

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

**NEPR**

**Received:**

**Sep 19, 2019**

**2:35 PM**

**IN RE:**

Review of the Puerto Rico Electric Power  
Authority Integrated Resource Plan

**CASE NO.:**

CEPR-AP-2018-0001

**SUBJECT:**

PREPA's Request for Reconsideration  
Regarding September 17, 2019 Resolution  
and Orders

**THE PUERTO RICO ELECTRIC POWER AUTHORITY URGENT OMNIBUS  
MOTION FOR RECONSIDERATION AND/OR REQUEST FOR  
EXTENSION OF TIME TO COMPLY WITH ORDERS**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

**COMES NOW** the Puerto Rico Electric Power Authority ("PREPA") and respectfully submits to the Honorable Energy Bureau (the "Energy Bureau") PREPA's motion for reconsideration regarding the two September 17, 2019 Resolution and Orders:

**I. BACKGROUND**

1. On August 21, 2019, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("August 21 Resolution and Order") through which, among other things, established that the discovery period in the instant case will be from July 3, 2019 until October 1, 2019. In the August 21 Resolution and Order, the Energy Bureau expressed that "[t]here will be a ten (10) day period for parties to answer all Requests of Information."

2. On August 4, 2019 PREPA was served with a "First Discovery Request" from Local Environmental organizations. On August 26, 2019 PREPA was served with a "Second Discovery Request" from Local Environmental Organizations and on the same date, August 26,

2019, PREPA was also served with a “First Set of Interrogatories and Request for Productions of Documents and Information” from the Environmental Defense Fund (“EDF”).

3. On August 15, 2019 PREPA submitted its responses to the Local Environmental Organization’s first set of requests for information (“ROIs”). All responses were provided, except that PREPA informed that the third ROI requested that the work papers to be provided on a USB drive. PREPA informed that it was going to create a SharePoint site with the public work papers and provide all parties with access to the SharePoint site. PREPA requested this Honorable Bureau an extension of time until August 19, 2019 to create the SharePoint site. To this date, the Bureau has not ruled on PREPA’s request, but the SharePoint was created and its currently being accessed by all intervenors without any reported problem.

4. This Honorable Bureau must take notice that, to date, PREPA has responded to several sets of ROIs, including ROIs submitted by the Local Environmental Organizations, the Energy Bureau, ARCTAS, Wartsila, the Not for Profit Intervenors, among others.

5. On September 10, 2019 the Local Environmental Organizations filed a *Motion by Local Environmental Organizations to Compel PREPA to Respond to Discovery Requests*. No sanctions or summary order was requested by the Local Environmental Organizations.

6. On September 16, 2019 EDF filed a *Motion to Compel PREPA to Respond to Discovery Request*. EDF did not request sanctions. Instead, EDF requested the Energy Bureau to consider extending the discovery process, which ends on October 1, 2019.

7. On September 17, 2019, without giving PREPA the opportunity to respond to the motions to compel, this Honorable Bureau issued a summary order imposing PREPA an Administrative fine of five thousand dollars (\$5,000.00). Said amount to be paid in only two days and warning PREPA that non-compliance with the order may result in the imposition of

administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day. This Bureau also ordered PREPA to serve its response to the Local Environmental Organization's first set of ROIs that same day, September 17, 2019, and its response to the Local Environmental Organization's Second ROI in one additional day, September 18, 2019.

8. That same day, September 17, 2019, this Honorable Bureau issued a separate Resolution and Order under similar terms. The Resolution and Order imposes an additional fine of five thousand dollars (\$5,000.00) to be paid on or before September 19, 2019 and ordered PREPA to serve its responses to EDF's ROI on or before September 18, 2019.

9. PREPA requests that the Honorable Bureau reconsider its September 17, 2019 Resolution and Orders, and instead give PREPA adequate time to respond to the *Motion by Local Environmental Organization's to compel PREPA to Respond to Discovery Requests* and to EDF's *Motion to Compel PREPA to Respond to Discovery Requests*, as authorized by Section 12.02 of the *Regulation on Adjudicative, Notice of Noncompliance, Rate and Investigations Proceedings* and ordered by Section 3.2.1 of the *Uniform Administrative Procedure Act*, as amended.

10. The imposition of sanctions for noncompliance with the provisions of the Regulation or with the Commission's orders or resolutions is governed by Article XII of Regulation of the Honorable Bureau and by Section 3.2.1 of the Uniform Administrative Procedure Act.

Article 12.01 states that:

In place of any fine or order indicated in this Article or in addition thereto, the Commission may impose on the party, counsel for the party or both, reimbursement of the expenses incurred, including attorney fees, **unless the Commission determines that noncompliance was justified or that, under the circumstances, payment would result in unfairness.** [Emphasis provided]

11. More clearly, Section 3.2.1 of the Uniform Administrative Procedure Act, specifically states that:

(a) Where the petitioner in an action or the respondent fails to comply with the rules and regulations or with any order of the agency head, administrative judge or official examiner, the agency may, on its own initiative or at the request of any party, **order him/her to show cause for which the penalty should not be imposed. The order shall state the rules, regulations or orders that have not been complied with, and a term of twenty (20) days shall be granted from the date of service of the order, to show cause. If said order is not complied with, or if it is determined that there was no cause to justify the noncompliance,** then a financial penalty shall be imposed in favor of the agency or any party, that shall not exceed two hundred dollars (\$200) for each separate imposition on the party or his attorney, if the latter is responsible for the noncompliance. [Emphasis provided]

12. In view of the fact that this Honorable Bureau's Resolution and Order was issued without giving PREPA the opportunity to respond to the motions to compel, nor did the Bureau issue an Order to Show Cause, PREPA requests the term of twenty (20) days provided by the Uniform Procedure Act, to show cause for which no penalty should be imposed and to explain in detail the reasons why PREPA has not answered all discovery requests.

13. For the same reasons, PREPA requests that the imposition of sanctions and datelines imposed to answer the ROIs be set aside, until the Honorable Bureau evaluates the motion to be filed by PREPA.

14. In the alternative, that the Honorable Bureau understands that PREPA needs to deposit the two (2) five thousand-dollar (\$5,000.00) fines, PREPA requests ten (10) additional days to deposit the fine. PREPA's administrative process and regulations make it impossible to comply with the payment by June 19, 2019.

**WHEREFORE**, the Puerto Rico Electric Power Authority requests that the Honorable Puerto Rico Energy Bureau grant this motion, provide twenty (20) days to show cause for which

no sanctions or penalty should be imposed and to explain the reasons why PREPA has not answered to all ROI's and to set aside the fine imposed and stay the deadlines given to answer until the Bureau evaluates the motion to be filed by PREPA. In the alternative, PREPA requests ten (10) additional days to deposit the imposed monetary sanctions.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 19<sup>th</sup> day of September 2019.

*/s Katuska Bolaños*  
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## CERTIFICATE OF SERVICE

It is hereby certified that, on this same date I have filed the above motion using the Energy Bureau's Electronic Filing System, at the following address: <http://radicacion.energia.pr.gov> and that a courtesy copy of the filing was sent via e-mail to the Puerto Rico Energy Bureau Clerk and internal legal counsel to: [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov); [wcordova@energia.pr.gov](mailto:wcordova@energia.pr.gov); [legal@energia.pr.gov](mailto:legal@energia.pr.gov); [viacaron@energia.pr.gov](mailto:viacaron@energia.pr.gov) and [sugarte@energia.pr.gov](mailto:sugarte@energia.pr.gov).

In addition, the foregoing filing was sent via e-mail to [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov); [wcordova@energia.pr.gov](mailto:wcordova@energia.pr.gov); [legal@energia.pr.gov](mailto:legal@energia.pr.gov); [sugarte@energia.pr.gov](mailto:sugarte@energia.pr.gov); [sierra@arctas.com](mailto:sierra@arctas.com); [tonytorres2366@gmail.com](mailto:tonytorres2366@gmail.com); [cfl@mcvpr.com](mailto:cfl@mcvpr.com); [gnr@mcvpr.com](mailto:gnr@mcvpr.com); [info@liga.coop](mailto:info@liga.coop); [amaneser2020@gmail.com](mailto:amaneser2020@gmail.com); [hrivera@oipc.pr.gov](mailto:hrivera@oipc.pr.gov); [jrivera@cnslpr.com](mailto:jrivera@cnslpr.com); [carlos.reyes@ecoelectrica.com](mailto:carlos.reyes@ecoelectrica.com); [ccf@tcmrslaw.com](mailto:ccf@tcmrslaw.com); [manuelgabrielfernandez@gmail.com](mailto:manuelgabrielfernandez@gmail.com); [acarbo@edf.org](mailto:acarbo@edf.org); [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com); [rmurthy@earthjustice.org](mailto:rmurthy@earthjustice.org); [rstgo2@gmail.com](mailto:rstgo2@gmail.com); [larroyo@earthjustice.org](mailto:larroyo@earthjustice.org); [jluebkmann@earthjustice.org](mailto:jluebkmann@earthjustice.org); [acasellas@amgprlaw.com](mailto:acasellas@amgprlaw.com); [loliver@amgprlaw.com](mailto:loliver@amgprlaw.com); [epo@amgprlaw.com](mailto:epo@amgprlaw.com); [robert.berezin@weil.com](mailto:robert.berezin@weil.com); [marcia.goldstein@weil.com](mailto:marcia.goldstein@weil.com); [jonathan.polkes@weil.com](mailto:jonathan.polkes@weil.com); [gregory.silbert@weil.com](mailto:gregory.silbert@weil.com); [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com); [maortiz@lvprlaw.com](mailto:maortiz@lvprlaw.com); [rnegron@dnlawpr.com](mailto:rnegron@dnlawpr.com); [castrodiappalaw@gmail.com](mailto:castrodiappalaw@gmail.com); [voxpathulix@gmail.com](mailto:voxpathulix@gmail.com); [paul.demoudt@shell.com](mailto:paul.demoudt@shell.com); [javier.ruajovet@sunrun.com](mailto:javier.ruajovet@sunrun.com); [escott@ferraiuoli.com](mailto:escott@ferraiuoli.com); [SProctor@huntonak.com](mailto:SProctor@huntonak.com); [GiaCribbs@huntonak.com](mailto:GiaCribbs@huntonak.com); [mgrpcorp@gmail.com](mailto:mgrpcorp@gmail.com); [aconer.pr@gmail.com](mailto:aconer.pr@gmail.com); [axel.colon@aes.com](mailto:axel.colon@aes.com); [rtorbert@rmi.org](mailto:rtorbert@rmi.org); [apagan@mpmlawpr.com](mailto:apagan@mpmlawpr.com); [mpietrantoni@mpmlawpr.com](mailto:mpietrantoni@mpmlawpr.com).

In San Juan, Puerto Rico, this 19<sup>th</sup> day of September 2019.

s/ Katuska Bolaños  
Katuska Bolaños