

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

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IN RE:

**PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW**

CASE NO.:

CEPR-AP-2015-0001; NEPR-AP-2018-0003

SUBJECT:

Resolution and Order dated
October 7, 2019

MOTION FOR RECONSIDERATION OF FINE

TO THE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority through the undersigned legal representation and respectfully sets forth and pray:

I. INTRODUCTION

1. On October 7, 2019, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) entered a *Resolution and Order* (the “Fine Order”) in which, among other determinations, the Energy Bureau imposed “a one-time fine in the amount of five thousand dollars (\$5,000) based on [Puerto Rico Electric Power Authority (PREPA)]’s late filings and noncompliance with the information required to be submitted as part of the quarterly filings.” See Fine Order, ¶ II, p. 3.

2. PREPA respectfully submits to the Energy Bureau that the imposition of the five thousand dollars (\$5,000)’s fine is unwarranted and, as such, requests the Energy Bureau that it reconsider its imposition and that the fine be set aside.

II. RELEVANT PROCEDURAL BACKGROUND

3. On April 25, 2019, the Energy Bureau entered a Resolution and Order in which, among other matters, established and ordered the processes to be carried out for the approval of

the factors associated with the fuel adjustment, purchased power, fuel oil subsidy, CILT cost adjustment, human and non-human subsidies and the energy efficiency riders (the “April 25 Order”). The Energy Bureau established that the factors associated with the fuel adjustment, purchased power, fuel oil subsidy were going to be reviewed and approved by the Energy Bureau on a quarterly basis, while the CILT cost adjustment, human and non-human subsidies and the energy efficiency factors would be reviewed and approved on a yearly basis.

4. The April 25 Order states that

[f]or the quarterly riders that will be in effect on October 1, 2019, [the Puerto Rico Electric Power Authority (PREPA)] will submit, on or before September 13, 2019, the proposed factors, including the proposed reconciliations for the months of June, July and August 2019. The Energy Bureau will review the information provided by PREPA and will timely approve the factors and reconciliations that will be in effect from October 1, 2019 to December 31, 2019.

5. On September 13, 2019, PREPA, even after doing its best efforts to comply with the April 25 Order, was not going to be able to present the reconciliation pertaining to the month of August 2019. Therefore, before the period to submit the reconciliation expired, PREPA filed a *Request for Extension of Time to Submit Reconciliations for the Month of August 2019* (the “Request for Extension of Time”). In the Request for Extension of Time PREPA explained all the reasons as to why it was not going to be able to present the reconciliations for the month of August 2019. In particular, PREPA informed the Energy Bureau that:

As already mentioned in the [*PREPA’s Motion for an Extension of Time and to Coordinate Overlapping Schedules* dated June 12, 2019], new internal processes in the generation of the new reports and their data validation are inherent to the creation and establishment of the new rate structure. The new reports’ format and contents must be reviewed by officers of several PREPA departments, including the Finance, Customer Service and the Planning and Environmental directorates. As of today, as it happened with the May 2019 reconciliation filing, PREPA has not been able to complete the processes required to generate and validate the reports. The PREPA Finance Department experienced significant delays in

completing the accounting closes of May, June and July, and will not be able to complete the August 2019 accounting close by September 13, 2019. Even though PREPA agrees with the Energy Bureaus expressions' included in the June 21 Resolution, and its moving to "modify its internal processes to meet the Energy Bureau's requirements and to comply with its resolutions and orders", including the case of caption's, the April 25 Resolution's deadlines are still pressing to PREPA and do not fit into PREPA's current operational reality. PREPA acknowledges that it must move towards updating its systems and processes to be able to comply with the April 25 Resolution's deadlines. Among the changes PREPA has made to accelerate the accounting close process (once the reports issue is solved) is to further automatize the process to compute the sales and the reconciliation adjustments, as well as assigning additional staff to process and validate the information of monthly fuel costs, as provided by the Fuel Office and the administrative staff of the different power plants. PREPA is in the process of identifying additional revisions and implementations to the already-existing internal proceedings. Such revisions will be informed to the Energy Bureau in due course. *See Request for Extension of Time*, ¶ 5.

6. The Energy Bureau had the opportunity to receive live testimony under oath of several PREPA officers on the above-stated. On September 13, 2019, the Energy Bureau ruled on PREPA's *Request for Extension of Time* and ordered "PREPA to attend a Technical Conference on Tuesday[,] September 17, 21019 at 3:00pm" and informed that "[t]he purpose of the Technical Hearing [was] for PREPA to present and explain the steps it has taken towards modifying its internal procedures to comply with the orders and deadlines established in the [case of caption] and in the approved PREPA Tariff Book." *See Resolution and Order* dated September 13, 2019 (the "September 13 Order"), p. 2. The Energy Bureau also warned PREPA that non-compliance with the April 25 Order would result in the imposition of a daily fine of in the amount of five thousand dollars (\$5,000) until PREPA presented a complete reconciliation filing. *See Id.*

7. As PREPA mentioned in the Request for Extension of Time, it was not going to be able to present the August 2019 reconciliation within the established deadline and therefore, PREPA was only able to partially comply with the April 25 Order. On September 13, 2019,

PREPA filed the reconciliations for the months of May, June and July 2019, but not August 2019. See *Motion to Submit Proposed Factors for the Period of October to December 2019 and Public Lighting Report* dated September 13, 2019.

8. In compliance with the September 13 Order, several PREPA officers appeared on September 17, 2019 at the Energy Bureau and gave testimony under oath to the Energy Bureau explaining why PREPA was not able to comply with the deadlines established to produce the reconciliations and therefore, it was not able to timely complete the August 2019 reconciliation¹. The attending officers produced a flow chart and explained to the Energy Bureau the process that PREPA follows in order to be able to timely produce the reconciliations for each month.

9. During the hearing, the Energy Bureau granted PREPA until September 20, 2019, to produce the August 2019 reconciliations. PREPA complied and, on September 20, 2019, PREPA filed a *Motion to Submit Additional Reconciliations (August 2019) for the Determination of Factors for the Period of October to December 2019* (the “August 2019 Reconciliation Motion”).

10. On September 25, 2019, the Energy Bureau entered a *Resolution and Order* directing PREPA to submit revised versions of certain documents that it had presented with the August 2019 Reconciliation Motion because some parties of the confidential documents did not comply with the requirements established by the Energy Bureau (the “September 25 Order”). The September 25 Order also directed PREPA to attend a Technical Conference Call the next day, September 26, 2019 and also informed that attendees must be able to address any question from

¹ At the end of the hearing the Energy Bureau expressed that it did not understand why PREPA did not file at least the reconciliations for the months of May, June and July 2019. PREPA produced evidence and informed that it had, indeed, timely filed the May, June and July 2019 reconciliations.

the Energy Bureau related to the documents filed on September 20, 2019, including, but not limited to, the explanations requested in the [September 25 Order]. *See* September 25 Order, p. 3.

11. PREPA complied with the September 25 Order, timely submitted the requested documents and, attended the Technical Conference Call.

12. On October 7, 2019, the Energy Bureau issued the Fine Order, in which, among other determinations, the Energy Bureau imposed “a one-time fine in the amount of five thousand dollars (\$5,000) based on [Puerto Rico Electric Power Authority (PREPA)]’s late filings and noncompliance with the information required to be submitted as part of the quarterly filings.” *See* Fine Order, ¶ II, p. 3. PREPA understands that, even though it was not able to comply with the April 25 Order and that the Energy Bureau found that some documents submitted with the August 2019 Reconciliation Motion did not comply with the requirements of the Energy Bureau, PREPA presented sufficient reasons to justify that (1) it was not able to comply with the April 25 Order and therefore, the August 2019 reconciliations were not timely filed and that (2) the PREPA officers thoroughly answered all of the Energy Bureau’s questions during the September 26 Technical Conference Call and that the testimony given by the PREPA officers during said call is evidence that the alleged lack of information was due to honest human mistakes.

III. ARGUMENT

13. PREPA can not deny that it has failed to comply with certain orders entered by the Energy Bureau in the case of caption. Specifically, PREPA partially complied with the April 25 Order and, as per the Energy Bureau’s perspective, once it submitted the August reconciliation documents, these did not comply with the September 25 Order.

14. First, it is clear and at this point and also uncontested, that PREPA did not ignore or disregarded any of the Energy Bureau’s orders included in § III of this motion. All the orders

have been addressed through different motions. Therefore, the record shows that PREPA was, as it is now, paying careful attention to the docket of the case, tending to all pending matters and preparing for all upcoming deadlines and milestones².

15. Certainly, PREPA did not fully comply with the April 25 Order. But, since June 12, 2019, PREPA had already explained to the Energy Bureau the constraints that it had to face in order to be able to present the reconciliations within the Energy Bureau's established deadlines. PREPA also explained that even doing its best effort, it was not going to be able to comply with the Energy Bureau's deadlines.

16. It must also be noted that PREPA complied to the extend possible and to the extent that its resources allowed it. This was thoroughly explained during the September 17, 2019 Technical Conference. At least ten (10) PREPA officers appeared to the Technical Conference prepared to answer all of the Energy Bureau's questions and to explain, once again, its inability to comply with the reconciliations' deadlines. Among the present parties were the key personnel with the technical knowledge to discuss the possible questions and also, the head of several PREPA directorates, including: Customer Service, Planning and Environmental, Finance and Legal. Every present officer was prepared to discuss the hurdles that PREPA has to overcome to prepare the requested reconciliations.

17. A fine is a punitive resource that should not be used in this case. As the record shows, there is plenty of evidence, including testimony under oath provided during the September 17, 2019 technical conference, showing that what caused PREPA's inability to comply with the April 25 Order were real obstacles, either operational, lack of staff or lack of better practices, but never disregard. What the record won't show, because it doesn't exist, is evidence of ignoring or

² See *PREPA's Motion for an Extension of Time and to Coordinate Overlapping Schedules* dated June 12, 2019.

not responding to the Energy Bureau's orders. PREPA should not be fined for not complying with an order to which it had requested an extension to comply with and more importantly, an order that PREPA had already advanced to the Energy Bureau that it was not going to be able to comply with. The Request for Extension of Time is yet another piece of evidence that shows that PREPA was in fact paying attention to the Energy Bureau's orders and working towards meeting the established deadlines or, at least, completing the reconciliation as fast and close as possible to the established deadline.

18. Lastly, PREPA did not failed to comply with any of the Energy Bureau's orders when it presented documents that did not suffice the Energy Bureau's requirements. This transpired during the Technical Conference Call in which Associate Commissioner De La Cruz was able to discuss the documents or information that the Energy Bureau considered that PREPA had not correctly presented. During the Technical Conference Call, PREPA and the Energy Bureau clarified the information that had been submitted, PREPA presented explanations for certain information that was not clear to the Energy Bureau and also, noted additional information or different formats that the Energy Bureau wants in order to be able to correctly present the documents during the next reconciliation period. For example, there were discussions of documents that were presented in *.pdf* format but the Energy Bureau wanted in the Excel format.

19. Again, there is no evidence of disregard or letting an Energy Bureau's order unattended. There is evidence justified of misunderstandings.

20. PREPA request the Energy Bureau to note that PREPA has been responding to all the orders that have been entered and, when it knows that it will not be able to comply with them, PREPA has timely come forward and presented the explanations and reasons for its inability to

comply. For this reason, and the reasons stated above, PREPA understands that a five thousand dollars (5,000) fine should be set aside.

WHEREFORE, PREPA respectfully requests the Energy Bureau to reconsider the Fine Order and set aside the five thousand dollars (5,000) fine.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of October 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 hrivera@oipc.pr.gov; abogados@fuerteslaw.com; francisco.rullan@aae.pr.gov; mgrpcorp@gmail.com; licenciadamasferrer@gmail.com; wilma.lopez@aae.pr.gov cfl@mcvpr.com; ive@mcvpr.com; pnieves@vnblegal.com; mmuntanerlaw@gmail.com; maribel.cruz@acueductospr.com; jfeliciano@constructorespr.net; abogados@fuerteslaw.com; eirizarry@ccdlawpr.com; edwin.quinones@aae.pr.gov; nydinmarie.watlington@cemex.com; aconer.pr@gmail.com; epenergypr@gmail.com; jorgehernandez@escopr.net; ecandelaria@camarapr.net; pga@caribe.net; manuelgabrielfernandez@gmail.com; mreyes@midapr.com; agraitfe@agraitlawpr.com; attystgo@yahoo.com.

In San Juan, Puerto Rico, this 21st day of October 2019.

/s/ Katuska Bolaños
Katuska Bolaños