

GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU



IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW

CASE NO.: CEPR-AP-2015-0001; NEPR-AP-
2018-0003

SUBJECT: Implementation of PREPA's
permanent rate; PREPA's petition for a
temporary modification of the adjustment
clause related to hurricanes Irma and Maria.

RESOLUTION AND ORDER

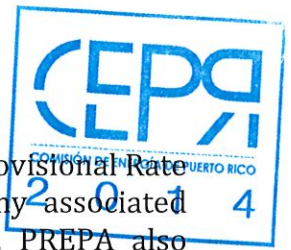
I. Introduction

On January 10, 2017, the Puerto Rico Energy Bureau ("Energy Bureau") issued its Final Resolution and Order ("January 10 Final Order") in the instant case, through which it approved the Puerto Rico Electric Power Authority's ("PREPA") revenue requirement for fiscal year 2017. The January 10 Final Order also 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 January 10 Final Order and in the compliance filing requirements. The Energy Bureau addressed PREPA's request through a Final Resolution issued on March 8, 2017 ("March 8 Final Resolution"). PREPA submitted its final compliance filing on May 19, 2017 ("May 19 Compliance Filing"). On May 31, 2018, the Energy Bureau issued a Resolution and Order ("May 31 Resolution and Order") authorizing PREPA to implement the Energy Bureau-approved permanent rate, as detailed in the Revised Exhibit C of PREPA's May 19 Compliance Filing ("Permanent Rate").

After several procedural incidences, on June 23, 2017, the Energy Bureau issued a Resolution and Order granting PREPA until October 1, 2017 to implement the Permanent Rate. The Energy Bureau also determined for the Provisional Rate¹ to remain in effect until the Permanent Rate was implemented.

On September 29, 2017, PREPA filed a document titled "Urgent Motion for Extension of Provisional Rates and Schedules for Implementing New "Permanent" Rates and Related

¹ Pursuant to the provisions of Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act ("Act 57-2014"), on June 24, 2016, notified on June 27, 2016, the Energy Bureau approved an interim rate that PREPA was authorized to implement until a final determination on the rate review petition was issued ("Provisional Rate"). See Order Establishing Provisional Rates, Case No. CEPR-AP-2015-0001, June 24, 2016.



Processes” (“PREPA’s Motion”). Through its Motion, PREPA requested the “Provisional Rate and the deadlines for implementation of the permanent rates and for any associated reconciliation be extended [...] until December 31, 2017.”² Furthermore, PREPA also requested that any other filing required in relation to the Energy Bureau’s March 8 Final Resolution, including the filing of budget materials and reconciliations, be extended until July 1, 2018.³

On October 2, 2017, PREPA filed a motion titled “Amended Urgent Motion for Extension of Provisional Rates and Schedules for Implementing New “Permanent” Rates and Related Processes” requesting a further extension of the effectiveness of the Provisional Rate and the deadlines for implementing the permanent rate until July 1, 2018.⁴

Also, on October 31, 2017, the Energy Bureau issued a Resolution granting PREPA’s request for a temporary extension of the effectiveness of the Provisional Rate and the deadlines established in the January 10 Final Order, as amended by the March 8 Final Resolution and the May 31 Resolution and Order. The Energy Bureau also established that, as the restoration of electric service progresses, and the Commonwealth’s services and operations be normalized, the Energy Bureau would determine the appropriate timeline for the specific implementation of the directives and requirements associated with the instant proceeding, including the date of implementation of the permanent rate and the timeline and proceeding for the filing of budget materials and reconciliations.

On September 17, 2018, PREPA filed a motion titled “PREPA’s Petition for a Temporary Modification of the Adjustment Clause Related to Hurricanes Irma and María” (“Petition for Modification”).⁵ In its Petition for Modification, PREPA requested leave to temporary modify the Adjustment Clause contained in its Electric Service Rates. The purpose of the temporary modification is “to reconcile fuel and purchased power costs for the period during which the Hurricane-related emergency made normal reconciliation of those costs impossible or impractical, to reduce short-term bill impacts on customers, to apply adjustments to customer bills in a manner that are reasonable and consistent with the existing tariff structure, and to allow for the prompt application of fuel cost reimbursement from the Federal Energy Management Administration (“FEMA”) and the reconciliation of the FEMA reimbursement.”⁶

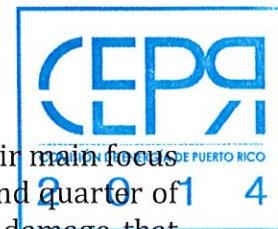
² PREPA’s Motion at ¶8.

³ *Id.* at ¶10.

⁴ PREPA’s Amended Motion at ¶8.

⁵ Filed under Case No. NEPR-AP-2018-0003.

⁶ Petition for Modification, p. 1.



According to PREPA, in the aftermath of Hurricanes Irma and María their main focus was the restoration of the electric system, which continued well into the second quarter of 2018.⁷ In addition, PREPA's communication infrastructure suffered severe damage that hindered its ability to read customer meters and to properly bill for its services.⁸ PREPA argued that in order to prevent rate-shock and due to the devastation of Hurricanes Irma and María, it did not adjust the fuel and purchased power factors from September 2017 to May 2018, as required by the Adjustment Clause.⁹

PREPA also argued that other circumstances outside its control, such as the need to use peaker units and emergency power generation for base load generation, caused the costs of fuel and purchased power to increase significantly during the restoration.¹⁰ According to PREPA, this created an aggregate backlog in recoveries of costs under the Adjustment Clause in the amounts of \$135.9 million (fuel clause) and \$45.3 million (purchased power clause).¹¹ However, pursuant to the Stafford Act, on July 2018 PREPA received a reimbursement from FEMA in the amount of \$125.1 million, applicable to fuel cost recovery.¹² Therefore, the amount of fuel cost to be reconciled was reduced to \$10.8 million, for a total reconciliation of approximately \$56.1 million.

In its Petition for Modification, PREPA proposed to modify the Adjustment Clause in order to reconcile the backlog over a period of up to nine (9) months.¹³ According to PREPA, a one-month reconciliation will result in a rate impact of approximately 3.8 ¢/kWh, whereas if a nine-month period is used, the rate impact will be approximately 0.3 ¢/kWh.¹⁴ Finally, PREPA requested the Energy Bureau to approve the temporary modification of the Adjustment Clause on an expedited basis, allowing PREPA to start the reconciliation period on October 2018.¹⁵

⁷ *Id.*, p. 3, ¶ 4.

⁸ *Id.*

⁹ *Id.*, pp. 3 – 4, ¶¶ 4 and 6.

¹⁰ *Id.*, ¶ 5.

¹¹ *Id.*, p. 4, ¶ 6.

¹² *Id.*

¹³ *Id.*, p. 5, ¶ 11.

¹⁴ *Id.* p. 7, ¶ 15.

¹⁵ *Id.*, ¶ 16.



II. Consolidation of PREPA's request and the reconciliation of the fuel and purchased power costs

PREPA requests a temporary modification of its rates in order to reconcile certain costs over a longer period of time. This modification represents a temporary rate change that cannot be done in the expedited manner PREPA described in its Petition for Modification. Paragraph (a) of Section 6.25 of Act 57-2014 establishes that all rate reviews must follow the procedure established therein. Moreover, paragraph (c) of the referenced Section 6.25 establishes that any request to modify the rates previously approved by the Energy Bureau must contain: (i) a detailed explanation of the reasons for the modification, (ii) the effect such modification will have on PREPA's revenue and (iii) any other information required by the Energy Bureau.

Although the Petition for Modification meets the aforementioned requirements, at the time it was filed PREPA had yet to implement the Permanent Rate approved by the Energy Bureau in its January 10 Final Order, as modified by the March 8 Final Resolution and the May 31 Resolution and Order. The Permanent Rate is the lawfully approved rate. PREPA purportedly requests to modify the Adjustment Clause contained in its Electric Service Rates. However, the Adjustment Clause, as cited by PREPA, is not part of the Permanent Rate. The Permanent Rate specifically substitutes the Adjustment Clause contained in PREPA's previous rate structure with several riders, each designed to recover certain costs as pass-through charges to the customers. These riders include separate charges for fuel and purchased power.

The rider structure was adopted in order to unbundle the Adjustment Clause, which recovered the costs associated with the Contribution in Lieu of Taxes ("CILT") and other subsidies through a gross-up of the fuel and purchased power costs. As proven in the instant case, this gross-up formula did not recover actual costs associated with CILT and subsidies.¹⁶

PREPA's requested rate modification intends to recover the fuel and purchased power costs incurred during the time period the provisional rate has been in effect. Therefore, the reconciliation of such costs must be done in conjunction with the reconciliation of the Provisional Rate and the Permanent Rate. Such reconciliation must be done using the rate structure approved by the Energy Bureau in its January 10 Final Order, as modified by the March 8 Final Resolution and the May 31 Resolution and Order.

For this reason, the Energy Bureau hereby consolidates Case No. NEPR-AP-2018-0003 with the instant case. Since the reconciliation of the aforementioned fuel and purchased power costs will be performed during the reconciliation of the Provisional Rate with the Permanent Rate, PREPA's Petition for Modification is denied. PREPA shall provide, as explained below, a detailed work plan with relevant steps and deadlines to perform the

¹⁶ The Fuel and Purchased Power formulas had a factor of 0.89 designed to recover the costs associated with CILT, public lighting and other subsidies. The Permanent Rate establishes a series of riders designed to recover each cost individually, including fuel and purchased power. Therefore, with the Permanent Rate true costs are recovered, contrary to the estimated approach of PREPA's previous rates.

reconciliation between the Provisional Rate and the Permanent Rate. The work plan shall include the necessary steps to reconcile of the backlogged fuel and purchased power costs. The Energy Bureau will use the information contained in the work plan to develop a procedure for the described reconciliation.



III. Implementation of the Permanent Rates

PREPA has made several public statements regarding the status of the electric grid recovery process. According to PREPA, the electric service has been restored to 99.9% of its clients.¹⁷ Since the restoration of service is essentially complete, PREPA is ordered to implement the Permanent Rate on December 1, 2018.

No later than October 15, 2018, PREPA shall submit, for Energy Bureau's approval, a draft, in English and Spanish, of the proposed language to be included in each customer's bill explaining the approved permanent rate.

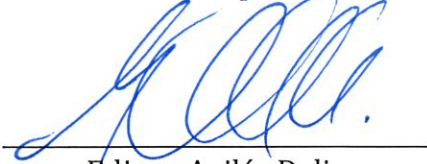
IV. Conclusion

In light of the aforementioned, the Energy Bureau **RESOLVES** the following:

1. Case No. NEPR-AP-2018-0003 is consolidated with the instant case.
2. PREPA's request to modify the Adjustment Clause contained in the Electric Service Rates is **DENIED**. The Energy Bureau will consider the reconciliation of the fuel and purchased power costs backlog as part of the process to reconcile the Provisional Rate with the Permanent Rate.
3. PREPA is **ORDERED** to implement the Permanent Rate **on December 1, 2018**.
4. PREPA is **ORDERED** to file with the Energy Bureau, **no later than October 31, 2018**, a detailed work plan with relevant steps and deadlines to perform the reconciliation between the Provisional Rate and the Permanent Rate. The work plan shall include the necessary steps to reconcile the backlogged fuel and purchased power costs, as described in PREPA's Petition for Modification. The work plan shall identify the key personnel (internal or external) responsible for each of the tasks required for implementing the reconciliation.
5. PREPA is **ORDERED** to file with the Energy Bureau, **no later than October 15**, a draft, in English and Spanish, of the proposed language to be included in each customer's bill explaining the approved permanent rate.

¹⁷ "La AEE alega que le restableció el servicio al 99% de sus abonados"; El Nuevo Día, July 3, 2018, <https://www.elnuevodia.com/noticias/locales/nota/laaeealegaquelrestablecioelservicioal999desusabonados-2432514/>

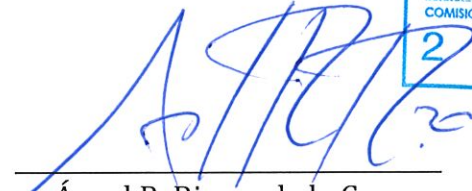
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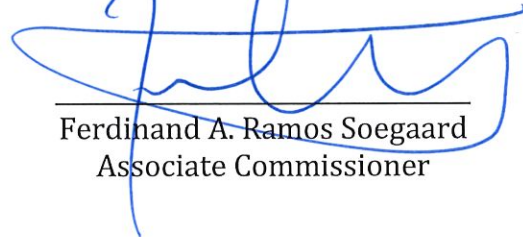
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CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on September 28, 2018. I also certify that on this date a copy of this Resolution and Order was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeepr.com, n-ayala@aeepr.com, c-aquino@aeepr.com, j-morales@prepa.com, hannia.rivera@oipc.com, maribel.cruz@acueductospr.com, pga@caribe.net, jfeliciano@constructorespr.net, nydinmarie.watlington@cemex.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, manuelgabrielfernandez@gmail.com, mmuntanerlaw@gmail.com, licenciadamasferrer@gmail.com y wilma.lopez@aae.pr.gov. I also certify that today, September 28, 2018, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to the following:

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For the record, I sign this in San Juan, Puerto Rico, today September 28, 2018.

María del Mar Cintrón Alvarado
Clerk