

**GOVERNMENT OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION**



**IN RE:** PUERTO RICO ELECTRIC POWER  
AUTHORITY'S FISCAL PLAN

**CASE NO.:** CEPR-MI-2018-0002

**SUBJECT:** Order requiring PREPA to  
submit its proposed 2018 Fiscal Plan

**RESOLUTION AND ORDER**

**I. Introduction and Background**

On January 10, 2018, the Federal Oversight and Management Board for Puerto Rico ("FOMB") directed the Government of Puerto Rico to submit to the FOMB a proposed Fiscal Plan for the Puerto Rico Electric Power Authority ("PREPA") by January 24, 2018.<sup>1</sup> As previously outlined by the FOMB, PREPA's proposed Fiscal Plan would need to include "a revised capex plan, transformational operational targets and the governance and regulatory framework to facilitate federal recovery funding and private sector investment."<sup>2</sup>

The FOMB identified a set of principles which "should be incorporated in the development of PREPA's Fiscal Plan."<sup>3</sup> These principles include: low-cost reliable power, energy resilience, new technology development, new demand environment, revised capital investment program, operational excellence, financial sustainability, regulatory framework, governance, private investment and partnerships, robust independent regulator and federal funding for reconstruction.

**II. Commission Authority to Require Submission of PREPA Fiscal Plan**

The Puerto Rico Energy Commission ("Commission") is the entity "in charge of regulating, overseeing, and ensuring compliance with the public policy on energy of the Commonwealth of Puerto Rico, [...] evaluate [PREPA's plans] regarding its obligation to efficiently generate electric power, various operational issues, and the integration of renewable energy, among other mandates, [...] guarantee the orderly and integrated development of our electrical system, thus ensuring the reliability, efficiency, and transparency thereof, and the provision of electric power services at reasonable prices, [and]

---

<sup>1</sup> See Letter to Governor Ricardo Rosselló with Official Notification of New Date for the Delivery of the Revised Fiscal Plan of January 10, 2018.

<sup>2</sup> See Letter to Governor re PREPA Transformation Plan of dated December 12, 2018.

<sup>3</sup> *Id.*

oversee all types of operations, processes, and mandates pertaining to the efficiency of the energy sector of the Island.<sup>4</sup>

Article 6.3 of Act 57-2014 directs and authorizes the Commission to, among other:

1. "establish by regulations the public policy rules regarding electric power service companies, as well as any transaction, action or omission in connection with the electric power grid and the electric power infrastructure of Puerto Rico, and implement such public policy rules." Article 6.3(b).
2. "establish and implement regulations and the necessary regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of electricity rates of Puerto Rico." Article 6.3(c).
3. "oversee the quality and reliability of the electric power services provided by PREPA and any other electric power company certified in Puerto Rico." Article 6.3(d).
4. "attain [...] the goal of reducing and stabilizing energy costs permanently, and controlling volatility in the price of electricity in Puerto Rico [and] require that the prices included in any power purchase agreement, wheeling rate, and interconnection charge are fair and reasonable." Article 6.3(f).
5. "review 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." Article 6.3(h).
6. "guarantee that PREPA meets its obligations to bondholders." Article 6.3(m).
7. "establish reliability standards for the electric power grid." Article 6.3(v).
8. "review and approve the energy reserve margin established by PREPA and ensure compliance therewith." Article 6.3(aa).

With regards to requiring the productions of documents and information, Article 6.3(nn) empowers the Commission to "require the production and inspection of records, inventories, documents, and physical facilities of any juridical persons or entity subject to the jurisdiction of the Energy Commission or the Commonwealth Energy Public Policy Office."

---

<sup>4</sup> Statement of Motives of Act 57-2014, as amended, knowns as the Puerto Rico Energy Transformation and RELIEF Act, at ¶¶18 – 20.



The Commission's legal and substantive jurisdiction over PREPA remains unchanged by Congress's enactment of PROMESA. This order is not preempted by either PROMESA or any FOMB directive, as it is not in conflict with any provision included in PROMESA or any authority granted to the FOMB.<sup>5</sup>

### III. Submission of PREPA Fiscal Plan

To comply with the principles established by the FOMB with regards to the content of the proposed Fiscal Plan, as well as with the requirements set forth in PROMESA Section 201, which require a Fiscal Plan to be based on applicable Commonwealth law, the PREPA Fiscal Plan would need to include and identify proposed actions that fall within the powers and duties of the Commission under Act 57-2014.

Accordingly, to ensure full compliance of applicable Commonwealth law, the Commission **ORDERS** PREPA to submit to the Commission the proposed Fiscal Plan, and all supporting exhibits and work-papers, at the time it submits those materials to the FOMB. PREPA's submission to the Commission shall also list the key executives (and their positions) and consultants responsible for designing and implementing each element of the Fiscal Plan. Such individuals shall be prepared to answer the Commission's questions under oath, in response to written questions and/or at a public hearing.

Should PREPA fail to comply with this Resolution and Order, the Commission will seek specific enforcement through judicial order, as provided in Article 6.3(II) of Act 57-2014. Moreover, if PREPA fails to provide the Commission the information it needs (including not only work-papers but responses to any subsequent questions), the Commission will have no choice but to notify the FOMB that the Commission is unable to find that the proposed Fiscal Plan is consistent with Commonwealth law. Such a notification will, under PROMESA Section 201, preclude FOMB from certifying the Fiscal Plan.

Be it notified and published.

Ángel R. Rivera de la Cruz  
Associate Commissioner

José H. Román Morales  
Associate Commissioner  
Interim Chairman

<sup>5</sup> Section 4 of signals "conflict" preemption, not "occupation-of-the-field" preemption. Because is not impossible for PREPA to comply with this Commission order and any FOMB order, there is no conflict. A detailed explanation of the non-preemptive relationship between PROMESA and the Commission's authority appears in the Commission's pleading submitted to the U.S. District Court on December 19, 2017, Docket No. 29, Adv, Proc. NO. 17-256-LTS, in Bankruptcy Case No. 17-04780-LTS.



## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on January 22, 2018 and on this date a copy of this Resolution and Order regarding the Case No. CEPR-MI-2018-0002 was notified by electronic mail to the following: n-vazquez@aeep.com, n-ayala@aeep.com and c-aquino@aeep.com. I also certify that today, January 22, 2018, 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:

### **Puerto Rico Electric Power Authority**

Attn.: Nélida Ayala Jiménez; Carlos M. Aquino Ramos;  
Nitza Vázquez Rodríguez  
P.O. Box 363928  
Correo General  
San Juan, PR 00936

For the record, I sign this in San Juan, Puerto Rico, today, January 22, 2018.

María del Mar Cintrón Alvarado  
Clerk