

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

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

CASE NO.: CEPR-AP-2018-0002¹⁸ MAY 25 P4 :28

SUBJECT: Intervenors' Comments
Regarding Order of May 22, 2018

INTERVENORS' COMMENTS REGARDING
ORDER OF MAY 22, 2018

Assured Guaranty Corp., Assured Guaranty Municipal Corp., National Public Finance Guarantee Corporation, and the Ad Hoc Group of PREPA Bondholders (collectively, the "Intervenors") respectfully submit these Comments regarding the Puerto Rico Energy Commission's (the "Commission") May 22, 2018 Resolution and Order Following Technical Conference (the "May 22 Order").

On May 4, 2018, the Commission formally initiated a rate case "to ensure that the Puerto Rico Electric Power Authority's ('PREPA') rates for FY2019 are just and reasonable and not unduly discriminatory, as required by Article 6.25 of Act 57-2014." Resolution and Order Regarding Rates for Fiscal Year 2019, CEPR-AP-2018-002, D.E. 1, at p. 1 (May 4, 2018) (the "FY19 Rate Order"); *see also id.* at p. 6 ("Under Act 57-2014, PREPA has the legal burden of proving that its rates are just and reasonable."). Specifically, the Commission recognized that PREPA's current rates do not satisfy the applicable legal requirements, and therefore the Commission must set new rates for fiscal year 2019. *Id.* at p. 1. The Commission scheduled July 31, 2018 as the timeframe for issuing new rates. *Id.* at p. 8.

As the Commission also recognized, there is a pressing need to set new rates given that PREPA's costs are currently out of step with its revenues. *Id.* at p. 1. This mismatch (among other things) has caused PREPA to operate with net-negative cash flows, and PREPA has already sought

and received hundreds of millions of dollars in financing from the Commonwealth. According to its legal duty, the Commission initiated this rate case in order to set rates that will be just and reasonable—unlike the rates currently in effect. *Id.* at pp. 1-2.

After a technical conference that the Intervenors participated in (the “Technical Conference”), on May 22, 2018 the Commission issued another order in this rate case. *See* Resolution and Order Following Technical Conference, CEPR-AP-2018-002, D.E. 3 (May 22, 2018). The May 22 Order stays some requirements of the FY19 Rate Order, conditional on PREPA’s compliance with the May 22 Order. *Id.* at ¶ 1. The May 22 Order does not reference agenda items I.A. or I.B. from the Technical Conference, both of which dealt with the Commission setting new rates. The May 22 Order does, on the other hand, reference agenda item I.C., which dealt with PREPA’s production of information to the Commission in this rate case. *Id.* at ¶ 2.¹ Separately, the May 22 Order proposes multiple “informal” procedures whereby officials from the Commission and PREPA would discuss relevant matters off the adjudicative record. *Id.* at ¶¶ 3-4 & p. 2.

The Intervenors hereby submit comments to several aspects of the May 22 Order.² **First**, to the extent the May 22 Order suggests that the rate case is stayed pending PREPA’s provision of information on an undetermined and self-selected timeline,³ the Intervenors remind the Commission of its pressing statutory duty to set new rates—as recognized in the FY19 Rate Order. And to the extent the May 22 Order does in fact contemplate a stay of the rate case with a duration

¹ The order requires PREPA to annotate a list of information requests, indicating whether and when it is able to respond to such requests.

² The Intervenors reserve all rights to present other comments or objections during this rate case.

³ Because the May 22 Order does not explicitly address the Commission’s responsibility to set new rates, other than to mention “possibly making rate adjustments,” *id.* at p. 2, it is not clear whether this is in fact the Commission’s intent.

determined solely by PREPA, the Intervenor observe that such a procedure would abdicate the Commission's regulatory duty by allowing PREPA to self-select if and when it will provide information critical to the Commission carrying out its purpose. There is no question that "the Commission is legally obligated to ensure that rates are just and reasonable." *Id.* at Attachment A, p. 1. The Intervenor expect that the Commission will continue to comply with that duty on the expedited schedule originally set by the Commission.⁴

Second, the Intervenor understand that the Commission is encouraging an active dialogue with PREPA, and appreciate the ability to participate in such dialogue—as during the Technical Conference, for instance. Yet the May 22 Order appears to move away from the transparent and productive public approach that the Commission has employed thus far in this rate case, in favor of informal, off-the-record discussions between staff members. *See id.* at ¶¶ 3-4. Doing so withdraws crucially important matters from public scrutiny. It also denies stakeholders the ability to understand how issues affecting their rights will be handled and deprives them of the right to be heard. Instead, the Intervenor propose a continued commitment to transparency in this rate case, in which parties have the opportunity to fully participate in all aspects of these proceedings. This commitment to transparency should include the ability for stakeholders to participate in conversations going forward—as they were able to do during the Technical Conference—and a commitment by the Commission to share with interested stakeholders any and all productions by PREPA in response to the Commission's information requests.

Third, and relatedly, the Intervenor note that although PREPA continues to not comply with its fuel and purchased power adjustment obligations, the May 22 Order merely proposes

⁴ Similarly, the Intervenor expect that the future procedure in this rate case will include agenda items I.A and I.B from the Technical Conference—unlike the May 22 Order.

“informal staff-level discussions on this topic prior to PREPA making any formal filing.” *Id.* at ¶ 4. This important issue should be addressed by the Commission publicly and expeditiously. The Intervenor urge the Commission to create a transparent procedure under which, no later than July 31, 2018, PREPA: (i) resumes updating the fuel and purchased power rate monthly to fully collect those costs going forward, consistent with the costs that are incurred by PREPA; and (ii) begins to collect over a reasonable period any under-recovery of fuel and purchased power costs it has incurred since August 2017.

In sum, the Intervenor stress that this proceeding remains as urgent as ever. The Commission should proceed—on an expedited, transparent basis—with carrying out the statutory duties that it duly recognized in the FY19 Rate Order.

RESPECTFULLY SUBMITTED,

THIS 25th DAY OF MAY, 2018

CERTIFICATE OF SERVICE: We hereby certify that on this same date a true and accurate copy of the foregoing motion was sent via electronic means to **Autoridad de Energía Eléctrica de Puerto Rico** to Nélida Ayala Jiménez, Esq., Nitza D. Vázquez Rodríguez, Esq. and Carlos M. Aquino Ramos, Esq. at n-ayala@aepr.com, n-vazquez@aepr.com, c-aquino@aepr.com; to the **Oficina Independiente de Protección al Consumidor**, to Coral M. Odiot Rivera, Esq. and José Pérez Vélez, Esq. at codiot@oipc.gov, and jperez@oipc.gov; and to the **Oficina Estatal de Política Pública Energética** to Wilma I. López Mora at wilma.lopez@aee.pr.gov.

ADSUDAR MUÑOZ GOYCO SEDA & PEREZ-OCHOA, PSC, P.S.C.

By: /s/ Eric Pérez-Ochoa
Eric Pérez-Ochoa
USDC-PR No. 206,314
Email: epo@amgprlaw.com
Luis A. Oliver-Fraticelli
USDC-PR NO. 209,204
Email: loliver@amgprlaw.com
208 Ponce de Leon Ave., Suite 1600
San Juan, PR 00936
Tel.: (787) 756-9000 | Fax: (787) 756-9010

WEIL, GOTSHAL & MANGES LLP

By: /s/ Rob Berezin

Rob Berezin*

Marcia Goldstein*

Jonathan Polkes*

Jared Friedmann*

Gregory Silbert*

767 Fifth Avenue

New York, New York 10153

Tel.: (212) 310-8000 | Fax: (212) 310-8007

Email: rob.berezin@weil.com

marcia.goldstein@weil.com

jonathan.polkes@weil.com

jared.friedmann@weil.com

gregory.silbert@weil.com

*admitted *pro hac vice*

Counsel for National Public Finance Guarantee Corporation

CASELLAS ALCOVER & BURGOS P.S.C.

By: /s/ Heriberto Burgos Pérez

Heriberto Burgos Pérez

USDC-PR 204809

Ricardo F. Casellas-Sánchez

USDC-PR 203114

Diana Pérez-Seda

USDC-PR 232014

P.O. Box 364924

San Juan, PR 00936-4924

Telephone: (787) 756-1400

Facsimile: (787) 756-1401

Email: hburgos@cabprlaw.com

rcasellas@cabprlaw.com

dperez@cabprlaw.com

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ Howard R. Hawkins, Jr.

Howard R. Hawkins, Jr.*

Mark C. Ellenberg*

Ellen V. Holloman*

Ellen Halstead*
Thomas J. Curtin*
Casey J. Servais*
200 Liberty Street
New York, NY 10281
Telephone: (212) 504-6000
Facsimile: (212) 406-6666
Email: howard.hawkins@cwt.com
mark.ellenberg@cwt.com
ellen.holloman@cwt.com
ellen.halstead@cwt.com
thomas.curtin@cwt.com
casey.servais@cwt.com

*admitted *pro hac vice*

Counsel for Assured Guaranty Corp. and Assured Guaranty Municipal Corp.

TORO COLÓN MULLET, P.S.C.

By: /s/ Manuel Fernández-Bared
Manuel Fernández-Bared
USDC-PR No. 204,204
E-mail: mfb@tcm.law

By: /s/ Linette Figueroa-Torres
Linette Figueroa-Torres
USDC-PR No. 227,104
E-mail: lft@tcm.law

By: /s/ Nayda Perez-Roman
Nayda Perez-Roman
USDC-PR No. 300,208
Email: nperez@tcm.law

P.O. Box 195383
San Juan, PR 00919-5383
Tel.: (787) 751-8999
Fax: (787) 763-7760

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ Gregory A. Horowitz

Amy Caton*
Thomas Moers Mayer*
Gregory A. Horowitz*
Alice J. Byowitz*
Douglas Buckley*
1177 Avenue Of The Americas
New York, New York 10036
Tel.: (212) 715-9100
Fax: (212) 715-8000
Email: acaton@kramerlevin.com
tmayer@kramerlevin.com
ghorowitz@kramerlevin.com
abyowitz@kramerlevin.com
dbuckley@kramerlevin.com

*admitted *pro hac vice*

Counsel for the Ad Hoc Group of PREPA Bondholder