

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



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

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

**SUBJECT:** Resolution and Orden on the  
Puerto Rico Economic Competitiveness and  
Sustainability Institute's Motion Requesting  
Order

**RESOLUTION**

On October 24, 2018, the Puerto Rico Economic Competitiveness and Sustainability Institute ("ICSE", for its Spanish acronym) filed a document titled *Motion Commenting PREPA's Informative Motion and Public Statements Regarding Review of FY19 Rates* ("Request for Order") before the Puerto Rico Energy Bureau ("Energy Bureau"). In the Request for Order, ICSE expressed concerns over certain public statements made by José Ortiz Vázquez, P.E., Executive Director of the Puerto Rico Electric Power Authority ("PREPA"), regarding an alleged reduction in PREPA's current electric service rates of 3.5 to 3.9 cents per kWh due to some efficiencies in power generation.<sup>1</sup> ICSE characterized PREPA's statements as "done outside of and alter the regulatory proceeding that PREB is currently executing."<sup>2</sup>

On October 30, 2018, the Energy Bureau issued an Order ("October 30 Order"<sup>3</sup>), instructing PREPA to state its position regarding the Request for Order. In compliance with the October 30 Order, on November 21, 2018<sup>4</sup>, PREPA filed a document titled *PREPA's Informative Motion Responding to ICSE's Motion*, ("Informative Motion"). In the Informative Motion, PREPA certified that it notified a copy of the Informative Motion to ICSE's counsel via email.<sup>5</sup> In the Informative Motion, PREPA alleged that ICES prematurely and erroneously concluded that PREPA's actions were done outside of any relevant regulatory proceeding; clarified that the public statements made by PREPA's Executive Director pertaining to the October 2018 rate adjustments were misunderstood; that there was no change in the rate structure or billing process; and that the rate update that was discussed in October 2018 pertained to a favorable reconciliation of prior monthly costs regarding fuel and purchase

<sup>1</sup> See Request for Order, ¶4.

<sup>2</sup> *Id.*, at ¶7.

<sup>3</sup> See Order, October 30, 2018, Case No. CEPR-AP-2018-0002.

<sup>4</sup> Although the document was dated November 20, 2018, PREPA filed it with the Energy Bureau on November 21, 2018.

<sup>5</sup> Informative Motion, p. 5.

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power adjustments due to a combination of factors, including lower than expected overall costs and higher than expected sales.<sup>6</sup>

On November 30, 2018, ICSE filed a document titled *Motion Requesting Action by the Puerto Rico Energy Bureau Concerning PREPA's Non-Compliance with PREB Orders*, ("November 30 Motion").<sup>7</sup> Through the November 30 Motion, ICSE requested that the Energy Bureau order PREPA to comply with the October 30 Order. Based on ICSE's request, on December 6, 2018, the Energy Bureau ordered PREPA to file with the Energy Bureau proof of the notification sent to ICSE.<sup>8</sup>

On December 10, 2018, PREPA filed a document titled *Motion for Compliance with Order* ("December 10 Motion") in which PREPA made the following general statement: "PREPA is enclosing evidence of the electronic notification of the Motion sent to attorney Fernando E. Agrait, ICSE's legal counsel."<sup>9</sup> More specifically, the documents that PREPA included in its December 10 Motion were: (i) a hard copy of two emails and; (ii) a read receipt message<sup>10</sup>. Upon review of said documents, we conclude that: (i) on November 30, 2018 attorney Fernando E. Agrait notified to Nitza D. Vázquez Rodríguez, PREPA's legal counsel the November 30 Motion in accordance with his notification certification<sup>11</sup>; and (ii) on December 3, 2018, three days after ICSE notified PREPA the November 30 Motion, Nitza D. Vázquez Rodríguez notified Fernando E. Agrait a copy of Informative Motion in a reply to the foregoing notification email.<sup>12</sup>

<sup>6</sup> *Id.* at pages 2-3.

<sup>7</sup> Although the document was dated November 29, 2018, ICSE filed it with the Energy Bureau on November 30, 2018.

<sup>8</sup> In its Order, the Energy Bureau noted that that ICSE filed the November 30 Motion under two different dockets (*i.e.*, Case No. CEPR-AP-2018-0001 and Case No. CEPR-AP-2018-0002) and that pursuant to Section 2.02(a) of Regulation 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, each motion filed before the Energy Bureau must have only one heading. In light of the foregoing, the Energy Bureau ordered ICSE to, prospectively, file separate motions for each intended docket and warned ICSE that failure to file separate motions under each docket may result in the immediate dismissal of the motion. *See* Resolution and Order, October 30, 2018, CEPR-AP-2018-0002.

<sup>9</sup> *See* December 10 Motion, p. 1.

<sup>10</sup> This document confirms that Fernando E. Agrait opened on December 3, 2018 at 12:14:33 pm the email sent by Nitza D. Vázquez Rodríguez on December 3, 2018 at 11:16 am.

<sup>11</sup> The first sentence of the mentioned certification seems to have been inadvertently included in the November 30 Motion as it reads: "I also certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on November 29, 2018." *See*, November 30 Motion, p. 2.

<sup>12</sup> The reply to Agrait's November 30, 2018 email states:

"Greetings attorney Agrait! I am enclosing a copy of the motions filed with the Energy Bureau. It seems that you did not received the electronic mail with your copy. I would appreciate that you confirm the receipt of this email."





Based on the foregoing, PREPA failed to comply with the provisions of Section 2.02(E)(1) of Regulation 8543<sup>13</sup> and the October 30 Order. In other words, PREPA's notification was not **effected the same day the document was presented before the Energy Bureau**. Prospectively, PREPA shall ensure compliance with the provisions of Regulation 8543. Noncompliance with the notification requirement may result in the immediate dismissal of the document or other administrative sanctions, at the Energy Bureau's discretion.

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Upon review of the documents submitted by ICSE and PREPA, the Energy Bureau **DETERMINES** that PREPA's actions regarding the October billing cycle are consistent with the reconciliation process for the Adjustment Clause, which is part of the current rate structure.<sup>14</sup> PREPA did not modify its rates for the aforementioned billing cycle. PREPA's public comments, although misleading, don't change that fact. Therefore, there is no need

See Email from Nitza D. Vázquez Rodríguez to Fernando E. Agrait dated December 3, 2018 11:16 am, filed together with the December 10 Motion.

<sup>13</sup> Regarding the general requirements of written appearances, including their notification, Section 2.02 of Regulation 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, requires:

#### Section 2.02.- General Requirements of Written Appearances

Every pleading, motion or document presented before the Energy Commission must comply with the following requirements:

....

(E) With the exception of claims that result in the initiation of an adjudicative proceeding before the Commission, every document shall contain a certification from the appearing party or the appearing party's lawyer, in the case of being represented, **indicating that they have served a copy to every other party to the case of said document**, and the vehicle used to effect said notice.

- 1) Notice **to all parties shall be effected the same day the document is presented before the Commission**.
- 2) When a lawyer represents a party, notice shall be served to the lawyer, unless the Commission orders that notice be sent directly to the party.
- 3) Notice shall be sent via email to the address on record. In the event any party, or lawyer, does not have an email account, notice shall be personally delivered, faxed or mailed to the number or address, as may be the case, appearing on record. **Notice shall be considered served upon being sent (via email or fax) or upon being mailed.**

....

See Section 2.02 of Regulation 8543. (Emphasis added.)

<sup>14</sup> See *Tarifas para el Servicio de Electricidad* de la Autoridad, pp. 72 -74. Available at: <https://aeepr.com/es-pr/Site-Servicios/Manuales/LibroTarifas02.pdf>. Visited last on December 19, 2019.

for PREPA to submit additional information at this time. As such, the Request for Order is **DENIED**.

Be it notified and published.



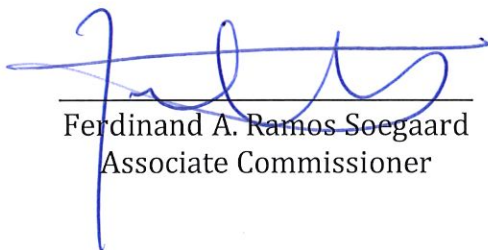
Edison Avilés Deliz  
Chairman



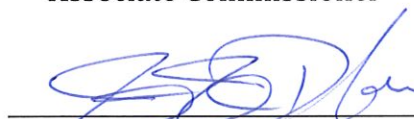
Ángel R. Rivera de la Cruz  
Associate Commissioner



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



José J. Palou Morales  
Associate Commissioner

#### CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 21, 2018. I also certify that on this date a copy of this Resolution regarding the Case No. CEPR-AP-2018-0002 was notified by electronic mail to the following: n-vazquez@aepr.com, hdiaz@oipc.pr.gov, wilma.lopez@aae.pr.gov, francisco.rullan@aae.pr.gov and agraitfe@agraitlawpr.com. I certify that today, December 21, 2018, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to the following:

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

Nitza D. Vázquez Rodríguez, Esq.  
PO Box 364267  
General Post Office  
San Juan, PR 00936-4267

#### **Consumer Protection Independent Office**

Hannia Rivera Díaz, Esq.  
268 Hato Rey Center, Suite 524  
San Juan, Puerto Rico 00918



**State Office of Public Energy Policy**

p/c Mr. Francisco Rullán Caparrós

Wilma I. López Mora, Esq.

P.O. Box 41314

San Juan, Puerto Rico 00940

**Puerto Rico Economic Competitiveness  
and Sustainability Institute**

Attn. Fernando E. Agrait, Esq.

701 Ponce de León Ave.

Edif. Centro de Seguros, Suite 414

San Juan, Puerto Rico 00907

For the record, I sign this in San Juan, Puerto Rico, today December 21, 2018.

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María del Mar Cintrón Alvarado  
Clerk