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 Windmar, Sunnova and ICSE-PR's Motions for Reconsideration.

FINAL RESOLUTION

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Through this Final Resolution, the Puerto Rico Energy Commission ("Commission") rules on the Motions for Reconsideration filed on January 30, 2017, by PVP Properties, Inc., Coto Laurel Solar Farm, Inc., Windmar PV Energy, Inc., and Windmar Renewable Energy, Inc. (collectively, "Windmar"), Sunnova Energy Corporation ("Sunnova") and *Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico* ("ICSE-PR") (together, the "Parties").

I. Brief Procedural Background

On May 27, 2016, the Puerto Rico Electric Power Authority ("PREPA") filed before the Commission its Petition for Approval of Permanent Rates and Temporary Rates ("Petition"), which was determined by the Commission to be complete through Resolution and Order of June 13, 2016. On August 2016, the Parties filed their respective motions to intervene,[1] which were approved by the Commission on August 12, 2016. On January 10, 2017, the Commission issued its Final Resolution and Order ("Final Order"), through which it approved PREPA's revenue requirement for Fiscal Year 2017 ("FY2017") and issued 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."[2]

On January 30, 2017, the Parties each filed a *Motion for Reconsideration*, requesting the Commission reconsider certain portions of its Final Order with regards to several determinations related to PREPA's net-metering program. In addition, ICSE-PR raised certain arguments related to the permanent nature of the approved rate increase and the Commission's conclusions with regards to Witness Cao's testimony.

On February 13, 2017, the Commission issued a Resolution notifying it would address the Motions for Reconsideration filed the Parties, as well as those filed by PREPA and the Puerto Rico Aqueduct and Sewer Authority.[3]

[1] ICSE-PR filed its motion on August 2, 2015; Windmar and Sunnova filed their respective motions on August 5, 2016.

[2] Section 6A of Act 83 of May 2, 1941, as amended, known as the Puerto Rico Electric Power Authority Act and Article 6.25 of Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act.

[3] The Motion for Reconsideration filed by PREPA was addressed by the Commission through its March 8, 2017 Resolution. The Motion for Reconsideration filed by the Puerto Rico Aqueduct and Sewer Authority is addressed through a separate Resolution.

II. 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.[4] A statute is an agency's source of power; it is the legal mechanism through which an agency is authorized to act.[5] 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.[6]

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.[7] When interpreting a statute, one must strive to achieve an interpretation which is both literal and logical.[8] 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.[9]

When a statute's language is clear, its text is the upmost expression of the legislature's intent.[10] Absent any ambiguity, a statute's language should not be disregarded under the pretext of complying with its intent.[11] 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.[12]

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[4] 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).

[5] *Caribe Comm. v. P.R. Tel. Co., supra.*

[6] *Municipio Autónomo de San Sebastián v. QMC Telecom., LLC*, 190 D.P.R. 652 (2014).

[7] *Caribe Comm. v. P.R. Tel. Co., supra*, citing R.E. Bernier y J.A. Cuebas Segarra, Aprobación e intepretación 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.*

[8] *Municipio Autónomo v. QMC Telecom, supra*; *Gilberto Álvarez Crespo v. Pierluisi*, 150 D.P.R. 252 (2000).

[9] *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).

[10] *Municipio Autónomo v. QMC Telecom*, *supra*, *Otero de Ramos v. Srio. de Hacienda*, 156 D.P.R. 876 (2002).

[11] *Id. See, also*, Section 14 of the Puerto Rico Civil Code, 31 L.P.R.A. §14.

[12] *Puerto Rico Telephone Company v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico, supra*.

The legislature may delegate broad authority to an agency.[13] 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.[14] 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.[15]

Moreover, 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.[16] 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.[17] 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.[18] 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.[19]

III. Net-Metering in Puerto Rico

Puerto Rico's net-metering program was created through the enactment of Act 114-2007[20] which required PREPA to develop and implement a net metering program aimed at stimulating "energy production through renewable sources such as the sun and the wind [...] through the establishment of a program requiring interconnection and net metering of [PREPA] with those customers that install solar electric equipment, windmills or other

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[13] *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).

[14] *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.

[15] *Caribe Comm. v. P.R. Tel. Co.*, *supra*.

[16] *Collazo v. Dpto. de la Vivienda, supra.*

[17] D. Fernández, supra, at. 47.

[18] *Id.* at p. 51.

[19] *Id.* at p. 53.

[20] An Act to order and authorize PREPA to establish a net-metering program, as amended, 22 L.P.R.A. §1011 et seq.

sources of renewable energy."[21] Act 114-2007's Statement of Motives delineates the reasons that prompted the adoption of a net-metering program in other countries and jurisdictions.

> Three reasons are indicated for establishing such programs in these countries. First, customers instantly receive an economic benefit for the electricity produced by consuming this energy or eventually by means of a credit or payment for the excess feedback to the electricity company. Second, net metering reduces customer costs by eliminating the need for a second meter. Third, net metering provides a simple, inexpensive, and easily administered mechanism for encouraging the use of solar electric equipment and windmills which at the same time benefit the environment and the economy in general.[22]

As such, among the chief benefits derived from net metering identified by the Puerto Rico Legislature is the ability to "receive an economic benefit" from consuming self-generated electricity and from receiving a credit or payment for excess energy exported to the utility's system. Consistent with the aforementioned, the Legislature concluded that the incentive for investing in renewable distributed generation systems is derived from the customer's ability to "use the electricity generated by their solar electric equipment, windmills or other source of renewable energy **to offset the consumption of electricity provided by PREPA.**"[23]

Prior to being amended by Act 4-2016[24], Section 5 of Act 114-2007 provided that PREPA "shall measure the net electricity produced or consumed by the customer during the billing cycle" and "[i]n those cases in which [PREPA] supplies a customer more electricity than the customer feeds back to the public utility during a billing cycle, [PREPA] may charge the customer for the net electricity it supplied." Conversely, in those cases in which the customer's outflow exceeds the energy supplied by PREPA, Section 5 of Act 114-2007 provided that PREPA "shall be bound to credit the feedback customer for the excess kilowatt-hours generated during the billing cycle."

As such, under the then existing legal framework, PREPA would determine the total amount of energy (in kWh) supplied to the customer and deduct the total amount of energy (in kWh) exported by the customer to PREPA's grid and either charge or credit the customer for the energy consumed from PREPA or exported to PREPA's system, as applicable.

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[21] Statement of Motives, Act 114-2007 at ¶1.

[22] *Id*. at ¶2.

[23] *Id*. at ¶3. Emphasis added.

[24] The Puerto Rico Electric Power Authority Revitalization Act.

However, a detailed examination of Act 114-2007's legislative record shows that certain concerns remained among legislators with regards to the costs incurred by PREPA in implementing a net metering program and the effect of the net metering program on non-net metering customers. To such effect, Representative González Colón, upon questions from Representative García San Inocencio with regards to the impact such program would have on the rates paid by regular customers, stated that the costs associated with the net-metering program would not be passed to the remainder of PREPA's customers.[25] In an almost prescient intuition, Representative González Colón stated:

> As a matter of fact, this legislation being proposed in Senate Bill 1212, is a big door for specific future legislation, and not tie (sic) ourselves to a specific renewable energy source or limits on the capacity each person may generate through their own system. Afterwards, once PREPA, through the act we are presenting today, may make the corresponding amendments (sic), adopt a regulation, I believe we'll be back here to work on legislation regarding this subject and delineate other areas.[26]

The aforementioned denotes that, in adopting Act 114-2007, the Legislature understood that Puerto Rico's net metering policy was a work-in-progress, and that further action from the Legislature would be needed to ensure a coherent net-metering program, which encourages investment in renewable distributed generation systems based on the system's inherent benefits.

Almost a decade later, in 2016, the Legislative Assembly took affirmative steps to amend the legal framework which had prevailed since the enactment of Act 114-2007. To such ends, through Act 4-2016, the Legislative Assembly amended Sections 4 and 5 of Act 114-2007 to authorize the imposition of certain charges to net metering customers. During the legislative debate, Senator Nieves Pérez stated the need for net metering customers to contribute to certain costs incurred by PREPA. For clarity, we transcribe the entire portion of Senator Nieves Pérez's statements related to the issue at hand.

> Right now Act 114-2007 regarding Net Metering does not include a charge, a group of specific charges, and PREPA was proposing to create a charge for net metering. And the reality is that **the justification for that charge is that customers who had, for example, solar panels paid in equal share as those without renewable energy, certain charges common to all**, such as CILT, public lighting, subsidies, etc. The reality is that from the position of not charging anything to granting PREPA the opportunity to charge whatever it wanted put in danger the viability of Puerto Ricans to opt for renewable

[25] *See* Diario de Sesiones of the Puerto Rico House of Representatives, February 12, 2007, at p. 70.

[26] *Id*. at p. 65.

energy without being limited by certain excessive charges that could be imposed by PREPA.

And the reality is that with regards to this subject, I have to say the following. This subject is being greatly discussed in much more detail in Nevada and California, because the purpose of the charge is that **if many people begin to migrate to integrating renewable energy in their homes and businesses and do not pay charges common to all, as I said, CILT, subsidies, etc., then the reality is that those without renewable energy, will eventually have to pay much more.** But obviously this Bill does authorize a charge, but it places serious limitations on PREPA so that when it seeks a new rate or a new charge before the Energy Commission, it complies with particular criteria, and the principal criteria is that the charge must be minimum and reasonable, so that it does not become an obstacle for renewable energy in Puerto Rico. **But the reality is that there must be a charge, because even though I do not have a solar panel in my home, when I go outside there is a pole providing light and that must be paid. There are certain subsidies which we have socialized in Puerto Rico, and those must be paid also, and other charges.** But we have reached a solution, which in conversations with PREPA, with the renewable industry, we reached a point which creates a good, an acceptable charge which does not disrupt the industry. Equally, this charge shall be prospective, it will not apply to net metering which is already interconnected nor those in the evaluation or construction process with a grace period of twenty (20) years. Therefore we achieved measures which certainly provide a balance between the agents without renewable energy and those that do, and promote more Puerto Ricans to use renewable energy in their homes and businesses.[27]

The Legislative Assembly's intent is unequivocal: to authorize PREPA to, subject to Commission approval, prospectively impose on net metering customers certain charges "common to all" PREPA customers. Accordingly, through Section 29 of Act 4-2016, the Legislative Assembly amended Section 4 of Act 114-2007 to provide for the Commission to evaluate and authorize the imposition of such charges on net metering customers, if such charges were deemed by the Commission to comply with the criteria set forth therein.

Section 4 of Act 114-2007 was further amended to distinguish between two types of net metering customers. The first group are those who, on or before the date of approval of Act 4-2016 (February 16, 2016): (i) have entered into a net metering agreement, (ii) are in the "process of evaluating or developing a renewable energy project which shall be interconnected to the system of the Authority," and (iii) those whose "projects [were] submitted from the period after the date of approval of [Act 4-2016] to the time the final charge for net metering projects is determined and published by the Commission" and who comply with certain requirements set forth therein. Pursuant to Act 4-2016, these

[27] Diario de Sesiones del Senado de Puerto Rico, February 10, 2016, at pp. 36273 – 36274. Emphasis added.

customers (referred to as "grandfathered net metering customers"), would "enjoy a grace period of twenty (20) years, counted as of the approval of [Act 4-2016], during which the charges approved by the Commission shall not be billed."

For customers not eligible for the grace period mentioned above (referred to as "non-grandfathered net metering customers"), PREPA may impose, subject to Commission approval, the charges approved pursuant to Section 4 of Act 114-2007, as amended by Act 4-2016.

Consistent with the aforementioned authority, Section 30 of Act 4-2016 also amends Section 5 of Act 114-2007 to specifically include PREPA's authority to bill non-grandfathered net metering customers the charges approved by the Commission. To that effect, Sub-section (b) of Section 5 of Act 114-2007 was amended to provide that PREPA "may bill a customer for the net electricity supplied, **as well as the charge to be approved by the Energy Commission in accordance with Section 4 of this Act**." (Emphasis added.) Consistent with the grandfathering provision contained in Section 4 of Act 114-2007, the opening paragraph of Section 5 of Act 114-2007 provides that the amendments made by Act 4-2016 to Section 5 of Act 114-2007 shall only apply to non-grandfathered net metering customers. Both Section 4 and Section 5 of Act 114-2007, as amended by Act 4-2016, provide the express statutory authority for (i) the Commission to distinguish between grandfathered and non-grandfathered net metering customers and for (ii) PREPA to propose, and the Commission to approve, charges to be imposed on non-grandfathered net metering customers.

IV. Commission determination regarding net metering

a. Determining the charges that would apply to non-grandfathered net metering customers

Section 4 of Act 114-2007, as amended by Act 4-2016, required the Commission to determine that the charges applied to non-grandfathered net metering customers: (i) are just; (ii) have the purpose of covering the operating and administrative expenses of the grid services received by customer that entered into a Net Metering Agreement; (iii) are not excessive; and (iv) do not constitute an obstacle to the implementation of renewable energy projects. The Commission determined that the charges to be applied to non-grandfathered net metering customers complied with the four criteria set forth in Section 4 of Act 114-2007.[28]

Paragraph 398 of the Commission's Final Order identifies the non-avoidable costs proposed to be recovered from non-grandfathered net metering customers. For ease of discussion, we label such costs as "non-avoidable costs." Such paragraph states:

[28] *See* Part V.E.5 of the Final Order, ¶¶413-426.

> For ***outflow*** from ***non-grandfathered*** net-metering, the credit shall not include: CILT, the energy efficiency charge (when created), public lighting subsidy, the Energy Commission assessment, and all of the items denoted as "help to humans" during the technical hearing: life-preserving equipment, LRS Tariff, RH3 tariff, residential fuel subsidy, and the fixed public housing rate (RFR tariff). These items are mostly social commitments— things that benefit the public as a whole, including net-metering customers.

Sunnova states that the Final Order is not clear as to which "non-by-passable charges are being excluded from the credit to non-grandfathered net metering customers."[29] Some of the costs identified in paragraph 398 of the Final Order are encompassed within other charges or bundled together, which means that a typical customer's bill does not list them separately. For example, PREPA's new Transparent Bill (*see* Docket No. CEPR-AP-2016-0002) lists the CILT, Energy Efficiency and Public Lighting charges as separate line-items in each customer's electric service bill. The remaining costs listed in paragraph 398 (Energy Commission assessment, life-preserving equipment, LRS Tariff, RH3 Tariff, residential fuel subsidy and the RFR rate) are encompassed within the Subsidy charge line-item.

While a typical electric service bill does not detail each costs encompassed within a specific charge, the costs to be recovered through each charge are easily distinguishable from other PREPA costs and charges and the values used to calculate such charges were reviewed and approved as part of PREPA's revenue requirement.[30]

Pursuant to Section 4 of Act 114-2007, as amended by Act 4-2016, the Commission determined that the charges to be applied to grandfathered net-metering customers complied with the four criteria set forth therein. Specifically, that the charges were just, were designed to cover administrative and operational expenses of the grid services received by net metering customers, were not excessive and did not result in an obstacle to the implementation of renewable energy projects.[31]

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[29] Sunnova Motion for Reconsideration at p. 5.

[30] *See* Commission attachment 1 REV and Commission Attachment 4 REV of the Commission's Final Resolution addressing PREPA's Motion for Reconsideration and Motion for Clarification, issued March 8, 2017.

[31] The specific arguments made by the Parties with regards to the Commission's application of such criteria will be discussed in Section V of this Final Resolution.

b. Applying charges for non-avoidable costs to non-grandfathered net metering customer

Having identified the charges which would be applied to non-grandfathered net metering customers and determined that such charges comply with the requirements set forth in Section 4 of Act 114-2007, the Commission developed the mechanism through which such charges would be billed. All net metering customers (grandfathered and non-grandfathered) pay PREPA's full rate on their *net inflow*, that is the treatment that has always been afforded to net metering customers prior to the enactment of Act 4-2016 and the approval of the Final Order. Sections 4 and 5 of Act 114-2007, as amended by Act 4-2016, provide that grandfathered net metering customers shall continue to receive the same treatment previously provided by Act 4-2016: PREPA's full rate is applied to their *net inflow*. Thus, at any given billing period, if a grandfathered customer's *inflow* is greater than *outflow*, then the difference between the two would be multiplied by PREPA's full rate and the customer would be responsible for paying such amount. Conversely, if *outflow* was greater than *inflow*, then net *inflow* would be negative, meaning that the customer would receive a credit for the excess *outflow* over *inflow* calculated by multiplying such excess by the applicable *outflow* credit. In all instances, grandfathered customers must pay the fixed charge portion of PREPA's rate.

If grandfathered net metering customers pay PREPA's full rate on their *net inflow*, and receive a credit equal to PREPA's full rate on their excess *outflow*, then non-grandfathered net metering customers must be subject to a different treatment. That different treatment is the ability for PREPA to impose certain charges based on the customer's *total inflow* from PREPA, as opposed to *net inflow*. To apply such charges to non-grandfathered net metering customers, the Commission determined to reduce the credit received by the customer for their *outflow* by the portion of PREPA's full rate associated to non-avoidable costs. That is, non-grandfathered net-metering customers would receive a credit for *outflow* that is below PREPA's full rate, which is the rate at which a grandfathered net-metering customer's *outflow* is credited. In doing so, non-grandfathered net metering customers pay non-avoidable costs based on their *total inflow* from PREPA, without offsetting such amount through their *outflow*.[32] This treatment provides a reasonable solution to the problem the Legislature sought to address in approving Act 4-2016: undue cost-avoidance and a charge which ensures the equitable recovery of costs that are "common to all" and "provide[s] a balance between the agents without renewable energy and those that do, and promote more Puerto Ricans to use renewable energy in their homes and businesses."[33]

[32] All other avoidable costs are applied to the *net inflow*, which allows a customer to fully offset such costs through their *outflow* (the excess energy generated and exported to PREPA's system).

[33] Diario de Sesiones del Senado de Puerto Rico, February 10, 2016, at pp. 36273 – 36274.

c. Billing net metering customers

1. Non-net metering customer consumption and billing

Regular customers (i.e. customers without a net metering agreement) only receive energy from PREPA. Stated differently, a regular customer's entire energy consumption for any given period of time is supplied exclusively by PREPA. The energy supplied by PREPA is referred to as *inflow*. For regular customers, the portion of their bill based on their consumption is calculated by multiplying their total *inflow* from PREPA (stated in kWh) for the billing period and PREPA's applicable volumetric rate (stated in ¢/kWh). To illustrate the aforementioned, consider the following example: **Customer A**, a regular customer, consumed a total of 600 kWh during a given billing period. Let's assume that PREPA's rate for that period was 18¢/kWh. Under this scenario, Customer A's volumetric charge would be $108.00 (600 kWh x 18¢/kWh).[34]

2. Net-metering customer consumption and billing

A net metering customer receives energy from two sources. In the case of customers with photovoltaic or solar systems, during certain periods of time (i.e. during nighttime or during periods of low solar intensity) the customer's energy consumption is supplied by PREPA. In these cases, the customer is experiencing *inflow* of energy. During the times when the customer's distributed generation system is producing energy, said energy is consumed by the customer and any excess energy not consumed by the customer is exported to PREPA's system. The energy produced by the customer's distributed generation system and exported to PREPA's system is termed *outflow*. By self-generating all or a portion of his/her consumption, a net metering customer is able to reduce the amount of energy consumed from PREPA and receive a credit or payment for the excess energy exported to PREPA's grid.

3. Billing a net metering customer: previous methodology

Prior to the approval of Act 4-2016, the volumetric (consumption) portion of a net metering customer's bill was calculated by determining their total *inflow* from PREPA (stated in kWh) for a particular billing period, calculating the total *outflow* (stated in kWh) exported to PREPA's grid and deducting the *outflow* from the *inflow* (inflow – outflow). The result is the customer *net inflow*, which is then multiplied by PREPA's applicable rate (stated in ¢/kWh). As such, when *inflow* is greater than *outflow*, the customer would pay PREPA's full volumetric rate on the *net inflow* (*inflow – outflow*).

[34] The total bill is computed by adding the volumetric charge to the fixed customer charge and the demand charge, if applicable, as established on the approved rate. For purposes of illustration, we will address only the volumetric charge, since the fixed charge is constant for each tariff code and must be paid by all net metering customers and the demand charges are not part of the net metering program.

Consider the following example. During a given billing period, **Customer B** consumed a total of 600 kWh. Customer B's distributed generation system generated a total of 400 kWh, of which 300 kWh were consumed by the customer and 100 kWh were exported to PREPA's system. In this case, Customer B's *inflow* for the billing period is 300 kWh (determined by subtracting from the customer's total consumption of 600 kWh the portion supplied by his/her distributed generation system, 300 kWh). Customer B's *outflow* was 100 kWh (determined by subtracting from the total energy produced by the customer's distributed generation system, 400 kWh, the amount consumed by the customer, 300 kWh).[35] Accordingly, Customer B's volumetric charge would be determined by subtracting *outflow*, 100 kWh, from *inflow*, 300 kWh, to reach a net *inflow* of 200 kWh and multiply that by PREPA's full volumetric rate, which, assuming a rate if 18¢/kWh, results in a total volumetric charge of $36.00.

As we discuss below, the same result reached above is achieved through the methodology adopted by the Commission in its Final Order, whereby instead of determining net inflow, the customer's bill is determined by multiplying *inflow* by PREPA's full rate and then subtracting the result of multiplying *outflow* by the applicable credit awarded for excess energy exported to PREPA's grid.

4. Billing net metering customer: New methodology approved by the Commission

As stated before, to comply with the statutory mandate of establishing a mechanism for charging non-grandfathered net metering customers for costs which are "common to all", the Commission determined that it was just and reasonable and consistent with the Legislative intent, to exclude from the credit for *outflow* the charges associated with non-avoidable costs costs such as Contribution in Lieu of Taxes ("CILT"), public lighting, the energy efficiency charge, the Energy Commission assessment and the life-preserving equipment, LRS Tariff, RH3 Tariff, residential fuel subsidy and RFR Tariff subsidies.[36] The Commission determined that such charges where "social commitments—things that benefit the public as a whole, including net-metering customers."[37] In essence, these charges are, in the words of Senator Nieves Pérez, "common to all", which have been "socialized" and which "must be paid."[38]

[35] Notice that the customer's total consumption for the billing period, 600 kWh, was supplied both by *inflow* from PREPA (300 kWh) and by the customer's distributed generation system (300 kWh).

[36] *See* Final Order at ¶398.

[37] *Id*.

[38] Diario de Sesiones del Senado de Puerto Rico, February 10, 2016, at p. 36274.

A. Grandfathered net metering customers

The following example illustrates the Commission methodology for determining a net metering customer's bill. Using the same values as the preceding example, **Customer B**'s[39] volumetric charge is determined by first multiplying *inflow* by PREPA's full rate (300 kWh x 18¢/kWh) which result in a total of $54.00.[40] Next, we multiply the *outflow* (the excess energy exported by the customer to PREPA's grid, (100 kWh) by the per unit value of the applicable credit granted by PREPA for energy exported to its grid (18¢/kWh). This results in a total credit of $18.00 (100 kWh x 18¢/kWh). Finally, we subtract the total *inflow* charge from the total credit for *outflow* to reach Customer B's actual volumetric charge of $36.00 ($54.00 – $18.00). As this example illustrates, the mechanism for calculating a grandfathered net metering customer's volumetric charge adopted by the Commission in its Final Order achieves the same result as the mechanism previously in place, which ensures grandfathered net metering customers continue to receive the same treatment they have always had.

B. Non-grandfathered net metering customers

Having described how the volumetric (consumption) portion of a grandfathered net metering customer's bill is determined under the methodology adopted by the Commission in its Final Order, we now turn to the application of such methodology to a non-grandfathered net metering customer. Using the same assumptions as with Customer B, **Customer C** a non-grandfathered net metering customer, consumed a total of 600 kWh during a particular billing period. Let's assume that during such billing period, PREPA's full rate was 18¢/kWh. Customer C's distributed generation system generated a total of 400 kWh, of which 100 kWh were exported to PREPA's grid and the remaining 300 kWh were consumed by the customer. As such, the Customer C's *inflow* for said billing period was 300 kWh, and his/her *outflow* was 100 kWh.[41]

To determine Customer C's volumetric charge, we must first multiply the total *inflow* (300 kWh) by PREPA's full rate (18¢/kWh) for a total of $54.00. Secondly, we multiply the customer's *outflow* (100kWh) by the per unit amount of the credit established by the Commission through its Final Order. For purposes of this example, we assume that

[39] For purposes of this discussion, we assume Customer B is a grandfathered net-metering customer, eligible to continue to receive the same billing treatment as before the enactment of Act 4-2016 and the approval of the Final Order.

[40] Notice that, even before taking into consideration any credit for *outflow*, a net metering customers' electric bill is lower than that of a regular PREPA customer, because a net metering customer is able to reduce his/her consumption from PREPA, an inherent benefit of installing a distributed generation system which is not affected by the Commission's Final Order.

[41] The customer's *inflow* from PREPA equals his/her total consumption (600 kWh) minus the portion of that consumption that was supplied by the energy generated by his/her distributed generation system (300 kWh).

the non-avoidable costs to be recovered through the applicable charges amount to 1 cent/kWh, therefore, the *outflow* credit is 18¢/kWh – 1¢/kWh = 17¢/kWh.[42] By multiplying Customer C's *outflow* (100kWh) by the applicable credit (17¢/kWh) we reach a total credit of $17.00. Finally, we subtract the total bill for *inflow* from the total credit for *outflow* to reach the Customer C's actual volumetric charge of $37.00 ($54.00 – $17.00).

The following table summarizes the examples discussed above. It illustrates how each type of net metering customer's volumetric charge is calculated using the methodology approved in the Final Order and compares such results with the method for calculating a regular, non-net metering customer's volumetric charge.

Total Consumption: 600 kWh	Inflow for NM Customers: 300kWh	Outflow for NM Customers: 100 kWh
PREPA Rate: 18¢/kWh	Credit for Grandfathered NM Customers: 18¢/kWh	Credit for Non-Grandfathered NM Customers: 17¢/kWh

Customer A Regular Customer	Customer B Grandfathered NM customer	Customer C Non-Grandfathered NM Customer
600 kWh x 18¢/kWh = $108	300 kWh x 18¢/kWh = $54 100 kWh x 18¢/kWh = $18 $54 – $18 = $36	300 kWh x 18¢/kWh = $54 100 kWh x 17¢/kWh = $17 $54 – $17 = $37
Total Volumetric Charge: $108.00	**Total Volumetric Charge: $36.00**	**Total Volumetric Charge: $37.00**

As shown in these examples, the Commission approved methodology for calculating a net metering customer's volumetric charge is consistent with the requirements of Act 4-2016: that grandfathered net metering customers continue to receive the same treatment as they have always received, while non-grandfathered net metering customers pay a reasonable charge for non-avoidable costs which are "common to all" customers. The Commission acknowledges that other factors, such as financing, impact a customer's

[42] The Commission estimates that, based on the approved revenue requirement and cost allocation, the charge to be applied to non-grandfathered net metering customers equals approximately 1¢/kWh. This amount was estimated by adding the total non-avoidable costs to be recovered from non-grandfathered net metering customers (identified in Commission Attachment 1 REV and Commission Attachment 4 REV of the Commission's Final Resolution addressing PREPA's Motion for Reconsideration and Motion for Clarification) and dividing it by PREPA's total kWh sales for FY 2017. While the actual amount may differ, the Commission herein sought to provide an example which would serve as an adequate illustration of the actual result of implementing the approved methodology.

decision to enter into a net metering agreement. However, no evidence was provided by the Parties to show that the treatment adopted by the Commission would significantly deter new customers from entering into net metering agreements. While PREPA has the initial burden of showing that its proposed rates are just and reasonable, intervenors also have the burden of providing sufficient evidence to show that their arguments are fact-based and not mere speculations.

V. Motions for Reconsideration

Through their Motions for Reconsideration, the Parties argued against the Commission's determinations regarding charges applied to non-grandfathered net metering customers. Below, the Commission addresses the main arguments raised by the Parties and provides further clarification to its Final Order where needed.

a. Scope of Section 4 of Act 114-2007's grandfathering clause

Sunnova argues that the grandfathering clause exempts grandfathered net metering customers from being billed, even on their net inflow, any charge approved by the Commission pursuant to Section 4 of Act 114-2007.[43] Sunnova bases its argument on the portion of Section 4 of Act 114-2007, as amended by Act 4-2016, which provides that customers eligible to be grandfathered "shall have a grace period of twenty (20) years, counted as of the approval of [Act 4-2016], during which the charges approved by the Commission shall not be billed."[44]

Sunnova's arguments encompass an attempt to achieve the very result which the Legislative Assembly attempted to avoid when it authorized the imposition of charges to net metering customers: undue cost avoidance. Sunnova seeks for the Commission to conclude that, in ensuring that grandfathered customers continue to be subject to the same treatment as before, the Legislative Assembly went one step further and entirely exempted such customers from these charges. This result is inconsistent with the Legislative Assembly's intent, as it would allow grandfathered net metering customers to avoid paying for costs which they have always paid for on their *net inflow,* and is in conflict with a Legislative Assembly that sought to achieve greater contribution from net-metering customers for costs which are "common to all" customers.

Prior to the approval of Act 57-2014,[45] PREPA's costs were bundled together under general line items—for residential customers, mainly base rate.[46] PREPA's new transparent

[43] Sunnova's Motion for Reconsideration at p. 6.

[44] *Id*.

[45] The Puerto Rico Energy Transformation and RELIEF Act, as amended.

bill[47] unbundles many of the costs and requires them to be separately stated. As such, most of the charges approved by the Commission are charges designed to recover costs for which grandfathered net metering customers have always been responsible for paying based on their *net inflow*. That such charges are now separately stated does not change the fact that they are part of PREPA's rates and grandfathered net metering customers have always paid PREPA's full rate on their *net inflow*.

Windmar, on the other hand, argues that while costs that were previously bundled within PREPA's base rate may be charged to grandfathered net metering customers, Act 4-2016 prevents PREPA from charging grandfathered net metering customers for charges designed to recover new costs, such as the energy efficiency charge.[48] Windmar bases its argument in the term "new charges". But nowhere in Section 4, nor Section 5, for that matter, of Act 114-2007, as amended by Act 4-2016, is the term "new charges" found; there is no statutory basis for concluding that the grandfathering clause prevents the Commission from approving a new line item charge that would apply to all of PREPA's customer's including net metering customers.

Act 4-2016 refers to "additional charges", which the Commission, based on the legislative intent, has determined to mean the ability to apply a charge to a portion of the customer's consumption to which charges were not previously applied under net metering. As such, if a customer's total consumption from PREPA (*inflow*) is 300 kWh and total *outflow* (excess energy exported to PREPA's grid) is 100 kWh, all of PREPA's charges are applied to the net inflow of 200 kWh. The "additional charge" would result from removing the credit for certain charges (e.g. CILT and public lighting) from the *outflow* (100 kWh) therefore applying these charges to the total *inflow* from PREPA (300 kWh).

There is no evidence in the legislative record that supports the conclusion that the Legislative Assembly intended for grandfathered net metering customers to receive a different treatment than the one they have always received. By providing that the charges approved by the Commission would not be billed, the Legislative Assembly exempted grandfathered net metering customers from being billed such charges based on any portion of their consumption other than their *net inflow*, the treatment they had always received and which the Legislative Assembly sought to preserve. What matters is not which charges are included in PREPA's rates; what matters is how those rates are applied to the net metering customer's consumption.

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[46] Customers also paid a separate fuel charge and power purchase charge, which also encompassed the costs associated with CILT, public lighting and subsidies.

[47] Required by Section 6B of Act 83 and approved in Docket No. CEPR-AP-2016-0002.

[48] Windmar's Motion for Reconsideration at p. 6. ("If the charges were previously not included in those grandfathered customers' bills they cannot now be charged as a result of the Rate Review because of the protection under Section 4 of Act 114 of 2007.")

Net metering does not prevent a utility from changing its rate structure and billing determinants (i.e. the specific charges within a utility's bill, such as basic rate, fuel adjustment, subsidies, etc.). Net metering allows a customer the opportunity to reduce its exposure to those rates by reducing his/her consumption from utility supplied power and receiving a credit for the excess energy supplied to the utility's grid. Grandfathered net metering customers have always paid PREPA's full rate on their *net inflow*. Under the Commission's Final Order, that treatment does not change. These customers will continue to pay PREPA's full rate based on their *net inflow*.

b. Commission authority under Section 4 of Act 114-2007

Windmar argues, albeit without referencing any statutory provision or portion of the legislative record to support its conclusion, that the Commission is not authorized to change how *outflow* is credited to net metering customers.[49] Act 114-2007 does not require for the *outflow* credit to equal PREPA's rate for *inflow*. What Act 114-2007 requires is for PREPA to provide a credit for the energy provided to its system by net metering customers. The amount of that credit is not statutorily fixed. There is no statutory impediment for the Commission to approve a credit which is lower than PREPA's full service rate. This is consistent with the general understanding of net metering in other jurisdictions where the credit paid to net metering customers for outflow does not necessarily equal the utility's full rate.[50]

In the alternative, Windmar requests the Commission to, in lieu of reducing the credit for *outflow* (a necessary result of applying a charge to *total inflow*), adopt a "new charge separate from the net-metering credit to collect the amounts [pursued] from the "lower credit".[51] Applying the charge by reducing the outflow credit, as in the methodology established by the Commission, produces the exact same result as imposing a separate charge, as proposed by Windmar.

Charges are based on costs. If the cost is the same, then it is immaterial how the charge is applied, because it will be designed to recover the same amount. Assuming the Commission accepts Windmar's recommendation of adopting a separate charge, such charge would be either a consumption (per kWh) charge or a fixed charge (per customer charge). To recover the same amount as the lower credit, as proposed by Windmar, the consumption charge would need to be applied to the entire *inflow* from PREPA, which is the same treatment as the one established by the Commission. If it was Windmar's intention

[49] *See* Windmar's Motion for Reconsideration at p. 5.

[50] *See*, for example, *The Poles of Power: Magnetic Bi-Directional Turn of the Meter,* Ferrey, S., George Washington Journal of Energy & Environmental Law, 8 Geo. Wash. J. Energy & Envtl. L. 39 (2017) ("[N]et metering effectively **compensates the generator at, or near, the full retail rate** that the retail meter registers.)(Emphasis added.)

[51] Windmar's Motion for Reconsideration at p. 6.

for the customer to also receive a credit for such "separate" charge, then its reasoning is beyond comprehension, since the very charge it proposes as an alternative for recovering the costs sought after by the lower credit can be avoided by the customer, resulting in a never ending circle whereby avoided costs are recovered through a charge which is, itself, avoidable. This would produce an absurd result.

On the other hand, if the charge proposed by Windmar was a fixed charge, then the customer would pay such charge, regardless of the actual consumption from PREPA. That is, even if the customer consumed no electricity from PREPA, such customer would still be required to pay the fixed charge, without any ability of reducing the amount based on reduced consumption.

The only difference between the methodology established by the Commission and Windmar's alternative proposal is that, instead of labeling it as a separate "special" charge, the Commission identified the specific costs that would be recovered from net metering customers and reduced the credit granted for *outflow* by the sum of those costs. The amount of the reduction in the *outflow* credit is arithmetically the same as the "special charge" proposed by Windmar.

In *FPC v. Hope Natural Gas*,[52] the United States Supreme Court established the long-standing regulatory principle that, when reviewing a commission's order, "the question is whether [the] order 'viewed in its entirety' meets the requirements of the Act." The Court further stated that "[u]nder the statutory standard of "just and reasonable" it is the result reached not the method employed which is controlling." Windmar's arguments are against the methodology adopted by the Commission and not the result produced by such methodology. As such, it warrants no further consideration by the Commission. The Commission approved methodology is reasonable and consistent with legislative intent.

c. The "unfair and destabilizing" effect of undue cost avoidance

Windmar argues that Act 114-2007 "establishes an incentive for renewables which is structured as a credit which allows to offset energy inflow from the utility."[53] The Commission agrees. Nowhere in the Final Order is this "incentive" removed, nor does the Commission conclude, as Windmar argued, that such an incentive is "unfair or destabilizing."[54] All net metering customers continue to be able to offset energy *inflow* from PREPA, by reducing the amount of energy consumed from PREPA and by receiving a credit for excess energy exported into PREPA's system (*outflow*). What the Commission did conclude as "unfair or destabilizing" was net metering customers avoiding responsibility for costs which benefit them and are "common to all" customers. The Commission's Final

[52] 320 U.S. 591 (1944).

[53] Windmar's Motion for Reconsideration at p. 12.

[54] *Id*.

Order simply reiterates the conclusions already made by the Legislative Assembly. One need only look at Senator Nieves's statements during the enactment of Act 4-2016 to conclude that the motive for amending Section 4 of Act 114-2007 was to apply to net metering customers charges for costs which they have historically avoided. The very action by the Legislative Assembly of authorizing the imposition of these charges on net metering customers is a result of a finding that the prior ability to avoid certain charges was, indeed, unfair and destabilizing. The Commission did not "take establishing public policy into [its] own hands without proper legislative delegation" as Windmar argues.[55] On the contrary, the Commission's actions are the direct result of the implementation of the express and unequivocal intent of the Legislative Assembly in approving Act 4-2016. Neither is the Commission's Final Order "merely an opinion;"[56] it is the legally binding conclusion of the governmental agency with specialized technical expertise tasked with overseeing the implementation of Puerto Rico's overall energy public policy.

d. Commission evaluation of charges under the criteria set forth in Section 4 of Act 114-2007

The Commission reaffirms its conclusions in paragraphs 314 to 426 of the Final Order with regards to the compliance of the approved charges with the requirements set forth in Section 4 of Act 114-2007, as amended by Act 4-2016. Below we address specific arguments made by the Parties in their Motions for Reconsideration.

1. Determination that charges comply with Section 4 of Act 114-2007

First we address Windmar's statement that the Commission discussed the criteria under which each charge would be evaluated but did not conclude whether such charges complied with each criteria.[57] While the Commission's determination to approve such charges should be sufficient to deem that such charges are in compliance with the criteria set forth in Section 4 of Act 114-2007, should Windmar require an express assertion to that effect, the Commission here does so. The Commission finds that the charges listed in paragraph 398 of the Final Order comply with each of the criteria established in Section 4 of Act 114-2007 and, therefore, may be imposed on net metering customers, as determined in the Final Order.

2. Determination that charges are "just"

Windmar and Sunnova argue that the Commission's evaluation of whether a charge is just should be limited to whether such charge is just to net metering customers, and not to PREPA's customers as a whole. In support of its positon, Windmar and Sunnova argue

[55] *Id*.

[56] *Id*. at p. 15.

[57] Windmar's Motion for Reconsideration at p. 12.

that Section 29 of Act 4-2016 amends Section 4 of Act 114-2007, which relates exclusively to the net metering program and that, had the legislature intended for it to apply to all customers, the legislature would have made the amendment within Act 57-2014.[58] Similarly, ICSE-PR argues that the Commission misunderstood the interaction between Act 57-2014 and Act 114-2007.[59] Specifically, ICSE-PR argues that the Commission's interpretation that rates cannot impose different burdens on ratepayers and that it must comply with the "just and reasonable rates" mandate is incorrect.[60] ICSE-PR contends that the legislative interest is not to treat net-metering customers as regular customers, but to duly discriminate in their favor.

In adopting Act 57-2014, the Legislative Assembly adopted the exclusive procedure through which any change in PREPA's rates would be addressed. That is, absent any express statutory provisions to the contrary, PREPA could not impose a charge on any of its customers, unless such charge was approved through a rate review procedure under Article 6.25 of Act 57-2014. Section 4 of Act 114-2007, as amended by Act 4-2016, provides that PREPA may propose "as part of its rates" just and reasonable charges to its net metering customers. Inasmuch as PREPA's rates may only be modified and reviewed pursuant to Section 6.25 of Act 57-2014, the evaluation of the "justness" of the charges proposed to be applied to net metering customers is made within the context of Act 57-2014 and, therefore, must comply with the overall public policy that rates must be just and reasonable to all customers, not just to a specific sub-category.

3. Evaluating whether a charge is "excessive".

Sunnova argues that, when evaluating whether a charge is excessive, the Commission should "consider that [net metering customers] consume less energy from PREPA than do regular customers, which inherently provides a relief to PREPA's operational expenses."[61] While the Commission agrees with the general premise that net metering customers consume less energy from PREPA, the costs to be recovered by the charges approved by the Commission are indepedent from the net metering customers' energy consumption. That is, PREPA's responsibility to, and the costs associated with, providing certain services (e.g. CILT and public lighting) are not dependent on the amount of energy consumed by a net metering customer. The fact that a net-metering customer reduces its consumption does not reduce PREPA's responsibility for costs related to Contribution In Lieu of Taxes, Public Lighting, and other "help-to-humans" subsidies, such as public housing, which are "common to all" customers. Such costs, are costs incurred by

[58] See Windmar's Motion for Reconsideration at p. 13 and Sunnova's Motion for Reconsideration at p. 8.

[59] ICSE-PR's Motion for Reconsideration at page 7.

[60] *Id*.

[61] Sunnova's Motion for Reconsideration at p. 12.

PREPA for the benefit of society as a whole. Because they benefit all customers equally, the Legislature intended for these charges to be borne by all customers.

Furthermore, a utility's system requirements are determined based on the system's peak load (the maximum amount of power that a utility must supply, to keep the lights on, at any one moment of a year).[62] A utility must be ready to serve its peak load and, therefore, must have sufficient generation capacity to meet its system peak. PREPA's system peak occurs sometime between 7:00 p.m. and 11:00 p.m., a time in which a typical photovoltaic (solar) distributed generation system no longer produces sufficient energy to meet the customer's demand.[63] As such, until effective measures can be taken to shift PREPA's peak-load to daytime hours, solar distributed generation systems are unable to significantly contribute to meeting PREPA's peak load during the evening hours. Moreover, certain costs approved by the Commission (e.g. public lighting) are costs incurred by PREPA in supplying service at night, during which photovoltaic distributed generation systems are physically unable to contribute to meet the system's demand.

4. Evaluating whether a charge is an "obstacle"

Sunnova argues that "[a]nything that challenges the progress of renewable energy is certainly an obstacle."[64] Sunnova did not provide (nor did any other intervenor) any evidence that would serve as a benchmark for determining a cut-off point after which a specific charge would "challenge the progress of renewable energy" and thus become an obstacle. In absence of evidence, Sunnova's arguments are mere allegations, not based on facts which support that the charges approved by the Commission are, in fact an obstacle. The Commission reaffirms its determination that a charge which is equal to all customers, cannot constitute an obstacle.

5. Applicability of charges to self-consumption and outflow

Windmar argues that the Commission's evaluation of the charges pursuant to the criteria set forth in Section 4 of Act 114-2007 is flawed. Windmar first argues that the Commission's Final Order approves "charges to the energy generated by the distributed generators […] including self-consumption and outflow."[65] Windmar misunderstood the Commission's Final Order. Nowhere in the Final Order is the Commission authorizing the imposition of charges to the energy generated by a customer's distributed generation

[62] Final Order at p. 99, fn 219.

[63] *See* Figure 7-1: Maximum Demand Day, PREPA Supplemental IRP Report in Case No. CEPR-AP-2015-0002.

[64] Sunnova's Motion for Reconsideration at p. 13.

[65] Windmar's Motion for Reconsideration at p. 10.

system. The charges approved by the Commission apply exclusively to the *inflow* from PREPA—the total amount of energy supplied by PREPA and consumed by the customers.

e. Commission methodology for billing non-grandfathered net metering customers

Sunnova argues that the Commission's methodology for imposing charges on a non-grandfathered net metering customer's *total inflow* from PREPA "would account to net metering customers producing energy to PREPA for free."[66] Free is defined as "not costing or charging anything."[67] It implies providing a good or service without receiving something in return. As illustrated by the examples in Part IV.c, net-metering customers would continue to be entitled to receive from PREPA a credit or payment for the excess energy produced by their distributed generation systems and exported to PREPA's grid (*outflow*). That the credit or payment they would receive is lower than what was provided before, because new net metering customers are no longer allowed to avoid certain costs "common to all", does not amount to PREPA receiving energy from these customers for free. Non-grandfathered net metering customers are receiving a credit; they are being compensated for the energy that is exported to PREPA's system.

f. The Commission's November 3, 2016 Order

Sunnova argues that there is uncertainty with regards to the Commission's November 3, 2016 Resolution, through which it determined that certain rate design and net metering issues would not be addressed in this proceeding. The Commission based its determination in the insufficiency of information provided by PREPA. However, the Commission did not determine that it would not address the charges that could be imposed on net metering customers. The recently initiated rate design proceeding will allow the Commission, along with stakeholders, to continue fine-tuning PREPA's rates to better align them with cost-causation principles.[68] In addition, the Commission will consider the benefits of distributed generation which could not be determined given the insufficiency of the information provided in the instant proceeding. Although the lack of certain information limits the Commission's ability to reach the most optimal result, it does not limit the Commission from reaching a reasonable result which complies with the public policy and legislative intent furthered by Act 4-2016. In approving the charges to net metering customers, the Commission complied with the legislative mandate of designing a net metering policy which recognizes the benefits of distributed generation, while ensuring that net metering customers contribute proportionately to those costs incurred by PREPA in benefit of all.

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[66] Sunnova's Motion for Reconsideration at p. 7.

[67] https://www.merriam-webster.com/dictionary/free

[68] *See* Notice of Investigation of Rate Design, Cost Allocation and Related Isues Applicable to the Puerto Rico Electric Power Authority, CEPR-IN-2017-0001, issued on April 24, 2017.

g. Additional arguments made by ICSE-PR

ICSE-PR requests the Commission to clarify that ICSE-PR did not propose to reject PREPA's revenue requirement. Rather, ICSE-PR argues that it "requested a 'temporary' increase and not a permanent increase."[69] ICSE-PR adds that they are aware of the need of approving the necessary revenues for PREPA's operation, but that is not in the best interest of PREPA, nor the consumers, to approve a permanent rate increase.[70]

ICSE-PR's concerns seems to be semantic in nature. It's concerns with regards to the use of the label "temporary" as opposed to "permanent" when referencing the revenue requirement and rates approved in the Final Order has no practical significance. The rates approved by the Commission in its final Order are "permanent" because they remain in effect until they are once again reviewed by the Commission. On the contrary, a "temporary" rate is a rate that remains in place for a pre-determined period of time, after which some other rate will enter into effect, that other rate being the "permanent rate."

ICSE-PR's concerns revolve around not "[sending] the wrong signal to PREPA, to government entities, the markets and the PREPA consumers" with regards to a "false sense of stability" and "incorrect sense of financial recuperation."[71] The Commission shares ICSE-PR's concerns and is fully committed to achieving the type of operational, fiscal and administrative transformation intended by Act 57-2014. However, the Commission disagrees with ICSE-PR's contention that labeling PREPA's revenue requirement as "temporary", as opposed to "permanent", will significantly impact PREPA's perception in the eyes of its stakeholders. We reject the notion that the mere use of a word would lead PREPA's stakeholders to believe that PREPA is no longer in a delicate financial and operational condition. Indeed, our Final Order sheds more light than ever into the challenges that lay ahead.[72]

ICSE-PR also argued that the Commission misinterpreted Dr. Ramón Cao's analysis of PREPA's proposal.[73] However, aside from repeating arguments it has already made and which the Commission addressed in its Final Order, ICSE-PR does not point to any information or evidence to support its statements or to refute the Commission's conclusions as expressed in the Final Order.[74] As such, the Commission reaffirms its conclusions regarding Dr. Cao's testimony.

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[69] ICSE-PR Motion for Reconsideration at page 1.

[70] Id. at page 2.

[71] ICSE-PR's Motion for Reconsideration at p. 2.

[72] *See*, for example, Part One of the Commission's Final Order.

[73] ICSE-PR's Motion for Reconsideration at p. 2.

[74] *See* Commission's Final Order at ¶¶57-60.

Finally, ICSE-PR states that the Commission "fails to present or discuss any option of private investment or private operation to substitute PREPA's operations and services."[75] The identification of private investments to substitute or outsource PREPA's operations is beyond the scope of the instant proceeding.

In light of the aforementioned, the Motions for Reconsideration filed by Windmar, Sunnova and ICSE-PR are **DENIED**.

Any party adversely affected by this 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 Resolution was filed in the record of the Commission. Copy of such filing must be provided to the Commission and to all parties in this proceeding within the aforementioned thirty (30) day term. The filing and notice of such petition shall be made in accordance with Section 4.2 of the Uniform Administrative Procedure Act ("LPAU" for its Spanish acronym)[76] and the rules and regulations of the Court of Appeals.

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

Be it notified and published.

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 April 28, 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@aeepr.com, c-aquino@aeepr.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, epenergypr@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

[75] ICSE-PR's Motion for Reconsideration at page 5.

[76] 3 L.P.R.A. § 2172.

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For the record, I sign this in San Juan, Puerto Rico, today, April 28, 2017.

María del Mar Cintrón Alvarado
Clerk