

COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION

SECRETARIA  
COMISION DE ENERGIA DE  
PUERTO RICO

'18 MAY 11 P3:23

IN RE: REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY FY19  
RATES

NO. CEPR-AP-2018-0002

**SUBJECT:** PREPA's Verified Response and  
Motion Regarding May 4<sup>th</sup> Order

**PREPA'S VERIFIED RESPONSE AND MOTION REGARDING MAY 4<sup>th</sup> ORDER**

The Puerto Rico Electric Power Authority ("PREPA") respectfully submits this Verified Response and Motion regarding the Puerto Rico Energy Commission's (the "Commission") May 4, 2018, Resolution and Order Regarding Rates for Fiscal Year 2019 ("May 4<sup>th</sup> Order").

**I. INTRODUCTION**

The May 4<sup>th</sup> Order directs an extremely expedited and procedurally abbreviated process culminating in a final order of the Commission to be issued on or about July 31, 2018, setting a new PREPA revenue requirement and new rates and creating specific new riders. The Order (p. 8) requires PREPA, by today, May 11<sup>th</sup>, to propose dates for several identified steps in that proceeding. The Order (p. 9) also provides for a technical conference "to answer any questions about this Resolution and Order and to determine if any modifications are needed due to practical considerations" on May 18<sup>th</sup>.

PREPA is filing this Response and Motion by the May 11<sup>th</sup> deadline in order to address certain issues with the May 4<sup>th</sup> Order and to propose a tentative plan for moving forward. PREPA reserves the right to amend and revise this Response and Motion, including the proposals herein, as noted and explained further below.

PREPA notes that on April 19, 2018, the Federal Oversight and Management Board for Puerto Rico (the "Oversight Board") certified a Fiscal Plan for PREPA (the "Board PREPA

Fiscal Plan”) under Section 201 of the Puerto Rico Oversight, Management, and Economic Stability Act, Public Law 114-187 (“PROMESA”). On the same day, the Oversight Board certified a fiscal plan for the Commonwealth of Puerto Rico under Section 201 of PROMESA (the “Board Puerto Rico Fiscal Plan” and together with the Board PREPA Fiscal Plan, the “Board Fiscal Plans”) that included provisions on structural reform in the energy sector.

The Board Fiscal Plans include provisions on energy sector reform that are primarily developed by and largely reflective of the stated public policy objectives of the Government of Puerto Rico, with the limited exception of certain recommendations contained in the Board Fiscal Plans that the Government of Puerto Rico has declined to adopt under Section 205 of PROMESA. The Government of Puerto Rico and PREPA are charged with implementing the applicable provisions of the Board Fiscal Plans regarding energy sector reform. PREPA and the Government of Puerto Rico are working to implement the energy reforms called for by the public policy of the Government and reflected in the Board Fiscal Plans.

PREPA believes that any process for addressing PREPA’s rates should be consistent with the public policy of the Government of Puerto Rico and the Board Fiscal Plans as being implemented by PREPA and the Government.

In addition, any rate revision process must comport with applicable Puerto Rico and federal law, of course, such as Puerto Rico law on the respective roles and authorities of different Puerto Rico government entities. Furthermore, any expedited ratemaking process, such as that initiated by the May 4<sup>th</sup> Order, should be focused on addressing urgent needs.

PREPA does not believe that the May 4<sup>th</sup> Order currently is consistent with applicable Puerto Rico or federal law, the Board Fiscal Plans as being implemented by PREPA and the Government of Puerto Rico, or the stated public policy objectives of the Government of Puerto

Rico. In addition, the May 4<sup>th</sup> Order fails to address the urgent need to address PREPA's Adjustment Clause that recovers incurred fuel and purchased power costs.

While the May 4<sup>th</sup> Order was issued without advance input from PREPA or the Government of Puerto Rico, the Order's technical conference provision indicates that the Commission recognized that the Order might need substantial modifications. PREPA is optimistic that a suitable and productive process for moving forward can be established taking into account the applicable legal and policy framework and PREPA's operational needs.

## **II. CERTAIN ISSUES WITH MAY 4<sup>TH</sup> ORDER**

In brief, PREPA is highly concerned about the May 4<sup>th</sup> Order in several respects including, without limitation, the following:

- (1) the May 4<sup>th</sup> Order in various respects is incompatible with, or does not support, the Board Fiscal Plans as being implemented by PREPA and the Government of Puerto Rico, or the public policy objectives of the Government of Puerto Rico, including but not limited to the development of rates and rate tools to support and facilitate the best outcomes of the transformation of the energy sector;<sup>1</sup>
- (2) the May 4<sup>th</sup> Order interferes with the pending federal court case and processes intended, among other things, to resolve controversies over PREPA's legacy obligations, in direct conflict with PROMESA;
- (3) the May 4<sup>th</sup> Order is not consistent with the respective roles and authorities of Puerto Rico government entities under Puerto Rico law;

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<sup>1</sup> The Board Fiscal Plans contain detailed provisions regarding energy sector reform and the role of the regulator in the transitional period. The Plans provide that PREPA, not the Commission, develop a "bridge" rate case to determine an appropriate transitional rate (and incorporate some rate tools). *E.g.*, Certified PREPA Fiscal Plan, slide 57. While the Government of Puerto Rico has declined to implement certain recommendations contained in the Board Fiscal Plans, PREPA will make rate filings with the Commission designed to provide a bridge to the post-transformation sector.



- (4) the May 4<sup>th</sup> Order does not deal with the most pressing problem related to PREPA's existing rates, which is the need to modify the Adjustment Clause; and
- (5) the May 4<sup>th</sup> Order provides for a process and timeline that is impossible or impractical in various other respects, such as by requiring data that does not exist or is not readily and practically available,<sup>2</sup> and that is likely to lead to undesirable or under-achieving outcomes.

Accordingly, PREPA proposes that the Commission stay the May 4<sup>th</sup> Order, at least for a minimum of three weeks, and work with PREPA to develop a plan that better aligns with applicable law and processes, the Board Fiscal Plans as being implemented by PREPA and the Government of Puerto Rico, and the Government's public policy objectives, addresses the urgent needs, and helps pave the way for electricity sector transformation that benefits the people of Puerto Rico. Please note that this filing was prepared on an expedited basis, and that it is subject to further review, developments, and modifications.<sup>3</sup>

### **III. LEGAL AND PUBLIC POLICY OVERLAY AND URGENT NEEDS**

As indicated above, PREPA believes that the May 4<sup>th</sup> Order is inconsistent with Puerto Rico and federal law, the Board Fiscal Plans as being implemented by PREPA and the Government of Puerto Rico, and the policy objectives of the Government, and fails to address certain urgent needs. A thorough discussion of all of those factors far exceeds the scope of this

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<sup>2</sup> Due to the Hurricanes, PREPA does not have and/or could not develop in any reasonable way, some of the information requested by the May 4<sup>th</sup> Order. PREPA does have or can develop some other categories of that information, although the time required to do so will vary among different types of information. The Order explicitly or assumes that certain data exists and is readily and practically available when that is not the case. For example, PREPA's post-Hurricanes data on billing determinants (such as number of customers and usage) is incomplete for practical reasons not in PREPA's control. FEMA reimbursements for restoration costs also are not yet known.

<sup>3</sup> For a variety of reasons beyond PREPA's control, reflected in this filing, it is much too early for PREPA to speak completely and conclusively on many of the subject matters raised by the May 4<sup>th</sup> Order and this Response and Motion. This Response and Motion is intended as a good faith effort to advance the discussion between PREPA and the Commission while retaining the necessary extensive flexibility.

Response and Motion but a short discussion of certain rate-related issues is set forth below. This list is not intended to be definitive or exhaustive.

- (1) The Board Fiscal Plans as being implemented by PREPA and the Government of Puerto Rico contain specific processes and requirements for energy sector reform that should be taken into account in any rate case or other rate proceeding. *See, e.g.,* the discussion of a bridge rate in footnote 1, above.
- (2) PROMESA provides for a budgeting process that will necessarily impact and act as the primary determiner of PREPA's expenditures. The May 4<sup>th</sup> Order is not sufficiently coordinated with that budgeting process, treats that budgeting process solely as a spending cap (Order, p. 3), and inconsistently, and in excess of the Commission's legal authority as contended by PREPA in the pending judicial review of the first Rate Review, also provides for capping expenditures based on Commission determinations with limited exceptions also subject to Commission review (Order p. 2).
- (3) Further, while Act 57-2014 provides for the Commission's initiation of a rate review, the May 4<sup>th</sup> Order goes beyond the Commission's role by making some determinations in advance, exceeding authority, and constraining PREPA's role in the development of rate proposals.
- (4) Moreover, under Act 2-2017, the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") is the fiscal agent for PREPA, and AAFAF acts as such for the Government of Puerto Rico in matters relating to PROMESA and for certain other purposes as provided in Act 2-2017. Therefore, certain issues

that necessarily impact PREPA's rates will be determined by AAFAF, not PREPA or the Commission.

- (5) PREPA is a debtor in a bankruptcy-like proceeding under Title III of PROMESA that is pending before the U.S. District Court for the District of Puerto Rico. The resolution of PREPA's legacy obligations, including PREPA's bond debt, will be addressed in that Title III case and consistent with PROMESA. The Commission should not attempt to insert itself into the debt restructuring process nor should the May 4<sup>th</sup> Order attempt to dictate discussions between PREPA, its bondholders, the Oversight Board, and AAFAF outside of the proper legal process. Nor should the May 4<sup>th</sup> Order have been structured to allow or require extensive evidence and discovery on issues reserved for PROMESA and the Title III Court. The discovery burdens alone could be catastrophic.<sup>4</sup>
- (6) PREPA has experienced unusually high fuel and purchased costs since Hurricanes Irma and Maria that have not yet been passed through the Adjustment Clause. PREPA has experienced greatly increased costs after the Hurricanes (due, in large part, to the need to burn much more diesel fuel than normal in order to restore service as quickly as possible, and to higher fuel prices). A large portion of those costs could be reimbursed by the Federal Emergency Management Administration ("FEMA"), but that has not yet occurred. Currently, there is no certainty on the amount or timing of any FEMA fuel reimbursements. The Adjustment Clause's reconciliation provision arguably would require collecting all of the increased

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<sup>4</sup> PREPA believes that the Commission likely was proceeding from the premises that it must set all new rates; that to do so, it must set a new revenue requirement; and that to do that, it must have new evidence on expected costs of debt. PREPA does not believe any of those premises is correct.



costs over a three-month period, and does not provide a clear mechanism for applying FEMA reimbursements. PREPA is working on a proposal to be submitted to the Commission to temporarily modify the Adjustment Clause, to assist customers, by spreading the recovery of those costs over a longer period (up to 12 months) than provided for under the existing tariff mechanism, and providing a clear mechanism for applying FEMA reimbursements.

- (7) The Government of Puerto Rico, through Board Fiscal Plans implementation, new Puerto Rico legislation, and the plan of adjustment in the Title III case, and transactions authorized thereby, intends to transform the electricity sector, taking advantage of private investment and leveraging federal funding, to achieve a modern, reliable, resilient, and sustainable electrical grid in the best interests of the people of Puerto Rico. The transformation as provided for in the Board Fiscal Plans also includes rate tools, including formula rate updates and full cost reconciliations. The May 4<sup>th</sup> Order generally does not facilitate the transformation, and could hinder the transformation in some respects, such as its rejection and criticism of full cost reconciliations (including the inaccurate rhetoric suggesting PREPA made a “blank check” proposal (Order, p. 7)). The May 4<sup>th</sup> Order appears to seek to set new rates for FY 2019 in order to have rates better match costs, but there is not a finding in the Order that there is a sufficient gap between base rates and the associated costs to warrant a new “rate case” at this time, and providing for a timely reconciliation of costs and revenues through FY 2019 would be a superior approach to setting all new rates in a hastily conducted rate case.

#### IV. PROPOSED PROCESS

PREPA's suggested plan for how best to move forward working with the Commission is as follows:

- (1) The Commission stays the May 4<sup>th</sup> Order for at least an initial period of three weeks to allow for discussions / communications among the Government of Puerto Rico, AAFAF, PREPA, the Commission, and the Oversight Board on a process more consistent with the applicable legal framework.
- (2) PREPA will prepare and submit to the Commission proposed expedited actions relating to PREPA's Adjustment Clause reconciliation and factors with a goal of submitting it so that it can go into effect no later than the July 2018 bills.
- (3) PREPA will identify the non-privileged information that is available and responsive to the Commission's information requests and submit a plan to the Commission on or prior to May 28, 2018, for providing such information to the Commission.<sup>5</sup> PREPA is working through identifying what information exists and is readily and practically available. That is a complicated task. PREPA might be able to start supplying some of the information prior to May 28<sup>th</sup>. PREPA also suggests that it make the proposal on an informal basis, rather than in a formal filing.
- (4) PREPA is working on preparing other proposals, still under consideration and in development, relating to other pending reconciliations and other possible incremental changes in its existing rates that would not necessarily require the

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<sup>5</sup> PREPA notes that certain of the information requested by the Commission is legally privileged or is not readily or practically available. In addition, certain of the information is not within PREPA's control. Therefore, PREPA may not be able to provide the Commission with all of the information requested.



calculating a new base rate revenue requirement, nor setting all new rates. PREPA suggests that it make an informal proposal for the timeline of such a filing by June 11, 2018.

- (5) PREPA along with the Government of Puerto Rico and AAFAF is evaluating what other rate filings, if any, may be necessary or useful to comply with the Board Fiscal Plans as being implemented and to facilitate electric sector transformation. PREPA, at this time, is not able or in a position to propose a timeline or describe even at the highest level of generality what might be proposed or when. To do so would be inappropriate, speculative, and counter-productive.

Under this tentative plan, the Commission would stay the May 4<sup>th</sup> Order, as noted above, and subsequently replace and amended portions thereof to reflect any revisions and to take into account plans for addressing other data issues and providing the Commission with data.

## V. CONCLUSION

Therefore, PREPA respectfully requests that its Response be accepted and its Motion be granted, that the May 4<sup>th</sup> Order generally be stayed, at least for an initial period of three weeks, and the Commission issue an amendatory or replacement order consistent with this filing.

RESPECTFULLY SUBMITTED,

THIS 11<sup>TH</sup> DAY OF MAY, 2018

**PUERTO RICO ELECTRIC POWER AUTHORITY**



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### AFFIDAVIT

I, Efran Paredes Maisonet, of legal age, married, engineer, resident of Bayamon, Puerto Rico, in my capacity as Director of Planning and Research of the Puerto Rico Electric Power Authority ("PREPA"), under oath declare as follows:

1. My name and personal circumstances are those stated above.
2. I have reviewed PREPA's above Response and Motion.
3. In my capacity as PREPA's Director of Planning and Research, I have been duly authorized to provide this Verification in support of the Response and Motion.
4. The factual information included in the Response and Motion is true on the basis of my personal knowledge or on the basis of the information supplied to me by employees of PREPA and other advisors to PREPA.

In San Juan, Puerto Rico, this 11<sup>th</sup> day of May, 2018.

  
Efran Paredes Maisonet

Affidavit No. 3034

Sworn and subscribed before me by Efran Paredes Maisonet of the personal circumstances above mentioned, whom I personally know, in San Juan, Puerto Rico, this 11<sup>th</sup> day of May, 2018.

  
Public Notary

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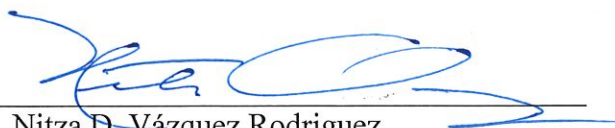
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### **CERTIFICATION OF FILING AND SERVICE**

I HEREBY CERTIFY on May 11, 2018, I have sent the above Response and Motion: (1) via U.S. Postal Service to the Puerto Rico Energy Commission through its Clerk by U.S. Mail to 268 Munoz Rivera Ave., Seaborne Building Plaza, Plaza Level, Ste. 202, San Juan, Puerto Rico 00918, and via email to [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov) and [mcintron@energia.pr.gov](mailto:mcintron@energia.pr.gov); (2) to the office of the Commission's General Counsel via [afigueroa@energia.pr.gov](mailto:afigueroa@energia.pr.gov), [viacaron@energia.pr.gov](mailto:viacaron@energia.pr.gov), and [legal@energia.pr.gov](mailto:legal@energia.pr.gov); (3) to the Independent Consumer Protection Office via email to [codiot@oipc.pr.gov](mailto:codiot@oipc.pr.gov) and [jperez@oipc.pr.gov](mailto:jperez@oipc.pr.gov); and (4) to the State Office of Public Policy on Energy via email to [wilma.lopze@aee.pr.gov](mailto:wilma.lopze@aee.pr.gov) and [francisco.rullan@aee.pr.gov](mailto:francisco.rullan@aee.pr.gov).



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