

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

IN RE: THE PUERTO RICO ELECTRIC
POWER AUTHORITY

REGULATION ON THE PROCEDURE
FOR THE REVISION OF INVOICES
ISSUED BY THE PUERTO RICO
ELECTRIC POWER AUTHORITY
DURING EMERGENCY SITUATIONS

CASE NO. CEPR-MI-2018-0004

SUBJECT: PREPA'S MOTION FOR
LEAVE TO FILE COMMENTS ON
EMERGENCY REGULATIONS

PUERTO RICO ELECTRIC POWER AUTHORITY'S
MOTION FOR LEAVE TO FILE COMMENTS ON EMERGENCY REGULATIONS

TO THE HONORABLE PUERTO RICO ENERGY COMMISSION:

Comes now the Puerto Rico Electric Power Authority ("PREPA") and submits to the honorable Puerto Rico Energy Commission (the "Commission") this Motion for leave to file the attached Comments on Emergency Regulations, stating as follows:

1. When a regulation is issued as an emergency regulation, the law on Procedure for Regulation permits the new regulation to become effective immediately, but requires the issuing agency to provide an opportunity for public comments during a period of no less than 30 days, and to determine whether any modifications or amendments are necessary. Act 38-2017, Sections 2.2, 2.13; *see also In re: Reglamento Sobre el Procedimiento para la Revisión de Facturas Emitidas por la Autoridad de Energía Eléctrica de Puerto Rico Durante Situaciones de Emergencia*, CEPR-MI-2018-0004, Resolution at 2 (Jan. 24, 2018).

2. The Commission recently issued emergency regulations that establish a process by which customers may dispute bills issued by PREPA in certain "emergency situations," in response to Law 3-2018 (the "Regulations"). *See id.* To the best of PREPA's knowledge, the Commission has not yet set a deadline for the submission of public comments regarding the recent Regulations.

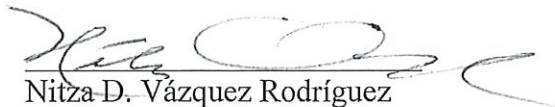
3. PREPA respectfully requests that the Commission grant PREPA leave to file the attached Comments. No party will be unfairly prejudiced by the acceptance of these comments, which represent limited, reasonable modifications to clarify the intended scope of the Regulations, mitigate their impact on PREPA's limited resources, and protect against the possibility that the billing dispute procedure might be abused. PREPA's Comments will provide the Commission information about the nature of the problem outlined in Law 3-2018, and the negative impact the Regulations may have on PREPA and its customers if not amended; information which is particularly valuable given the emergency rulemaking process. Thus, acceptance of PREPA's Comments is in the public interest.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the honorable Commission grant PREPA leave to file the attached Comments *instantly*.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 28th DAY OF FEBRUARY, 2018

PUERTO RICO ELECTRIC POWER AUTHORITY


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CERTIFICATION OF FILING AND SERVICE

I hereby certify that on February 28, 2017, I have sent the above filing to the Puerto Rico Energy Commission through its Clerk via secretaria@energia.pr.gov and mcintron@energia.pr.gov, and to the office of its General Counsel via legal@energia.pr.gov, tnegron@energia.pr.gov and afigueroa@energia.pr.gov.



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

IN RE:

CASE NO.: CEPR-MI-2018-0004

REGULATION ON THE PROCEDURE FOR
THE REVISION OF INVOICES ISSUED BY
THE PUERTO RICO ELECTRIC POWER
AUTHORITY DURING EMERGENCY
SITUATIONS

SUBJECT: PROMULGATION OF
EMERGENCY REGULATIONS

PREPA'S COMMENTS ON EMERGENCY REGULATIONS

The Puerto Rico Electric Power Authority ("PREPA") respectfully submits to the honorable Puerto Rico Energy Commission (the "Commission") comments on the Emergency Regulations regarding the procedure for revision of invoices issued by PREPA during emergency situations, issued by the Commission on January 24, 2018 (the "Regulations") in response to Law 3-2018. PREPA submits these comments in accordance with the law on Procedure for Regulation, 3 L.P.R.A. § 2133.

PREPA requests that the Commission modify the regulations in accordance with the intent of Law 3-2018. The revisions PREPA proposes will not impede the intended legislative purpose. Conversely, the unmodified Regulations threaten to seriously compromise PREPA's ability to collect revenues it is properly owed. Given PREPA's extraordinary liquidity crisis, this will interfere with PREPA's ability to operate to the detriment of the Island and all of PREPA's clients.

INTRODUCTION

On January 24, 2018, the Commission adopted Regulations establishing a process by which customers may dispute bills issued by PREPA in "emergency situations."¹ The

¹ *In re: Reglamento Sobre el Procedimiento para la Revisión de Facturas Emitidas por la Autoridad de Energía Eléctrica de Puerto Rico Durante Situaciones de Emergencia*, CEPR-MI-2018-0004, Resolution (Jan. 24, 2018) (hereinafter, the "Resolution").

Regulations define those emergency situations to include blackouts and periods of more than 24 hours of interrupted service, as well as any other event that has been declared to be an emergency by executive order of the Governor of Puerto Rico.² Existing Regulation 8863, which became effective in 2016 and has governed all bill disputes since that time, continues to govern bill disputes in non-emergency circumstances.³

The Regulations were adopted in response to Puerto Rico Law 3-2018, which was enacted on January 17, 2018. Resolution at 1. The Statement of Motives for Law 3-2018 explains that the Law is intended to address a concern that PREPA may bill clients for energy measured by PREPA meters but not generated by PREPA assets or through the efforts of PREPA, for example, in high rise buildings where a building or multi-unit generator is connected “in front of” the customers’ PREPA meters. Law 3-2018, Exposición de Motivos. The Statement of Motives points to reports that condominium complexes and other multi-family residential buildings have been forced to use electric generators to run elevators and safety features, and states that this generation may have been measured by PREPA’s meters and therefore may be billed to individual customers in the building. *Id.*

The Regulations were adopted on an emergency basis, meaning that they went into effect immediately. However, the law provides an opportunity for comment on emergency rules after they go into effect. *See* Law 38-2017, Sec. 2.13. PREPA proposes limited, reasonable modifications to clarify the intended scope of the Regulations, mitigate their impact on PREPA’s

² Sec. 1.08(11) (defining “emergency situation”); *see also* Sec. 1.04 (stating the regulations are applicable only in cases of claims that PREPA has not supplied power to the customer due to interruptions of service in emergency situations).

³ *See* Regulation 8863; *see also* Sec. 1.04 (stating that Regulation 8863 applies in all non-emergency situations).

limited resources, and protect against the possibility that the emergency procedure might be abused.

I. GENERAL COMMENTS

The Regulations do not identify the specific circumstances that Law 3-2018 was intended to address and their vague language could be construed to cover a dangerously broad range of circumstances. Law 3-2018 states explicitly that it is intended to address reports that meters in some high-rise and multi-family buildings may have registered consumption of energy that was produced by entities other than PREPA.⁴ This problem is limited to certain high-rise or multi-family buildings that are configured so that the output of backup generation flows through individual customers' meters, and the vast majority of PREPA's customers do not meet this description.

Despite the limited intent of Law 3-2018, and the limited circumstances in which the problem arises, the Regulations do not mention that the issue they are intended to address occurs in high-rise buildings with a particular configuration. Instead, the Regulations state they are for the purpose of investigating and resolving the disputes that arise in relation to invoices issued during a situation of emergency. Sec. 1.03. This exceptionally broad phrasing may lead customers to mistakenly file objections under the Regulations that should have been properly filed under Regulation 8863. PREPA must respond to all objections, even mistaken ones, or risk forfeiting the amount subject to the objection. Sec. 3.10. Thus, mistaken filings will cause PREPA to expend time and resources in evaluating and responding to misplaced objections, instead of devoting that time to restoration efforts.

⁴ Law 3-2018, Exposición de Motivos.

In addition to the Regulations' lack of specificity, they waive the requirement that customers submit a deposit as a prerequisite for an objection, and allow customers to defer their obligation to pay a disputed invoice during the investigation period. *See* Sec. 3.05; *compare* Regulation 8863 Sec. 4.05. The combination of vague language regarding the types of disputes to which the Regulation applies, and the relative ease with which customer payment obligations may be suspended under the Regulation, open the Regulation to the possibility of abuse.

It is not difficult to imagine a scenario in which PREPA receives scores of objections under the Regulations, either due to abuse of the process or mistaken belief that they apply to a broad range of customers, is unable to investigate all of the objections within the shortened timelines set forth in the Regulations, and is therefore forced to forfeit amounts rightfully owed to it. In sum, the Regulations may have a significant negative impact on PREPA's financial condition and its ability to devote resources to restoration efforts.

Moreover, the absence of language tying the Regulation to the specific circumstances addressed in Law 3-2018 may impair customers' rights. The broad language now in the Regulations may lead customers to believe that any objection related to a bill issued while restoration efforts are ongoing should be submitted under the Regulations, simply because the Regulations refer to the hurricane state of emergency. However, a customer who mistakenly files an objection under the Regulations might lose the opportunity to re-file their objection under Regulation 8863, because Regulation 8863 requires that all objections be filed within 30 days of the bill date. If, for example, the customer mistakenly files an objection under the Regulations on the 28th day after the bill date, and PREPA rejects the objection on the 32nd day, the customer will have missed the deadline to file their objection under Regulation 8863.

To eliminate the possibility for customer confusion and abuse, and the concomitant blow to PREPA's revenues and restoration efforts, the Regulations should be revised to clearly articulate the types of customers and backup generation systems to which they apply. PREPA commits to participating in a technical conference with the Commission to explain which customers and systems are within the scope of Law 3-2018.

II. SPECIFIC COMMENTS

A. Timeframes for PREPA Action

Law 3-2018 requires the Commission to adopt an expedited procedure to address the issue it identified. Law 3-2018, Art. 3. However, neither the Regulations nor the Commission Resolution that accompanied them articulates a rationale supporting the Regulations' requirement that PREPA completes many of its tasks in **half** the time it is allotted for addressing and resolving objections submitted pursuant to Regulation 8863. Specifically, the Regulations require PREPA to commence an investigation within 15 days from the receipt of a complete objection instead of 30, and complete each investigation within 30 days of initiation rather than 60. Secs. 3.10, 3.11; *see also* Regulation 8863, Sec. 4.10.

The procedures under the Regulations could still be "expedited" in accordance with Law 3-2018 if these timelines were extended somewhat, and extended timelines would reduce the financial and man-power burden on PREPA.

B. Deposit Waiver

Regulation 8863, which governs non-emergency disputes regarding bills, requires that customers make a deposit equal to the average of the last six months of billed service, as a prerequisite for initiating an investigation. Regulation 8863, Sec. 4.05. PREPA believes the deposit requirement is intended to discourage unsupported objections, since a properly-submitted

objection defers the customer's obligation to pay the disputed bill. *See* Regulation 8863, Sec. 5.02. However, the Regulations governing emergency situations do not require a deposit as a prerequisite to an investigation regarding a disputed bill. Sec. 3.05.

Law 3-2018 does not mandate that objections within its scope should be made without a deposit, and the Commission Resolution accompanying the Regulations does not explain why a deposit is not appropriate in this circumstance.

The lack of a deposit requirement under the Regulations may incentivize unsupported requests for investigations. PREPA must take action to respond to each objection, even those that are unsupported, meaning that even incomplete or erroneous objections will consume PREPA's limited resources. In order to minimize the impact of such investigations on PREPA's revenues, the Commission should modify the Regulations to require deposits equal to those required by Regulation 8863. *See* Regulation 8863, Sec. 4.05.

Alternatively, the Regulations should be modified to require a deposit only in certain circumstances, such as when the disputed bill is above a certain dollar threshold, as a means of balancing the interests of PREPA and its customers.

C. Clarification of Process for Deficient Objections

Section 3.07 of the Regulations states, "any invoice objection that does not comply with the provisions of this Section [which details the information necessary in an objection] will be treated as if it had never been filed and will have no legal effect." Sec. 3.07 (unofficial translation). This language could be read to allow PREPA to completely ignore a deficient objection, which appears to conflict with Section 3.09, which explicitly requires PREPA to inform the customer of any deficiencies in their objection within 5 days of receipt and provides that PREPA must allow customers to correct those deficiencies within 15 days. Sec. 3.09. This tension could result in additional litigation before the Commission, and expenditure of

considerable time and expense. The simplest course may be to revise Section 3.07 to provide that “any invoice objection that does not comply with the provisions of this Section after the expiration of the period allowed for correction thereof will be treated as if it had never been filed and will have no legal effect.” Sec. 3.07 (addition underlined).

D. Technical Corrections

The Regulations do not contain a Section 4.04. Therefore, current Sections 4.05 and 4.06 should be renumbered.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests its Comments be accepted as such, and that such other relief as is appropriate be entered.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 28th DAY OF FEBRUARY, 2018

PUERTO RICO ELECTRIC POWER AUTHORITY



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