



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

IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN

CASE NO.: CEPR-AP-2018-0001

SUBJECT: PREPA's Urgent Omnibus Motion
for Reconsideration and/or Request for
Extension of time to Comply with Orders;
PREPA's Omnibus Motion for Extension of
Time to submit Responses to Several
Requirements for Information; and
modification to Procedural Calendar

RESOLUTION AND ORDER

I. Introduction

On July 3, 2019, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* in the instant case regarding the Integrated Resource Plan ("IRP") filed by the Puerto Rico Electric Power Authority ("PREPA") on June 7, 2019 ("July 3 Resolution and Order").¹ Through the July 3 Resolution and Order, the Energy Bureau established the procedural calendar for the instant case.

On August 21, 2019, the Energy Bureau issued a *Resolution and Order* ("August 21 Resolution and Order") to, among other things, establish the current procedural calendar. As set forth in the August 21 Resolution and Order, intervenors have a right to issue discovery requests,² pursuant to the provisions of Sections 8.01(H) and (I) of Regulation No. 8543.³ Upon notification of a Request for Information ("ROI"), the requested party, including PREPA, has ten (10) days to answer said ROI.⁴ The discovery period started on July 3, 2019 and will end on October 1, 2019.⁵ The August 21 Resolution and Order forewarned parties

¹ See Resolution and Order, Completeness Determination of PREPA's IRP Filing and Procedural Calendar, Case No. CEPR-AP-2018-0001, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, July 3, 2019.

² August 21 Resolution and Order, p. 3.

³ *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, December 18, 2014.

⁴ August 21 Resolution and Order, p. 3.

⁵ *Id.*

that failure to comply its provisions “may result the imposition of administrative fines up to twenty-five thousand dollars (\$25,000) per day, per violation”.⁶

The Local Environmental Organizations (“LEO”) served PREPA with two ROIs, dated August 4, 2019 (“LEO’s 1st ROI”) and August 26, 2019 (“LEO’s 2nd ROI”), respectively, whereas the Environmental Defense Fund (“EDF”) served PREPA an ROI on August 26, 2019 (“EDF’s ROI”). Thus, PREPA had until August 15, 2019 to respond to LEO’s 1st ROI and until September 5, 2019 to respond to LEO’s 2nd ROI and EDF’s ROI.

On August 16, 2019, PREPA filed a document titled *The Puerto Rico Electric Power (sic) Cover Filing and Response to Local Environmental Organizations First Set of Requests of Information and Confidentiality Designations* in response to LEO’s 1st ROI (“PREPA’s Response to LEO’s 1st ROI”). Through PREPA’s Response to LEO’s 1st ROI, it asked the Energy Bureau to grant an extension until August 19, 2019 to create a SharePoint site to upload the documents and notify the corresponding parties.⁷

On August 27, 2019, intervenor Empire Gas Company, Inc. (“Empire Gas”), issued its first Requirement of Information (“ROI”) to PREPA in the instant case. On August 30, 2019, PREPA requested additional time to submit responses to several ROIs issued by four (4) different intervenors, among them, Empire Gas’ first ROI.⁸ On the same date, the Energy Bureau issued a Resolution and Order requiring PREPA to respond, on or before 12:00 p.m. September 9, 2019 the referenced ROIs.⁹

On September 6, 2019, the Energy Bureau served PREPA its 6th ROI (“NEPR 6th ROI”) and on September 12, 2019 the Energy Bureau served PREPA its 7th ROI (“NEPR 7th ROI”). Accordingly, responses to the NEPR 6th and 7th ROI were due on September 16 and September 23, 2019, respectively

On September 10, 2019, LEO filed a document titled *Motion by Local Environmental Organizations to Compel PREPA to Respond Discovery Request* (“LEO’s Motion”), stating that, to that date, PREPA had not provided the link to the SharePoint in response to Request 1.03 of LEO’s 1st ROI, and had not provided responses to LEO’s 2nd ROI.¹⁰ Upon review of LEO’s Motion, on September 17, 2019, the Energy Bureau issued a *Resolution and Order*, through which it ordered PREPA to provide the links in response to Request 1.03 of LEO’s 1st ROI

⁶ August 21 Resolution and Order, p. 8.

⁷ PREPA’s Response to LEO’s 1st ROI, p. 2, ¶4.

⁸ See PREPA’s *Request for Extension of Time to Submit Responses to Intervenors’ Requirements for Information*, Case No. CEPR-AP-2018-0001, August 30, 2019.

⁹ See Resolution and Order, Request for Extension of Time to Submit Responses to Intervenors’ Requirements for Information, Case No. CEPR-AP-2018-0001, August 30, 2019.

¹⁰ LEO Motion, p. 2, ¶¶2-3.

by September 17, 2019, to provide the responses to LEO's 2nd ROI by September 18, 2019, and to pay, no later than 12:00 pm, September 19, 2019, a \$5,000 administrative fine for its non-compliance with the August 21 Resolution and Order.

On September 16, 2019, EDF filed a document titled *Motion to Compel PREPA to respond to Discovery Requests* ("EDF Motion"), stating that, despite good faith attempts to resolve discovery issues, PREPA had failed to respond to EDF's ROI.¹¹ EDF argued that such failure to respond "jeopardizes the purpose of intervening in this process, and shuts down the possibility of an informed participation in the process".¹² EDF further argued that a delay in the discovery process may affect EDF's ability to prepare its written testimony on a timely manner.¹³ Upon review of the EDF Motion, on September 17, 2019, the Energy Bureau issued a *Resolution and Order*, ordering PREPA to serve its responses to EDF's ROI by September 18, 2019, and to pay, no later than 12:00 pm, September 19, 2019, a \$5,000 administrative fine for its non-compliance with the August 21 Resolution and Order.

On September 19, 2019, PREPA filed a document titled *The Puerto Rico Electric Power Authority Urgent Omnibus Motion for Reconsideration and/or Request for Extension of Time to Comply with Orders* ("First Omnibus Petition"). Through the First Omnibus Petition, PREPA requested the Energy Bureau to reconsider the September 17, 2019 Resolution and Orders, to allow PREPA to respond to the motions filed by LEO and EDF, and to set aside the sanctions and deadlines until after the review of PREPA's replies.¹⁴ PREPA argued that the imposition of sanctions for non-compliance is ruled by Article XII of Regulation 8543 and Section 3.21 of Act 38-2017.¹⁵ PREPA also argued that the referenced Section 3.21 requires the issuance of an order providing a 20-day period to show cause for which no penalty should be imposed.¹⁶ In the alternative, PREPA asked for ten (10) additional days to pay the monetary sanctions.¹⁷

On September 20, 2019, LEO filed a motion in response to PREPA's First Omnibus Petition,¹⁸ through which it clarified that PREPA notified the SharePoint link on August 8,

¹¹ EDF Motion, p. 1, ¶¶2-3.

¹² *Id.*, p. 1, ¶4.

¹³ *Id.*, p. 2, ¶6.

¹⁴ First Omnibus Petition, p. 4, ¶¶12-13.

¹⁵ *Uniform Administrative Procedures Act of the Government of Puerto Rico*.

¹⁶ First Omnibus Petition, pp. 3-4, ¶¶10-12.

¹⁷ *Id.*, p. 4, ¶14.

¹⁸ *Response by Local Environmental Organizations to PREPA's Urgent Omnibus Motion for Reconsideration and/or Request for Extension of Time to Comply with Orders*, Case No. CEPR-AP-2018-0001, September 20, 2019.



2019, and that Request 1.03 of LEO's 1st ROI was amended to seek clarification as to whether there were additional workpapers that were not on the SharePoint.¹⁹ LEO requested the Energy Bureau to toll the end of the discovery period until PREPA has answered all outstanding discovery request and to extend the time for intervenors to file testimony.²⁰

On September 21, 2019, PREPA filed a document titled *Omnibus Motion for Extension of Time to submit Responses to Several Requirements for Information* ("Second Omnibus Petition"). On the Second Omnibus Petition, PREPA argued that, notwithstanding conducting all reasonable efforts, PREPA has not been able to respond to the over 165 interrogatories and requests for production of documents that comprise the intervenors' ROIs.²¹ The Second Omnibus Petition includes an exhibit with the dates PREPA proposed to respond to the intervenors' ROIs.²²

In the Second Omnibus Motion, PREPA also requests an extension to fulfill the NEPR 6th and 7th ROIs, arguing that they require running 21 cases using the Aurora model, each of which requires 10 to 16 hours to complete.²³ Thus, based on the simulation time that the different scenarios require, PREPA proposes to submit partial responses to the NEPR 6th and 7th ROIs, on September 27, October 4 and October 11, 2019.²⁴

Neither the First nor the Second Omnibus Motions addressed Empire Gas' ROI. Furthermore, up to the date of the notification of this Resolution and Order, there is no information in the instant case's administrative file addressing Empire Gas' ROI.

II. Analysis and Determinations

A. Administrative Fines

Section 3.21 of Act 38-2017 states that an administrative agency, in its quasi-judicial function, may impose sanctions to a party that fails to comply with the agency's orders. In such cases, the agency may order the party to show cause for which no penalty should be imposed. According to Section 3.21 of Act 38-2017, if the agency issues the order to show cause, the responding party should be afforded twenty (20) days to submit its motion.²⁵

¹⁹ Id., pp. 1-2, ¶1.

²⁰ Id., pp. 2, ¶3.

²¹ Second Omnibus Petition, p. 2-3, ¶¶7, 10.

²² Second Omnibus Petition, p. 3, ¶ 8, and Exhibit A.

²³ Second Omnibus Petition, Exhibit A.

²⁴ Id.

²⁵ Act 38-2017, Section 3.21(a).

Section 7.1 of Act 38-2017 allows agencies to impose administrative fines, not to exceed five thousand dollars (\$5,000), for violations to the statutes and rules that the agencies administer, providing, however, that if a special law allows a higher fine, the agency may impose the higher penalty. Article 6.36 of Act 57-2014,²⁶ authorizes the imposition of administrative fines of up to twenty-five thousand dollars (\$25,000) upon parties for non-compliance with Energy Bureau's orders. Regarding violations to discovery orders, paragraph (D) of Section 12.03 of Regulation 8543, provides that if a party fails to comply with an order to perform or permit disclosure of evidence, the Energy Bureau may "[i]ssue an order, **under the conditions it deems just**, to impose any party, witness, or attorney a financial penalty as a result of their actions."

PREPA argues that the two *Orders* adopted on September 17, 2019, each imposing a five thousand dollars (\$5,000) fine, where issued without giving PREPA an opportunity to respond to the LEO and EDF Motions, and without issuing an order to show cause granting a 20-day term to provide its response.²⁷ Thus, PREPA posits that an opportunity to respond to the motions to compel and to show cause is warranted.²⁸

Section 3.21 of Act 38-2017 grants discretion to administrative agencies to issue an order to show cause, when it is determined that a party didn't comply with the law, regulations or the agency's orders.²⁹ According to the referenced Section 3.21, if the agency decides to issue an order to show cause, it must grant the affected party a 20-day term to submit its response. However, it is not mandatory for the agency to issue an order to show cause.

Through the August 21 Resolution and Order, the Energy Bureau's warned parties that failure to comply with the provisions set forth therein could result in the imposition of administrative fines. Furthermore, the Energy Bureau issued the fines in accordance with the discretion given by Act 57-2014 and within the parameters of Section 12.03 of Regulation 8543. Such fines are consistent with the provisions of Section 7.1 of Act 38-2017. Therefore, PREPA's arguments regarding the issuance of an order to show cause, including a 20-day term to respond, lacks merit. Notwithstanding, the Energy Bureau finds that granting an extension to pay the administrative fines is reasonable.

²⁶ Act 57-2014, known as the *Energy Transformation and RELIEF Act* ("Act 57-2014").

²⁷ First Omnibus Petition, p. 4, ¶12.

²⁸ *Id.*

²⁹ See *Blás Toledo v. Hospital Guadalupe*, 146 DPR 267,319 (1998); "La utilización de la palabra podrá le imparte un carácter discrecional para que el juez determine si las mismas proceden o no."

B. PREPA's Due Dates to answer ROIs and Changes to the Procedural Calendar

The requested extensions to respond to the ROIs, surpass the procedural calendar discovery period, as established by the August 21 Resolution and Order. This in turn may affect the intervenors' ability to timely file their written testimonies and adequately prepare for the evidentiary hearing.

Moreover, the twenty-day term PREPA requested to submit its response to LEO's and EDF Motions represent an unduly delay in this proceeding. Therefore, such request must be denied.

In setting the current procedural calendar, the Energy Bureau balanced the requirement of allowing ample participation in the IRP review process, and the public interest of establishing an IRP in a timely manner, in order to ensure the energy sector transformation mandated by Act 120-2018³⁰ and Act 17-2019³¹. It is PREPA's responsibility to meet all procedural requirements set forth in this case. However, considering the complexity of the IRP review, and the comprehensiveness of the ROIs, the Energy Bureau grants PREPA's request to extend the term to respond to the ROIs, as follows:

Intervenor	ROI No.	Date ROI served	Due Date for PREPA's Response
LEO	2	August 26, 2019	October 4, 2019
EDF	1	August 26, 2019	October 4, 2019
Progression Energy	1	September 9, 2019	October 11, 2019
Renew (Robust Power)	1	September 15, 2019	October 11, 2019
Not for Profit Intervenors	2	September 15, 2019	October 4, 2019
EDF	2	September 19, 2019	October 16, 2019
Empire Gas	1	August 27, 2019	September 30, 2019

Regarding NEPR 6th and 7th ROIs, PREPA must respond as follows:

ROI	Question	Due Date for PREPA's Response
NEPR 6 th ROI	PREB-PREPA 06-02	September 27, 2019
	PREB-PREPA 06-04	
	PREB-PREPA 06-01	October 4, 2019
	PREB-PREPA 06-05	
	PREB-PREPA 06-06	
	PREB-PREPA 06-03	October 11, 2019
NEPR 7 th ROI	PREB-PREPA 07-01	September 27, 2019
	PREB-PREPA 07-04	

³⁰ The Puerto Rico Electric Power System Transformation Act, as amended.

³¹ The Puerto Rico Energy Public Policy Act.

ROI	Question	Due Date for PREPA's Response
NEPR 7 th ROI	PREB-PREPA 07-02	October 4, 2019
	PREB-PREPA 07-05	
	PREB-PREPA 07-03	October 11, 2019
	PREB-PREPA 07-06	

Moreover, due to the previous determination, the procedural calendar in the instant case is amended as follows:

Date	Phase
July 3, 2019 – October 16, 2019	Discovery Process
October 23, 2019	Intervenor's Written Testimony Due
October 24 - November 13, 2019	Discovery on Intervenor's Written Testimony
November 20, 2019	Rebuttal Testimony Due

All other provisions of the procedural calendar remain unaltered. Attachment A to this Resolution and Order contains a complete and up to date procedural calendar.

PREPA is **WARNED** that neither the ROI deadlines nor the procedural calendar will be further modified. If PREPA encounters unexpected circumstances that might affect the timely delivery of its responses to the ROIs, PREPA **MUST** inform the Energy Bureau on or before October 1, 2019. After such date, the Energy Bureau will evaluate any petition regarding the deadlines only in the most extreme and unforeseeable circumstances.

C. Continuous obligation to review and update discovery.

Finally, in its First Omnibus Petition, PREPA contends that, even though the Energy Bureau has not ruled on its petition to grant an extension until August 19, 2019 to create the SharePoint, as requested in PREPA's Response to LEO's 1st ROI, PREPA created the SharePoint and its being used by all intervenor without reported problems.³² First, we note that, pursuant to paragraph (F) of Section 8.01 of Regulation 8543, PREPA has a continuous duty to correct, amend and update its responses during a discovery process. Furthermore, the August 21 Resolution and Order already allows PREPA to set cloud-based storage services to deliver its responses to the ROIs.³³

³² *Id.*, p. 2, ¶3.

³³ August 21 Resolution and Order, p. 4.



Therefore, even if the Energy Bureau didn't rule on PREPA's request for extension, PREPA was required to fulfil its own commitment to set-up a SharePoint in order to comply with its discovery obligations. PREPA's actions demonstrate a clear disregard towards its duties and obligations towards the discovery process and the Energy Bureau's orders. Such actions will not be tolerated and will be met with more stringent fines and administrative penalties.

III. Conclusion

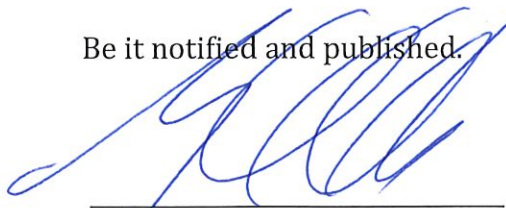
For all of the above, the Energy Bureau **GRANTS** a deadline extension to answer the ROI's, as set forth in part II.B of this Resolution and Order. The Energy Bureau hereby **MODIFIES** the procedural calendar in the instant case, as set forth in Attachment A of this Resolution and Order. The Energy Bureau **DENIES** PREPA's request to set aside the imposition of sanctions and **ORDERS** PREPA to submit its payment no later than **Monday, September 30, 2019, at 5:00pm**. Finally, the Energy Bureau **DENIES** PREPA's request for a twenty-day term to submit its response to LEO's and EDF Motions.

Any party affected by this determination may move for reconsideration of this Resolution and Order before the Puerto Rico Energy Bureau under Section 11.01 of Regulation 8543, and Act 38-2017. The affected party shall move for reconsideration within the term of twenty (20) days from filing this Resolution and Order. Such request must be presented to the Bureau Clerk's Office, at World Plaza Building, 268 Ave. Muñoz Rivera, Level Ste. 202, San Juan, P.R. 00918, or electronically in the Energy Bureau's digital platform at <https://radicacion.energia.pr.gov/>.

The Energy Bureau shall consider said motion within fifteen (15) days of its filing. Should the Energy Bureau reject it forthright or fail to act upon it within fifteen (15) days, the term to request review shall recommence from notice of such denial, or from the expiration of the fifteen (15)-day term. If a determination is made in its consideration, the term to petition for review shall commence from the date when a copy of the notice of the Energy Bureau's resolution definitively resolving the motion to reconsider is filed in the record. Such resolution shall be issued and filed in the record within ninety (90) days after the motion to reconsider has been filed. If the Energy Bureau accepts the motion to reconsider but takes no action regarding the motion within ninety (90) days of its filing, it shall lose jurisdiction on the motion and the term to file judicial review shall commence upon the expiration of the ninety (90)-day term, unless the Energy Bureau, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.

Any affected party may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date the copy of the notice of this Resolution and Order was filed in the record of the Energy Bureau, pursuant to Section 11.03 of Regulation 8543, Act 38-2017 and the Court of Appeals Regulation.

Be it notified and published.



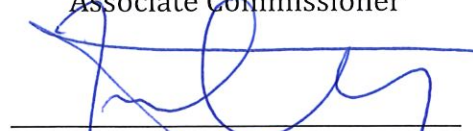
Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ángel R. Rivera de la Cruz
Associate Commissioner




Ferdinand A. Ramos Soegaard
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on September 23, 2019. I also certify that on September 23, 2019 a copy of this Resolution and Order was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aepr.com, c-aquino@prepa.com, mvazquez@diazvaz.law, kbolanos@diazvaz.law, acarbo@edf.org, javier.ruajovet@sunrun.com, pedrosaade5@gmail.com, rmurthy@earthjustice.org, carlos.reyes@ecoelectrica.com, ccf@tcmslaw.com, victorluisgonzalez@yahoo.com, mgrpcorp@gmail.com, hriviera@oipc.pr.gov, jriviera@cnspr.com, manuelgabrielfernandez@gmail.com, acasellas@amgprlaw.com, corey.brady@weil.com, maortiz@lvprlaw.com, rnegron@dnlawpr.com, paul.demoudt@shell.com, escott@ferraiuoli.com, agraitfe@agraitlawpr.com, castrodiéppalaw@gmail.com, voxpopulix@gmail.com, cfl@mcvpr.com, sierra@arctas.com, tonytorres2366@gmail.com, info@liga.coop, amaneser2020@gmail.com, mpietranтони@mpmlawpr.com, apagan@mpmlawpr.com.

I sign this in San Juan, Puerto Rico, today September 23, 2019.



Wanda I. Cordero Morales
Clerk

Attachment A

Summary of Procedural Calendar

Date	Phase
July 3, 2019 – October 16, 2019	Discovery Process
August 2, 2019	Requests for Intervention and <i>Amicus Curiae</i> Due
August 13, 2019	Initial Technical Hearing (1 st Part)
September 4-5, 2019	Initial Technical Hearing (2 nd Part)
October 23, 2019	Intervenor's Written Testimony Due
October 24 - November 13, 2019	Discovery on Intervenor's Written Testimony
November 1, 2019	<i>Amicus Curiae</i> Brief Due ¹
November 20, 2019	Rebuttal Testimony Due
December 2–6, 2019	Evidentiary Hearing (<i>The Energy Bureau may modify the duration at its discretion</i>)
December 20, 2019	Final Substantive and Legal Briefs Due
January 10, 2020	Reply to Legal Briefs Due
January 10, 2020	Public Hearing
January 17, 2020	Public Comments Due

¹ See, Resolution and Order, Procedural Calendar and Public Comment Process Modification, Case No. CEPR-AP-2018-0001, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, September 20, 2019.