

GOVERNMENT OF PUERTO RICO
PUERTO RICO ENERGY BUREAU

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IN RE:

CASE NO.: CEPR-MI-2018-0010

REGULATION ON RETAIL WHEELING

SUBJECT: PREPA's General
Comments and Responses to Specific
Questions

**PREPA'S GENERAL COMMENTS AND
RESPONSES TO SPECIFIC QUESTIONS**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") and respectfully submits its General Comments and Responses to Specific Questions in response to the Resolution and Order issued by the Puerto Rico Energy Bureau ("Bureau")¹ on August 7, 2018 ("August 7th Order"), including the Order's call for general comments from PREPA and interested parties and its direction that PREPA answer a list of specific questions as stated more specifically in the Order's Exhibit A and Appendix I.²

I. INTRODUCTION

The Bureau's August 7th Order reflects that Puerto Rico statutory law -- sections of Act 57-2014 (as amended) and Act 73-2008 -- include provisions allowing retail "wheeling", provided that a number of conditions are met, one of which is the issuance of a regulation on wheeling by the Bureau.³ August 7th Order, pp. 1-2.

¹ References in this filing to the Bureau include the former Energy Commission, when applicable.

² Please note that the PREPA does not waive the right to file proposed additional comments or objections on legal, policy, and/or factual points in this Docket, whether in respect to any current or future proposals or issues. Most of the questions raised by the August 7th Order involve items that depend on further changes in Puerto Rico law and/or future developments, and, accordingly, PREPA has only limited ability to comment on these items at this time and reserves its rights.

³ See, e.g., Act 57-2014 (as amended), Sections 1.3(qq) (definition of "Wheeling rate" to mean "a just and reasonable amount of money that PREPA may charge to a power producer for using its

The Bureau's wheeling regulation must reflect a number of factors, including, in brief, the state of transmission and distribution infrastructure, related energy losses, cost, reasonable conditions required to protect the transmission and distribution infrastructure and effect maintenance, factors relating to the reasonableness of PREPA's wheeling rates and protection of non-subscribers, the contribution of power producers for grid maintenance and ancillary services, other technical considerations, and best practices of other jurisdictions. Act 57-2014 (as amended), Section 6.20; August 7th Order, pp. 1-2.

In brief, for purposes of this filing, retail "wheeling" will be treated as meaning sales of electricity by statutorily qualified renewables generators to retail customers, using elements of the transmission and distribution grid and services of PREPA, provided that the sales are allowed by and consistent with the applicable statutory provisions and regulations and PREPA's wheeling rates and other applicable requirements are met.

PREPA has a number of concerns regarding the August 7th Order. Those concerns are discussed below.

transmission and distribution facilities for wheeling and for the right to interconnect the electrical power generation facility of such power producer to the electric power grid of Puerto Rico, in accordance with the provisions of §§ 10641 et seq. of Title 13."), 1.3(tt) definition of "Wheeling" to mean "the transmission of electricity from one system to another through Puerto Rico's electric power grid, according to the wheeling provisions of §§ 10641 et seq. of Title 13, known as the 'Economic Incentives Act for the Development of Puerto Rico'."); 6.3(f) and (g) (relating to power and duties of Bureau to regulate wheeling rates and mechanism), 6.20 ("Wheeling") (substantive provisions regarding wheeling and Bureau regulation of wheeling); codified as 22 L.P.R.A. §§ 1051a(qq) and (tt), 1054b(f) and (g), 1054cc. *See also, e.g.*, Act 73-2008, Article 1, Section 2(d)(1)(H) (portion of definition of "Eligible Business" that relates to energy production through the use of renewable sources after June 18, 2011); and Article 4, Section 2 (substantive provisions regarding wheeling); codified as 13 L.P.R.A. §§ 10642(d)(1)(H) and 10672. PREPA, for purposes of the instant filing, is setting aside any legal questions about whether any of the relevant provisions has become inoperative, qualified, or conditional for any reason.

II. GENERAL COMMENTS

PREPA is unaware of the considerations that led the Bureau to move forward on the subject of regulation of wheeling at this time. Now may not have been the best time to do so. Yet, the Bureau has moved forward, so PREPA now submits this filing.

PREPA is of the view that this may not be the best time because PREPA and the Puerto Rico electric sector are in transition. PREPA and the sector are in the final stages of recovery from Hurricanes Irma and Maria, with restoration of outages caused by the Hurricanes completed but other tasks, such as reaching full metering and billing and developing the electrical infrastructure rebuilding plan, still ongoing. Also, PREPA is in the process of developing a proposed integrated resource plan ("IRP"), after conducting very extensive stakeholder processes, to be filed with the Bureau and then litigated. Moreover, PREPA and the Puerto Rico electric sector are engaged in the very complicated process of transitioning to a transformed utility and sector, a vast effort that involves federal and Puerto Rico law, the Government of Puerto Rico and multiple government entities, PREPA, other interested parties, and the people of Puerto Rico.

PREPA understands that the Bureau might feel as one consideration that the subject of wheeling regulation is one that has been put off for a long time.

Yet, adding the subject of the wheeling to the above mix, at this time, adds even more complexity, and it potentially invokes one of the most powerful laws of all, the law of unintended consequences.

Accordingly, PREPA is very concerned that this docket, if it moves forward, and any resulting regulation, must and should be about, and limited to, the regulation of wheeling.

PREPA's concerns are heightened because the questions in Appendix I to Exhibit A of the August 7th Order include many items that are not about wheeling. Rather, they are about the transformation of PREPA and the electric sector and/or the possible development of full retail open access.

- For example, Question 1.1, the very first question in Appendix I is: "Should PREPA continue to own generation, or should PREPA divest all of its generation assets?" That question is a very problematic question to be raised in a docket that is supposed to be about wheeling regulation. That question is a transformation question and it falls far outside the proper confines of the subject of wheeling regulation. Moreover, and even more importantly, the Government of Puerto Rico already has spoken on the question of disposition of PREPA generation assets in the certified Fiscal Plan for PREPA and in the enactment of Act 120-2018, the Puerto Rico Electric System Transformation Act, which among other things, expressly and in detail provides for the sale, disposition and/or transfer of PREPA generation assets through public-private partnership agreements or, potentially, other means. The question simply is not a question for the Bureau to address, much less resolve.
- Question 1.2 is about procurement of supply by PREPA and the possible development of a wholesale supply market. Question 1.3 is about a possible independent system operator. Those are transformation questions, not wheeling questions.
- Question 1.4 is about "non-discriminatory open access". The question is ambiguous about whether it means open access to the PREPA transmission system and/or retail open access, but, either way, the question is about full open access of some kind, not about the narrower structure of wheeling that is provided for in Puerto Rico law.
- Question 1.5 starts off as a question about default supply, which is at least related in part to wheeling, but then it expands to forcing all customers to choose another supplier, which is a transformation and open access question.
- A number of questions refer to suppliers. When that means eligible suppliers under the Puerto Rico statutory provisions for wheeling, that may make sense, but in some of the questions it is not clear if that limit is being observed, and in some questions, such as Questions 1.7 and 1.18, it apparently is not.
- Question 1.11 is about how the IRP process should work. The Bureau already has promulgated a regulation on the next IRP (Regulation No.

9021), and the Bureau already has opened and begun conducting a docket on the next IRP (No. CEPR-AP-2018-0001). Question 1.11 does not belong in this wheeling docket.

- Question 1.12 about “leveling the playing field for distributed energy resources to compete with traditional generation resources” also goes far afield into the transformation. The statutory wheeling provisions allow sales of electricity by statutorily qualified renewables generators to retail customers provided they comply with various requirements. That is the scope of this docket.
- Question 1.13 about stranded assets has aspects that relate to wheeling, and others that do not. The question is worded very generally.
- Question 1.15 has two questions, the first of which refers to “the plans to privatize PREPA”, which is problematic because that is not an entirely accurate characterization of the Fiscal Plan and Act 120-2018, and, again, because it relates to the transformation. PREPA does appreciate, however, that the two questions might be intended in whole or in part to avoid doing anything that prevents, hinders, or damages the transformation and/or its results.
- Question 2.1 plainly is a question about the transformation, as it relates to the transmission and distribution systems and functions.
- Question 2.2 is a question about the form of a charge for restructuring. That is yet another question that goes far afield from wheeling and into transformation.
- Questions 2.3 and 2.5 could be revised to be limited to wheeling but, as they stand, they are questions relating to full open access and the transformation.
- Question 2.4 is about the revenue requirement and rates of the owner or operator of transmission and distribution. That is another transformation question, or, at best, a question about post-transformation rates. In neither event it is a wheeling question.

For the Bureau to introduce the subjects of the transformation and full retail open access, in a wheeling docket no less, potentially could have very significant and adverse consequences, such as in potential effects on potential private investors.

PREPA also notes that residential open access is a subject that does not appear to be structured so as to address the current problems of the Puerto Rico electric system

and that the successful discussion, design, and implementation of residential open access takes very careful study and efforts over a long period, even in a jurisdiction that, unlike Puerto Rico, has as an electric sector that does not face major structural or financial difficulties. PREPA's understanding is that such a process has taken anywhere from 2 or 3 to 5 years in various jurisdictions on the mainland, and that some of the jurisdictions that acted quickly did not necessarily have optimum results. For example, PREPA's understanding is that in Illinois the process took over 5 years from the first legislative workshops to the actual implementation of residential open access.

III. PREPA RESPECTFULLY MUST OBJECT THAT QUESTIONS THAT ARE NOT ABOUT WHEELING, AND INSTEAD ARE ABOUT THE TRANSFORMATION OR OPEN ACCESS, ARE BEYOND THE PROPER SCOPE OF THIS DOCKET AND BEYOND THE PROPER JURISDICTION AND ROLE OF THE BUREAU.ANSWERS TO APPENDIX I QUESTIONS

1. General Questions Regarding the Regulations

- 1.1. Should PREPA continue to own generation, or should PREPA divest all of its generation assets?

Answer: This topic has already been addressed publicly by the Governor of Puerto Rico, Ricardo Roselló, and the Legislature of Puerto Rico establishing a framework for the privatization of all generation assets.

- 1.2. How should supply be procured? Should it be procured through bilateral contracts, or through a centrally dispatched wholesale market?

Answer: Unknown because the question is too general. PREPA's procurement activities under the current system structure have been improved, but the question appears to call for addressing how procurement may work in a variety of scenarios resulting from the transformation or otherwise. Note also that the privatization law itself provides for further development of Puerto Rico's energy policy and regulatory structure in further legislation.

- 1.3. Given that wheeling would allow more buyers of electricity than PREPA, should there be an independent system operator to ensure reliability and administer financial transactions?

Answer: As part of PREPA's transformation, there is a process to separate generation operations from the rest of PREPA to in effect set up a system operator that operates the T&D assets and manages the T&D functions.

- 1.4. How would you recommend that the Commission ensure non-discriminatory open access to the grid?

Answer: This question is ambiguous, as noted earlier, and PREPA has many concerns regarding moving on full retail open access in this docket, as discussed above. The focus should be wheeling, if this docket moves forward. We would recommend adopting policies, regulations, and mechanisms from jurisdictions similar to Puerto Rico in size and complexity, electrically isolated, where wheeling has resulted in real, net benefits for the customers. Also, it is essential to setup overreaching public policy goals, such as universal service, reduced costs, non-discriminatory access, fair treatment of all customers, renewable portfolio standards, reliable service, coverage of all stranded costs, among others, as to then assure that any implemented mechanism, such as wheeling, meets such public policy goals. That will require legislation and much of it is beyond the Bureau's authority under existing law.

- 1.5. Should the wheeling mechanism include PREPA (or any successor entity) as a default supplier for retail services? Or should all customers be required to choose a supplier?

Answer: Setting aside other concerns, this would be a very important issue, and needs to be addressed by the Government of Puerto Rico (including through legislation), protecting the wellness of the customers. The assigning of a default service provider needs to be taken care of, especially in a small market like Puerto Rico. It would be impractical, or just impossible to massively disconnect customers with no set service provider every time a contract expires. Also, there are certain types of customers, such as government contracts, which may not attract providers, and must be taken care of.

- 1.6. Should there be reporting requirements to enable customers to have accurate comparisons between other suppliers and PREPA?

Answer: Setting aside other concerns, there needs to be clear, useful, reporting requirements, which would apply equally over all suppliers.

- 1.7. Should the same consumer protection requirements for PREPA apply to suppliers/Energy Service Companies? What new consumer protections should be implemented for Energy Service Companies?

Answer: Setting aside other concerns, it would be logical to keep the same protection standard for all customers, regardless of the supplier. It needs to be determined by the Government of Puerto Rico (including through legislation) on which consumer standard protections will remain.

- 1.8. Should there be collars on contract lengths?

Answer: Setting aside other concerns, this item needs to be determined by the

Government of Puerto Rico (including through legislation), using industry best practices, and modeling after successful systems. (See 1.4)

1.9. Should suppliers have a limit on market share?

Answer: Setting aside other concerns, this item needs to be determined by the Government of Puerto Rico (including through legislation), using industry best practices, and modeling after successful systems. (See 1.4)

1.10. Should community choice aggregation be permitted?

Answer: Setting aside other concerns, community aggregation (with legislation) potentially could be implemented, if and only if such an arrangement does not avoid providing their fair share of the costs of system maintenance and legacy debt or otherwise cause other concerns.

1.11. Does integrated resource planning (IRP) continue to occur after wheeling is implemented? If so, what is the best way to ensure a meaningful IRP in the context of retail competition? What parties, if any, should have responsibility for "procuring" resources identified in the IRP? What happens if the resources identified in the IRP are not being procured? What parties should be responsible for procuring energy efficiency resources and demand response resources?

Answer: Setting aside other concerns, this item needs to be determined by the Government of Puerto Rico (including through legislation), using industry best practices, and modeling after successful systems. (See 1.4) Please also note that the question is unclear whether or how it is intended to apply in transformation scenarios.

1.12. What are the best ways to level the playing field for distributed energy resources to compete with traditional generation resources?

Answer: The main goals of any electricity regulatory structure are adequacy, reliability, safety, and low prices, while maintaining a structure that is financially sustainable and complies with applicable legal provisions. All resources need to participate and provide these services. The end customer will be the main beneficiary. It would be counterproductive to discriminate in favor of any sector of resources unless a clear benefit is identified and valued and all other applicable concerns are met.

1.13. Who should be responsible of stranded assets, if any?

Answer: The question is very general and is not framed for any particular scenarios, but, that being said, all customers and producers in Puerto Rico. The structure needs to take into account how it applies to departed / departing customers as well as current customers, and concerns about bypass, especially uneconomic or unfair bypass.

- 1.14. Are there any particular considerations regarding microgrids that should be considered in the development of wheeling regulations?

Answer: PREPA has many concerns about the Bureau's microgrids regulation, which it will not restate here. Setting aside the concerns, the microgrids customers must participate in system reliability and the paying of existing debt, connected to the main grid or not. (See 1.13)

- 1.15. How will the implementation of wheeling impact the plans to privatize PREPA? What are some of the factors the Commission should take into consideration in drafting wheeling regulations?

Answer: PREPA is not fully in a position to address this questions. The Government of Puerto Rico and AAFAF have the lead roles along with the P3 Authority on the subject of privatization. Setting aside other concerns, all regulations the Bureau intends to pass need to be coordinated with the Government of Puerto Rico restructuring team, as to not derail or affect the ongoing legal and business processes. An incorrect policy, though well intentioned, could severely decrease the value of assets to be sold, and affect legacy debt obligations and increase costs, and reduce options to electricity customers in Puerto Rico.

- 1.16. How should the Commission address the issue of a supplier default? Who should be responsible to serve the customers of a defaulting supplier? Should customers be allocated to remaining suppliers or should PREPA or its successor entity be responsible?

Answer: Setting aside other concerns, it is essential to setup a mechanism for default supplier. The costs of customers who do not, or cannot obtain a supplier must be shared by all producers, since there will be a significant group of customers, such as government, subsidized customers, essential services, etc., which will or may be unattractive to private suppliers, in particular due to poor payment histories. The costs of serving these customers must be shared by all. In addition, the logistics of disconnecting customers who do not actively choose a provider would make any retail system unmanageable.

- 1.17. How should the Commission address firm point-to-point wheeling in the event that the transmission system cannot accommodate this without further upgrades? Will the reconstruction of new transmission post-Hurricane Maria allow for firm service?

Answer: Setting aside other concerns, this item needs to be determined by the Government of Puerto Rico (possibly including legislation), using industry best practices, and modeling after successful systems. (See 1.4). Regarding firm service, any statement would require a case by case analysis. Even with a restored system, it would be impossible to make such a broad categorization like comparing a load in Vieques to Mayagüez, or a load in Ponce to Fajardo.

- 1.18. What financial or credit requirements should be in place for suppliers/Energy Service Companies?

Answer: Setting aside other concerns, this item needs to be determined by the Government of Puerto Rico (including through legislation), using industry best practices, and modeling after successful systems. (See 1.4)

2. Cost Recovery and Allocation

- 2.1. What regulations and mechanisms need to be in place to ensure viable revenue and business models for the owner/ operator of the transmission and distribution network?

Answer: This item needs to be determined by the Government of Puerto Rico, using industry best practices, and modeling after successful systems. (See 1.4) This item has been the subject of legislation, and may be the subject of further legislation.

- 2.2. Should debt service (e.g. collected through a specific charge) for outstanding PREPA debt be a non-bypassable charge, paid by all customers who engage in wheeling? If so, do you have a recommendation as to how such charge should be structured?

Answer: Setting aside other concerns, this needs to be non-bypassable to all energy customers and producers in Puerto Rico. PREPA's current understanding is that the initial and current restructuring concepts address methods to do such a structure.

- 2.3. Should there be an "exit fee" to enable PREPA or its successor to recover any potential stranded generation costs resulting from the loss of customers to competition? If so, do you have a recommendation as to how it should be structured? What other mechanisms should be implemented to prevent shifting of costs to customers who do not choose a competitive supplier?

Answer: Setting aside other concerns, this item needs to be determined by the Government of Puerto Rico (including through legislation), using industry best practices, and modeling after successful systems. (See 1.4)

- 2.4. How is the revenue requirement for the owner/operator of the transmission and distribution network best determined? Should there be a supply and delivery component to the rates?

Answer: Setting aside other concerns, this item needs to be determined by the Government of Puerto Rico (including possible legislation), using industry best practices, and modeling after successful systems. (See 1.4)

- 2.5. How should the transmission costs to connect new generation to the grid be

treated? Should the cost be socialized among all customers and included in the transmission rate or should it be allocated to the generator? What should be done with respect to network investments/upgrades that cannot be attributed to one particular generator or end-user, and should these be allocated?

Answer: Setting aside other concerns, this item needs to be determined by the Government of Puerto Rico (including possible legislation), using industry best practices, and modeling after successful systems. (See 1.4)

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Honorable Puerto Rico Energy Bureau accept PREPA's General Comments and Answers, including PREPA's objections, and that the Bureau, if it proceeds further with this Docket, proceed in a manner that is consistent with Puerto Rico wheeling law and without entering subjects outside of wheeling, including, but not limited to, the transformation and open access.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 27th DAY OF AUGUST, 2018

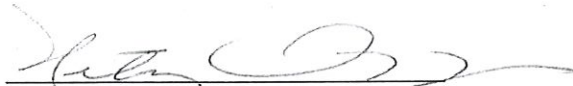
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CERTIFICATION OF FILING AND SERVICE

I hereby certify that on August 27th, 2018, I have sent the above filing to the Puerto Rico Energy Bureau via email to: comentarios@energia.pr.gov; secretaria@energia.pr.gov; mcintron@energia.pr.gov; and to the office of the Bureau's internal legal counsel via email to legal@energia.pr.gov.



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