

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

**IN RE:** REVIEW OF LUMA'S INITIAL BUDGETS

**CASE NO.:** NEPR-MI-2021-0004

**SUBJECT:** Request for Extension of Time to Comply with the January 23 Resolution and Status of Independent Consumer Protection Office (ICPO) Plan to Negotiate Non-agricultural Irrigation Rates in Accordance with Rate Order.

**RESOLUTION AND ORDER**

**I. Introduction and Procedural Background**

On January 23, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("January 23 Resolution"), through which, the Energy Bureau Ordered the Puerto Rico Electric Power Authority ("PREPA") to disclose reconciliations of irrigation district shortfalls with the Government of Puerto Rico payments toward mandated reimbursements pursuant to underlying Acts. Any gaps or deficiencies were required to also be explained. PREPA was required to inform the Energy Bureau of its measures to unwind the current ratepayer SUBA-NHH subsidy and comprehensively conform to long-established laws providing for adequate revenue sources to cover irrigation funding obligations.<sup>1</sup>

On February 16, 2024, PREPA filed a document titled, *Motion for Extension of Time to Comply with January 23 Resolution to the Honorable Energy Bureau* ("February 16 Motion"), through which, PREPA advised that it would be unable to complete the analysis and plans required in the January 23 Resolution and requested an extension of time for 21 days until March 14, 2024 to submit its Motion in Compliance with the January 23 Resolution.

On February 22, 2024, the Energy Bureau issued a Resolution and Order ("February 22 Resolution"), through which, the Energy Bureau granted PREPA's request to extend the time for PREPA to comply with the January 16 Resolution until March 14, 2024.

On March 13, 2024, PREPA filed a document titled, *Renewed Motion for Extension of Time to Comply with the January 23<sup>rd</sup> Resolution and Order* ("March 13 Motion"), through which, PREPA represented that it has been working diligently to comply with the January 23 Resolution, however, the production of the required information has been delayed. PREPA requests an extension of time until April 3, 2024 to submit its Motion in Compliance with the January 23 Resolution.<sup>2</sup>

PREPA relates that it is gathering and analyzing historical financial information to assess the operating deficit of the Irrigation District, evaluating from a financial, legal, and contractual perspective the necessary rate increases to government and industrial customers to cover the expected shortfall and quantifying the impacts on water service quality from potential financial shortfalls and risks to reduce ongoing operations. PREPA states that other equally important matters, such as the 2022 financial statement auditing process and Fiscal Year 2025 budget proposal, are being addressed simultaneously, and this, in addition to everyday responsibilities, has contributed to the delay.<sup>3</sup>

<sup>1</sup> January 23 Resolution, p. 4.

<sup>2</sup> March 13 Motion, p. 3.

<sup>3</sup> March 13 Motion, p. 2.



## II. Discussion

The Energy Bureau reiterates the concerns it expressed in the January 23 Resolution regarding ratepayer subsidization of Irrigation Districts. The Energy Bureau restates its concern that the current ratepayer subsidization violates Section 24 of Act 83 of May 2, 1941, as amended, and provisions within Act 58 of April 30, 1928, stating that PREPA must recover expenses directly from irrigation services and the Government of Puerto Rico must reimburse the regulated entity for any outstanding irrigation district obligations that are unable to be addressed through user fees or independent district budgets. As the Energy Bureau noted, there exists no provision allowing the transfer of these funding mandates onto ratepayers. Yet the current SUBA-NHH construct does precisely that by socializing explicitly assigned irrigation financial responsibilities.<sup>4</sup>

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The Energy Bureau noted in the 2017 Rate Order<sup>5</sup> that The Irrigation District Subsidy results when the Irrigation District's water rates fail to recover its costs and PREPA makes up the difference by raising rates to its electric customers. Those customers are excluded from the negotiations with non-agricultural customers for the rates set by the Irrigation District. The rates for agricultural clients are set by law. The Energy Bureau noted that non-agricultural water rates should cover their costs unless a reduction is needed to ensure the customer stays on the system. The Energy Bureau determined that any departure from cost should be reviewed by the Energy Bureau to ensure that it is no greater than necessary to retain the customer. The Energy Bureau stated that it would not approve the Irrigation District Subsidy in the future, unless PREPA demonstrates that the discount is no greater than necessary and that the Independent Consumer Protection Office (ICPO) and at least one commercial or industrial customer have participated in the negotiations.<sup>6</sup> The Energy Bureau Ordered, "Future negotiations between the Irrigation District and its non-agricultural customers shall involve the ICPO to the extent the ICPO wishes to participate."<sup>7</sup>

Contrary to the direction in the 2017 Rate Order, PREPA has not demonstrated that any discount on non-agricultural water rates is no greater than necessary to retain the customer and has apparently received no input from the ICPO. The Energy Bureau acknowledges that ICPO participation is discretionary, however, in view of the current budgetary demands on ratepayers, who have no voice other than ICPO in negotiations for water rates, ICPO participation would be beneficial.

## III. Conclusion

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The Energy Bureau **APPROVES** PREPA's request for an extension of time to comply with the January 23 Resolution and extends the time to comply until April 3, 2024.

The Energy Bureau **REQUESTS** from the ICPO, within ten (10) business days from the issuance of this Resolution and Order, their plans and any actions already taken to negotiate irrigation rates to prevent or mitigate shortfalls that are being subsidized by electric ratepayers, in accordance with the directives in the 2017 Rate Order.

<sup>4</sup> January 23 Resolution, p. 3.

<sup>5</sup> See, In Re: Puerto Rico Electric Power Authority Rate Review, Case No. CEPR-AP-2015-0001, January 10, 2017.

<sup>6</sup> 2017 Rate Order, p. 90.

<sup>7</sup> 2017 Rate Order, p. 135.






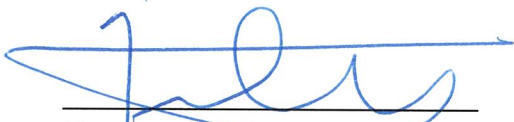
The Energy Bureau **WARNS** PREPA that:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and
- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000) at the discretion of the Energy Bureau.

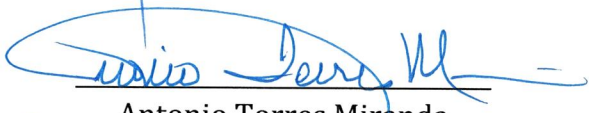
Be notified and published.

  
Edison Avilés Deliz  
Chairman

  
Lillian Mateo Santos  
Associate Commissioner

  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
Sylvia B. Ugarte Araujo  
Associate Commissioner

  
Antonio Torres Miranda  
Associate Commissioner

**CERTIFICATION**

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on March 21, 2024. Also certify that on March 21, 2024, I have proceeded with the filing of this Resolution and Order and was notified by email to hriviera@jrsp.pr.gov; pre@promesa.gov; margarita.mercado@us.dlapiper.com; ana.rodriguezrivera@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; mvalle@gmlex.net; arivera@gmlex.net; legal@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com.

I sign in San Juan, Puerto Rico, today, March 21, 2024.

  
Sonia Seda Gaztambide  
Clerk

