On January 10, 2017, the Commission issued a Final Resolution and Order through which it approved PREPA’s revenue requirement for Fiscal Year 2017 (“FY2017”) and made over 100 directives aimed at ensuring PREPA’s 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.”<sup>1</sup>

On January 20, 2017, PREPA filed its Motion for Clarification regarding several issues addressed in the Commission’s Final Resolution and Order. The issues for which PREPA sought clarification include the calculation of the base revenue requirement, certain directives regarding spending caps, several directives related to rate design and revenue responsibility allocation, and the rate and budget update and approval process, among others. The Commission held a clarification conference call on January 27, 2017.

On January 30, 2017, PREPA filed its Motion for Reconsideration through which it repeated and expanded some of the concerns raised through its Motion for Clarification (mainly issues pertaining to the revenue requirement calculation, spending caps and rate and budget update and approval process) and raised additional concerns related to the Commission’s authority to make certain directives related to budgeting and operational performance. PREPA also “objected” certain findings and statements made by the Commission with regards to the reliability of the information provided by PREPA throughout the proceeding.

On February 13, 2017, the Commission issued a Resolution notifying it would address PREPA’s Motion for Reconsideration, as well as the Motions for Reconsideration filed by four other intervenors.<sup>2</sup>

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<sup>1</sup> See Section 6A of Act 4-2016, known as the Puerto Rico Electric Power Authority Revitalization Act.

<sup>2</sup> The Motions for Reconsideration filed by ICSE-PR, the Puerto Rico Aqueduct and Sewer Authority, Windmar Group and Sunnova Energy Corporation will be addressed through a separate Resolution.

## II. PREPA's Motion for Clarification

### A. Correction to Base Rate Revenue Requirement and Rate Increase

PREPA argued that the Commission's Final Resolution and Order includes an "overstatement of the approved rate increase by about \$6.314 million."<sup>3</sup> According to PREPA, the alleged overstatement results from incorrectly calculating the Contribution in Lieu of Taxes ("CILT") and Subsidy expected revenues of \$182.4 million (derived from the 11% gross-up under the original fuel forecast), rather than \$188.7 million. PREPA argues that expected revenues from CILT and Subsidies should be \$188.7 million, which contemplates that such revenue would be collected as a pass-through item.

After considering PREPA's arguments, the Commission has made several modifications to the base rate revenue requirement and the CILT and Subsidies Pass Through Revenue. First, as discussed in Part II.C.6. of this Resolution, the Commission's intention was not to recover the LRS, RH3 and GAS tariff subsidies through base rates. They will be recovered through the Subsidies Rider, as required by paragraph (b)(1) of Section 22 of Act 83. This clarification is reflected on Commission's Final Resolution and Order Attachment 4 Revised, Page 2 of 2, which is attached to this Final Resolution.

Moreover, the \$37.040 million double-counted amount associated to these subsidies was removed from the base rate revenue requirement and added to the Subsidy Rider Revenue. This modification reflects that these subsidies will be recovered via the Subsidy Rider rather than in PREPA's base rates.<sup>4</sup> Since the \$37.040 million adjustment was removed from base rate revenue requirement, the Bad Debt Expense associated with it must be adjusted.<sup>5</sup> Therefore, the total Bad Debt Expense amount was adjusted from \$12 million to \$13.1 million.<sup>6</sup>

Accordingly, the Commission adjusted PREPA's Base Rate Revenue Requirement and the CILT and Subsidies Pass Through Revenue. The revised Base Rate Revenue Deficiency shall be \$171,786,000.<sup>7</sup>

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<sup>3</sup> See Motion for Clarification, at 4, ¶ 5.

<sup>4</sup> See Commission's Final Resolution and Order Attachment 1 Revised, Columns (B) and (C); Commission's Final Resolution and Order Attachment 2 Revised, Column (4); Commission's Final Resolution and Order Attachment 3 Revised, Page 4 of 10; and Commission's Final Resolution and Order Attachment 4 Revised, Page 2 of 2.

<sup>5</sup> See Commission's Final Resolution and Order Attachment 2 Revised and Commission's Final Resolution and Order Attachment 3 Revised, Page 8 of 10.

<sup>6</sup> See Commission's Final Resolution and Order Attachment 3 Revised, Page 8 of 10.

<sup>7</sup> See Commission's Final Resolution and Order Attachment 1 Revised and Commission's Final Resolution and Order Attachment 2 Revised.

## B. Clarification of Spending Cap Language

1. *PREPA seeks clarification on whether the “annual cap excludes the various categories of variable rates that recover variable costs determined not only by markets but also by other exogenous factors, such as fuel and purchased power, CILT, subsidies and energy efficiency.”<sup>8</sup>*

The Commission intended for the “spending cap” to only apply to the cost associated to its base revenue requirement, not to the cost associated to the pass-through items of PREPA’s revenue requirement. Other costs not considered to be pass-through items which may be affected by factors not entirely within PREPA’s control, but which are part of PREPA’s base revenue requirement, are subject to the “spending cap” established by the Commission. PREPA’s ability to pass certain costs to its customers (pass-through items) shall not be construed as granting PREPA an unchallenged authority to incur in expenses without regard to prudence or efficient operational practices. PREPA shall, at all times, ensure costs are reasonable. The spending cap shall not apply to the following reconciliation clauses: Fuel, Purchased Power, CILT, Subsidies and Energy Efficiency.

Further clarification on this subject is provided in Part III.D below.

2. *PREPA seeks clarification on whether prior approval from the Commission would be required for emergency spending not included in the approved revenue requirement. PREPA further seeks clarification as to the procedures for requesting such approval, if such approval is required from the Commission.*

Emergency spending shall be defined as expenditures made necessary as a result of a *force majeure* event.<sup>9</sup> The Commission did not intend for emergency spending to be subject to a spending cap. However, PREPA shall alert the Commission to unanticipated emergency spending as soon as practical, as it becomes aware that such spending will be necessary. PREPA’s budgets must contemplate reasonable reserves for emergency spending.

For purposes of the Final Resolution and Order, emergency spending shall be treated as an extraordinary situation. Paragraph 443 of the Commission’s Final Resolution and Order describes how the Commission will address extraordinary situations, which include emergency situations.

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<sup>8</sup> See Motion for Clarification, at 6, ¶ 10.

<sup>9</sup> For purposes of this Resolution, *force majeure* shall be defined as any circumstance not within the reasonable control of PREPA, if, despite the exercise of reasonable diligence, such circumstance cannot be, or be caused to be, prevented or avoided.

On the other hand, once PREPA becomes aware of the need of extraordinary spending, PREPA shall notify the Commission, and shall provide all relevant information in support of such spending. Such requirement shall be ongoing and shall be deemed to require PREPA to provide all relevant information as such information becomes available. While prior approval will not normally be required, the Commission may, on a case by case basis, provide guidance to PREPA with regards to additional spending related to such an extraordinary situation and recovery of such spending by PREPA. Notwithstanding the preceding, in those cases in which PREPA becomes aware of the need for extraordinary spending, but such spending is not required to be made immediately (contrary to emergency spending), PREPA shall endeavor to seek prior approval from the Commission for such spending.

In all cases, PREPA shall be required to keep careful and detailed records of any spending associated with all extraordinary situations.

### **C. Questions Regarding Rate Design**

1. *PREPA requests the Commission to clarify the procedure for reconciling balances from existing Fuel (FCA) and Purchased Power (PPCA) Adjustors to new Fuel, Purchased Power, CILT and Subsidies Riders and determine whether the procedure proposed by PREPA is reasonable.*

For transitioning from existing FCA and PPCA Adjustors to new Fuel, Purchased Power, CILT and Subsidies Riders, PREPA proposed the following procedure:<sup>10</sup>

- a. List billing determinant data (sales, customer bills, revenues) by month, for all rate codes;
- b. Disaggregate the revenues by rate code into base rates, FCA and PPCA components;
- c. For the FCA component, separate the revenues into those used to reconcile the FCA and those attributable to CILT and subsidies. Provide documentation regarding how the separation occurred;
- d. For the PPCA component, separate the revenues used to reconcile the PPCA and those attributable to CILT and subsidies. Provide documentation how the separation occurred;
- e. Provide documentation for Fuel Expenses YTD;
- f. Provide documentation for PPCA Expenses YTD;

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<sup>10</sup> As detailed in page 8 of PREPA's conference call presentation.

- g. Provide documentation of CILT payments paid YTD;
- h. Provide documentation of subsidy payments paid YTD;
- i. Calculate over/under recovered FCA balances including documentation;
- j. Calculate over/under recovered PPCA balances including documentation;
- k. Calculate over/under recovered CILT balances including documentation;
- l. Calculate over/under recovered subsidy balances including documentation.

The Commission finds that PREPA’s proposed procedure is reasonable and accepts such proposal. The reconciliation shall be made during the first two quarters after the new Fuel, Purchased Power, CILT and Subsidies Riders enter into effect.

- 2. *Inconsistency in the Energy Efficiency Rider Reconciliation – PREPA requests the Commission to clarify alleged discrepancy between directive requiring all riders to be updated quarterly (with an acceleration provision) and directive establishing an annual update of the Energy Efficiency rider.*

The fuel and purchased power riders are to be updated quarterly, while the energy efficiency rider, once implemented, would be updated annually. The Commission approved an accelerated adjustment of the fuel and purchased power riders if at any given moment there is a \$20 million differential between estimated and actual costs. The Commission originally intended for the \$20 million differential to be computed taking into account the combined over- and under- collections projected from the fuel, purchased power and energy efficiency riders. However, the Commission hereby **MODIFIES** its original directive to provide that the \$20 million differential would only take into account the over- and under-collection from the fuel and purchased power riders. With regards to the energy efficiency rider, the Commission will establish specific budgeting and review processes to align the rider with PREPA’s actual costs.

- 3. *Estimated \$0.01025/kWh overall rate increase.*

In paragraph 13 of its Motion for Clarification, PREPA states that the Commission approved an overall rate increase of \$0.01025/kWh. Such statement refers to paragraphs 295 and 296 of the Commission’s Final Resolution and Order which read as follows:

295. PREPA’s projected sales are 17,268,325,180 kWh. Therefore, the average rate increase corresponding to the revenue requirement deficiency of \$177,000,000 is approximately 1.025 ¢/kWh. The average rate increase will be applied to the energy charge component of the base rate for all PREPA clients, except as described in Part Three-II.

296. Given the many directives and decisions made by the Commission in this Final Resolution and Order, PREPA shall calculate the actual rate increase for each tariff code and provide such information for Commission review and approval no later than February 15, 2017. [Citations omitted]

The \$0.01025/kWh increase identified in the foregoing paragraphs is an approximation of the average increase in rates to be experienced by PREPA's customers and was calculated for illustrative purposes only. The Commission did not intend for such result to be construed by PREPA as a final determination of the rate increase to be applied. As stated in paragraph 296, PREPA shall calculate the actual rate increase (in ¢/kWh) for each tariff code based on the directives set forth in the Final Resolution and Order, and provide such information to the Commission.

Further clarification with regards to PREPA's request for the Commission to consider a uniform percentage increase, in lieu of a ¢/kWh increase, is provided in Part III.F.1 below.

4. *Residential Second Block Energy Charges – PREPA requests the Commission to clarify whether the approved rate increase should be applied to LRS, RH3, RFR and GRS customers.*

The Commission intended for PREPA to compute a single rate for the second block for the LRS, RH3 and GRS tariffs, as well as the excess-consumption charge for the RFR tariff. The same ¢/kWh increase should be applied to all residential energy charges, including both blocks of the GRS, LRS and RH3 tariffs; the excess usage of the RFR tariff; and the consumption by special general-service customers counted under in general-service classes but billed at the GRS tariff (e.g. the Analog rate, rural aqueducts, and condominium common areas). The increase would be the total base revenue increase for these customers (the entire residential class plus the special general-service customers) divided by the sum of energy sales to the GRS, LRS and RH3 tariffs, and the RFR excess usage. The total base revenue increase for the residential-billed customers is the product of (1) the total increase in revenue requirements (other than the increase allocated to the PPBB tariff) and (2) the ratio of sales to these residential and special general-service customers (other than the RFR fixed blocks) to total sales (other than sales in RFR fixed blocks and to the PPBB tariff).

5. *RFR and Uniform Rate Increase – PREPA request the Commission to clarify how to apply the \$0.01025/kWh increase to RFR customers.*

As previously stated in Part II.C.3, in its Final Resolution and Order, the Commission did not establish a universal \$0.01025/kWh increase for all customer classes. The actual rate increase to be applied to each customer class must be calculated by PREPA and submitted to the Commission based on the directives set forth in the Final Resolution and Order and this Final Resolution.

6. *Clarification of “Help to Humans” – PREPA requests the Commission address an alleged inconsistency with regards to the “Help to Humans” subsidy. PREPA argues that “the LRS, RH3 and RFR tariffs subsidies were zeroed out, thereby necessitating all shortfalls to be recovered through base rates. If these subsidies are included in base rates, they would be credited to net-metering customers.”<sup>11</sup>*

Commission’s Final Resolution and Order Attachment 4, page 2, described the computation of the required revenue increase, not the design of the subsidies rider. The \$36.5 million in discounts for the LRS, RH3 and RFR tariffs, as well as the \$0.5 million for the GAS tariff, were double-counted by PREPA’s revenue request, as revenue deductions and as subsidies. These discounts shall be recovered through the subsidy rider, as reflected on the revised Commission’s Final Resolution and Order Attachments, attached herewith.<sup>12</sup>

7. *Clarification for Grandfathering of Net Metering – PREPA requests the Commission to determine the “cut-off” date after which net-metering customers would not be considered to be “grandfathered” under Section 29 of Act 4-2016<sup>13</sup> and asks the Commission to establish that the “cut off” date applicable to charges approved in the Final Resolution and Order shall be the same as the “cut off” date established by the Commission for the Transition Charge.<sup>14</sup>*

Section 29 of Act 4-2016 provides that the “grandfathering clause” shall apply to any customer who, by the date of approval of Act 4-2016: (i) has “entered into a net-metering agreement;” or (ii) “is in the process of evaluating or developing a renewable energy project.” The “grandfathering clause” also applies to a net-metering customer who, after the date of approval of Act 4-2016, but prior to the Commission approving such additional charges, submits a project for interconnection evaluation and complies with certain other requirements stated in Section 29 of Act 4-2016.

Accordingly, any customer who, on or before February 16, 2016, entered into a net-metering agreement or is in the process of evaluating or developing a renewable energy project shall be deemed to be grandfathered for purposes of the charges approved under the Final Resolution and Order. After the approval of Act 4-2016, the grandfathering clause shall apply to those customers who submitted their application for interconnection

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<sup>11</sup> See Motion for Clarification, at 9, ¶ 15.

<sup>12</sup> See Commission’s Final Resolution and Order Attachment 1 Revised, Columns (B) and (C); Commission’s Final Resolution and Order Attachment 2 Revised, Column (4); Commission’s Final Resolution and Order Attachment 3 Revised, Page 4 of 10; and Commission’s Final Resolution and Order Attachment 4 Revised, Page 2 of 2.

<sup>13</sup> The Puerto Rico Electric Power Authority Revitalization Act.

<sup>14</sup> See Restructuring Order, Case No. CEPR-AP-2016-0001.

on or before the date in which the Commission issues a resolution approving the calculation of the rates made by PREPA in compliance with the Commission's Final Resolution and Order. Section 29 of Act 4-2016 provides that the cut-off date shall be the date in which the charges are "determined and published by the Commission." While the Final Resolution and Order approved the charges that would be applied to net-metering customers, the amount of such charges has not yet been "determined and published," since PREPA still needs to calculate the rates that would apply to each type of customer and notify such results to the Commission. Once the Commission approves PREPA's calculation, then the charge applicable to net-metering customers will have been determined and published.<sup>15</sup>

Pursuant to Section 29 of Act 4-2016, any customer who applies for interconnection after such date, fails to comply with the requirements set forth in Section 29 of Act 4-2016 (regarding payment of deposit) or increases the capacity of their renewable energy systems in excess of 20% of its original capacity, shall be treated as a non-grandfathered net-metering customer for purposes of the application of the charges approved by the Commission in its Final Resolution and Order.

In its Motion for Clarification, PREPA proposed that the "cut-off" date be the same as the cut-off date established by the Commission for purposes of the Transition Charge. In such occasion, the Commission established that the cut-off date after which customers would no longer be grandfathered was the date in which the Restructuring Bonds were issued, since it is the date on which the Transition Charge is "determined and published."<sup>16</sup> The Commission cannot apply such a date as the cut-off date for purposes of determining the applicability of the grandfather clause to charges approved in the Final Resolution and Order for three specific reasons.

The first reason is that the date in which the charges approved in the Final Resolution and Order are "determined and published" is different from the date in which the Transition Charge is "determined and published". Second, while the effectiveness of the Transition Charge is dependent on the completion of PREPA's financial restructuring and the issuance of Restructuring Bonds, the effectiveness of the charges approved through the Final Resolution and Order is separate and independent from the issuance of such Restructuring Bonds. Third, assuming that the Restructuring Bonds are not issued, setting such date as the cut-off date for purposes of applying the grandfather clause would result in net-metering customers being perpetually grandfathered; an unreasonable

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<sup>15</sup> Such a result is consistent with our interpretation of the grandfathering clause in the Restructuring Order.

<sup>16</sup> Through the Restructuring Order, the Commission approved a calculation methodology and adjustment mechanism for the Transition Charge. The actual amount of the first Transition Charge is unknown and will depend on the final terms and conditions of the Restructuring Bonds. Accordingly, the Commission determined that the date on which the Transition Charge is determined and published is the date on which the Restructuring Bonds are issued.

outcome not intended by the Legislature and one which would prevent PREPA from recovering costs duly incurred in serving net-metering customers.

8. *Minimum demand for large customers – PREPA requests the Commission to clarify whether minimum demands for GSP, GST, LIS and TOU rates will continue to be included in the tariffs.*

The existing minimum-bill provisions will be retained and not converted to minimum demands.

9. *Maintaining second load factor block for demand charge rates – PREPA requests the Commission to clarify whether, “[g]iven the Commission’s directive to not increase demand charges [ . . . ] whether PREPA should maintain the second load factor block for demand charge rates.”<sup>17</sup>*

PREPA should maintain the second load-factor energy block for tariffs with both demand and energy charges. The two energy blocks in any particular tariff should be increased by the same ¢/kWh amount. The increases may differ across tariffs, depending on the ratchet revenue that is being shifted to the energy charges.

10. *Rate and peak and off-peak tariff structure for TOU demand charges – PREPA requests the Commission to clarify whether the TOU demand charges “should continue at the same rates with same peak and off-peak tariff structure.”<sup>18</sup>*

The Commission intended to retain the dual demand charges (after eliminating the demand ratchets), with the same peak and off-peak tariff structure, pending the upcoming rate-design proceeding. For energy-related charges, tariff should be increased by the same ¢/kWh amount, as described in the Final Resolution and Order and in this Resolution.

11. *Fuel discount subsidy charge – PREPA argues that, by providing that the fuel discount for LRS, RH3 and GRS 111 customers should be phased out from 425kWh to 500 kWh, the Commission expanded the fuel discount subsidy. PREPA requests the Commission to clarify the method through which PREPA would recover the costs associated with the additional subsidy.*

As described above, the spending cap does not apply to the subsidy charge. The phase out portion of the fuel discount does not increase PREPA’s spending or base revenue requirement, it shifts some of the costs from LRS, RH3 and GRS 111 customers to the subsidy charge. PREPA would be able to recover costs associated with the additional fuel subsidy through the subsidy charge.

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<sup>17</sup> See Motion for Clarification, at 10, ¶ 18.

<sup>18</sup> *Id.*, at 10, ¶ 19.

12. *Load Factor blocks for commercial and industrial customers – PREPA requests the Commission to clarify the process through which PREPA would recover the approved rate increase from commercial and industrial customers. PREPA argues that the Final Resolution and Order allows PREPA to recover the allocated rate increase by (i) retaining the level of demand charge revenue constant for the component of the tariff design; (ii) retaining the minimum billing demand but eliminate all other ratchets; and (iii) recover the rate increase through increases in the energy charges.*<sup>19</sup>

The Commission intended for the demand charge in \$/kVA to remain the same as in the current tariff (e.g. \$8.10/kVA for GSP, \$7.70/kVA for GST, \$8.10/kVA on peak and \$1.10/kVA off-peak for TOU-P). Since the elimination of the ratchets will reduce billing demand, the demand revenue will decline. The billing demand would be determined only from the maximum metered demand in the current month. The minimum bill for each tariff would remain as in the current tariff. The energy charge for each tariff would be increased to recover any reduction in demand revenues from the tariff, due to the removal of ratchets.

13. *Differentiate between net metering vs. qualifying facilities - PREPA requests the Commission to differentiate between renewable generation resources and non-renewable generation resources for purposes of net-metering treatment. PREPA argued that the Public Utilities Regulatory Policies Act of 1978 prevents non-renewable distributed generation from benefiting from net-metering policies.*

Section 2 of Act 114-2007<sup>20</sup> provides that net-metering shall be available only to renewable generating facilities. The net-metering treatment adopted by the Commission in the Final Resolution and Order shall apply only to renewable energy generation system. For non-renewable distributed generation systems, PREPA is authorized to compensate the annual avoided cost listed in the revised Marginal Cost Worksheet<sup>21</sup>, using the sum of the “Average Capacity Cost - \$/kWh” and “Marginal Energy Cost - \$/kWh” lines for the delivery voltage.

14. *Base Rate Credit for Net Metering Customers – PREPA requests the Commission clarify whether the term “base rate” in the context of the net-metering credit should be interpreted as only a credit for the energy charge of the base rate.*

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<sup>19</sup> *Id.* at 11, ¶21.

<sup>20</sup> An Act to direct and authorize the Electric Power Authority to establish a net metering program, as amended.

<sup>21</sup> See WP 1 (Marginal Cost Worksheet) REV 2016-10-11, filed on October 13, 2016.

The credit for energy outflow will be the sum of certain energy charges, including the energy charge in the base tariff and certain riders. There will be no credit for demand or customer charges in the base tariff.

15. *Energy Efficiency Rider – PREPA requests the Commission to clarify whether the Energy Efficiency rider should continue to be based on a \$/kWh charge.*

The Energy Efficiency Rider shall be based on a \$/kWh charge.

16. *Recovery of revenues for subsidies not recovered in the subsidies rider – PREPA requests the Commission to clarify whether certain costs not recovered from net-metering customers (which were originally recovered through the subsidies clause) are now to be recovered through the reconciliation proceeding.*

Like any other difference between forecast and actual revenues, reductions in revenue due to net-metering would be reflected in the annual revenue reconciliation. PREPA should compute the rates in its compliance filing to collect the approved rate increase, reflecting the reduction in PREPA delivery (inflow) due to net-metering.

17. *Large Customer Demand Charges – PREPA requests the Commission to clarify whether the Commission intended for the Standby Service (SBS) to be the same price for the customer as their original GST, LIS or TOU rate.*

Through its directives, the Commission intended to approve PREPA’s request to eliminate the SBS tariff.

18. *Billing of demand charges – PREPA requests tja jhe Commission clarify whether demand charges are billed in \$/kW or \$/kVA (as currently billed by PREPA).*

PREPA shall bill demand charges in \$/kVA.

**D. Questions regarding the rate update process**

1. *Inconsistency in the rate update/budget review process – PREPA argues there is an inconsistency between the rate update procedure established in paragraphs 441, 442 and 444 of the Final Resolution and Order and paragraph 448.*

The Commission finds that there is no inconsistency between Paragraphs 441, 442 and 444 and Paragraph 448 of the Final Resolution and Order. Paragraph 448 is limited to describing PREPA’s current budgeting process and timeline (where budgets are approved between March and April of the fiscal year prior to the one in which the budgets will go into effect). Paragraphs 441, 442 and 444 require PREPA to provide the Commission with budgets in October of the fiscal year prior to the one in which the budget will go into effect (five to six months earlier than the current timeline), which is consistent with PREPA’s proposal. Hence, the Commission is requiring PREPA to advance its current budgeting

process by five to six months, so that approved budgets will be available for the Commission review at the time of the October proceeding.

2. *Is the Commission requiring a total budget and detailed department-level budgets for a fiscal year to be filed in the rate update proceeding filed in October of the previous fiscal year?*

Yes. For example, the total and detailed budgets for FY2019 would be filed with the Commission in October 2017. This filing schedule is consistent with PREPA’s proposal, as described by PREPA witness Dr. Hemphill. The only difference between PREPA’s proposal and the procedure adopted by the Commission is that (i) the Commission is seeking department-level, near-final budgets by October; and (ii) the amounts approved by the Commission as part of such budgets would be considered spending caps (provided such caps would be applicable to PREPA spending, and not to spending associated with pass-through items on PREPA’s revenue requirement).

3. *What does the Order expect or require in relation to PREPA Governing Board approval of those budgets before they are filed in the October proceeding?*

All budgets submitted by PREPA to the Commission for review must be approved by PREPA’s Governing Board.

4. *By detailed department level budgets, is the Commission seeking detail beyond the Commission’s rate case filing requirements set forth in its rules for a future test year rate case?*

The Commission’s review and approval of department level budgets responds to the practical difficulties associated with after-the-fact review of PREPA’s spending, given PREPA’s unique nature as a government owned public utility. In absence of the ability to disallow imprudent spending after such spending has been incurred, the Commission must induce PREPA to act prudently prior to incurring expenses. The review and approval of department level budgets provides the Commission with the tools necessary to ensure that PREPA’s rates are just and reasonable and consistent with sound fiscal and operational practices, as required by Act 57-2014.<sup>22</sup>

The detail of information (e.g. department-level budgets) required for the Commission to properly evaluate PREPA’s operations, is consistent with the broad regulatory powers bestowed upon the Commission by Act 57-2014. Paragraph 444 of the Final Resolution and Order provides the requirements with which PREPA must comply when submitting department level budget for approval by the Commission. Such level of detail and diligence is the logical and necessary outcome of the Commission’s statutory goal of achieving discipline on PREPA’s budgeting and spending practices. Such budgeting process was the subject of detailed and extensive examination during the Technical

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<sup>22</sup> The Puerto Rico Energy Transformation and RELIEF Act, as amended.

Hearings, which is the basis, along with the evidence in record, for the Commission's determination on this matter.

However, the Commission's Final Resolution and Order does not prevent PREPA from supplying such budgets by directorate or other accounting system (as opposed to FERC accounts). As such, the increased detail required by the Commission's Final Resolution and Order should not represent an increased burden to PREPA, since PREPA may use the accounting system it uses on its day-to-day operations, rather than translating its actual budgets into an accounting system generally used in a rate review setting. Finally, in requiring department level, near-final budgets, the Commission is not pre-empting PREPA and its Governing Board from exercising its managerial prerogative in developing such budgets. The Commission's review of such budgets is aimed at ensuring that PREPA's management acts prudently and that PREPA's proposed expenditures respond to, and are consistent with, existing public policy and regulatory requirements.

### **E. Revenue Decoupling Mechanism**

During the Clarification Conference Call held on January 27, 2016, PREPA stated that it understood the Commission's approved rate update/budget review process to be a Revenue Decoupling Mechanism.

In approving the annual budget review and reconciliation process, in lieu of PREPA's proposed Formula Rate Mechanism ("FRM"), the Commission did not adopt a Revenue Decoupling Mechanism. A key difference between PREPA's proposed FRM and the procedures established by the Commission is that PREPA's proposed expenses would be reviewed and approved by the Commission prior to being incurred, rather than providing for an after-the-fact reconciliation of all costs incurred by PREPA during the previous fiscal year. Another key difference is that the procedure established by the Commission uses detailed, approved budgets as the basis for updating PREPA's rates, while PREPA's proposed FRM would use actual expenses, regardless of their prudence or if they result in just and reasonable rates. Other key elements, such as the use of future revenue requirements, future sales and billing determinants, budget-based adjustments in between rate cases and after-the-fact sales reconciliation are present in both PREPA's proposed FRM and the procedures established by the Commission in its Final Resolution and Order.

Below the Commission provides a description of the timeline for updating rates, beginning with FY2018 and ending with the next three-year rate case.

1. On April 2017, PREPA files with the Commission the approved FY2017 revenue requirement, adjusted for known and measurable changes for FY2018. PREPA shall provide detailed information, including department-level budgets approved by PREPA's Governing Board, in support of such known and measurable changes. The Commission will review PREPA's proposed FY2018 revenue requirement and

budgets and will approve those budgets and rates for FY2018, which would enter into effect sometime after FY2018 begins.

2. On October 2017, PREPA files its approved department level budgets for FY2019 and reconciliation for FY2017 rates.
3. On or around March 2018, the Commission makes findings on the FY2019 proposed budget and reconciliation for FY2017.
4. On or around July 2018, the FY2019 rates go into effect based on the approved FY2019 budgets and the FY2017 reconciliation factor.
5. On October 2018, PREPA files approved department level budgets for FY2020 and reconciliation for FY2018.
6. On or around March 2019, the Commission makes findings on the FY2020 proposed budget and rates and reconciliation for FY2018. Such rates would go into effect on or around July 1, 2019.
7. On October 2019, PREPA files a new three-year rate case, in compliance with the rate case filing requirement regulation approved by the Commission. The revenue requirement approved through this proceeding would be for FY2021 (beginning on July 2020) and would be updated through the annual budget review for FY2022 (beginning on July 2021) and FY2023 (beginning on July 2022).

The timeline detailed above attempts to achieve the necessary synchronization between PREPA's budgeting process and the revenue requirement and rate setting process. However, as stated in Paragraph 449 of the Final Resolution and Order, the Commission will hold a "technical conference to develop with PREPA a procedure that achieves the necessary synchronization. That technical conference can be used to determine all of the dates and schedules about budgeting and reconciling, including the special reconciliation for FY2017 and the budgeting for FY2018."

As we discuss in more detail in Part III.D below, the Commission is ready and willing to engage PREPA in elaborating a procedure which achieves the purposes sought by the Commission and takes into consideration PREPA's particular needs and limitations. Yet, unless PREPA openly discusses acceptable alternatives with the Commission, the aforementioned timeline and the relevant directives of the Final Resolution and Order shall remain in effect.

### III. PREPA's Motion for Reconsideration

#### A. Principles applicable to delegation of powers to administrative agencies.

Government agencies come to life through legislative action and the scope of their authority is determined by the powers delegated by the legislative assembly through an enabling act.<sup>23</sup> A statute is an agency's source of power; it is the legal mechanism through which an agency is authorized to act.<sup>24</sup> When determining whether an agency has acted lawfully, one must look at its enabling act to determine whether the particular action has been delegated by the legislature.<sup>25</sup>

A statute must be interpreted in accordance with the legislative intent and the public policy it seeks to further, and in light of the specific circumstances under consideration.<sup>26</sup> When interpreting a statute, one must strive to achieve an interpretation which is both literal and logical.<sup>27</sup> Therefore, the different sections of a statute must be interpreted as a whole, not in isolation, so as to avoid irrational, confusing or absurd results.<sup>28</sup>

When a statute's language is clear, its text is the upmost expression of the legislature's intent.<sup>29</sup> Absent any ambiguity, a statute's language should not be disregarded under the pretext of complying with its intent.<sup>30</sup> The agency is the entity responsible for implementing and applying the public policy principles adopted by the statutes it is mandated by the legislature to oversee.<sup>31</sup>

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<sup>23</sup> D. Fernández Quiñones, Derecho Administrativo y Ley de Procedimiento Administrativo Uniforme, 2da ed., Colombia, Ed. Forum-Legis, 2001, pag. 11. See, also, *Caribe Comm. v. P.R. Tel. Co.*, 157 D.P.R. 203 (2002).

<sup>24</sup> *Caribe Comm. v. P.R. Tel. Co.*, *supra*.

<sup>25</sup> *Municipio Autónomo de San Sebastián v. QMC Telecom., LLC*, 190 D.P.R. 652 (2014).

<sup>26</sup> *Caribe Comm. v. P.R. Tel. Co.*, *supra*, citing R.E. Bernier y J.A. Cuebas Segarra, Aprobación e interpretación de las leyes de Puerto Rico, 2da ed. Rev., San Juan, Pubs. J.T.S., 1987, Vol. I. See also, D. Fernández, *supra*, at 13; *Pueblo v. Rodríguez Zayaz*, 147 D.P.R. 530 (1999); *J.P v. Frente Unido I*, 165 D.P.R. 445 (2005); *Sánchez Díaz v. E.L.A.*, 181 D.P.R. 810 (2011); *Municipio Autónomo v. QMC Telecom.*, *supra*.

<sup>27</sup> *Municipio Autónomo v. QMC Telecom*, *supra*; *Gilberto Álvarez Crespo v. Pierluisi*, 150 D.P.R. 252 (2000).

<sup>28</sup> *Caribe Comm. v. P.R. Tel. Co.*, *supra*. See also, *Puerto Rico Telephone Company v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, 151 D.P.R. 269 (2000).

<sup>29</sup> *Municipio Autónomo v. QMC Telecom*, *supra*, *Otero de Ramos v. Srio. de Hacienda*, 156 D.P.R. 876 (2002).

<sup>30</sup> *Id.* See also, Section 14 of the Puerto Rico Civil Code, 31 L.P.R.A. §14.

<sup>31</sup> *Puerto Rico Telephone Company v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, *supra*.

The legislature may delegate broad authority to an agency.<sup>32</sup> While an agency's powers cannot be unlimited, courts have consistently upheld the delegation of broad authority, and have rejected the need for a statute to identify with "mathematical accuracy" the specific powers being delegated.<sup>33</sup> An agency's action is deemed valid if it is consistent with the purposes of the statute and is framed within the broad powers delegated by the legislature. An agency not only enjoys those powers specifically mentioned in a statute, but also enjoys those which are necessary for fulfilling its mandates.<sup>34</sup>

A legislature cannot be expected to consider every specific detail when enacting a statute. Its role is to establish the general norms that will guide an agency's actions.<sup>35</sup> The complexity of personal and domestic relations, along with the increasing need for government supervision of the conduct of individuals and corporations, has made it impossible for a legislative body to be able to approve laws which would apply to every single possible scenario.<sup>36</sup> The prevailing doctrine recognizes that the administrative entity enjoys those powers which have been expressly granted, as well as those which arise as a result of the authorized action.<sup>37</sup> The defining element will be whether the action finds support in the legislature's intent when delegating authority to the agency and whether there is a rational connection between the agency's action and the purposes of the statute.<sup>38</sup>

## **B. The Commission's Authority under Act 57-2014**

Until 2014, Puerto Rico's electric market was dominated by a self-regulated monopoly not subject to oversight by a specialized regulator.<sup>39</sup> This regulatory scheme responded to the particular circumstances in which Act 83 was enacted.<sup>40</sup> Act 83's main

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<sup>32</sup> *Asociación de Farmacias de la Comunidad v. Dpto. de Salud*, 156 D.P.R. 105 (2002); *Luce & Co. v. Junta de Salario Mínimo*, 62 D.P.R. 452 (1944).

<sup>33</sup> *Caribe Comm. v. P.R. Tel. Co.*, *supra*; *Collazo v. Dpto. de la Vivienda*, 184 D.P.R. 95 (2011); *López v. Junta Planificación*, 80 D.P.R. 646 (1958). *See also*, D. Fernández, *supra*, at pages 50 – 51.

<sup>34</sup> *Caribe Comm. v. P.R. Tel. Co.*, *supra*.

<sup>35</sup> *Collazo v. Dpto. de la Vivienda*, *supra*.

<sup>36</sup> D. Fernández, at. 47.

<sup>37</sup> *Id.* at p. 51.

<sup>38</sup> *Id.* at p. 53.

<sup>39</sup> *See* Act 57-2014's Statement of Motives, ¶6.

<sup>40</sup> Act No. 83 of May 2, 1941, as amended, known as the Puerto Rico Electric Power Authority's Enabling Act.

purpose was to electrify Puerto Rico.<sup>41</sup> To achieve such goals, the Legislature granted PREPA considerable freedom in pursuing the development of a modern electrical system, resulting in a vertically integrated utility, responsible for all aspects of electric service, including generation, transmission and distribution.

However, the Legislature noted that:

[a]fter more than seventy (70) years of its creation, and more than three decades of having achieved the total electrification of the Island, PREPA has become a monopoly that regulates itself, sets its own rates without actual oversight; incurs operational, managerial, and administrative deficiencies whose actual costs, at the end of the day, is (sic) borne directly by customers; and whose governance lacks transparency and citizen participation.<sup>42</sup>

To remedy this situation, the Legislature determined the need to “enforce a thorough reform of the energy sector that promotes the operation and administration of an efficient system at just and reasonable costs.”<sup>43</sup> Said energy reform encompasses “multiple initiatives that are all related to common goals such as permanently reducing the cost of energy and provide the People of Puerto Rico with a reliable, affordable, efficient, and transparent electric power service.”<sup>44</sup> As such, the reforms contemplated by Act 57-2014 seek to address deficiencies at all levels of PREPA’s operations, both technical and administrative in nature.

Through Act 57-2014, the Legislature willingly and overwhelmingly determined to limit PREPA’s discretion, by adopting a regulatory framework in which PREPA would be subject to the oversight of a highly-specialized entity. That entity is the Commission, which the Legislature conceived as a “key component for the faithful and transparent execution of the Energy Reform.”<sup>45</sup> Among the responsibilities delegated to the energy Commission, the Legislature empowered it to “oversee all types of operations, processes, and mandates pertaining to the efficiency of the energy sector of the Island.”<sup>46</sup>

With the backdrop of a highly leveraged, underperforming utility, the Legislature tasked the Commission with exercising broad regulatory powers to transform PREPA into a modern and efficient utility. Such a vision of the Commission’s wide regulatory powers

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<sup>41</sup> Statement of Motives, ¶1.

<sup>42</sup> Statement of Motives, ¶6.

<sup>43</sup> *Id.*, ¶3.

<sup>44</sup> *Id.*, ¶8.

<sup>45</sup> *Id.*, ¶18.

<sup>46</sup> *Id.*, ¶20

was ratified during the enactment of Act 4-2016, which amended certain provisions of Act 57-2014. To that effect, during the bill’s debate it was stated that:

We created the Energy Commission as part of the Energy Reform, and, the reality is that since it was created, since the possibility of an Energy Commission which regulated PREPA was being discussed, there was a lot of opposition from PREPA and other sectors which for decades have benefited from not having a magnifying glass over what was going on inside PREPA and that PREPA was king and lord of everything related to energy in Puerto Rico. And that ended with the Energy Reform, because with the Energy Reform we created an Energy Commission.<sup>47</sup>

**C. Every Commission directive is supported by its legal authority**

PREPA argues that some of the Commission's directives exceeded its authority by entering PREPA Board's domain.<sup>48</sup> PREPA’s arguments have no merits for four main reasons:

1. The Commission is empowered to address "all types of operations, processes and mandates pertaining to the efficiency of the energy sector of the Island."<sup>49</sup>
2. The Commission's obligation to set just and reasonable rates necessarily includes the authority to limit the costs that are recovered through rates.
3. PREPA incorrectly views detailed statutory provisions as shrinking the boundaries of broader provisions.
4. The PREPA Board's statutory duties do not limit the Commission's statutory obligations.

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<sup>47</sup> Senator Ramón Luis Nieves Pérez, Diario de Sesiones of the Puerto Rico Senate, February 10, 2016, Vol. LXIV, Núm. 8, at p. 36272. (La Comisión de Energía la creamos en la Reforma Energética, y lo cierto es que desde que se creó, desde que se estaba discutiendo la posibilidad en una Comisión de Energía que regulara a la Autoridad de Energía Eléctrica, hubo mucha oposición por parte de la Autoridad de Energía Eléctrica y otros sectores que se beneficiaron por décadas de que no se le pusiera una lupa a lo que estaba pasando allí dentro en la Autoridad y de que la Autoridad fuera rey y señor de todo el tema energético en Puerto Rico. Y eso acabó con la Reforma Energética, porque en la Reforma Energética creamos una Comisión de Energía.) Senator Nieves Pérez further stated, in response to questions from Senator Torres Torres as to whether Act 4-2016 altered the Commission’s powers, that through Act 4-2016, “the Energy Commission is strengthened so that it has a greater role within the supervision of issues related to PREPA’s financial and debt issues.” *Id.* at p. 36302.

<sup>48</sup> See PREPA’s Motion for Reconsideration at p.6, referring to the Final Resolution and Order’s requirements about "structures for budgeting, annual rate updates, limited reconciliations of non-pass through costs, and spending caps."

<sup>49</sup> Statement of Motives at ¶20.

## 1. The Commission is empowered to address "all types of operations, processes and mandates."

Act 57-2014 directs the Commission to "oversee all types of operations, processes, and mandates pertaining to the efficiency of the energy sector of the Island."<sup>50</sup> To "oversee" is to "watch over and direct (as an undertaking or a group of workers) in order to ensure a satisfactory outcome or performance."<sup>51</sup> The Legislature could not be clearer: the Commission must "ensure" performance; its means of ensuring is to "direct."

Every action prescribed by the Commission relates to an "operation" or "process" that in turn relates to the cost of producing and delivering energy efficiently—at the "lowest reasonable cost."<sup>52</sup> Procedures by which PREPA commits to incur costs, and then actually incurs those costs, fit within these words.

The statutory language quoted above is so clear, so strong, so sweeping—so much broader than the actions the Commission took—that no further explanation should be necessary. But PREPA's misunderstanding of the Commission's authority is so deep and so pervasive that further explanation is required. The Legislature's intent in granting broad regulatory powers to the Commission, as described in the Statement of Motives, is exemplified in the wide range of powers specifically granted to the Commission in Section 6.3 of Act 57-2014.

With regards to the specific questions addressed by PREPA in its Motion for Reconsideration, the following provisions of Act 57-2014 provide the legal authority for each of the relevant Commission's directives in its Final Resolution and Order.

**Section 6.3(a)** directs the Commission to "[o]versee and ensure execution and implementation of the public policy on the electric power service of the Commonwealth of Puerto Rico[.]" That public policy includes reducing the "high cost of energy"; reducing dependence on oil; acting as a "robust independent entity that will ensure the transformation of the electric power system"; and "address[ing] operational, managerial, and administrative deficiencies."<sup>53</sup>

Each of the Commission's prescriptions is designed to carry out these goals.

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<sup>50</sup> *Id.*

<sup>51</sup> <https://www.merriam-webster.com/dictionary/oversee>.

<sup>52</sup> Section 6.25 of Act 57-2014.

<sup>53</sup> Statement of Motives at ¶9.

**Section 6.3(c)** empowers and obligates the Commission to "[e]stablish and implement [...] *regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of electricity rates of Puerto Rico* " (emphasis added).

Each of the Commission's prescriptions—whether about budgeting, rate updates, reconciliations and spending caps—is a "regulatory action" aimed at guaranteeing one or more of the specified items: the capacity, reliability, safety or efficiency of the electric system; or the reasonableness of rates.

**Section 6.3(d)** requires the Commission to "[o]versee the quality and reliability of the electric power services provided by PREPA."

Each of the Commission's directives aims to guarantee and improve the quality and reliability of PREPA's service, by ensuring that resources are adequately used in accordance with "sound fiscal and operational practices that provide for a reliable and adequate service at the lowest reasonable cost."<sup>54</sup>

**Section 6.3(f)** vests the Commission with the authority to "[f]ormulate and implement strategies to achieve the objectives of [Act 57-2014]."

Each of the Commission's directives consists of strategies formulated as the result of the extensive and detailed analysis of the information provided by PREPA and intervenors, aimed at guaranteeing the reliability of PREPA's services and ensure rates are "just and reasonable."

Finally, even if any of the Commission's directives was deemed not to be comprised within any of the aforementioned statutory provisions, Section 6.3 recognizes the generally accepted principle of administrative law that an agency enjoys those powers which have been expressly granted, as well as those which arise as a result of the authorized action.<sup>55</sup> To such end, Section 6.3, in its last paragraph, states that:

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.

All of the Commission's directives in its Final Resolution and Order are "pertinent and necessary" to ensure the reliability of PREPA's service, ensure just and reasonable rates, and comply with the Legislature's intent of achieving a meaningful reform of Puerto Rico's energy sector.

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<sup>54</sup> Section 6.25(a) of Act 57-2014.

<sup>55</sup> D. Fernández, at p. 51.

## **2. The Commission's obligation to set just and reasonable rates necessarily includes the authority to limit the costs that are recovered through rates**

When setting PREPA's rates, the Commission faces two key constraints: the rates must be "just and reasonable" to consumers and they must be sufficient to guarantee that PREPA meets its financial obligations.<sup>56</sup>

These two constraints are not in tension, as long as PREPA's costs are reasonable costs. If the costs are reasonable, the rates calculated to recover them will be reasonable, and the resulting revenues will be sufficient to meet its financial obligations. There will be no tension. But if PREPA's costs are unreasonable, then its rates will be unreasonable. There will be tension.

Because these two constraints—reasonable rates for consumers and full payment of its financial obligations—appear in the same statute, the Commission must interpret and apply them to avoid tension between them. The only way to achieve this is to prevent unreasonable costs from being incurred. Nothing in Act 83, Act 57-2014 or Act 4-2016 undermines this unavoidable reasoning. It is, perhaps, such responsibility which occupies the center-stage of the energy reform: turning back years of fiscal and operational mismanagement.

## **3. PREPA incorrectly views detailed statutory provisions as shrinking the boundaries of broader provisions**

PREPA cites specific Commission powers to argue that the language vesting those powers necessarily excludes other powers.<sup>57</sup> PREPA's interpretational error is twofold.

First, PREPA has severed these provisions from their context. To confine the Commission's authority to these specific provisions is to ignore the Commission's general obligation to "oversee" PREPA's activities and "establish and implement [...] regulatory actions," as discussed in Part III.C.1 above. The specific provisions do not limit the general ones; rather, they illustrate (but do not exhaust) subjects demanding specific regulatory attention. Second, PREPA's challenges, as described in Act 57-2014's Statement of Motives, are too complex, requiring too much technical judgment, for the Legislature to have addressed every specific problem with specific language. That is why the Legislature created an expert commission, empowered with broad authority. Nowhere in Act 57-2014

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<sup>56</sup> Section 6.25(b) of Act 57-2014.

<sup>57</sup> Motion for Reconsideration at 15 (citing, from Act 57-2014, sections 6.3, 6.3(h), 6.3(p), 6.4; from Act 83 (as amended by Act 57-2014), section 6A; and from Act 4-2016, the Statement of Motives, Section B).

or Act 4-2016 is there language suggesting that specific items limit the whole. Section 6.38 of Act 57-2014 specifically addresses PREPA’s assertion, by stating that:

The provisions of [Act 57-2014] shall be construed liberally in order to achieve its purposes, and whenever a specific power or authority is granted to the Commission, the same shall not be construed as to exclude or impair any other power or authority otherwise conferred to it.

Additionally, as previously stated, Section 6.3 provides that the Commission shall have all those “implicit and incidental powers that are pertinent and necessary” to comply with its mandates. PREPA’s arguments are in direct conflict with Act 57-2014’s express language. It was the Legislature’s explicit intention to ensure that powers specifically granted to the Commission would not limit the Commission’s ability to exercise any other action or power required to ensure compliance with Act 57-2014’s purpose.

Act 57-2014 provides a clear mandate to the Commission to ensure that PREPA’s 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.”<sup>58</sup> To comply with such mandate, it is “pertinent and necessary” to ensure that PREPA’s rates reflect no imprudent costs. The Commission’s power and duty to prevent PREPA from incurring imprudent costs is unambiguous. The unique circumstances surrounding this case (particularly the inability to disallow past imprudent costs—a subject which is extensively addressed in the Final Resolution and Order) justify the need for each of the Commission’s directives as a tool complying with Act 57-2014’s mandates.

#### **4. The PREPA Board's statutory duties do not limit the Commission's statutory obligations**

PREPA imagines a statutory boundary between the powers of its Board and the powers of the Commission. PREPA then argues that the Commission has crossed that boundary unlawfully. But PREPA never defines the boundary. Had it done so, its error would be clear. PREPA has confused policy overlap with boundary violation.

Between PREPA's Board and the Commission, there is a boundary: PREPA provides electric service; the Commission does not. But there is also an overlap. To provide service, PREPA makes decisions—about spending (both amounts and priorities), quality standards and pace of improvement. But in “overseeing” PREPA's operations, the Commission also must make decisions—about spending, quality standards and pace of improvement. Between the PREPA Board's service duties and the Commission's oversight obligations, an overlap is unavoidable.

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<sup>58</sup> Section 6.25(a) of Act 57-2014.

PREPA cites from Act 83 a series of provisions establishing its Governing Board.<sup>59</sup> Representative of these provisions is Section 4 of Act 83's opening sentence: "The powers of the Authority shall be exercised and its general policy and strategic management shall be determined by a Governing Board."<sup>60</sup> This sentence's sole purpose is to vest PREPA's powers in a Governing Board—a natural first step in establishing PREPA's existence. Subsequent provisions then describe how the Board will be composed and how it will operate—customary provisions necessary to create any public instrumentality. Focused on creating PREPA, these provisions say nothing about the Commission's powers, let alone limit those powers.

PREPA then cites Section 4(d)(1)(vi) of Act 83 (as amended by Act 4-2016). That provision empowers the PREPA's Board to:

[i]mplement 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.

Again, this language says nothing about the Commission's powers. It directs the Board to act consistently with its agreements; as well as to achieve the Legislature's objectives of operational efficiency, fuel diversification and infrastructure modernization, so as to serve customers reliably at the "lowest reasonable cost." This language does not address the Commission's authority; it describes PREPA's obligations. It is those obligations that Act 57-2014 directs the Commission to "oversee" and ensure compliance with.

There is a point at which the Commission's authority stops. The Commission does not hire PREPA's employees, it does not borrow money for PREPA's needs, it does not contract with third parties for fuel and it does not trim trees. The Commission does not provide electric service. That boundary is clear. But PREPA's assertion that the Commission's authority can never constrain the Board's actions is wrong and finds no support in either Act 57-2014, Act 4-2016 or the general principles of regulation. All regulation—from speed limits to food and drug labeling—constrains someone's actions. The Board might decide to trim trees every five years because it views one outage per month as tolerable. But the Commission can require PREPA to trim trees every three years because it decides that one outage per month is intolerable and inconsistent with a reliable service. The Board might want to close customer service offices on evenings and weekends, but the Commission can determine that more office hours will provide customers more responsive service. As long as the Commission has a factual basis for these actions, and sets rates to cover the reasonable resulting costs, the Commission has

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<sup>59</sup> Motion for Reconsideration at pp. 11–13 (citing sections 3 and 4).

<sup>60</sup> Section 4 of Act 83–1941 (opening sentence), as amended by Act 4-2016.

the authority to set these standards. PREPA provides the service, but the Commission sets the standards. Overlap flows inevitably from oversight. Overlap is not invasion.

Still seeking to avoid the Commission's oversight, PREPA states:

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.<sup>61</sup>

To set standards is not to "manage" PREPA or "overtake" its functions. PREPA provides service. Service costs money; budgets discipline how PREPA spends that money. To oversee PREPA is to oversee its spending. Since all costs must be recovered in rates, the only way to ensure that rates are reasonable is to restrict costs to those that are reasonable. To limit the rates, PREPA must limit the costs. Given the Commission's obligation to make rates reasonable, given the direct relationship between rates and budgets, and given the Commission's authority to "oversee," there is no need for specific authority over budgets.

In conclusion: To constrain how the Board provides service is not to replace the Board in providing service. To argue otherwise—to say that the Commission may never constrain the Board's spending—is to return us to the pre-2014 era, one in which PREPA's "operational, managerial, and administrative deficiencies"<sup>62</sup> revealed that its "vision [was] inaccurate and inconsistent with the purposes that prompted its creation."<sup>63</sup>

**D. The Commission will control PREPA's spending, but the method of control remains flexible—if PREPA engages with the Commission forthrightly**

As Part III.C.2 explained, the Commission's obligations to ensure rates are just and reasonable and sufficient to fulfill PREPA's financial obligations are not in tension—but only if the Commission can prevent PREPA from incurring costs imprudently. Once imprudent costs are incurred, they must be recovered, leaving as only alternative to pass such costs to customers. The Commission's Final Resolution and Order aimed to eliminate this outcome, by requiring PREPA to limit its spending to revenue requirements approved by the Commission. Part III.C explains why the Commission's prescriptions are within its authority. The Commission will control PREPA's spending, to the extent of that authority and consistent with practicalities.

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<sup>61</sup> Motion for Reconsideration at ¶18.

<sup>62</sup> Statement of Motives at ¶6.

<sup>63</sup> *Id.* at ¶9.

PREPA witness Dr. Hemphill's proposal for annual rate-setting provided *no answer to the question that counted*: how to prevent imprudent costs before they are incurred. With its language of "updates" and "reviews," the proposal gave the Commission only opportunities to comment on *future* proposed costs; it left PREPA with discretion to incur costs—at the proposed level or any other level. Once PREPA incurred those costs, the Commission would have no practical choice but to make ratepayers pay them. PREPA's proposal ensured cost recovery, not cost accountability; it did nothing to further Act 57-2014's goals of a fiscally responsible PREPA. The proposal merely gives a forward look to proposed costs; nowhere does it address the reality that imprudent costs, once incurred, would be passed on to customers, leaving ratepayers defenseless and the Commission powerless.

Under PREPA's proposal, the Commission can only observe and advise, which, if accepted, amounts to an unequivocal abdication of its purpose of existence. Act 57-2014 commands the Commission to oversee and protect, and, moreover, to transform. PREPA states that its proposal "would give the Commission and stakeholders 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."<sup>64</sup> It is not PREPA's place to "give the Commission [...] an [...] enhanced role." It is this sentence which exposes PREPA's misconception that the Commission's powers are granted by PREPA. Regulatory power is not something granted to a commission by a magnanimous utility. The source of regulatory power is the Legislature, and the recipient is the Commission. Said sentence also points out the main flaw in PREPA's argument: that its proposal is an enhancement to what was in place before. But what was in place before is a complete lack of operational oversight. When compared to such a scenario, any alternative, regardless of its failings, is an enhancement.

Still, the question at hand is left unanswered: *how to prevent imprudent costs before they are incurred*. Having offered no answer, PREPA now criticizes the Commission's answer. PREPA states that "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."<sup>65</sup> The Commission readily acknowledges that PREPA's familiarity with its internal procedures is superior to the Commission's. But instead of using its superiority to answer the key question, PREPA cites its superiority as reason to avoid the question. After extensive dialogue—through countless requests for information, during the evidentiary hearing, and during multiple technical conference calls—PREPA has failed to do what it should: design a rate review and update procedure that assists the Commission to prevent imprudent costs.

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<sup>64</sup> Motion for Reconsideration at ¶ 38.

<sup>65</sup> Motion for Reconsideration ¶ 49a.

The Commission cannot and will not cede its statutory obligation to prevent imprudent costs. Whatever difficulties PREPA sees in the Commission's solutions exist only because PREPA has decided to use its claimed superior knowledge as a means of defeating external solutions, rather than embracing them, the very type of conduct Act 57-2014 sought to eliminate by granting the Commission broad regulatory powers over PREPA.

The Final Resolution and Order grants PREPA the opportunity to propose to the Commission a schedule for the budgeting and revenue requirement and rate setting procedures which achieves the synchronization sought after by the Commission and addresses PREPA's particular needs and limitations.<sup>66</sup> PREPA must propose ways to mesh its decision-making procedures with the Commission's obligations. The Commission is certain that such meshing is feasible, if—and only if—PREPA is willing to engage the Commission in reaching a solution for implementing the Commission's directives. Direct, honest and open channels of communication between PREPA and the Commission will allow for greater practicality in the implementation of the Commission's directives.

Nonetheless, while the Commission is open to engaging PREPA, it will not relinquish its authority to direct PREPA to act in accordance with the public policy furthered by Act 57-2014. PREPA's unwillingness to engage the Commission will not exempt it from the Commission's requirement and the Commission will exercise all of its statutory powers to ensure rates are just and reasonable and prevent customers from having to pay for PREPA's imprudence.

Accordingly, PREPA shall submit a schedule for addressing, and provide preliminary solutions for, the four challenges described next. Until PREPA engages the Commission and a practical alternative is reached, the provisions of the Final Resolution and Order, as clarified in Parts II.D and II.E of this Final Resolution, remain in effect.

**1. *Synchronizing proposed budget with proposed revenue requirement:***

For a given fiscal year, there cannot be a situation where (a) the Commission approves a revenue requirement based on a PREPA-proposed budget; (b) months later the PREPA Board approves a higher budget; (c) during that fiscal year PREPA spends at the level approved by the Board but not approved by the Commission (in excess of the approved revenue requirement); and (d) PREPA then insists on recovering its total costs through rates set by the Commission (requiring recurring rate increases). Subject to the qualifying factors that appear next, PREPA shall propose alternative methods that confine PREPA's spending to levels approved by the Commission. Those methods necessarily involve synchronizing, somehow (likely by rearranging schedules for Commission and Board review), PREPA's budget approval process with the Commission's revenue requirement process, so that the Commission approves the actual budget that will constrain PREPA's spending; the precise problem that PREPA's original proposal ignored.

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<sup>66</sup> Final Resolution and Order at ¶449.

**2. Authorizing shifting of funds across functions and departments:** PREPA's revenue requirement, and spending, must reflect total reasonable cost—no more and no less. To assess the reasonableness of total cost, the Commission must assess the reasonableness of individual department and function costs. The Commission therefore determines the revenue requirement cost by studying information on each function and department. Every utility commission setting cost-based rates follows such path. It is rare, however, for a commission to require each utility department to spend only the money approved for that department. The normal approach is for the utility commission to arrive at the total costs by studying department-level costs, but upon establishing total costs, allow the utility to vary from the projected departmental costs.

On this issue, the Commission prefers to act like other commissions: Approve total cost based on approvals of individual function and department costs, but allow PREPA's individual departments to spend as they need to, as priorities depart from predictions, but subject to the overall cap. The question is how to ensure that changes in departmental spending do not all move upwards, thus defeating the purpose of limiting total costs. PREPA shall propose ways for the Commission to learn of—and, if it chooses to, approve or disapprove—significant changes in departmental spending before that spending occurs.

**3. Ensuring that rider costs are prudent costs:** Certain costs (*e.g.*, fuel, purchased power and energy efficiency) will be recovered through riders separate from the base rate revenue requirement. Rider costs, like base costs, contain elements that are subject to PREPA's control or influence. Rider costs, like base costs, must be prudent costs. They also must be "reconciled" to rates somehow. The key difference between rider costs and base rate costs is the method and timing of reconciliation. PREPA seems to suggest that rider costs are outside its control and therefore require an exemption from whatever caps and procedures the Commission establishes.

In Part II.B of this Final Resolution the Commission states that the spending cap applies only to costs included in the base revenue. However, PREPA is wrong in asserting that costs included in a rider are entirely outside of its control. PREPA's actions do have an impact on costs, even when those costs are, to some extent, dependent on external factors. Therefore, PREPA shall propose methods to ensure that its rider costs are prudent costs.

**4. Adjusting total revenue requirement to reflect events that are (a) uncertain or unpredictable and (b) not susceptible to Commission approval in advance:** The Commission does not expect PREPA to delay an action to get Commission approval, if that delay affects cost or quality adversely. Opportunities to save or avoid costs, or to increase quality at reasonable cost, do not coincide with pre-established Commission review procedures. The Commission will not, however, permit flexibility to reduce accountability. Consistent with Part II.B.2, PREPA may propose a method for distinguishing different types of unpredictable costs and the nature of the Commission review that should address such costs. The treatment of emergencies, and the uncertainty surrounding the debt negotiations, both mentioned by PREPA as a reason for flexibility, can be addressed in this context.

Not one of these challenges were addressed adequately in PREPA's proposal to the Commission. PREPA's witness and proposed model failed to take into account the realities and constraints that apply to PREPA as a result of its nature as a government-owned public utility. Merely importing models from FERC and Illinois, failing to take into account Puerto Rico's painfully obvious differences, did not work. PREPA should not repeat that mistake. PREPA should invest in identifying solutions which are tailored to these constraints, and not merely adopt models inconsistent with local realities.

## **E. Accounting issues**

### **1. Clarification of Attachment 1: Ratepayer funding of capital expenditures**

Regarding Attachment 1 to the Commission's Order, PREPA seeks clarification as follows:

Line 24 is labeled as "Ratepayer Funding of Capital Expenditures". 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.<sup>67</sup>

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.

The Commission **CLARIFIES** as follows: The Commission is allowing current ratepayer funding of PREPA's long-term capital expenditures—an extraordinary ratemaking treatment—because of (a) the necessity of making those expenditures and (b) PREPA's lack of access to external capital. This current ratepayer funding is covered by the amount stated on Attachment 1, line 24, "Ratepayer Funding of Capital Expenditures." That amount exceeds the level that normally would be funded currently by ratepayers under the more typical Debt Service Coverage approach to determining a utility's revenue requirement. The Debt Service Coverage amount on line 21 are also funded by ratepayers, as are other line items comprising PREPA's entire base rate revenue requirement.

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<sup>67</sup> Motion for Reconsideration at ¶¶ 110-111.

## 2. Accounting for ratepayer funding of capital expenditures Contribution in Aid of Construction

PREPA seeks reconsideration of the Commission's directive to account for ratepayer-funded capital expenditures as Contributions in Aid of Construction ("CIAC").<sup>68</sup> This request is **DENIED**. PREPA shall record the amount of ratepayer funding of capital expenditures (specifically, the amount of ratepayer funding of PREPA's FY2017 capital expenditures that exceeds the Debt Service Coverage Ratio margin) as CIAC. That amount shall be credited to the Utility Plant in Service Account (account 101).

PREPA seeks to account for these expenditures not as CIAC but as operating revenues on its income statement. Operating revenues must reflect operating expenses. Operating expenses are costs that are incurred in a given period for service that is provided during that period. That service benefits ratepayers in that period, and is paid for by ratepayers during that period. These expenses are recognized for accounting purposes in that period.

Capital expenditures, in contrast, benefit ratepayers in more than one period. Under the Uniform System of Accounts, capital expenditures therefore have a different accounting treatment than operating expenses. During construction, capital expenditures are recorded as Construction Work in Progress (account 107); when placed into service, they are recorded as charges to Utility Plant in Service (account 101).

When a utility is financially healthy, the current cash outlays necessary to cover capital expenditures come from private investors (who buy bonds or purchase stock). When the plant built with these expenditures becomes operational, those cash outlays enter the revenue requirement, causing customers to pay for the plant over a period reflecting the life of the bonds or the useful life of the plant. PREPA's financial condition precludes this approach, so the source of the capital expenditures must be today's ratepayers, paying for the expenditures through current rates. Because the plant is financed with funding from customers, special treatment is required. When the plant is initially being replaced or placed into service, customer contributions are accounted for as credits to account 101, Plant in Service. As emphasized in the Final Resolution and Order, this treatment is extraordinary and temporary. Once PREPA can access external financing at reasonable cost, ratepayers will no longer be funding capital expenditures current, so the CIAC approach will no longer be necessary.

Accounting for these ratepayer contributions as CIAC is not only consistent with the Uniform System of Accounts; it will protect PREPA ratepayers from paying for the same plant twice should PREPA seek to switch to a different revenue requirement method, such as rate base/rate of return (the double payment would occur because the depreciation component in a rate base revenue requirement, and possibly the rate base itself, would reflect plant whose costs were already recovered in part through the current

<sup>68</sup> Motion for Reconsideration at ¶¶ 118-132, *citing* Commission Final Resolution and Order at pp. 34, 178.

recovery allowed by the Final Resolution and Order). Finally, in response to PREPA's concern, there is no intent—and never has been—that the CIAC amount be "only a temporary rate increase that would at some point in the future be flowed back to customers."<sup>69</sup>

### 3. Accounting for costs incurred under maintenance contracts

PREPA seeks reconsideration of the Commission's directive that \$16 million associated with certain generation maintenance contracts be accounted for as operating expense instead of capital costs.<sup>70</sup> This request is **DENIED**.

Treating forecast generation maintenance as maintenance expense is common industry practice and is required by the Uniform System of Accounts. PREPA recognizes that expenditures for "betterments" and replacements of major plant are capitalized, while the remainder of maintenance costs are properly treated as operations and maintenance expense.<sup>71</sup> That PREPA has historically "budgeted" these expenditures as capital expenditures is irrelevant.

### 4. Test years in subsequent rate proceedings

PREPA seeks reconsideration of this 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."<sup>72</sup> The Commission **GRANTS** this request. The Commission will revise the sentence to read as follows: "For future rate proceedings, PREPA's application must also include information for the most recent fiscal year, adjusted for known and measurable changes from that year."

## F. Rate design and load research issues

### 1. Rate design treatment of the revenue increase

PREPA objects to the Commission's decision to achieve the revenue increase by, as PREPA states, an "across-the-board \$/kWh increase." We will assume PREPA is not objecting to the method by which the Commission allocated revenue responsibility across customer classes, but instead to the method by which the Commission modified rates within each customer class. PREPA states:

<sup>69</sup> Motion for Reconsideration at ¶ 125.

<sup>70</sup> Motion for Reconsideration at ¶¶ 112-117.

<sup>71</sup> Motion for Reconsideration at ¶ 113.

<sup>72</sup> Commission Final Resolution and Order at ¶ 69.

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.<sup>73</sup>

PREPA is concerned that the Commission's approach "will effectively give the highest load factor customers the largest percentage rate increase."<sup>74</sup> The Commission **DENIES** this request.

While the concern about "highest load factor customers" does not speak clearly, we assume PREPA is referring to those customers within each class with demand meters (GSP, GST, LIS, and TOU) that have the highest ratio of average use (energy consumption per hour) to the customers' metered maximum monthly load. Putting all of the increase in the energy charges for these classes would tend to give the highest load factor customers the largest percentage rate increase, if PREPA is computing the load factor from the customers' billing demand, which may occur at 4 AM, 4 PM, or any other time on any day.

PREPA seems to assert that its cost-of-service study demonstrates something about the appropriate bill increases for the high-load-factor customers. PREPA does not offer any record support for its apparent position that high-load-factor customers should not experience somewhat higher rate increases than low-load-factor customers served under the same tariff. Neither the embedded-cost-of-service study nor the marginal-cost study, both of whose flaws were discussed in the Final Resolution and Order, provides any information on costs caused by the customers' own monthly maximum demand, or the relative cost of serving customers with high maximum-demand load factors, versus those with lower such factors. PREPA's embedded-cost study relies on estimates of tariff-code non-coincident peak, and the marginal costs are computed per unit of contribution to the system coincident peak.

PREPA is welcome to continue to raise this question in the upcoming proceeding on rate design.

## 2. Load research program

PREPA seeks clarity about the load research program. The Commission intends to work with PREPA and any interested customer groups to design a program that will produce the information necessary to set just and reasonable rates. This process would

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<sup>73</sup> Motion for Reconsideration at ¶ 59.

<sup>74</sup> *Id.*

take place as part of the rate design proceeding. Nonetheless, in anticipation of such proceeding, PREPA shall submit options for each of the following elements of a program: purposes; methodologies; specific roles for PREPA, its consultants, the Commission and affected customers; costs; and criteria for determining whether the program is meeting its goals. The description should reference other successful programs, to allow the Commission to make comparisons.

Given the Commission's dissatisfaction with the revenue allocation and rate design submissions in this first rate proceeding, PREPA shall seek proposals from multiple consultants to assist in developing such information. The Commission will assist PREPA in selecting a consultant which will best perform according to the Commission's standards. PREPA should not engage a consultant without seeking Commission input. This last step is necessary because PREPA's consultant costs are ultimately paid by the ratepayers, whose statutory right to just and reasonable rates the Commission must protect.

## G. Miscellaneous issues

### 1. Third-party estimates for major capital expenditures

The Commission 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."<sup>75</sup> PREPA says this requirement lacks detail, was not supported in the record and should be considered in the IRP case.<sup>76</sup> The Commission **DENIES** this request.

All capital expenditures affect rates. Indeed, over \$300 million in the approved FY2017 revenue requirement is attributable to capital expenditures. These expenditures must be disciplined by an objective process—either a request for proposals objectively designed and implemented, or an independent assessment of the costs before they become committed costs. There is no legal or logical principle precluding the Commission from subjecting its approval of costs to these conditions. The need for objective discipline of major capital spending before the spending occurs (given our practical inability to disallow costs once incurred, and given the common tendency in construction projects for costs to exceed predictions), should be sufficient to support our determination. However, should detailed factual support be necessary, it existed—in the form of the lack of careful budgeting and recordkeeping at PREPA that was exposed throughout the rate proceeding.

With regards to PREPA's wish for more detail, the Commission **CLARIFIES** as follows: For each major new capital project (the threshold to be used to identify major capital projects will be defined by the Commission at a later date), PREPA shall provide detailed explanation regarding the information used to support project cost estimates,

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<sup>75</sup> Final Resolution and Order at p. 154.

<sup>76</sup> Motion for Reconsideration at ¶ 51.

including the processes and steps through which PREPA obtained from third-party vendors and contractors information regarding estimated costs.

## 2. The relationship between revenue requirements and IRP

PREPA raised concerns regarding the directive which requires that PREPA "use the most recent, Commission-approved IRP as the basis for the budget forecast."<sup>77</sup> The Commission hereby **CLARIFIES** this requirement. We do not mean that an annual budget forecast can only include those projects approved in the existing IRP. The need for new projects may not neatly coincide with IRP procedures.

On the other hand, when a budget proposal and revenue requirement request departs from an existing plan, the value of the IRP process diminishes. Customers should not be paying for random projects unattached to an approved plan. Therefore, each budget forecast must explain how it carries out, or varies from, the existing IRP. PREPA shall develop this concept and propose ways to implement it, including the mechanisms available for reviewing projects which may require an update to the approved IRP. This requirement, which also appears in the rate case filing requirements, does not revise any obligation in the IRP rules concerning updates.

## 3. Fuel costs: Additives, delays and hedging

PREPA seeks reconsideration about the Commission's treatment of costs relating to additives and hedging.<sup>78</sup> The Commission **CLARIFIES** as follows.

PREPA has not incurred Fuel Expense for Additives in the three fiscal years through FY2016. Nor has it incurred expense for Delays or Fuel Hedging in the last two fiscal years (FY2015 and FY2016). PREPA shall inform the Commission of PREPA's incurrence of expense for additives. PREPA shall also notify the Commission of its incurrence of cost for Delays. In each of these situations, PREPA is **ORDERED** to submit such notifications, along with an explanation of the costs and their purposes, within 30 days of the event.

Before implementing any hedging program, or incurring any obligations or costs related to a hedging program, PREPA shall submit its terms to the Commission for approval.

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<sup>77</sup> Motion for Reconsideration at ¶ 52; Final Resolution and Order at p. 154.

<sup>78</sup> Motion for Reconsideration at ¶ 44e.

#### 4. AOGP

PREPA states:

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).<sup>79</sup>

Nowhere did the Commission make this suggestion. We stated the point clearly (at paragraph 230): "PREPA's emphasis on AOGP has come at the expense of a permitted, licensed, and half-built pipeline from the EcoEléctrica facility to Aguirre." This sentence neither states nor implies that the pipeline's cancellation was PREPA's decision; it says only that PREPA made the decision to focus on AOGP in lieu of other options, after the cancellation occurred. PREPA needs now to perform the economic analysis required by our recent Order.<sup>80</sup>

#### H. The expert staff reports were a benefit to PREPA and to the public

PREPA complains about the Commission's reliance on its expert reports. PREPA has no cause to complain, because the presence of those reports, and the presence of the experts at the evidentiary hearing, increased PREPA's opportunity to influence the Commission.

The Commission retained the experts for advice. The Commission had no legal obligation to make that advice public. The Commission instead could have required each expert to draft internal memoranda, which would have remained entirely private, protected by the Commission's deliberative privilege. As long as the memoranda contained no facts external to the evidentiary record, the Commission could have relied on the memoranda in drafting its Order. The parties would have had no opportunity to critique the experts' reasoning.

Instead, the Commission not only made the reports public; it made the experts available for cross-examination. Each expert was subject to the risk of having his or her thoughts exposed, questioned and criticized by the large team of consultants and lawyers retained by PREPA. While the Commission is certain that its experts would have brought the same level of professionalism to private memoranda that they brought to the expert reports, public exposure made this professionalism—and any possible lapses—evident to

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<sup>79</sup> Motion for Reconsideration at ¶ 105.

<sup>80</sup> February 10, 2017 Order, Case No. CEPR-AP-2017-0001.

all. PREPA points to no sentence in the Commission's order that relies on a fact not present in the record. There is no such sentence. PREPA has no legal complaint.

The Commission agrees that had there been more time for the parties to review the expert reports, it would have been better for all. But the 180-day statutory deadline established by Act 57-2014 significantly limited the amount of time available for the entire proceeding, not just to examine the Commission's expert reports. The Commission was equally constrained in evaluating PREPA's filings and responses to discovery and drafting an order of the complexity as the Final Resolution and Order within the statutory time-frame.

Any argument made by PREPA in its Motion for Reconsideration which has not been expressly addressed in this Final Resolution is **REJECTED**.

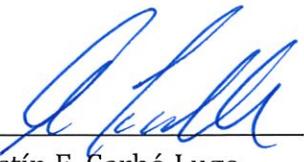
Finally, in light of the aforementioned, PREPA's February 16, 2017 request of an extension to comply with the Final Resolution and Order's February 15 deadline, is **GRANTED**. PREPA shall provide the information required by the Final Resolution and Order **no later than twenty (20) days from the date this Final Resolution is notified and published**.

Any party adversely affected by this Final Resolution may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date a copy of the notice of this Final Resolution was notified and copy of such notice was filed by the Commission's Clerk. Filing and notice of a petition for review before the Court of Appeals shall be made pursuant to the applicable provisions of Regulation 8543, the LPAU and the Rules of the Puerto Rico Court of Appeals.

Given the technical nature of the subject matter, this Final Resolution is published in English. A Spanish translation will be published once available. Should any discrepancy between the English and Spanish version arise, the English version shall prevail.

Be it notified and published.



  
Agustín F. Carbó Lugo  
Chairman

  
Ángel R. Rivera de la Cruz  
Associate Commissioner

  
José H. Román Morales  
Associate Commissioner

### CERTIFICATION

I hereby certify that the members of the Puerto Rico Energy Commission has so agreed on March 8, 2017 and on this date a copy of this Final Resolution on Case No. CEPR-AP-2015-0001 was notified by electronic mail to the following: n-ayala@aepr.com, c-aquino@aepr.com, glenn.rippie@r3law.com, michael.guerra@r3law.com, john.ratnaswamy@r3Law.com, codiot@opic.pr.gov, jperez@oipc.pr.gov, mmuntanerlaw@gmail.com, jfeliciano@constructorespr.net, abogados@fuerteslaw.com, info@aae.pr.gov, nydinmarie.watlington@cemex.com, aconer.pr@gmail.com, epenegypr@gmail.com, jorgehernandez@escopr.net, ecandelaria@camarapr.net, pga@caribe.net, manuelgabrielfernandez@gmail.com, agraitfe@agraitlawpr.com, maribel.cruz@acueductospr.com, mgrpcorp@gmail.com, eirizarry@ccdlawpr.com and pnieves@vnblegal.com, attystgo@yahoo.com. I also certify that today, March 8, 2017, I have proceeded with the filing of the Final Resolution issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

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For the record, I sign this in San Juan, Puerto Rico, today, March 8, 2017.

A handwritten signature in blue ink, which appears to read 'M. del Mar Cintrón', is written above a horizontal line.

María del Mar Cintrón Alvarado  
Clerk



# Attachment 1 Revised: Determination of Total Revenue Requirement and Change in Base Rates

Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 (Thousands of Dollars)

Commission Attachment 1 REV  
 Page 1 of 1  
 Revised

Line No.	Description	PREPA Proposed FY2017 (A)	Commission Adjustments (B)	Total Adjusted Results (C)	Base Rates: Commission Adjusted Results (D)	Adjusted FY2017 Fuel and Purchase Power Adjustor Revenue & Expense (E)	Adjusted FY2017 CILT & Subsidy Pass-Through Adjustor Revenue & Expense (F)
1	<b>Operating Expenses</b>						
2	Fuel	\$ 655,968	\$ 461,305	\$ 1,117,273		\$ 1,117,273	
3	Purchased Power	\$ 819,907	\$ -	\$ 819,907		\$ 819,907	
4	Generation Expenses	\$ 122,411	\$ 30,549	\$ 152,960	\$ 152,960		
5	Transmission Expenses	\$ 34,222	\$ 3,914	\$ 38,136	\$ 38,136		
6	Distribution Expenses	\$ 169,277	\$ 19,004	\$ 188,281	\$ 188,281		
7	Customer Billing Expenses	\$ 84,945	\$ 389	\$ 85,334	\$ 85,334		
8	Administrative and General Expenses	\$ 148,897	\$ (16,602)	\$ 132,295	\$ 132,295		
9	Bad Debt Expense	\$ 85,384	\$ 13,100	\$ 98,484	\$ 98,484		
10	Energy Administration Assessment	\$ 5,800	\$ (5,800)	\$ -	\$ -		
11	<b>Subtotal Operating Expenses</b>	<b>\$ 2,126,811</b>	<b>\$ 505,859</b>	<b>\$ 2,632,670</b>	<b>\$ 695,490</b>	<b>\$ 1,937,180</b>	<b>\$ -</b>
12							
13	<b>Subsidies</b>						
14	Energy Administration Assessment		\$ 5,800	\$ 5,800			\$ 5,800
15	Contribution to Municipalities (CILT)	\$ 51,784	\$ -	\$ 51,784			\$ 51,784
16	Public Lighting	\$ 93,241	\$ -	\$ 93,241			\$ 93,241
17	Special Customer Subsidies	\$ 75,071	\$ (129)	\$ 74,942			\$ 74,942
18	<b>Subtotal Subsidies</b>	<b>\$ 220,096</b>	<b>\$ 5,671</b>	<b>\$ 225,767</b>	<b>\$ -</b>		<b>\$ 225,767</b>
19							
20	Debt Service (Principal & Interest)	\$ 314,390	\$ -	\$ 314,390	\$ 314,390		
21	Debt Service Coverage		\$ 125,756	\$ 125,756	\$ 125,756		
22	<b>Subtotal Debt Service and Coverage</b>	<b>\$ 314,390</b>	<b>\$ 125,756</b>	<b>\$ 440,146</b>	<b>\$ 440,146</b>		
23							
24	<b>Ratepayer Funding of Capital Expenditures</b>	<b>\$ 336,558</b>	<b>\$ (183,096)</b>	<b>\$ 153,462</b>	<b>\$ 153,462</b>		
25							
26	<b>Subtotal PREPA Base Rate Revenue Requirement</b>	<b>\$ 2,997,855</b>	<b>\$ 454,190</b>	<b>\$ 3,452,045</b>	<b>\$ 1,289,098</b>	<b>\$ 1,937,180</b>	<b>\$ 225,767</b>
27							
28	<b>Revenue and Other Income</b>						
29	Other Income	\$ (38,925)	\$ -	\$ (38,925)	\$ (38,925)		
30	Fuel and Purchased Power Adjustor Revenue	\$ (1,658,287)	\$ (278,893)	\$ (1,937,180)	\$ -	\$ (1,937,180)	
31	CILT and Subsidy Pass Through Revenue		\$ (225,767)	\$ (225,767)			\$ (225,767)
32	Non-Fuel Base Rate Revenue at Current Rates	\$ (1,078,387)	\$ -	\$ (1,078,387)	\$ (1,078,387)		
33	<b>Subtotal Revenue and Other Income</b>	<b>\$ (2,775,599)</b>	<b>\$ (504,660)</b>	<b>\$ (3,280,259)</b>	<b>\$ (1,117,312)</b>	<b>\$ (1,937,180)</b>	<b>\$ (225,767)</b>
34							
35	<b>PREPA Base Rate Revenue Deficiency (Excess)</b>	<b>\$ 222,256</b>	<b>\$ (50,470)</b>	<b>\$ 171,786</b>	<b>\$ 171,786</b>	<b>\$ -</b>	<b>\$ -</b>
36							
37	<b>PREPARC Securitization (Transition Charge) Revenue Requirement - Note [b]:</b>						
38	Debt Service for Securitization	\$ 394,237	\$ -	\$ 394,237			
39	Gross-Up for Collections Lag and Uncollectible Revenue	\$ 109,027	\$ -	\$ 109,027			
40	<b>PREPARC (SPV) Revenue Requirement</b>	<b>\$ 503,264</b>	<b>\$ -</b>	<b>\$ 503,264</b>			
41							
42	<b>Total PREPA and PREPARC Revenue Requirements</b>	<b>\$ 3,501,119 [a]</b>	<b>\$ 454,190</b>	<b>\$ 3,955,309</b>			

**Notes and Source**

Col.A: PREPA Schedule A-1 REV with reclassification of selected items for presentation clarity

[a] PREPA shows this amount on its Schedule A-1 REV net of PREPA's Other Income:

<b>Total PREPA and PREPARC Revenue Requirements</b>	\$ 3,501,119	Line 40
Other Income	\$ (38,925)	Line 28
<b>Total PREPA and PREPARC Revenue Requirements per PREPA</b>	<b>\$ 3,462,194</b>	PREPA Schedule A-1 REV

[b] The method for determining the PREPARC revenue requirement for the new securitized bonds to be issued and the method for determining the Transition Charge rates related to that was addressed and approved by the Commission in Case No. CEPR-AP-2016-0001.

Col.B: See Commission Attachment 2 for a summary of adjustments and Commission Attachment 3 for additional details.

Col.C: Shows the adjusted results before separating amounts into base rates, fuel and purchased power rider and "Subsidy Rider" for cost recovery.

Col.D: Shows the adjusted base rate revenue requirement and revenue deficiency

Col.E: The Commission has determined that PREPA's fuel and purchased power expenses will be collected through the fuel and purchased power adjustors.

Col.F: The Commission has determined that the subsidy amounts listed on Attachment 4 REV will be collected in a "Subsidy Rider."



## Attachment 2 Revised: Summary of Commission Adjustments to FY2017 Revenue Requirement

Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Summary of Commission Adjustments to FY2017 Revenue Requirement  
 ('Thousands of Dollars)

Commission Attachment 2 REV  
 Page 1 of 1  
 Revised

Line No.	Description	Total Commission Adjustments (A)	Debt Service Coverage Ratio Margin (1)	Ratepayer Contributions for FY2017 CapEx Funding (2)	Reclassification of FY2017 CapEx to Generation Maint. Exp. (3)	Special Customer Subsidies Double Count (4)	Fuel Expense Forecast (5)	Operating Expense Needed for Safe & Reliable Operation (6)	Fines and Penalties Expense Not Incurred (7) Note A	Bad Debt Expense (8) Note B	Reconnection Fee Revenue Held to Cost (9)	Subsidies and Expenses (10) Revised
1	<b>Operating Expenses</b>											
2	Fuel	\$ 461,305					\$ 461,305					
3	Purchased Power	\$ -										
4	Generation Expenses	\$ 30,549			\$ 16,000			\$ 14,175			\$ 374	
5	Transmission Expenses	\$ 3,914						\$ 3,809			\$ 105	
6	Distribution Expenses	\$ 19,004						\$ 18,487			\$ 517	
7	Customer Billing Expenses	\$ 389										\$ 129
8	Administrative and General Expenses	\$ (16,602)						\$ (17,057)			\$ 260	
9	Bad Debt Expense	\$ 13,100								\$ 13,100		
10	Energy Administration Assessment	\$ (5,800)										\$ (5,800)
11	<b>Subtotal Operating Expenses</b>	<b>\$ 505,859</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 16,000</b>	<b>\$ -</b>	<b>\$ 461,305</b>	<b>\$ 19,414</b>	<b>\$ -</b>	<b>\$ 13,100</b>	<b>\$ 1,711</b>	<b>\$ (5,671)</b>
12												
13	<b>Subsidies</b>											
14	Energy Administration Assessment	\$ 5,800										\$ 5,800
15	Contribution to Municipalities (CILT)	\$ -										
16	Public Lighting	\$ -										
17	Special Customer Subsidies	\$ (129)										\$ (129)
18	<b>Subtotal Subsidies</b>	<b>\$ 5,671</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,671</b>
19												
20	Debt Service (Principal & Interest)	\$ -										
21	Debt Service Coverage	\$ 125,756	\$ 125,756									
22	<b>Subtotal Debt Service and Coverage</b>	<b>\$ 125,756</b>	<b>\$ 125,756</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
23												
24	<b>Ratepayer Funding of Capital Expenditures</b>	<b>\$ (183,096)</b>		<b>\$ (183,096)</b>								
25												
26	<b>Subtotal PREPA Base Rate Revenue Requirement</b>	<b>\$ 454,190</b>	<b>\$ 125,756</b>	<b>\$ (183,096)</b>	<b>\$ 16,000</b>	<b>\$ -</b>	<b>\$ 461,305</b>	<b>\$ 19,414</b>	<b>\$ -</b>	<b>\$ 13,100</b>	<b>\$ 1,711</b>	<b>\$ -</b>
27												
28	<b>Revenue and Other Income</b>											
29	Other Income	\$ -										
30	Fuel and Purchased Power Adjustor Revenue	\$ (278,893)					\$ (461,305)					\$ 182,412
31	CILT and Subsidy Pass Through Revenue	\$ (225,767)										\$ (188,726)
32	Non-Fuel Base Rate Revenue at Current Rates	\$ -										
33	<b>Subtotal Revenue and Other Income</b>	<b>\$ (504,660)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (37,041)</b>	<b>\$ (461,305)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (6,314)</b>
34												
35	PREPA Base Rate Revenue Deficiency (Excess)	\$ (50,470)	\$ 125,756	\$ (183,096)	\$ 16,000	\$ (37,041)	\$ -	\$ 19,414	\$ -	\$ 13,100	\$ 1,711	\$ (6,314)
36												
37	<b>PREPARC Securitization (Transition Charge) Revenue Requirement</b>											
38	Debt Service for Securitization	\$ -										
39	Gross-Up for Collections Lag and Uncollectible Revenue	\$ -										
40	<b>PREPARC (SPV) Revenue Requirement</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
41												
42	<b>Total PREPA and PREPARC Revenue Requirements</b>	<b>\$ 454,190</b>	<b>\$ 125,756</b>	<b>\$ (183,096)</b>	<b>\$ 16,000</b>	<b>\$ -</b>	<b>\$ 461,305</b>	<b>\$ 19,414</b>	<b>\$ -</b>	<b>\$ 13,100</b>	<b>\$ 1,711</b>	<b>\$ -</b>

**Notes and Source**

Col.A: Sum of Adjustments accepted by the Commission

Columns (1) through (10): See Commission Attachment 3 (which updates Smith and Dady Ex. 5 for the Commission's decisions). The Commission's decision about Reconnection Fee revenue is reflected in column 9 and on Commission Attachment 3, page 9.

Note A: PREPA indicated during the hearing that it had not included any amount for fines or penalties in its FY2017-based revenue requirement so there is no need for this adjustment

Note B: Updated for the impact of the Commission's decisions on other adjustments

## Attachment 3 Revised: Commission Adjustments to FY2017 Revenue Requirement

Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Commission Adjustments  
 Reflect Debt Service Coverage  
 (Thousands of Dollars)

Commission Attachment 3 REV  
 Page 1 of 10

Line No.	Description	Amount (A)	Reference
<b>Calculation of Debt Service Coverage</b>			
1	PREPA Debt Service (Principal and Interest)	\$ 314,390	PREPA Schedule A-1 REV
2	Debt Service Coverage Ratio	<u>1.4 x</u>	Commission Advisor Hill
3	Debt Service Coverage	<u>\$ 440,146</u>	
<b>Summary</b>			
4	PREPA Debt Service (Principal and Interest)	\$ 314,390	Line 1
5	Debt Service Coverage Margin	<u>\$ 125,756</u>	Line 3 - Line 1
6	<b>Total Debt Service and Debt Service Coverage</b>	<u>\$ 440,146</u>	
7	<b>Adjustment to Provide for 1.4x Debt Service Coverage Margin</b>	<u>\$ 125,756</u>	Line 5

**Notes and Source**

This adjustment is to recognize a Debt Service Coverage Ratio (DSCR) margin based on the DSCR recommendation of Commission Advisor Stephen Hill

Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Commission Adjustments  
 Adjust Amount of Ratepayer Contributions for FY2017 Capital Expenditure Funding  
 (Thousands of Dollars)

Line No.	Description	Amount (A)	Reference
1	PREPA Requested Ratepayer Funding of FY2017 Capital Expenditures	\$ 336,558	PREPA Schedule A-1 REV
<b>Commission Advisor Adjustments</b>			
2	Adjust for amount recognized in DSCR Margin	\$ (125,756)	Note A
3	Limit Ratepayer Funding of Aguirre Offshore Gas Port (AOGP) in FY2017 to amount approved in the Commission's IRP Order	\$ (41,340)	Note B
4	Adjust PREPA FY2017 Capital Expenditures for Meters (PIV 16677)		Note C
Reclassify Certain PREPA Capital Expenditures as Generation O&M Expense:			
	<u>PREPA PIV #</u> <u>Description</u>		
5	15880    Major Inspection "C" Unit 1-3 Cambalache	\$ (4,000)	Note D
6	16945    Combined Cycle Improvement U-5 San Juan Steam Plant	\$ (6,000)	Note D
7	16946    Combined Cycle Improvement U-6 CSJ	\$ (6,000)	Note D
8	<b>Total Commission Advisor Adjustments to Ratepayer Funding of FY2017 CapEx</b>	<b>\$ (183,096)</b>	Sum of lines 2 through 6
9	Adjusted Ratepayer Funding of PREPA FY2017 Capital Expenditures	<u>\$ 153,462</u>	Note E

**Notes and Source**

This adjustment reflects Commission Advisor adjustments to the amount of PREPA's requested FY2017 ratepayer funding of Capital Expenditures

- [A] A portion of PREPA's proposed FY2017 Capital Expenditures is covered by the DSCR margin recommended by Commission Advisor Hill See page 1 of this schedule.
- [B] Commission Advisors Fisher and Horowitz recommend limiting FY2017 capital expenditures for the AOBP to the amount allowed in the Commission's IRP Order:
 

	<u>Amount in Dollars</u>	<u>Reference</u>
PREPA Proposed FY2017 Capital Expenditures for AOGP	\$ 56,339,808	PREPA Schedule F-3 REV
AOGP capital spending authorized in the Commission's IRP Order	\$ 15,000,000	Fisher/Horowitz Expert Report
FY2017 AOGP capital expenditure adjustment	<u>\$ 41,339,808</u>	Fisher/Horowitz Expert Report
- [C] Commission Advisors Fisher and Horowitz recommend limiting PREPA's Capex for FY2017 capital expenditures from capital to exclude an amount of costs that is estimated for AMI meters. The Commission did not accept that adjustment.
- [D] Commission Advisors Fisher and Horowitz recommend reclassifying certain FY2017 capital expenditures from capital to generation O&M. This reflects such reclassification of the following PREPA proposed FY2017 capital expenditures:
- [E] Having current year ratepayer funding of PREPA's Capital Expenditures is not recommended as a permanent component of PREPA's revenue requirement methodology. As explained in the Hill and Smith/Dady reports, including this as a component of PREPA's base rate revenue requirement should only continue until PREPA has restored financial viability and can access external capital markets at reasonable cost to finance its CapEx. At that point, PREPA debt service and a DSCR would continue to be included in the determination of PREPA's base rate revenue requirement, and the special ratepayer-funding of CapEx would cease.



Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Commission Adjustments  
 Reflect Reclassification of Certain PREPA Proposed FY2017 Capital Expenditures to Generation Maintenance Expense  
 (Thousands of Dollars)

Commission Attachment 3 REV  
 Page 3 of 10

Line No.	Description	Amount (A)	Reference
Reflect Reclassification of Certain PREPA Proposed FY2017 Capital Expenditures to Generation Maintenance Expense to Increase Generation Maintenance Expense			
	<u>PREPA Project (PIV)</u>	<u>Description</u>	
1	15880	Major Inspection "C" Unit 1-3 Cambalache	\$ 4,000 Note A
2	16945	Combined Cycle Improvement U-5 San Juan Steam Plant	\$ 6,000 Note A
3	16946	Combined Cycle Improvement U-6 CSJ	\$ 6,000 Note A
4			
5	Increase to Generation Maintenance Expense for Reclassification		\$ 16,000

**Notes and Source**

This adjustment reflects Commission Advisor adjustments to the amount of PREPA's requested FY2017 ratepayer funding of Capital Expenditures

[A] Commission Advisors Fisher and Horowitz recommend reclassifying certain FY2017 capital expenditures from capital to generation O&M. This reflects such reclassification of the PREPA proposed FY2017 capital expenditures listed above

Additional source for dollar amounts: PREPA Schedule F-3 REV



Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Commission Adjustments  
 Adjust for Double-Count of Special Customer Subsidies and Revenue at Current Rates  
 (Thousands of Dollars)

Line No.	Description	Amount (A)	Reference
<b>Special Customer Subsidies</b>			
1	General Agricultural Service Tariff	\$ (525)	Note A
2	Low-Income Consumer Subsidies (RH3, LRS), and	\$ (16,439)	Note A
3	Fixed Public Housing Rate (RFR Tariff)	\$ (20,077)	Note A
4	Adjustment to Special Customer Subsidies	<u>\$ (37,041)</u>	Notes A and B

**Notes and Source**

[A] This adjustment reflects an adjustment identified by Commission Advisor Chernick to remove a double-count identified in PREPA's filing of certain Special Customer Subsidies and Revenue at Current Rates.

Commission Advisor Chernick has identified the following double counts in his detailed review of PREPA's proposed Special Customer Subsidies and PREPA's revenue at existing rates:

Amount (in dollars)	Rates Affected by the Rate Discount
\$524,933	for the General Agricultural Service Tariff,
\$16,438,851	for Low-Income Consumer Subsidies (RH3, LRS), and
<u>\$20,076,641</u>	for the Fixed Public Housing Rate (RFR Tariff)
<u>\$37,040,425</u>	Total amount counted by PREPA in Special Customer Subsidies and reflected by PREPA in revenue at current rates

[B] As shown on Attachment 4, page 2, the special customer subsidies are being included in the "Subsidy Rider."



Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Commission Adjustments  
 Adjust Fuel Expense Forecast  
 (Thousands of Dollars)

Commission Attachment 3 REV  
 Page 5 of 10

Line No.	Description	Amount (A)	Reference
1	Fuel Expense	\$ 461,305	Note A
2	Fuel Adjustor Revenue	\$ (461,305)	Note B
3	<b>Net Impact on Base Rate Revenue Requirement</b>	<b>\$ -</b>	Notes A and B

**Notes and Source**

- A] This adjustment reflects an adjustment to Fuel Expense recommended by Commission Advisors Horowitz and Fisher
- B] Because PREPA's Fuel Adjustor will be recovering fluctuations in Fuel Expense via its Fuel Adjustor an equal amount is being added to Fuel Revenue. Currently, PREPA's Fuel Adjustor recovers more than the Fuel Expense due to the inclusion of a 0.89 factor in the denominator; however, under both PREPA's recommendation and the Commission Advisors' recommendations, that factor (for CILT) is being removed from PREPA's Fuel (and Purchased Power) Adjustors, prospectively, effective with the new base rates established in the current PREPA rate case
- C] The Commission has determined that PREPA will recover its Fuel Expenses through the Fuel Adjustor and its Purchased Power Expenses through the Purchased Power Adjustor, rather than recovering a base amount of Fuel and Purchased Power Expense through Base Rates

Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Commission Adjustments

Adjust Operating and Maintenance Expense for Synapse Recommended Levels for Safe and Reliability Operation of the Electric Utility  
 (Millions of Dollars)

Line No.	Description	Labor Expense (A)	Non-Labor Expense (B)	Total Operating Expenses (C)
1	Generation Expense	\$ 9.680	\$ 4.495	\$ 14.175
2	Transmission Expense	\$ 3.330	\$ 0.479	\$ 3.809
3	Distribution Expense	\$ 16.115	\$ 2.372	\$ 18.487
4	Administrative and General Expense	\$ (17.057)		\$ (17.057)
5	Net Impact on Base Rate Revenue Requirement	<u>\$ 12.068</u>	<u>\$ 7.346</u>	<u>\$ 19.414</u>

**Notes and Source**

[A] This adjustment reflects an adjustment to PREPA's proposed FY2017 Operating Expenses recommended by Commission Advisors Horowitz and Fisher to assure that there is an adequate O&M Expense budget for the safe and reliable operation of the electric system

Puerto Rico Electric Power Authority  
 Determination of Total Revenue Requirement and Change in Base Rates  
 Commission Adjustments  
 Remove Budgeted FY2017 Expense Amount for Fines and Penalties  
 (Millions of Dollars)

<u>Line No.</u>	<u>Description</u>	<u>Operating Expense Adjustment</u>	<u>Reference</u>
1	Admininstrative and General Expense	<hr style="border-top: 3px double black;"/> Note A	PREPA Response to CEPR-Rs-05-31

**Notes and Source**

PREPA's response to CEPR-RS-05-31 indicates that for FY2017 PREPA budgeted \$624,446 in account 923 for the concept of stipulated fines and penalties that may occur for non-compliance with federal and state environmental laws and regulations. PREPA's response to CEPR-RS-05-32, however, indicates that for FY2017 PREPA has not received any notifications of related to environmental deviations or other matters.

Note A: PREPA indicated during the hearing that it had not included any amount for fines or penalties in its FY2017-based revenue requirement, so there is no need for this adjustment.



Puerto Rico Electric Power Authority  
Determination of Total Revenue Requirement and Change in Base Rates  
Commission Adjustments  
Bad Debt Expense  
(Thousands of Dollars)

<b>Line No.</b>	<b>Description</b>	<b>Amount</b>	<b>Reference</b>
		<b>(A)</b>	
	<b>Commission Advisor Adjustments to Net Revenue Requirement</b>		
1	Total Commission Advisor Adjustments on Net Revenue Requirement	\$ 441,090	See below
2	Uncollectible Factor	2.97%	PREPA Filing Detail
3	Bad Debt Expense	<u>\$ 13,100</u>	Note A

**Notes and Source**

This adjustment is to recognize the impact on Bad Debt Expense from the Commission's other adjustments to PREPA's net revenue requirement

	<b>Adjustments from Commission Attachment 2, Line 26</b>	<b>Amount</b>	<b>Attachment 2 REV Line 26 Reference</b>
4	Debt Service Coverage Ratio Margin	\$ 125,756	Col. (1)
5			
6	Adjust Amount of Ratepayer Contributions for FY2017 Capital Expenditure Funding Reflect Reclassification of Certain PREPA Proposed FY2017 Capital Expenditures to Generation Maintenance Expense	\$ (183,096)	Col. (2)
7			
8	Adjust for Double-Count of Special Customer Subsidies and Revenue at Current Rates	\$ -	Col. (4)
9	Adjust Fuel Expense Forecast	\$ 461,305	Col. (5)
10	Adjust Operating and Maintenance Expense for Synapse Recommended Levels for Safe and Reliability Operation of the Electric Utility	\$ 19,414	Col. (6)
11	Remove Budgeted FY2017 Expense Amount for Fines and Penalties	\$ -	Col. (7)
12	Reconnection Fee Revenue - Impact on PREPA's FY2017 Operating Expenses If the Reconnection Fee Increase is Held to the Cost of Reconnection	\$ 1,711	Col. (9)
13	Subsidies and Expenses	\$ -	Col. (10)
	<b>Total Commission Adjustments on Net Revenue Requirement</b>	<u>\$ 441,090</u>	

Note A: The impact on Bad Debt Expense has been recalculated to reflect the impact of the Commission's decisions on other adjustments

Reconnection Fee Revenue - Impact on PREPA's FY2017 Operating Expenses If the Reconnection Fee Increase is Held to the Cost of Reconnection  
 Estimate of the Expense Increase Based on how this was reflected by PREPA in its Revenue Requirement Calculations

Line No.	Description	Totals (A)	Increase (B)	Reference
<b>I. Annual Revenue from Reconnection Fee as Estimated by PREPA</b>				
Annual revenue for reconnection fee:				
1	at current tariff	\$ 5,100,000		
2	at cost based rates	\$ 10,646,760	\$ 5,546,760	CEPR-RS-05-21(d)
3	at PREPA proposed rates (which would be beyond PREPA's cost)	\$ 15,300,000	\$ 10,200,000	CEPR-RS-05-21(d)
4	Ratio (Revenue increase at above cost rates vs revenue increase at cost-based rates)		0.5438	Line 2 / Line 3
<b>II. Adjustment to Remove Above Cost Portion</b>				
5	Above cost portion		0.4562	1 - cost ratio (on line 4)
6	Increasing Deconnection Charges - reflected for FY2017 by PREPA		\$ 3,750,000	CEPR-RS-01-14 & PREPA summary of Customer Service Performance Improvements Also see Table below
7	Removal of above-cost portion - applied to \$3.75 million assumed by PREPA PREPA reflected the \$3.75 million as a reduction to expense - removal of the above-cost portion thus increases PREPA's proposed expenses			
			<u>\$ 1,710,750</u>	Line 5 x Line 6

**III. Adjust FY2017 Expenses in same manner that PREPA Reflected the "Customer Service Performance Improvements" in its Revenue Requirement Calculation**

Component	Source for percentages	Percent (C)	Expense Adjustment (Dollars) (D)	Expense Adjustment (\$000) (E)
8	Smith-Dady Report page 34, Table 12 and PREPA's Rate Case Financial Model - see below	21.87%	\$ 374,119	\$ 374
9		6.11%	\$ 104,592	\$ 105
10		30.24%	\$ 517,356	\$ 517
11		15.18%	\$ 259,614	\$ 260
12		26.60%	\$ 455,069	\$ 455
13			100.00%	\$ 1,710,750

**IV. Referenced Tables from Smith-Dady Report**

Description	FY2014	To Col. C Above Ratio
Generation Expenses	\$ 160,541,902	21.87%
Transmission Expenses	\$ 44,882,530	6.11%
Distribution Expenses	\$ 222,007,687	30.24%
Customer Billing Expenses	\$ 111,405,645	15.18%
Administrative and General Expenses	\$ 195,279,419	26.60%
Total	\$ 734,117,183	100.00%

Source: PREPA's Rate Case Financial Model  
 Smith-Dady Report page 34, Table 12

**Summary of Non-Fuel Performance Improvements**

Description	Amount
<b>Customer Service</b>	
Increasing Disconnection Costs	\$ 3,750,000
Theft Recoveries and Reduced T&D Loss	\$ 20,000,000
Total Customer Service Related Savings	\$ 23,750,000
<b>Procurement</b>	
Fleet and Shops	\$ 17,500,000
Procurement and Inventory	\$ 37,500,000
Total Procurement Related Savings	\$ 55,000,000
<b>Other (Net)</b>	
Medical Benefit Savings	\$ 14,000,000
Headcount Reduction	\$ 10,000,000
Total Other (Net) Related Savings	\$ 24,000,000
<b>Total Non-Labor Performance Improvements</b>	<b>\$ 102,750,000</b>
Smith-Dady Report page 33, Table 11	

To Line 6

Puerto Rico Electric Power Authority  
Determination of Total Revenue Requirement and Change in Base Rates  
Commission Adjustments  
Reclassification of Energy Commission Assessment and Direct Debit Credit and PREPA Claimed Subsidies Error  
(Thousands of Dollars)

Line No.	Description	Total Amount (A)	Subsidies (B)	Operating Expenses (C)	Revenue (D)	Footnote Reference	Attachment 2 Reference
<b>I. Energy Commission Assessment</b>							
1	Operating Expenses	\$ (5,800)		\$ (5,800)		Note A	Att 2, L.10
2	Subsidies	\$ 5,800	\$ 5,800			Note A	Att 2, L.14
3	Net Adjustment	\$ -				Note A	
<b>II. Direct Debit Credit</b>							
4	Operating Expenses	\$ 129		\$ 129		Note B	Att 2, L.7
5	Subsidies	\$ (129)	\$ (129)			Note B	Att 2, L.17
6	Net Adjustment	\$ -				Note B	
<b>III. Account for Fuel and Purchased Power Revenue versus Subsidy Revenue</b>							
7	Total Subsidy amount from Commission Attachment 4, page 2				\$ (188,726)	Note C	Att 2, L.31
8	Fuel and Purchased Power Revenue in Excess of Cost				\$ 182,412	Note C	Att 2, L.30
9	Net Adjustment	\$ -	\$ -		\$ (6,314)	Note C	Att 2, L.17
<b>IV. Net Adjustment</b>							
8	Net Adjustment affecting PREPA's Revenue Requirement	\$ -	\$ 5,671	\$ (5,671)	\$ (6,314)		

**Notes and Source**

- [A] The Commission has determined that the Energy Commission Assessment will be recovered through the Subsidies Rider (as required by statute).  
[B] The Commission has determined that the Direct Debit Credit is an Operating Expense, not a component of the Subsidies  
[C] The Commission has reconciled the Subsidies amounts as shown on Attachment 4, page 2. The Subsidies amounts, as adjusted by the Commission, needs to be reconciled to the amount reflected in the revenue requirement to reflect the collection of Subsidies through a pass-through rider, as opposed to via PREPA's base rates

	Per PREPA	Comm Adj.# 5	Comm Adjusted
Fuel and Purchased Power Adjustment Revenue	\$ (1,658,287)	\$ (461,305)	\$ (2,119,592)
Fuel and Purchased Power Adjusted Expense			\$ 1,937,180
Fuel and Purchased Power Revenue in Excess of Cost			\$ (182,412)

## Attachment 4 Revised: Contribution in Lieu of Taxes and Subsidies Adjustments

Puerto Rico Electric Power Authority

Commission Attachment 4 REV

Page 1 of 2

### Summary of PREPA As-Filed Contribution in Lieu of Taxes and Subsidies

Line No.	Description	As filed by PREPA Amount	Per PREPA Filing (in \$000)
1	Contribution to Municipalities	\$ 51,783,821	\$ 51,784
2	Public Lighting	\$ 93,240,901	\$ 93,241
3	Special Customer Subsidies	\$ 75,071,020	\$ 75,071
4	Total	<u>\$ 220,095,742</u> [A]	<u>\$ 220,096</u> [A]
5	CILT Subsidy Recovery in FCA and PPCA	\$ 182,411,548	
6	CILT Subsidy Recovery Required in Base Rates	\$ 37,685,194	
7	Total	<u>\$ 220,096,742</u> [A]	

#### Notes and Source

Source: PREPA Schedules A-1 REV and L-2 (L 000002) FY2017

PREPA response to CEPR-RS-01-11

PREPA Ex. 4.0 at page 11

[A] See Commission Attachment 1, column A, line 18

Line No.	Subsidies/Credits	PREPA FY 2017 Estimate (A)	Amount in "Subsidy Rider" Prior to Adjustments (B)	Reflected As An Operating Expense (C)	Removed PREPA's Double Count from Base Rate Revenue Requirement and Include in "Subsidy Rider" (D)	Adjusted Amount in "Subsidy Rider" (E)
1	Life-Preserving Equipment	\$ 2,547,894	\$ 2,547,894			\$ 2,547,894
2	General Agricultural Service	\$ 524,933			\$ 524,933	\$ 524,933
3	Analog Rate	\$ 5,521,495	\$ 5,521,495			\$ 5,521,495
4	Low-Income Tariffs					
5	LRS Tariff	\$ 15,416,766			\$ 15,416,766	\$ 15,416,766
6	RH3 Tariff	\$ 1,022,085			\$ 1,022,085	\$ 1,022,085
7	Hotel 11% Discount	\$ 5,463,401	\$ 5,463,401			\$ 5,463,401
8	Rural Aqueducts on GRS	\$ 4,220	\$ 4,220			\$ 4,220
9	Irrigation District Deficit	\$ 4,152,000	\$ 4,152,000			\$ 4,152,000
10	Residential Fuel Subsidy	\$ 18,630,971	\$ 18,630,971			\$ 18,630,971
11	Condo Common Areas	\$ 1,321,289	\$ 1,321,289			\$ 1,321,289
12	Direct Debit Credit	\$ 129,428		\$ 129,428		
13	Downtown 10% Subsidy	\$ 1,775	\$ 1,775			\$ 1,775
14	RFR Tariff	\$ 20,076,641			\$ 20,076,641	\$ 20,076,641
15	Act 73 Income Tax Credit	\$ 258,121	\$ 258,121			\$ 258,121
16	<b>Other Subsidy Categories</b>					
17	Public Lighting	\$ 93,241,901	\$ 93,241,901			\$ 93,241,901
18	Energy Commission	\$ 5,800,000	\$ 5,800,000			\$ 5,800,000
19	<b>Subtotal</b>	\$ 174,112,921	\$ 136,943,067			\$ 173,983,492
20	<b>Unquantified PREPA Claimed Subsidies</b>					
21	Net Metering	unknown				
22	Economic-Development Rider	tbd				
23	Load-Retention Rider	tbd				
24	<b>Contribution in Lieu of Taxes</b>	\$ 51,783,821	\$ 51,783,821			\$ 51,783,821
25	<b>TOTALS</b>	\$ 225,896,742	\$ 188,726,888	\$ 129,428	\$ 37,040,425	\$ 225,767,313
26						
27	<b>Categories:</b>					
28	Public Lighting	\$ 93,241,901 [1]	\$ 93,241,901	\$ -	\$ -	\$ 93,241,901
29	Contribution in Lieu of Taxes	\$ 51,783,821 [1]	\$ 51,783,821	\$ -	\$ -	\$ 51,783,821
30	Special Customer Subsidies	\$ 75,071,019 [1]	\$ 37,901,166	\$ 129,428	\$ 37,040,425	\$ 74,941,591
31	<b>SUBTOTAL</b>	\$ 220,096,741 [1]	\$ 182,926,888	\$ 129,428	\$ 37,040,425	\$ 219,967,313
32	Energy Commission	\$ 5,800,000	\$ 5,800,000	\$ -	\$ -	\$ 5,800,000
33	<b>TOTALS</b>	\$ 225,896,741	\$ 188,726,888	\$ 129,428	\$ 37,040,425	\$ 225,767,313
34					[2]	[3]
35	<b>DIFFERENCE, COMMISSION ADJUSTED VS. PREPA FILED</b>		\$ (37,169,853)	\$ 37,169,853		
			Col.B - Col.A Total	Cols. C & D Totals		

**Notes and Source**

- Col.A: Commission Advisor Paul Chernick Report, page 87, Table 9, Summary of Characteristics of PREPA-Claimed Subsidies
- [1] Also see Commission Attachment 4, page 1, for PREPA's as-filed amounts
- Col.B: Commission Adjusted Subsidies
- Col.C: Reclassified expense, see Commission Attachment 3, page 10
- Col.D: PREPA Double-Count was removed from base rates, see Commission Attachment 3, page 4
- [2] The \$37.040 million double-counted amount is removed from the base rate revenue requirement and is added to Subsidy Rider Revenue and Cost. This reflects that these subsidies will be recovered via the "Subsidy Rider" rather than in PREPA's base rates.
- Col.E: Amounts to be recovered in the "Subsidy Rider." The total reconciles to Attachment 1, with a minor rounding difference.
- [3] Compare line 33 column E Total \$ 225,767,313  
With Commission Adjusted Subsidies amount per Attachment 1, column F \$ 225,766,572  
Difference (rounding) 741  
Percent difference 0.0003%