



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

IN RE: AGUIRRE SITE ECONOMIC
ANALYSIS

CASE NO.: CEPR-AP-2017-0001

SUBJECT: PREPA's motion to show cause for failure to file LNG Market Research, request for rescheduling of technical hearings from Arctas and PREPA and procedural calendar amendments.

RESOLUTION AND ORDER

On June 2, 2017, the Puerto Rico Energy Commission ("Commission") ordered the Puerto Rico Electric Power Authority ("PREPA") to show cause¹ as to why it should not be fined for failure to comply with the Commission's orders. This after the Commission granted PREPA several extensions of time to file the LNG Market Research report, which it failed to do. In such order, the Commission also requested intervenors to answer several questions in order to fill the lack of information in PREPA's proposal. On June 7, 2017, PREPA filed a motion titled *PREPA's Urgent Motion in Compliance with Order to Show Cause and Other Matters* ("Urgent Motion") addressing several issues on the instant proceeding.

I. LNG Market Research Report

In its motion, PREPA argued that they have been holding negotiations with the three (3) LNG suppliers, "to obtain authorization to disclose to the Commission the pertaining data",² but that such efforts have taken longer than expected. PREPA stated that some parties are willing to discuss with the Commission furnishing the requested information directly to the Commission under the corresponding confidential treatment procedures. Finally, PREPA requested an additional extension of time, until June 23th, 2017, to submit the LNG Market Research report.

PREPA also argued that the Commission should not fine PREPA for not complying with the Commission's orders, since they "cannot compel the use or disclosure of information from third parties that are (sic) not under its control or possession and much less over their internal rules and regulations regarding trade secrets, proprietary or confidential information."³ PREPA added that "the LNG quote information has not been

¹ The Commission ordered PREPA to show cause on or before June 7, 2017.

² PREPA's Urgent Motion in Compliance with Order to Show Cause and Other Matters, June 7, 2017, at 1, ¶ 3.

³ *Id.* at 2, ¶ 5.

submitted by PREPA as it is proprietarily information of third parties not subject to the control and/or supervision of this illustrious forum nor PREPA".⁴ Nevertheless, in response to Commission's ROI CEPR-PREPA-03-02, PREPA stated that "[t]he structure of the price used for LNG at Aguirre in this analysis **is based on PREPA's LNG market research.**"⁵ Therefore, even though PREPA now argues that the quotes related to the LNG Market Research report are "not under its control or possession", PREPA itself stated that its Aguirre Site Analysis is based on PREPA's LNG market research. As we discuss below, it is not clear if the market research referenced in the response to Commission's ROI CEPR-PREPA-03-02, is the same as the LNG Market Research referenced in PREPA's Urgent Motion.

As we stated before, PREPA is required to file the requested information with the Commission. PREPA cannot deny the Commission, subject to limited exceptions, access to information relevant to its statutory duties and responsibilities simply because it deems such information to be confidential. Rather, PREPA is required by statute to provide the information to the Commission and seek the appropriate treatment to prevent its disclosure to third parties. This conclusion is based and supported by long-standing principles, as discussed below.

Administrative agencies have the authority to request information from the entities or people subject to its jurisdiction.⁶ Every person or entity to which information is requested must comply with the agency's request or challenge it. Nevertheless, the challenge can only be based on an argument that the requirement of information is unreasonable or exceeds the authority of the agency because it has no relation to the area of interests contemplated in the law or laws in question.⁷

Article 6.3 of Act 57-2014⁸ empowers the Commission to request and collect all relevant information necessary for the proper performance of its powers and duties.⁹ "[F]or an administrative agency to ensure compliance with its statutes or organic laws, it is imperative to obtain information."¹⁰ The Commission has wide-ranging authority to request documents and information it needs to carry out its regulatory duties, which plainly encompasses the power to order the production of third party contracts and information,

⁴ *Id.* at 3, ¶ 11.

⁵ See PREPA's response to Commission's Third Request for Information PREPA-03-02.

⁶ Comisionado de Seguros de Puerto Rico v. John Bradley, 98 D.P.R. 21 (1969).

⁷ Section 6.2 of the Uniform Administrative Procedure Act, 3 L.P.R.A. §2192.

⁸ Puerto Rico Energy Transformation and RELIEF Act, as amended.

⁹ Under the Puerto Rico Uniform Administrative Procedure Act, agencies have the power to request information from people under their jurisdiction, under the law they administer and within the interests stated in the law.

¹⁰ Cooperativa de Ahorro y Crédito Sabaneña v. COSSEC, KLAN200801551 (October 30, 2009).

including the referenced market research. Such power includes the ability to request information that PREPA might deem confidential. PREPA is compelled by law to comply with the Commission's orders and provide the requested information.

The Puerto Rico Supreme Court has been clear in defining the extension of the power an administrative agency has to investigate and request documents. As previously stated, administrative agencies have ample powers to request information and investigate the entities it regulates.¹¹ The agency may request any information that is reasonably pertinent to its jurisdiction, including documents that belong to third parties.¹² To that end, the Puerto Rico Supreme Court has expressed:

In investigations conducted by public entities the fact that certain papers belong to a third party does not place them outside the scope of the investigation validly done within the scope of the authority conferred by statute to the administrative investigating body. From the foregoing, it is clear that if a third party cannot oppose disclosing data that is within the scope of the investigative power of the public body (because it is related to the matter or subject matter over which the agency has jurisdiction), less can a person or an entity oppose [such authority] [...].¹³

PREPA's sole argument for withholding the LNG Market Research report is that the information contained in such report is confidential and proprietary of its suppliers and, as such, PREPA was seeking approval from such third parties in order to provide the information to the Commission. This argument is unpersuasive. First, because the Commission has adopted strict confidentiality rules aimed at preventing the disclosure of confidential or sensitive information, which are consistent with applicable legal provisions and jurisprudence.¹⁴ Secondly, as previously stated, the Commission has broad statutory authority to require PREPA to provide any type of information relevant to matters under the Commission's jurisdiction, including information deemed as confidential by PREPA, or any other third party.

The Commission's Resolution CEPR-MI-2016-0009, as amended, issued on August 31, 2016, establishes the procedure for any party to request confidentiality treatment for information that it deems confidential. The safeguards established by Resolution CEPR-MI-

¹¹ Comisionado de Seguros de Puerto Rico, *supra*, at 31.

¹² *Id.*

¹³ *Id.* at 33. (Translation provided) See also N.L.R.B. v. United Aircraft Corp., 200 F. Supp. 48, 51 (1961); "A person or corporation being investigated cannot be placed in a position of giving only such information as he or it may choose to offer. Usually it is the information which is not offered, that forms the basis for scrutiny when illegal practices are in question."

¹⁴ The Commission's rules on confidentiality were used by PREPA to seek protective measures of confidential information it submitted during the review of PREPA's rate review application (See Case No. CEPR-AP-2015-0001).

2016-0009 are designed to provide the parties with the necessary protection for confidential and proprietary information, at the same time that the Commission is able to analyze and evaluate crucial data to complete its regulatory obligations. PREPA's objections, founded on concerns over the confidential nature of the information sought by the Commission, are baseless and have no legal validity.

In light of the aforementioned, and of the Commission's unquestionable authority to require PREPA to provide information relevant to the Commission's duties and responsibilities, PREPA is hereby **ORDERED** to immediately file the required LNG Market Research report and/or the market research referenced in PREPA's response to Commission's Third Request for Information PREPA-03-02. PREPA must file the required information with the Commission's Clerk. Pursuant to the Resolution CEPR-MI-2016-0009, the information must be provided in a sealed envelope marked as confidential (if filed in paper) or in a USB device (including the term "CONFIDENTIAL" in the corresponding file names) and, such device, also being filed within a sealed envelope marked as confidential. Along with the documents, PREPA must file a motion requesting such documents and information to be treated as confidential and detailing the nature of the information being submitted, the legal basis for the request for confidential treatment and the scope of the treatment sought (i.e. whether such information is to be made available only to the Commission's Staff, to Commission Staff and intervenors with signed NDA, etc.). Once filed, such documents will be treated as confidential information only accessible to Commission Staff and the Commission will, afterwards, issue a resolution formally addressing the request for confidential treatment. Once the Commission issues a final determination with regards to the confidential nature of such information, PREPA will have the opportunity to request review of the Commission's determination in a court of competent jurisdiction in case it does not agree with the Commission's ruling.

Also, the Commission **ORDERS** PREPA to file, **on or before June 14, 2017**, a verified statement certifying that the LNG Market Research report ordered by the Commission in the instant proceeding, if different from the one PREPA references in its answer to the Commission's Third Request for Information PREPA-03-02, is not under its control or possession.

II. Amendments to Procedural Calendar

In its June 7, 2017 motion, PREPA requests that the Commission amends the procedural calendar of the instant proceeding. To this, PREPA argues that in addition to the compliance of the deadlines in this proceeding, which among other things include finishing filing its answers to intervenor's discovery requirements, PREPA has to comply with multiple other requirements under several procedures before this Commission.¹⁵ Likewise,

¹⁵ PREPA argues that within the same timeframe that they need to appear before the Commission to the technical hearing and file rebuttal testimony and its final substantive and legal brief, it has to comply with multiple deadlines in the following proceedings: In Re: Integrated Resource Plan for Puerto Rico Electric Power Authority, Case No. CEPR-AP-2015-0002; In Re: Puerto Rico Electric Power Authority Rate Review, Case No.

PREPA argues that it has to observe and comply with the determinations of the Fiscal Oversight and Management Board, when approving PREPA's Fiscal Plan and with various information requests from the Department of Energy related to the finance of the Aguirre Offshore Gas Port project, all the above with limited personnel.

On the other hand, on June 8, 2017, Arctas Capital Group, LP ("Arctas") filed a motion in response to PREPA's June 7, 2017 urgent motion, in which it requested the Commission to adjust the procedural calendar in the instant proceeding to ensure that intervenors have a reasonable amount of time to comply with the Commission's deadlines in this proceeding. Arctas argues that the lack of information from PREPA has not allowed them to properly complete its analysis and adequately prepare for subsequent tasks. Arctas adds that not adjusting the remaining scheduled dates will prevent them from properly file a complete and adequate Supplemental Testimony, from being prepared to request and cross examine PREPA's witnesses and from preparing the final substantive and legal brief.

Also, on June 7, 2017, Enlace Latino de Acción Climática, El Puente de Williamsburg, Inc. and Comité de Diálogo Ambiental, Inc. ("ELAC") filed a motion requesting the Commission to order PREPA to produce all documents related to its requirement of information and to answer all missing questions. ELAC argues that, to this date, PREPA has not finished answering the referred requirement of information and as a consequence, it is affecting their right to discovery and is obstructing their adequate participation in the instant proceeding.

After considering all parties' arguments, the Commission has determined to **GRANT** Arctas and PREPA's petition to amend the procedural calendar. The Commission modifies the Procedural Calendar in the instant proceeding as follows:

Responses to remaining discovery questions – PREPA must file all responses to outstanding discovery questions on or before June 16, 2017.

Supplemental Testimony on parties' analysis – Any party may file supplemental testimony on any party's analysis on or before June 21, 2017.

Reply to Testimony on parties' analysis – Any party who received comments on their proposal by PREPA or other intervenors, may file responses to such comments on or before June 23, 2017.

Technical Hearing – The Commission will hold a Technical Hearing in which parties will have the opportunity to participate in a session of questions about the testimonies filed as part of the economic analysis presented. The hearing will be held from **June 26, 2017 to June 28, 2017** at the Commission's Hearing Room, Seaborne Building, 268 Ave. Muñoz Rivera, 8th Floor. The Commission will provide at a later date all information regarding the

CEPR-AP-2015-0001; In Re: The Performance of the Puerto Rico Electric Power Authority, Case No. CEPR-IN-2016-0002; In Re: Cost Allocation, Rate Design, and Related Issues for the Puerto Rico Electric Power Authority, Case No. CEPR-IN-2017-0001; other requirements set forth in Act 57-2014.



format of the technical hearing, including the applicable rules of behavior and the order of the proceedings.

Final Substantive and Legal Briefs – PREPA and Intervenors may file their substantive and legal briefs **on or before July 10, 2017**.

III. PREPA's Witnesses

On June 6, 2017, the Commission's Staff notified PREPA via email that it should inform the Commission the persons that will be appearing as witnesses to the technical hearings on the instant proceeding, by end of business day on June 7, 2017. On June 7, 2017, the Commission issued several citations to PREPA's employees who had answered discovery questions or filed testimony in this proceeding. On that same date, PREPA notified through a letter to the Commission's Staff that several of the employees that had been cited to appear before the Commission, would not be available, because of vacation, medical reasons or retirement. PREPA requested the Commission an extension of time to evaluate the persons that will be available for the hearings in substitution of the employees not available to appear.

Also on the same day, the Commission's Staff notified PREPA that after careful consideration of PREPA's petition, the Commission had determined to grant PREPA's request for extension of time to inform the names of the witnesses that will be available for cross examination during the technical hearing. The Commission clarified that the citations issued were in addition to any other witness that PREPA wanted to produce, considering that these were the employees that filed answers to the Commission's Requirements of Information throughout this proceeding. Nevertheless, and in consideration of PREPA's arguments, the Commission excused some of the employees that will not be available for the hearing dates, provided PREPA produces a witness that (i) assumes that person's testimony and/or discovery answers and, (ii) is able to answer questions related to the subject matter of such answers and/or testimony.

The Commission reiterates its ruling on the above matter. The Commission reminds PREPA that the purpose of the hearing is to have a fluent and informed discussion of PREPA's proposal and therefore it is crucial that PREPA is able to produce personnel that are knowledgeable of the subjects. Having modified the procedural calendar, the Commission **ORDERS** PREPA's to notify the witnesses that will be assuming any response during the discovery process or the testimony provided by Mr. Alvin Román, Mrs. Maribel Franco and Mr. Rafael Marrero, and any other employee that retires from PREPA. PREPA must also notify any other witnesses that will be appearing at the technical hearings. All notifications should be made **on or before June 14, 2017**. Failure to provide the name of the person that would assume the retired employee's answers to the discovery and/or testimony will result on such information being stricken from the record.

IV. Other proceedings before the Commission

On its June 7, 2017 motion PREPA argued that it had multiple deadlines pending before June 30, 2017 on different procedures before the Commission. PREPA argues that the amount of work and the limited personnel available has affected their performance on the instant proceeding and other proceedings before the Commission. The Commission recognizes the amount of work PREPA must comply with during the timeframe before June 30, 2017. In order to guarantee the successful completion of the instant proceeding, the Commission will adjust the compliance dates for the listed proceedings as follows:¹⁶

CASE	PENDING INFORMATION	DEADLINE	NEW DEADLINE
CEPR-IN-2016-0002 Performance of the Puerto Rico Electric Power Authority	Answers to ROI 4	June 14, 2017	July 14, 2017
	Additional Comments Interested Parties	June 15, 2017	July 15, 2017
CEPR-IN-2017-0001 Investigation on Cost Allocation, Rate Design, and Related Issues	Answers to ROI 1	May 31, 2017	July 15, 2017
CEPR-AP-2015-0002 Integrated Resource Plan	Plan for the evaluation, siting, permitting and public procurement process for a large dual-fuel capable CC unit at Aguirre. ¹⁷	June 30, 2017	July 30, 2017
	Aguirre CC units 1 and 2 reports on repowering. ¹⁸	June 30, 2017	July 30, 2017
	Plan with description of the necessary processes and resources to collect the following data: (i) hourly consumption per customer class; (ii) monthly peak demand per customer class; and (iii) customer class affected by feeder interruptions. ¹⁹	June 30, 2017	July 30, 2017

¹⁶ All pending deadlines that are not expressly mentioned in this Resolution and Order are still in full effect.


¹⁷ Resolution on the Verified Motion for Reconsideration of the Puerto Rico Electric Power Authority, CEPR-AP-2015-0002, March 21, 2017, ¶ 32.

¹⁸ Resolution, Clarification of some requirements of the Integrated Resource Plan Final Order, CEPR-AP-2015-0002, April 5, 2017, at 2.

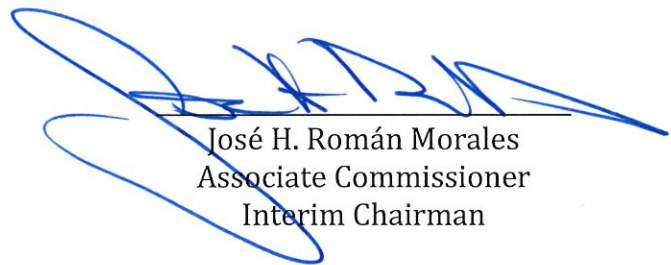
¹⁹ *Id.* at 3.

CASE	PENDING INFORMATION	DEADLINE	NEW DEADLINE
	Description of the negotiation efforts it has undertaken to date regarding renewable energy contract's status. ²⁰	June 30, 2017	July 30, 2017
	Review renewable energy interconnection capabilities and limits. ²¹	June 30, 2017	July 30, 2017

Be it notified and published.



 Ángel R. Rivera de la Cruz
 Associate Commissioner



 José H. Román Morales
 Associate Commissioner
 Interim Chairman

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on June 9, 2017 and on this date a copy of this Resolution and Order regarding Case No. CEPR-AP-2017-0001 was notified by electronic mail to the following: j-morales@aepr.com, n-vazquez@aepr.com, c-aquino@aepr.com, n-ayala@aepr.com, equinones@qaclaw.com, vcandelario@qaclaw.com, gmartinez@qaclaw.com, pbarcelo@estrellallc.com, lmoreira@estrellallc.com, serdar.tufekci@na.engie.com, richard.houston@na.engie.com, jperez@oipc.pr.gov, codiot@oipc.pr.gov, rstgo2@gmail.com, ladrian@gasnaturalfenosa.com, francisco.rullan@aae.pr.gov, wilma.lopez@aae.pr.gov, tonytorres2366@gmail.com, sierra@arctas.com, molinilawoffices@gmail.com, ccf@tcmrslaw.com, carlos.reyes@ecoelectrica.com, cfl@mcvpr.com, hmc@mcvpr.com, mgrpcorp@gmail.com, victorluisgonzalez@yahoo.com, epo@amgprlaw.com, acasellas@amgprlaw.com, agraitfe@agraitlawpr.com, and lfortuno@steptoe.com. I also certify that today, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

²⁰ *Id.* at 4. The Commission specified the information that needs to be included in the report.

²¹ Resolution on the Verified Motion for Reconsideration of the Puerto Rico Electric Power Authority, CEPR-AP-2015-0002, March 21, 2017, ¶ 103.



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For the record, I sign this in San Juan, Puerto Rico, today, June 9, 2017.



María del Mar Cintrón Alvarado
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