

**COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION**

**IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW**

CASE NO.: CEPR-AP-2015-0001

**SUBJECT: ACONER's Motion Requesting
Clarification**

RESOLUTION AND ORDER

I. Introduction and Background

On May 10, 2017, the Puerto Rico Energy Commission ("Commission") issued a Resolution and Order ("May 10 Resolution") addressing the Compliance Filing submitted by the Puerto Rico Electric Power Authority ("PREPA") on April 25, 2017. Through the May 10 Resolution, the Commission, among other things, required PREPA to amend the description and definition of non-grandfathered net metering customers in the net metering credit rider description included in Exhibit C of its Compliance Filing.

The Commission required PREPA to include the following description:

Non-Grandfathered net metering customer, defined as, pursuant to Section 29 of Act 4-2016, any customer who applies for interconnection after May 10, 2017 or who applied for interconnection between February 16, 2017 and May 10, 2017 but fails to comply with the requirements set forth in Section 4 of Act 114-2007, as amended by Section 29 of Act 4-2016 (regarding payment of deposits) or increases the capacity of their renewable energy systems in excess of 20% of its original capacity, shall be treated as non-grandfathered net metering customer for purposes of the application of the approved charges. The non-grandfathered customers will receive a credit for the energy exported (outflow) as explained below.

On May 11, 2017, the Commission issued an Order ("May 11 Order") directing PREPA to publish a notice identifying May 10, 2017 as the "cut-off" date for net-metering grandfathering treatment and the effect on new net metering customers, pursuant to its May 10 Resolution. According to the May 11 Order, PREPA was required to: (i) publish a notice in at least one (1) newspaper of general circulation; (ii) post such notice in PREPA's website and at its customer service locations and commercial offices; and (iii) mail a copy of said notice to each of its customers along with the bills for the following billing cycle.

On May 24, 2017, PREPA filed a Motion notifying the Commission of the actions taken in compliance with several of the requirements of the May 11 Order, namely, the publication of such notice in a newspaper of general circulation, its availability at PREPA's commercial facilities, and on its website.

On May 31, 2017, PREPA filed a second Motion ("May 31 Motion") indicating that, due to a lack of materials, equipment, and personnel, it would not be possible for PREPA to mail a copy of the required notice to its customers along with the bills for the following billing cycle. PREPA informed that it would take all necessary measures to include such notice with the customers' bills for the first billing cycle of July 2017.

On June 2, 2017, the Commission issued a Resolution and Order, granting PREPA's request to delay sending copy of the aforementioned notices until the July 2017 billing cycle, and required PREPA to certify compliance with such requirement within seven (7) days from the date of such compliance.

On June 12, 2017, the Puerto Rico Renewable Energy Contractors and Consultants Association, Inc. ("ACONER", for its Spanish acronym) filed a *Motion Requesting Clarification* requesting the Commission amend the description of Non-Grandfathered net metering customers adopted through its May 10 Resolution in order to: (i) provide February 16, 2016 (in lieu of February 16, 2017) as the correct date after which net metering customers who applied for a system are subject to the specific requirements set forth in Section 4 of Act 114-2007; (ii) extend the grandfathering treatment eligibility "cut-off" date to the date in which PREPA certifies having mailed copy of the notice required by the Commission to all its customers; and (iii) provide that the requirement for the payment of deposit shall only apply when such deposit is required and collected by PREPA.

As such, ACONER requests the Commission to amend the description of Non-Grandfathered net metering customers to read as follows:

"Non-Grandfathered net metering customer, defined as, pursuant to Section 29 of Act 4-2016, any customer who applies for interconnection after **[the publication date in which the final charge for net metering projects is mailed with PREPA's invoices]** or who applied for interconnection between February 16, 201[6] and **[the publication date in which the final charge for net metering projects is mailed with PREPA's invoices]** but fails to comply with the requirements set forth in Section 4 of Act 114-2007, as amended by Section 29 of Act 4-2016 (regarding payment of deposit [, **when available and collectable by PREPA]**) or increase the capacity of their renewable energy systems in excess of 20% of its original capacity, shall be treated as non-grandfathered net metering customer for purposes of the application of the approved charges. The non-

grandfathered customers will receive a credit for the energy exported (outflow) as explained below.”¹

II. Section 4 of Act 114-2007

Section 4 of Act 114-2007, as amended by Section 29 of Act 4-2016,² establishes two groups of grandfathered net metering customers. The first group are those customers that have “entered into a net metering agreement as of [February 16, 2016] or that [are] in the process of evaluating or developing a renewable energy project.” Customers that comply with the aforementioned criteria are automatically considered to be grandfathered net metering customers.

The second group of customers are those that submitted for evaluation a renewable energy project “from the period after the date of approval of this Act [February 16, 2016] to the time the final charge for net metering projects is *determined and published* by the Commission.” In its Final Resolution addressing PREPA’s Motion for Reconsideration, the Commission established that the phrase “determined and published”, as used in Section 4 of Act 114-2007, refers to the date in which the Commission issues a resolution approving PREPA’s calculation of the approved charges.³

To be considered as grandfathered, these customers must comply with a set of requirements, including the payment of a deposit and the completion of the construction within a specified timeframe.

III. Commission Determinations

A. Correction to date after which the specific requirements set forth in Section 4 of Act 114-2007 apply.

The description of Non-Grandfathered net metering customers adopted by the Commission through its May 10 Resolution identifies February 16, 2017 as the date after which customers who submitted for evaluation a renewable energy project must comply with the requirements established in Section 4 of Act 114-2007 in order to be eligible for grandfathered treatment.

ACONER requests the Commission amend such date to reflect February 16, 2016 as the correct date, instead of February 16, 2017, as established in the May 10 Resolution.⁴ The Commission **GRANTS** ACONER’s requests. Pursuant to Section 4 of Act

¹ ACONER’s Motion Requesting Clarification, ¶10.

² The Puerto Rico Electric Power Authority Revitalization Act.

³ March 8, 2017 Final Resolution, p. 7.

⁴ ACONER’s Motion, ¶3.

114-2007, the date after which customers who submitted for evaluation a renewable energy project must comply with the requirements established in Section 4 of Act 114-2007 is the date of approval of Act 4-2016, which is February 16, 2016. The Commission's use of the year 2017 was the result of a typing error.

B. Establish the grandfathered treatment eligibility “cut-off” date as the date in which PREPA certifies compliance with the May 11 Order notification requirement

ACONER requests the Commission to amend the grandfathered treatment eligibility “cut-off” date so that, instead of May 10, 2017, the date used is the date in which PREPA certifies having mailed a copy of the public notice required through the May 11 Order.⁵

The Commission **REJECTS** ACONER's request. Section 4 of Act 114-2007 provides that the “cut-off” date after which renewable energy projects are no longer eligible for grandfathered treatment is the date in which “the final charge for net metering projects is determined and published by the Commission.”

May 10, 2017 is the date in which the charges were *determined* and *published* by the Commission. They were *determined*, because it was on such occasion the Commission formally approved the methodology for calculating the charges and authorized PREPA to implement such charges. They were *published*, because it is through such resolution that the Commission issued and notified its final approval of such charges.

While the mailing of a public notice to PREPA's customers (as well as the other notification directives made by the Commission) provides an additional mechanism for notifying customers of the grandfathering eligibility “cut-off” date, neither the date in which PREPA mails such notices, nor the date in which PREPA certifies having mailed such notices, may be considered as the dates in which the charges were *determined* and *published*. Furthermore, it would be impractical to require PREPA to mail a notice identifying a “cut-off” date that is unknown at the time the notices are printed and mailed. To comply with ACONER's request, the notices published by PREPA would need to include a future, uncertain date, because the date on which PREPA would certify compliance would be unknown at the moment the notice is printed and mailed.

ACONER's proposed definition suggests that an alternative to including a specific date would be for the notice to describe the “cut-off” date as the “date in which the final charge for net metering projects is mailed with PREPA's invoices.” But this alternative risks leading to greater uncertainty with regards to the “cut-off” date, because the notice would not include a specific date, leaving each customer responsible for determining the actual “cut-off” date.

⁵ ACONER's Motion, ¶7.

C. Provide that the requirement for the payment of deposit shall only apply when such deposit is required and collected by PREPA

ACONER argues that PREPA has not been collecting the deposits required by Section 4 of Act 114-2007 from customers who submitted net metering projects after the approval of Act 4-2016 (February 16, 2016).⁶ ACONER further argues that none of PREPA's regulations, communications or internal documents provide for the collection of such deposits as a requirement for eligibility to grandfathered treatment.⁷ Accordingly, ACONER requests the Commission to amend the description of grandfathered net metering customers to ensure that customers eligible for grandfathered treatment from whom PREPA did not collect any deposits would not lose their grandfathered status given the lack of a deposit.

The Commission **REJECTS** ACONER's request. First, as discussed above, the criteria for net metering customers to be eligible for grandfathered treatment are specifically set forth in Act 114-2007. Secondly, PREPA's possible non-compliance with the requirements of Section 4 of Act 114-2007 regarding the collection of deposits is a subject best addressed through a complaint proceeding. Accordingly, ACONER may file a complaint with the Commission where it may include specific facts related to PREPA's alleged failure to comply with Section 4 of Act 114-2007.

IV. Commission Directive

The Commission **ORDERS** PREPA to amend the description of the Non-Grandfathered net metering customer included in Exhibit C of its Compliance Filing to read as follows:

Non-Grandfathered net metering customer, defined as, pursuant to Section 29 of Act 4-2016, any customer who applies for interconnection after May 10, 2017 or who applied for interconnection between February 16, 2016 and May 10, 2017 but fails to comply with the requirements set forth in Section 4 of Act 114-2007, as amended by Section 29 of Act 4-2016 (regarding payment of deposits) or increases the capacity of their renewable energy systems in excess of 20% of its original capacity, shall be treated as non-grandfathered net metering customer for purposes of the application of the approved charges. The non-grandfathered customers will receive a credit for the energy exported (outflow) as explained below.

Copy of the updated Tariff Book (Exhibit C) shall be filed with the Commission.

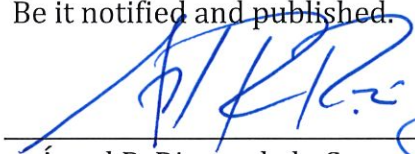
⁶ ACONER's Motion, ¶8.

⁷ *Id.* at ¶9.

For the benefit of all parties involved, the Commission publishes this Resolution and Order in both the Spanish and English languages. Should any discrepancy arise between these two versions, the provisions of the English version shall prevail.



Be it notified and published.


Ángel R. Rivera de la Cruz
Associate Commissioner


José H. Román Morales
Associate Commissioner
Interim Chairman

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on June 19, 2017 and on this date a copy of this Resolution and Order was notified by electronic mail to the following: j-morales@aeep.com, n-vazquez@aeep.com, n-ayala@aeep.com, c-aquino@aeep.com, codiot@oipc.pr.gov, jperez@oipc.pr.gov, attystgo@yahoo.com, maribel.cruz@acueductospr.com, pga@caribe.net, jfeliciano@constructorespr.net, nydinmarie.watlington@cemex.com, eirizarry@ccdlawpr.com, epenergypr@gmail.com, aconer.pr@gmail.com, glenn.rippie@r3law.com, john.ratnaswamy@r3law.com, michael.guerra@r3law.com, pnieves@vnblegal.com, abogados@fuerteslaw.com, jorgehernandez@escopr.net, ecandelaria@camarapr.net, agraitfe@agraitlawpr.com, francisco.rullan@aae.pr.gov, mgrpcorp@gmail.com, manuelgabrielfernandez@gmail.com, mmuntanerlaw@gmail.com, licenciadamasferrer@gmail.com and wilma.lopez@aae.pr.gov.


María del Mar Cintrón Alvarado
Clerk

I certify that today, June 20, 2017, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

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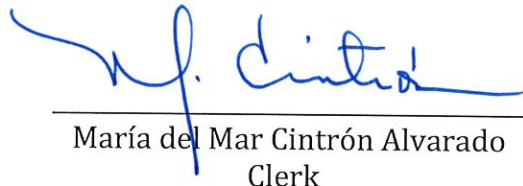
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For the record, I sign this in San Juan, Puerto Rico, today, June 20, 2017.


María del Mar Cintrón Alvarado
Clerk