

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

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

CASE NO.: CEPR-AP-2015-0001

**SUBJECT: Resolution on PREPA's Motion
to Extend Rate Implementation Deadline**

RESOLUTION AND ORDER

I. Introduction and Background

On May 27, 2016, the Puerto Rico Electric Power Authority ("PREPA") filed before the Puerto Rico Energy Commission ("Commission") its Petition for Approval of Permanent Rates and Temporary Rates ("Petition"). Along with its petition for a permanent rate review, PREPA also requested a provisional rate increase pursuant to subsection (e) of Section 6A of Act 83¹ and Section 6.25(d) of Act 57-2014.²

On June 27, 2016, the Commission issued a Resolution approving PREPA's request for a provisional rate and authorized PREPA to implement a uniform rate increase of 1.299 ¢/kWh.

On January 10, 2017, the Commission issued its Final Resolution and Order ("January 10 Final Order") through which it approved PREPA's revenue requirement for fiscal year 2017 and required PREPA to submit certain information, including final rates per customer class, through a compliance filing to be submitted no later than February 15, 2017.

On January 20, 2017, PREPA filed a motion requesting clarification of certain matters included in the Final Order and in the compliance filing requirements. The Commission addressed those issues through a Final Resolution issued on March 8, 2017 ("March 8 Final Resolution"). The March 8 Final Resolution required PREPA to submit its compliance filing no later than March 28, 2017.

On March 27, 2017, PREPA filed a motion requesting a 10-day extension, until April 7, 2017, to present the compliance filing required by the March 8 Final Resolution. PREPA filed the required compliance filing on April 25, 2017 ("April 25 Compliance Filing").

¹ Act No. 83 of May 2, 1941, as amended, known as The Puerto Rico Electric Power Authority Enabling Act.

² The Puerto Rico Energy Transformation and RELIEF Act, as amended.

On May 10, 2017, the Commission issued a Resolution and Order (“May 10 Resolution”) accepting PREPA’s April 25 Compliance Filing and authorized PREPA to implement—with the exception of the Public Lighting General tariff, the Payment to Qualifying Facilities Rider and the Cable TV Power Supplies tariff—the Commission approved permanent rate, subject to several conditions, requirements and notices. The Commission required PREPA to submit a revised compliance filing addressing the directives established by the Commission on its May 10 Resolution.

On May 24, 2017, PREPA filed its second compliance filing (“May 24 Compliance Filing”). On May 31, 2017, the Commission accepted PREPA’s May 24 Compliance Filing and authorized PREPA to implement the remaining tariffs and riders (“May 31 Resolution”). Through the May 31 Resolution, the Commission ordered PREPA to implement the Commission approved permanent rate, as described in the April 25 Compliance Filing and the May 24 Compliance Filing, no later than July 1, 2017.

On June 16, 2017, PREPA filed a Motion requesting an extension of time to implement the permanent rate approved by the Commission. PREPA argued that the implementation of the permanent rate, along with the approved rate structure,

requires significant work on PREPA’s Information Technology (“IT”) systems, including: 1) programming the rate structure changes in the billing system [...]; 2) programming the system so that internal financial and other reports also reflect the rate change; 3) training of key personnel and departments [...]; and 4) potentially installing hardware upgrades that would help ensure a successful rate structure update.³

PREPA argued that it lacks the internal resources to undertake the implementation of the permanent rate and that such tasks require renewing PREPA’s contracts with Oracle Corporation.⁴

PREPA further argues that other events have delayed PREPA’s ability to timely implement the permanent rate, including: (i) that final approval of PREPA’s rates did not occur until May 31, 2017;⁵ (ii) that the Puerto Rico Office of Management and Budget (“OGP”, for its Spanish acronym) delayed the approval of Oracle Corporation’s contract renewal by several months;⁶ (iii) that PREPA is experiencing personnel shortages in Information Technology and Customer Service Directorates, among

³ See PREPA’s Motion to Extend Rate Implementation Deadline, at ¶9.

⁴ *Id.*

⁵ *Id.* at ¶11(a).

⁶ *Id.* at ¶11(b).

others;⁷ and (iv) that, in addition to the Commission's requirements, PREPA's personnel is simultaneously working on requests made by the Financial Oversight and Management Board of Puerto Rico ("FOMB") and the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF", for its Spanish acronym).⁸

Accordingly, PREPA requests the Commission to: (i) extend the permanent rate implementation deadline until October 1, 2017;⁹ (ii) authorize PREPA to continue charging the provisional rate approved by the Commission on June 24, 2016 until the permanent rate is finally implemented;¹⁰ (iii) extend the date in which PREPA shall begin to credit customers for the difference between the provisional rate and the permanent rate;¹¹ and (iv) extend the deadline for submitting a draft of the language containing the explanation of the permanent rate increase.¹²

II. Applicable Legal Provisions

Subsection (e) of Section 6A of Act 83 grants the Commission authority to, on its own initiative, or upon request from PREPA, make "a preliminary evaluation to determine whether a [provisional] rate should be established." Section 6A(e) further provides that, if the Commission determines to establish a provisional rate,

said [provisional] rate shall remain in effect during the period of time needed by the Commission to evaluate the rate modification request proposed by [PREPA] and issue a final order thereon, and up to the date on which the new bill is implemented, which shall not exceed sixty (60) days after the approval of the rate, unless the Commission extends such term for just cause.

With regards to the implementation of the permanent rate, subsection (f) of Section 6A of Act 83 provides that, if the Commission determines to approve a new permanent rate, such new permanent rate "shall take (sic) effect sixty (60) days after the Commission [approves the rate], unless the Commission determines, at the request of [PREPA], that it shall take (sic) effect before sixty (60) days."

⁷ *Id.* at ¶11(c).

⁸ *Id.* at ¶11(d).

⁹ *Id.* at ¶13.

¹⁰ *Id.* at ¶14.

¹¹ *Id.* at ¶16.

¹² *Id.* at ¶17.

Finally, with regards to the reconciliation of a provisional rate with the permanent rate, said subsection (f) of Section 6A of Act 83 provides that the Commission shall order PREPA to “adjust customer’s bill to credit or charge any difference between the [provisional] rate established by the Commission and the new rate approved.” On its January 10 Final Order, the Commission directed PREPA to credit customers for the difference between the provisional rate and the permanent rate.¹³ The Commission determined that the reconciliation would take place “starting with the first month the permanent rate [is] in effect [and would last] for the same number of months the provisional rate was in effect.”¹⁴

While Section 6.25 of Act 57-2014 provides similar language as the one included in Section 6A of Act 83, subsection (e) of Section 6.25 of Act 57-2014 grants the Commission additional discretion to extend the implementation date of an approved permanent rate beyond the sixty (60) day term contemplated therein, and in subsection (f) of Section 6A of Act 83.¹⁵

III. Commission Determinations

a. Extending the permanent rate implementation date and the effectiveness of the provisional rate

Subsection (e) of Section 6.25 of Act 57-2014 authorizes the Commission to, upon request from PREPA, extend the term for implementing an approved permanent rate beyond the sixty (60) day term contemplated therein. However, Section 6.25 does not expressly require PREPA to show just cause in order to request, and the Commission grant, an extension beyond the sixty (60) day term for implementing a permanent rate.

On the other hand, subsection (e) of Section 6A of Act 83 requires PREPA to show just cause to extend the period of time a provisional rate would remain in effect after a permanent rate is approved. Subsection (e) of Section 6A requires the provisional rate to remain in effect during the period of time required for the Commission to review PREPA’s proposed new permanent rate, and the period of time required after Commission approval for PREPA to implement such new permanent rate. To that effect, subsection (e) of Section 6A establishes that a provisional rate authorized under this section, shall remain in effect until the new permanent rate is implemented, provided that such implementation period shall not exceed sixty (60) days, except when extended by the Commission for just cause.

¹³ See Commission’s January 10 Final Order, ¶¶297 – 305.

¹⁴ *Id.* at ¶299.

¹⁵ Subsection (e) of Section 6.25 of Act 57-2014 provides that “[t]he newly approved rate shall take effect sixty (60) days after the effective date of the order. The Commission may extend or reduce such term at the request of [PREPA] or requesting certified company.”

Both, the sixty (60) days referenced in subsection (e) of Section 6A, as well as the term just cause included therein, refer to the period of time available for PREPA to implement a new permanent rate after such rate has been approved by the Commission. A PREPA rate review proceeding before the Commission is governed, jointly, by the provisions of Section 6A of Act 83 and Section 6.25 of Act 57-2014. To act within its statutory authority, the Commission must apply both provisions harmoniously in order to reach a result consistent with the legislative intent.

Consequently, in exercising its authority to extend the term for implementing a new permanent rate, the Commission must ensure the existence of just cause to support PREPA's request for such an extension. Similarly, because both Section 6A of Act 83 and Section 6.25 of Act 57-2014 require the provisional rate to remain in effect until the new permanent rate is implemented, the Commission has no discretion to extend the date for implementing a new permanent rate without extending the effectiveness of a provisional rate.

Just cause is defined as “[t]hat cause separate from a legal cause that is based on reasonable grounds” and requires the existence of “an honest reason based on good faith.”¹⁶ In support of its request, PREPA cites several factors which have constrained its ability to implement the approved permanent rate within the term established by the Commission. Among these factors, PREPA cites personnel shortages, delays in receiving approval from relevant government agencies regarding outside contracting and increasing workload related to simultaneous requirements from the Commission, the FOMB and AAFAF.

PREPA's workforce difficulties are publicly known and were addressed by the Commission in its January 10 Final Order.¹⁷ Additionally, while the Commission cannot verify PREPA's alleged delays in receiving approval from OGP for contracting the necessary IT services nor the actual amount of information required by the FOMB and AAFAF to be provided by PREPA, PREPA did include along with its request an affidavit signed by Efran Paredes Maisonet, Acting Director of Planning and Environmental Protection, attesting, under penalty of perjury, to the truthfulness of such allegations.¹⁸

¹⁶ See Glosario de términos y de conceptos jurídicos o relativos al poder judicial, Oficina de Administración de los Tribunales y la Academia Judicial Puertorriqueña, 2015, pág. 73 (available at <http://www.ramajudicial.pr/orientacion/glosario.htm>) (“Aquella causa ajena a la causa legal que está basada en motivos razonables. Para alegar justa causa debe existir una razón honesta y regulada por buena fe”). See, also, *Rodríguez v. Administración*, 177 D.P.R. 714 (726) (2009) citing Ignacio Rivera García, *Diccionario de términos jurídicos*, Lexis Publishing, San Juan, 2000, pág. 142.

¹⁷ See Commission Final Order, at ¶136.

¹⁸ While the actual effect on PREPA cannot be verified by the Commission, the requirement of receiving approval from OGP for professional service contracts is required by Section 18 of Act 3-2017 and by OGP's Circular Letter No. 141-17.

The Commission finds no basis to conclude that PREPA's request lacks good faith or is based on dishonesty or unreasonable grounds. As such, the Commission finds that PREPA has shown just cause in support of its requests for an extension of the term for implementing the approved permanent rate.

b. Modifying the date in which the reconciliation of the provisional rate with the permanent rate shall enter into effect.

PREPA argues that the "provisional rate value to be utilized in the reconciliation will not be known on the first day that new rates go into effect and, thus, the reconciliation cannot mathematically commence immediately."¹⁹ PREPA further argues that it will "require 2-3 months after the implementation of the final rates [to] determine the exact amount of any potential refund."²⁰ Accordingly, PREPA requests the Commission to suspend the date for the reconciliation to commence and leave such date to PREPA's discretion, whom shall propose to conduct such reconciliation "either in a separate process or in conjunction with the implementation of an annually updated rate."²¹

The provisional rate approved by the Commission was based on a PREPA projected revenue deficiency of \$222.256 million.²² Accordingly, the Commission authorized PREPA to implement a uniform rate increase of 1.299 ¢/kWh. As a result of its evaluation of PREPA's Petition, the Commission found that PREPA's *actual* revenue deficiency for fiscal year 2017 was of approximately \$171 million,²³ warranting an *actual* rate increase *lower* than the increase authorized through the provisional rate. As such, the approved provisional rate had the effect of allowing PREPA to collect revenues in excess of its projected expenses, meaning its customers were paying higher electricity rates than actually required.²⁴

While we recognize the practical difficulties in simultaneously implementing the permanent rate and the provisional rate reconciliation, the Commission is not satisfied with PREPA's requests to: (i) delay the application of a customer credit to recognize the difference between the provisional rate currently paid and the *lower* permanent rate, and (ii) grant PREPA unilateral discretion to determine the date in which the reconciliation would take place (all while PREPA continues to charge its customers a

¹⁹ See PREPA Motion to Extend Rate Implementation Deadline, at ¶16.

²⁰ *Id.*

²¹ *Id.*

²² See Commission Final Order at ¶297.

²³ See Commission March 8 Final Resolution, Part II.A.

²⁴ The Commission determined that the main reason for the difference between PREPA's projected revenue deficiency and the actual revenue deficiency determined by the Commission was a mathematical error made by PREPA, which resulted in the double-counting of certain costs.

higher rate than necessary). PREPA's request would negate customers a much-needed relief by denying them the benefit of a reduction in the rates they pay for their electric service. The fact that whatever excess currently paid would be eventually credited to customers does not exclude the fact that customers have been paying more than what is *just and reasonable* for nearly a year.

In light of the aforementioned, the Commission proposes the following alternative which would address PREPA's concerns regarding the simultaneous implementation of the permanent rate and the provisional rate reconciliation, while, at the same time, grant customers the benefit of a reduction in electric service rates.

The Commission urges PREPA to consider filing a request for the Commission to authorize a modification of the provisional rate so that it is consistent with the \$171,786,000 base revenue deficiency identified by the Commission in its March 8 Final Resolution (0.9948 ¢/kWh).²⁵ The modified provisional rate would enter into effect on August 1, 2017. In between the time in which the modified provisional rate enters into effect and the time the permanent rate is finally implemented, PREPA would determine the exact amount to be reconciled, based on the difference accumulated between the original provisional rate (1.299 ¢/kWh) and the modified provisional rate (0.9948 ¢/kWh) and the date on which the original provisional rate entered into effect (August 1, 2016) and the date on which the modified provisional rate enters into effect (August 1, 2017). Any adjustment required to reconcile any difference accrued between the modified provisional rate and the permanent rate once implemented may be addressed during the annual rate update proceeding, given the fact that implementing the permanent rate requires certain changes to the rate structure not contemplated in the provisional rate.

Should PREPA determine not to file a request as described above, it shall file, **no later than August 15, 2017**, a detailed work plan with relevant steps and deadlines for calculating the difference between the provisional rate and the permanent rate and implementing the required reconciliation. The required work plan shall identify the key personnel (internal or external) who shall be responsible for each of the tasks required for implementing the provisional rate reconciliation.

In light of the aforementioned, the Commission **RESOLVES** the following:


1. The Commission **GRANTS** PREPA until October 1, 2017 to implement the permanent rate approved by the Commission through its January 10, 2017 Final Order, as modified by the March 8 Final Resolution.

²⁵ The modified provisional rate would be 0.9948 ¢/kWh, based on the \$171,786,000 deficiency and the estimated total energy of 17,268,325,180 kWh, as presented in Exhibit D of PREPA's Compliance Filing of May 19, 2017.


2. The Commission **GRANTS** PREPA's request for the provisional rate to remain in effect until the permanent rate approved by the Commission is implemented and enters into effect.
3. The Commission urges PREPA to request authorization to modify the provisional rate as described herein and for such modification to enter into effect no later than August 1, 2017.
4. Should PREPA determine not to seek authorization to modify the provisional rate, the Commission **ORDERS** PREPA to provide, **no later than August 15, 2017**, a detailed work plan with relevant steps and deadlines for calculating the difference between the provisional rate and the permanent rate and implementing the required reconciliation and the identity of key personnel (internal or external) responsible for each of the tasks required for implementing the provisional rate reconciliation.
5. The Commission **GRANTS** PREPA's requests for an extension of the deadline for submitting a draft of the language containing the explanation of the permanent rate increase. **PREPA shall submit such draft language no later than forty five (45) days prior to the date in which the permanent rate shall enter into effect.**

For the benefit of all parties involved, the Commission publishes this Resolution and Order in both the Spanish and English languages. Should any discrepancy arise between these two versions, the provisions of the English version shall prevail.

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 23, 2017 and on this date a copy of this Resolution and Order regarding Case No. CEPR-AP-2015-0001 was notified by electronic mail to the following: j-morales@aepr.com, n-vazquez@aepr.com, n-ayala@aepr.com, c-aquino@aepr.com, codiot@oipc.pr.gov, jperez@oipc.pr.gov, attystgo@yahoo.com, maribel.cruz@acueductospr.com, pga@caribe.net, jfeliciano@constructorespr.net, nydinmarie.watlington@cemex.com, eirizarry@ccdlawpr.com, epenergypr@gmail.com, aconer.pr@gmail.com, glenn.rippie@r3law.com, john.ratnaswamy@r3law.com, michael.guerra@r3law.com, pnieves@vnblegal.com, abogados@fuerteslaw.com, jorgehernandez@escopr.net, ecandelaria@camarapr.net, agraitfe@agraitlawpr.com, francisco.rullan@aae.pr.gov, mgrpcorp@gmail.com,

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For the record, I sign this in San Juan, Puerto Rico, today, June 23, 2017.



María del Mar Cintrón Alvarado
Clerk