

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

IN RE: PUERTO RICO
ELECTRIC POWER
AUTHORITY RATE REVIEW

CASE NO.: CEPR-AP-2015-0001

IN RE: AGUIRRE SITE
ECONOMIC ANALYSIS

Subject: Ruling on
PREPA's Motions to
Stay several
proceedings before
the Puerto Rico
Energy Commission.

CASE NO.: CEPR-AP-2017-0001

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

CASE NO.: CEPR-IN-2016-0002

Resolution on Motions for Stay

I. Introduction

On May 19, 2017, the Puerto Rico Electric Power Authority ("PREPA") submitted three motions, each aimed at slowing the Puerto Rico Energy Commission's ("Commission") efforts to reverse PREPA's history of poor performance. In Case No. CEPR-AP-2015-0001, PREPA seeks to avoid its obligations to submit a revenue requirement and budgets for fiscal year 2018, and its budgets for fiscal year 2019—obligations the Commission imposed to prevent PREPA from incurring imprudent costs that would otherwise fall on ratepayers. In Case No. CEPR-IN-2016-0002, PREPA asks the Commission to stay its investigation into PREPA's performance—an investigation designed to produce metrics that would hold PREPA and its executives accountable if PREPA's performance failed to improve. In Case No. CEPR-IN-2017-0001, PREPA seeks a stay of the Commission's efforts to resolve questions of rate design and cost allocation necessary to ensure that rates are "just and reasonable" as required by law. Each motion seeks a stay "pending final approval of PREPA's amended, conforming Fiscal Plan by the Financial Oversight and Management Board for Puerto Rico ("FOMB") and implementation of Act No. 26-2017."

We **REJECT** each motion for the reasons discussed in Part II. Act 57-2014¹ created the Commission to be "the key component for the faithful and transparent execution of the Energy Reform."² The statute commands the Commission to "guarantee the capacity, reliability, safety, efficiency, and reasonability of electricity rates of Puerto Rico."³ Granting these motions—ceasing our work on behalf of all Puerto Ricans—would disregard our statutory duties. It would subject the Commission to lawsuits for failing to carry out those duties. Those lawsuits would create uncertainty for everyone, undermining the trust from customers, bondholders and PREPA's own employees; trust the Commission has gained from its prior orders.⁴

PREPA has a proven history of high costs, suboptimal operations and low customer satisfaction. For a monopoly utility with poor performance to ask its regulator to cease efforts at improving that performance is unprecedented. PREPA's request is not only inconsistent with the Commission's statutory responsibilities, it also directly challenges the FOMB's support of the Commission's initiatives, and its belief that "an independent Commission with oversight authority over [PREPA] is the right approach to providing the necessary checks and balances as PREPA moves forward in its transformation process."⁵

II. To stay the current proceedings would violate the Commission's obligations under Act 57-2014

Act 57-2014 requires the Commission to oversee PREPA and other certified electric companies so as to "guarantee the orderly and integrated development of our electrical system, thus ensuring the reliability, efficiency, and transparency thereof, and

¹ The Puerto Rico Energy Transformation and RELIEF Act, as amended.

² Statement of Motives of Act 57-2014 at ¶18.

³ Section 6.3(c) of Act 57-2014.

⁴ Specifically, the Restructuring Order, Case No. CEPR-AP-2016-0001 (assuring bondholders that participating debt will be securitized and paid off, while guaranteeing ratepayers the benefit of approximately \$867 million in bondholder concessions); the Provisional Rate Order, Case No. CEPR-AP-2015-0001 (which provided PREPA necessary cash flow and thus enabled both utility operations and bondholder negotiations to continue); the Integrated Resource Plan Final Resolution and Order, Case No. CEPR-AP-2015-0002 (which aligned PREPA's fuel and power plant plans with the Puerto Rico's long-term need for fuel diversity, renewable energy and energy conservation); the Performance Case Order, Case No. CEPR-IN-2016-0002 (which initiated an investigation and assessment into PREPA's performance, with the intent of developing new performance standards and holding PREPA accountable for those standards); the Transparent Bill Order, Case No. CEPR-AP-2016-0002 (which approved the bill format to be used to clearly identify and present to the customers the charges and credits applicable to them); and the order approving PREPA's Revenue Requirement issued on January 10, 2017, Case No. CEPR-AP-2015-0001.

⁵ Testimony of José B. Carrión III, Chairman of the Financial Oversight & Management Board for Puerto Rico before the Indian, Insular and Alaska Native Affairs Subcommittee of the House Committee on Natural Resources, at the hearing on "The Status of the Puerto Rico Electric Power Authority Restructuring Support Agreement" held on Wednesday, March 22, 2017.

the provision of electric power services at reasonable prices."⁶ Under this general command, Act 57-2014 imposes on the Commission numerous duties, including:

"oversee all types of operations, processes, and mandates pertaining to the efficiency of the energy sector of the Island."⁷

"[e]stablish and implement regulations and the necessary regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of electricity rates of Puerto Rico;"⁸

"[o]versee the quality and reliability of the electric power services provided by PREPA and any other electric power company certified in Puerto Rico;"⁹

"[a]ttain [...] the goal of reducing and stabilizing energy costs permanently, and controlling volatility in the price of electricity in Puerto Rico."¹⁰

"[r]eview and approve policies and strategic plans, as well as short-, medium-, and long-term plans in connection with energy resources integrated planning in Puerto Rico, and oversee compliance therewith."¹¹

"[c]onduct inspections, investigations, and audits, if necessary, to attain the purposes of [Act 57-2014]."¹²

Act 57-2014 requires the Commission to act "steadfastly and effectively" in carrying out its duties and responsibilities.¹³ Granting PREPA's motions would amount to the Commission relinquishing its role as Puerto Rico's energy regulator and renouncing its essential duties, unequivocally causing the Commission to be at odds with the express legislative mandate of Act 57-2014. It would render PREPA an unregulated monopoly, because none of the three entities—AAFAF, the Committee or FOMB—has both the broad and, at the same time, specific statutory authority or responsibility the Commission has as

⁶ Statement of Motives at ¶19.

⁷ *Id.* at ¶20.

⁸ Act 57-2014, Section 6.3(c).

⁹ *Id.*, Section 6.3(d).

¹⁰ *Id.*, Section 6.3(f).

¹¹ *Id.*, Section 6.3(h).

¹² *Id.*, Section 6.3(y).

¹³ Statement of Motives at ¶20.

an independent entity with specific expertise related to PREPA's operations. As explained next, none of the three motions provides a persuasive basis for PREPA's unprecedented and unwarranted requests.

A. Budget examinations necessary to protect customers from imprudent costs: CEPR-AP-2015-0001

Our Final Order of January 10, 2017 established a detailed plan by which PREPA will propose its annual budgets for Commission review. The central purpose is to review and approve PREPA's costs *before* they are incurred rather than *after*. Advance review is essential to consumer protection, for a reason both simple and obvious: Given PREPA's non-profit, government-owned status, once PREPA incurs costs, those costs must be passed on to customers, even if the costs are unreasonable or are the result of undisputable mismanagement policies; otherwise PREPA will incur deficits, a key cause of its present financial condition, preventing it from paying its bills and repaying its lenders. Only by reviewing and approving costs in advance, therefore, can the Commission protect customers from volatile price increase and ensure that PREPA's rates are "just and reasonable."¹⁴

Arguing for a stay, PREPA asserts that the FOMB has required PREPA to amend its fiscal plan to achieve an "average all-in rate of 21 cents per kWh by 2023."¹⁵ PREPA also cites an FOMB resolution requiring it to establish "a mechanism for rate approval with the Energy Commission reflecting the Formula Rate Mechanism (FRM) and rate structures to be determined necessary to meet the amended fiscal plan Target Rate, which shall need to be consistent with the annual PREPA budgets to be certified by the Board."¹⁶ PREPA further cites Act 26-2017¹⁷ which, among other things, created a three-person Committee "authorized to establish the rates necessary to comply with the requirements of the Fiscal Plan."¹⁸ PREPA is concerned that "future work of the Committee may duplicate or conflict with the Commission's review of PREPA's future revenue requirements and budgets."¹⁹

¹⁴ PREPA has challenged the Commission's plan in a Motion for Reconsideration, submitted on January 30, 2017 and rejected by the Commission through Final Resolution issued on March 8, 2017. Not once during the evidentiary hearings, in its briefs or in its Motion for Reconsideration, has PREPA confronted the unavoidable logic in the Commission's reasoning. Not once has PREPA offered a solution that prevents PREPA from passing on to its customers the burden of incurring in unreasonable costs.

¹⁵ See PREPA's Verified Motion to Stay Proceedings and Budget Filing Requirements, Case No. CEPR-AP-2015-0001, at p. 5.

¹⁶ *Id.* at p. 3.

¹⁷ The Fiscal Plan Compliance Act.

¹⁸ PREPA's Verified Motion to Stay, Case No. CEPR-AP-2015-0001, at p. 3.

¹⁹ *Id.* at p. 4.

PREPA then argues—without providing any specifics—that the same personnel responding to the FOMB's requests are too busy to comply with the Commission's orders.²⁰

These factors create no persuasive basis for the Commission to stay its order. Thirteen weeks have passed since the Commission established its budget review procedures. Had PREPA's executives and attorneys been fully committed to the cause of accountability and meaningful reform, they would have met with their Board, created alternative solutions to the budgeting and scheduling problems identified by the Commission and offered those solutions to the Commission. The Commission certainly provided PREPA the opportunity to do so. In any event, the FOMB has specifically directed PREPA to "work with the Energy Commission" to provide an "implementation plan" for a formula rate mechanism. The Commission's January 2017 rate order has that mechanism. PREPA may offer adjustments to the timing of the mechanism's components but the core principle of preventing unreasonable costs before they are incurred must remain.

PREPA says the numbers that ultimately enter the ratemaking equations will be affected by discussions among PREPA and FOMB as to appropriate spending schedules. This obvious fact neither changes, nor conflicts with, the need to design a procedure by which the Commission prevents imprudent costs before they are incurred.

PREPA remains obligated to comply with the Commission's January 10 Order. As stated in our Final Resolution of March 8, 2017,²¹ the Commission welcomes alternative methods to solve the problem. Certainly, there is a way to achieve effective coordination between the FOMB and the Commission review of budgets so that duplication is avoided but fiscal accountability is preserved.

**B. Performance metrics designed to provide customers high-quality service:
CEPR-IN-2016-0002**

Through its decisions on the Transition Charge Calculation Methodology and Adjustment Mechanism, Provisional Rates and Permanent Rates, the Commission addressed PREPA's dire financial condition by parting ways with years of revenue deficiencies and getting PREPA on a path towards fiscal sustainability. The Commission's actions gave PREPA the monies necessary to invest in its infrastructure and gave bondholders confidence in the presence of an independent, objective and expert commission.

²⁰ *Id.*

²¹ See Case No. CEPR-AP-2015-0001.

Having been granted its request for financial relief, PREPA now seeks to resist efforts by the Commission to ensure oversight and accountability. Through Case No. CEPR-IN-2016-0002, the Commission seeks to ensure that its previous decisions addressing PREPA's financial difficulties are equally met by improvements in PREPA's performance. In that proceeding, the Commission has sought from PREPA information pertaining to administrative and operational processes, such as planning, budgeting and procurement, in order to ascertain the degree to which PREPA's administrative and operational practices depart from prudent utility practices and to develop the procedures and performance metrics necessary to enhance PREPA's operations.

PREPA again argues that its obligation to submit a Fiscal Plan to the FOMB, along with the possibility of rate-adjusting actions by the Committee, makes compliance with the Commission's orders on performance metrics infeasible.²² This argument lacks any logic whatsoever. PREPA's "Final Fiscal Plan" (dated April 28, 2017) is a general presentation of problems and goals. Nowhere in its 105 pages appears a single performance metric.²³ The document describes general directions and aspirations; it does not establish specific benchmarks for improvement against which PREPA can be judged. Indeed, the "Disclaimer" at p.2 states that "[n]othing contained in the Information may be relied upon as a promise or representation as to the future." Furthermore, nowhere in Act 26-2017 is there any suggestion that the Committee's authority under such Act prevents the Commission from adopting metrics which will induce performance and which will, in turn, help reduce costs and improve quality of service—both necessary ingredients to achieve a compliance with PREPA's Fiscal Plan while reducing the need for rate increases.

There is no basis, therefore, for asserting that the actions of the FOMB or the Committee, or PREPA's obligations to those entities, in any way precludes PREPA from complying with the Commission's requirements on performance metrics. It is those very metrics, and the Commission's steadfast and effective role in enforcing them, that will ensure that whatever Fiscal Plan goes into effect will be carried out cost-effectively.

C. Rate designs structured to lower PREPA's costs and help customers save money: CEPR-IN-2017-0001

An annual revenue requirement represents the total dollars a utility needs in a single year to cover its operations, pay its lenders and maintain a cash reserve sufficient to cover unexpected events. PREPA's annual revenue requirement, depending on how one defines the term, is approximately \$3 billion. Establishing this figure accurately, for

²² See PREPA's Verified Motion to Stay Proceeding, CEPR-IN-2016-0002, at ¶16.

²³ Part Ten of the Fiscal Plan, entitled "Operational Performance Improvements," and the section of the Appendix entitled "Operational Savings" do describe "situations encountered" and "actions taken," but there are no metrics for evaluating future performance.

the first time in many decades, within the 180-day statutory deadline, required an unsurmountable effort by the Commission.²⁴

Once a revenue requirement has been established, a regulator must allocate responsibility for paying it among customer categories. Then the regulator must establish rate designs for the customers within those categories. These two steps ensure fairness among customers and efficient consumption by customers. Each step is complex, involving hundreds of objective data points and dozens of subjective judgments.

In approving PREPA's revenue requirement, the Commission found that PREPA's cost allocation data was unreliable, its witnesses insufficiently clear and the 180-day statutory deadline too constraining, to complete these steps credibly. The Commission therefore initiated a separate proceeding on revenue allocation and rate design. In the interim, PREPA's pre-existing revenue allocation and rate design—which all agreed are outdated and flawed—remain largely unchanged.

As with the other two motions, PREPA now seeks to stay the Commission from correcting the deficiencies in PREPA's current revenue allocation and rate design structure. In support of its request, PREPA repeats its arguments about Fiscal Plans, FOMB requirements and the Committee's role in rate-setting. PREPA then adds: "Since the purpose of this proceeding is to design rates that recover the approved revenue requirement in accordance with the cost to serve PREPA's customers, changes in the assumptions underlying the revenue requirement will impact the rate design and cost of service questions the Commission plans to address in this proceeding."²⁵

This argument ignores both facts and logic. The first steps in revenue allocation and rate design are to (1) gather essential data on PREPA costs, and the drivers that cause those costs; then (2) determine credible methodologies for allocating those costs to those who cause them. Only after gathering the data and determining the methodologies do we reach the step of actually establishing rates. The involvements of the FOMB and the Committee are no reason to delay the work that PREPA already has delayed for too long.

PREPA next argues that "the Committee [created under Act 26-2017] has plenary authority to alter PREPA's rates and rate design".²⁶ While the Committee has certain authority with respect to PREPA's rates (PREPA's adjective "plenary" appears nowhere in Act 26-2017), Act 57-2014 obligates the Commission to make PREPA's rates just and

²⁴ On April 28, 2017, Mr. Ricardo L. Ramos Rodriguez, stated before the FOMB that, after more than a year, the Commission had not yet established PREPA's rates. That statement is false. By the time such statement was made, more than 3 months had passed since PREPA's revenue requirement was approved and nearly 2 months had passed since the Commission resolved PREPA's Motion for Reconsideration.

²⁵ See PREPA's Verified Motion to Stay Proceeding, Case No. CEPR-IN-2017-0001, at 4.


²⁶ *Id.*

reasonable and not unduly discriminatory. Gathering the data necessary to establish cost causation, and assessing the many ways to use that data to allocate revenue responsibility and design rates, are steps the Commission must take to satisfy Act 57-2014. Regardless of whether or when the Committee uses whatever power it has to adjust PREPA's rates, those rates must be rates that reflect the Commission's expert judgment. For these reasons, PREPA's argument fails. There is no conflict between the duties of the Commission and the Committee.


For the reasons discussed above, the Commission **REJECTS** PREPA's three motions. They disregard the Commission's legal authority, while offering excuses rather than solutions.

While counterproductive, PREPA's three motions implicitly raise a legitimate question: How can the four key regulatory actors now responsible for PREPA's performance—this Commission, AAFAF,²⁷ the Committee²⁸ and FOMB²⁹—best coordinate their activities to achieve their common goal: restoring PREPA to fiscal health while causing it to provide the cost-effective, reliable and environmentally responsible service that Puerto Rico's citizens deserve? The answer is not, as PREPA proposed, to slow the efforts of an agency expert in utility regulation in general and directly knowledgeable about PREPA's problems in particular. The answer is to engage in a meaningful discussion to identify how each can support the work of the others—so that PREPA has no excuse but to improve, and has no further opportunity to avoid the accountability measures that the Commission will continue to impose. The Commission is ready and willing to undertake such discussions and extends an open invitation to these entities to work along with the Commission in reaching a solution which achieves the goals of PREPA's recovery and Puerto Rico's recovery as a whole.

Be it notified and published.



Ángel R. Rivera de la Cruz
Associate Commissioner



José H. Román Morales
Associate Commissioner
Interim Chairman

²⁷ The Puerto Rico Fiscal Agency and Financial Advisory Authority.

²⁸ Act 26-2017 establishes a Committee consisting of the Executive Director of AAFAF, the Secretary of the Department of Treasury, and the Executive Director of the Office of Management and Budget and authorizes such Committee to set rates for all of Puerto Rico's public corporations.

²⁹ The Financial Oversight and Management Board for Puerto Rico, established by Public Law No. 114-187, the Puerto Rico Oversight, Management, and Economic Stability Act.



SERVICE LIST
IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW
CASE NO.: CEPR-AP-2015-0001

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on May 26, 2017 and on this date a copy of this Resolution regarding the following proceedings: Case No. CEPR-AP-2015-0001, Case No. CEPR-AP-2017-0001 and Case No. CEPR-IN-2016-0002, was notified by electronic mail to:

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María del Mar Cintrón Alvarado
Clerk

I certify that today, May 26, 2017, I have proceeded with the filing of this 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, May 24, 2017.



María del Mar Cintrón Alvarado
Clerk