

**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
Reconsideration of Commission's June
19, 2017 Resolution and Order.**

RESOLUTION

This Resolution addresses the Motion Requesting Reconsideration of the June 19, 2017 Order and Resolution ("Motion for Reconsideration") filed on July 6, 2017 by the Puerto Rico Renewable Energy Contractors and Consultants Association, Inc. ("ACONER", for its Spanish acronym).

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 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, ACONER filed a *Motion Requesting Clarification* where it requested the Commission to 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 requested 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

On June 19, 2017, the Commission issued a Resolution and Order (“June 19 Resolution and Order”) addressing each of ACONER’s proposed amendments. With regards to the date of approval of Act 4-2016,² the Commission granted ACONER’s request and ordered PREPA to amend the date included in the description of Non-Grandfathered net metering customers to February 16, 2016, instead of February 16, 2017, to reflect the correct date of approval of Act 4-2016.

On the other hand, the Commission rejected ACONER’s request for extending the grandfathering treatment eligibility “cut-off” date to the date in which PREPA certified having mailed copy of the notice to its customers and rejected ACONER’s request for amending the description of Non-Grandfathered net metering customers to include that the eligibility criteria related to the payment of a deposit be applied only when such payment was required or collected by PREPA.

On July 6, 2017, ACONER filed its Motion for Reconsideration, requesting the Commission to reconsider its determination related to the applicability of the eligibility criteria related to the payment of a deposit. According to its Motion for Reconsideration, the Commission erred in concluding that ACONER intended for “the eligibility of the projects to be considered Grandfathered [...] to be conditioned to the regulation, communication or any other document prepared, or to be prepared by PREPA” and that ACONER provided such information in its motion to demonstrate that “PREPA has not complied with the legal mandate of Act 4-2016, and has not provided the mechanism for the collection and subsequent refund of the legally required deposit.”³

ACONER also argues that “PREPA’s non-compliance with Act 4-2016 requirements inhibits all the Projects filed in the term provided, that by definition and description should qualify to be considered Grandfathered, from complying with said mandate” and that, by “not provid[ing] the required mechanism to collect and refund the deposit amount [PREPA] makes it impossible for the Projects [...] to comply with the mandate.”⁴

Finally, ACONER argued against the Commission’s conclusion that PREPA’s possible non-compliance with the requirements of Section 4 of Act 114-2007 regarding

¹ ACONER’s Motion Requesting Clarification, ¶10.

² The Puerto Rico Electric Power Authority Revitalization Act.

³ ACONER’s Motion for Reconsideration, Part IV.

⁴ *Id.*

the collection of deposits, is a subject best addressed through a complaint proceeding.⁵ Specifically, ACONER argued that such process is “unwarranted, onerous, and goes against interpretations of the Puerto Rico Supreme Court about procedural economies.”⁶ ACONER argued that “[t]he material facts that are being considered in this Motion [for Reconsideration] are directly related to the definitions and descriptions being ordered by the [Commission] in the Rate Review Case.”⁷

ACONER stated that “until said [deposit collection] mechanism is in fact available, and the deposits can be collected in compliance with the law, allowing for the Projects to comply with their legal responsibility, the definition of non-grandfathered net metering customers should be changed to reflect the present situation.”⁸ Accordingly, ACONER requests the Commission to amend said definition to condition the deposit payment eligibility criteria to “when available and collectable by PREPA.”⁹

II. Section 4 of Act 114-2007

Section 4 of Act 114-2007, as amended by Section 29 of Act 4-2016, 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 [i.e. February 16, 2016] to the time the final charge for net metering projects is determined and published by the Commission.” 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.

Specifically, Section 4 of Act 114-2007 provides:

For projects submitted from the period after the date of approval of this Act to the time the final charge for net metering projects is determined and published by the Commission, petitioners shall submit to the Authority, when filing the interconnection evaluation, a deposit in an

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

amount equal to five cents (\$0.05) per watt of proposed AC capacity or two thousand dollars (\$2,000) for industrial customers, one thousand dollars (\$1,000) for commercial customers, and two hundred fifty dollars (\$250) for residential customers, whichever is less. Said deposit shall be reimbursed by the Authority within a period not to exceed thirty (30) days after the Interconnection Agreement has been entered into or after the Authority notifies an unfavorable evaluation for a project.

III. Discussion, Analysis and Conclusion

As stated by the Commission in its June 19 Resolution and Order, “the criteria for net metering customers to be eligible for grandfathered treatment are specifically set forth in Act 114-2007.”¹⁰ The definition of a Non-Grandfathered net metering customer approved by the Commission is limited to reflecting the requirements and conditions specifically set forth in Section 4 of Act 114-2007, as amended by Section 29 of Act 4-2016. A party’s partial or full noncompliance with the requirements set forth in Section 4 of Act 114-2007 does not have the effect of modifying either the statutory language itself, nor the definition based on such language.

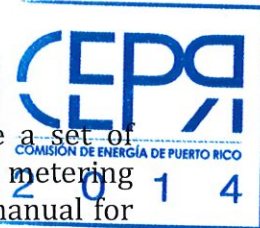
The requirements of Section 4 of Act 114-2007 are mandatory and legally binding on both PREPA and eligible net metering customer seeking grandfathering treatment. The Commission cannot adopt a definition which deviates from the requirements of Section 4 of Act 114-2007 and transforms the deposit payment criteria from mandatory to discretionary.

In light of the above, the Commission **REJECTS** ACONER’s Motion for Reconsideration.

Notwithstanding the aforementioned, the Commission recognizes ACONER’s underlying concern: that, in not collecting the deposits required by Section 4 of Act 114-2007, PREPA is preventing eligible net metering customers from complying with such requirements, despite their good-faith attempts at doing so. Stated differently, ACONER’s concern is based on the possibility that PREPA may deny grandfathered treatment to an otherwise eligible net metering customer based on that customer not having made the required deposit. However, ACONER has not alleged that such denial has occurred. Should such circumstance arise, the Commission reaffirms its determinations that it is a controversy best addressed through a complaint, in which both parties (PREPA and the affected customer) would have the opportunity to present evidence in support of their positions.

However, ACONER has brought before the Commission sufficient information to suggest that PREPA may not be in full compliance with the requirements of Section 4 of Act 114-2007. In addition to its allegations regarding PREPA’s failure to collect the

¹⁰ June 19, 2017 Resolution and Order, Part III.C, p. 5.





required deposits, attached to ACONER's Motion for Reconsideration are a set of documents and manuals recently published by PREPA related to its net metering program.¹¹ ACONER alleges that such documents, including the operating manual for the electronic filing system recently implemented by PREPA and required by Act 133-2016, does not contemplate the payment of deposits required by Section 4 of Act 114-2007.

In light of such allegations, on July 21, 2017, the Commission issued a Notice of Noncompliance (Case No. CEPR-AI-2017-0002) to PREPA, pursuant to Chapter IV of Regulation 8543.¹² Through said proceeding, the Commission will review PREPA's compliance with the requirements of Section 4 of Act 114-2007.

Any party adversely affected by the provisions of this Resolution on Reconsideration may file an appeal for judicial review before the Court of Appeals within thirty (30) days as of the date of the filing of the notice of the Resolution. A copy of any request for judicial review shall be served on the Commission and the other parties to the instant proceeding within the term to request judicial review. The presentation of the judicial review resource will be governed by the applicable provisions of the UAPA¹³ and the Rules of the Court of Appeals.

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 July 21, 2017 and on this date a copy of this Resolution was notified by electronic mail to the following: j-morales@aepr.com, n-vazquez@aepr.com, n-ayala@aepr.com, c-aquino@aepr.com, codiot@oipc.pr.gov, jperez@oipc.pr.gov, maribel.cruz@acueductospr.com, pga@caribe.net, jfeliciano@constructorespr.net, aconer.pr@gmail.com, nydinmarie.watlington@cemex.com, epenergypr@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,

¹¹ ACONER's Motion for Reconsideration, Attachments 1 and 2.

¹² Regulation on Adjudicative Proceedings, Notice of Noncompliance, Rate Review and Investigation Procedures.

¹³ Act 38-2017, Uniform Administrative Procedures Act of the Government of Puerto Rico.

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María del Mar Cintrón Alvarado
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I certify that today, July 21, 2017, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

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For the record, I sign this in San Juan, Puerto Rico, today, July 21, 2017.


María del Mar Cintrón Alvarado
Clerk