



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

**IN RE: REGULATION ON WHEELING**

**CASE NO.: CEPR-MI-2018-0010**

**SUBJECT: Notice of Proposed Rulemaking  
and Request for Public Comments.**

**RESOLUTION AND ORDER**

**I. INTRODUCTION**

On August 7, 2018, the Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order (“August 7 Resolution and Order”) regarding the Energy Bureau’s ongoing development of a regulation on wheeling, pursuant to Act 57-2014.<sup>1</sup>

As discussed in the August 7 Resolution and Order, the Energy Bureau, has the power and duty to create and regulate a wheeling mechanism and, in so doing, to consider several factors.<sup>2</sup> In drafting the proposed rules published today, the Energy Bureau considered the legislative mandate for wheeling as well as the public comments it received in response to the August 7 Resolution and Order. In this Resolution and Order, the Bureau provides its proposed rules and invites further public comment.

**II. PROPOSED RULES**

Wheeling is a key element in the process of transforming Puerto Rico’s power system into one that is modern, efficient, resilient, and environmentally-friendly. The regulations that govern the wheeling mechanism are critical for ensuring that it achieves its goals. In particular, the regulations should facilitate the introduction of competitive pressures into the generation sector, ensure that competitive generators have open and non-discriminatory access to the transmission and distribution infrastructure, and enhance transparency of prices.

The Energy Bureau aims to implement wheeling for power producers to serve industrial and large commercial customers as soon as possible this year. The proposed rules anticipate that wheeling may be expanded to enable power producers to serve other commercial and residential customers pursuant to an Energy Bureau order at a later date.

<sup>1</sup> Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>2</sup> *Id.* § 6.30.

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The proposed rules address various entities that will have roles in the context of wheeling, including the entities serving as Default Service Provider, Transmission and Distribution Provider (“TDP”), System Operator (“SO”), and Market Monitor. The proposed rules also address the entities operating as Energy Service Companies (ESCOs), DSM Providers, and Third-party administrators.<sup>3</sup> These entities will play a critical role in establishing a well-functioning, efficient, flexible, and non-discriminatory framework for wheeling and, more broadly, for Puerto Rico’s power sector.

It is important to note that the requirements for the TDP and SO will initially apply to the Puerto Rico Electric Power Authority (“PREPA”), prior to the award of a concession for the transmission and distribution (“T&D”) system and the establishment of the system operator functions.

The sections below summarize the key functions that the Energy Bureau envisions for the TDP, the Market Monitor, and the SO.

**1. System Operator**

Currently, the responsibility for operating Puerto Rico’s electric grid is with PREPA, which also owns and operates the majority of generation on the Island, as well as the transmission and distribution system. PREPA balances supply and demand across the grid on a continuous basis to ensure reliability. In the future, there will be many owners of electric generation competing to provide electricity to Puerto Rico’s customers and transmit this power across Puerto Rico’s transmission and distribution system. Due to concerns regarding market power and open access, it is appropriate to insulate these operations from interests in generation or other resources on the grid.

The SO will be responsible for overseeing and facilitating wholesale exchanges of electricity, operating the transmission system in a reliable and efficient manner, and ensuring open access to the transmission system. The proposed rules contain separate sections for the SO and the TDP, to be clear on the roles and responsibilities of each. Nevertheless, it is possible for these roles to be performed by a single entity.

**2. Independent Monitor**

The Independent Monitor will provide valuable and impartial input to the Energy Bureau and other stakeholders regarding ongoing development of the complex details of the SO protocols and other market rules. More importantly, the Independent Monitor will increase transparency and increase confidence in the functioning of the new competitive structures.

<sup>3</sup> See Section 1.09 of the Proposed Rules for definitions of these terms.

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### 3. *Transmission and Distribution Provider*

The TDP shall be responsible for maintaining and investing in the transmission and distribution system in a cost-effective manner, subject to Energy Bureau approval and in accordance with the Integrated Resource Plan.

### III. **PROCESS FOR IMPLEMENTING WHEELING**

The wheeling, unbundling, and TDP/SO proceedings are fundamentally intertwined. The Energy Bureau therefore summarizes the key process points below.

- The first step is to finalize the proposed rules.
- In the Spring of 2019, the Energy Bureau will open a TDP/SO proceeding that will address the filing requirements for these entities, with the goal of obtaining initial TDP/SO plans and protocols in the summer of 2019. The Energy Bureau anticipates that these filing requirements will be submitted by PREPA. The Energy Bureau expects that the final order in the TDP/SO proceeding will be issued in late 2019.
- Implementing wheeling shall require the establishment of appropriate pricing for the use of the transmission and/or distribution systems. This will be accomplished through the unbundling proceeding that the Energy Bureau opened in December 2018.<sup>4</sup> This process will include evidentiary hearings, which the Energy Bureau expects shall occur in the Summer or Fall of 2019.
- The T&D Concessionaire is currently expected to be selected in September of 2019. The T&D Concessionaire may petition the Energy Bureau to submit revised proposals for its protocols or implementation plans.

All of these proceedings will enable Puerto Rico to begin implementing wheeling approximately in January 2020.

### IV. **ORDER AND REQUEST FOR COMMENTS ON WHEELING.**

Pursuant to Act 38-2017,<sup>5</sup> the Energy Bureau will publish a notice on the proposed rulemaking process in a newspaper of general circulation. Pursuant to Section 2.2 of Act 38-2017, within thirty (30) days following the date of publication of said notice, the general public may present its comments regarding the proposed rules. The Energy Bureau further invites reply comments to be filed within ten (10) days, following the close of the general commenting period. **Exhibit A** of this Resolution and Order includes a set of questions and topics for which the Energy Bureau is particularly interested in receiving public comments

<sup>4</sup> See Case Docket No. NEPR-AP-2018-0004.

<sup>5</sup> Known as the *Administrative Procedure Act of the Government of Puerto Rico*, as amended.

at this time. However, Exhibit A shall not be construed as a limitation on the general public may comment on. Response to all questions is not required. topics the 4

Comments may be filed through any of the following means:

- a. By email to the following address: [comentarios@energia.pr.gov](mailto:comentarios@energia.pr.gov);
- b. Online, using the Energy Bureau's Electronic Filing Tool, at the following address: <https://radicacion.energia.pr.gov>.
- c. By postal mail addressed to the Puerto Rico Energy Bureau's Clerk's Office, at World Plaza Building, 268 Muñoz Rivera Ave., Suite 202, San Juan, PR 00918; or
- d. In person at the Energy Bureau's Clerk's Office, located at the address set forth above.

In addition, the Energy Bureau will hold a public hearing on **April 15, 2019**, at 10:00 a.m., at its Hearing Room at World Plaza Building, 268 Muñoz Rivera Ave., Eighth Floor, San Juan, Puerto Rico. Any person interested in participating in the process may appear at the public hearing.

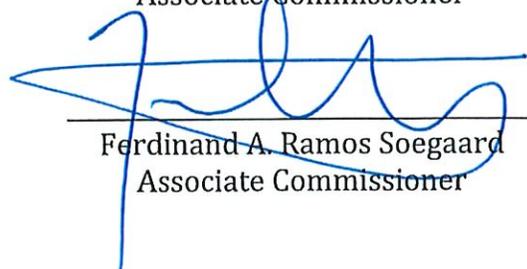
Finally, due to the possible impact of this proceeding on PREPA's operations, the Energy Bureau **ORDERS** PREPA to provide responses to the questions contained in **Exhibit A** on or before March 31, 2019.

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

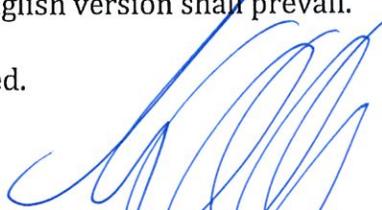
Be it notified and published.



Ángel R. Rivera de la Cruz  
Associate Commissioner



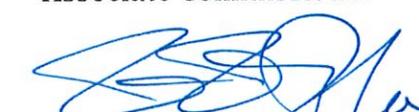
Ferdinand A. Ramos Soegaard  
Associate Commissioner



Edison Avilés Beliz  
Chairman



Lillian Mateo Santos  
Associate Commissioner



José J. Palou Morales  
Associate Commissioner



## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on February 28, 2019. I also certify that on March 1, 2019 a copy of this Resolution and Order regarding the Case No. CEPR-MI-2018-0010 was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com and n-vazquez@prepa.com. I also certify that today, March 1, 2019, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to the following:

### **Puerto Rico Electric Power Authority**

Attn.: Nitza D. Vázquez Rodríguez

Astrid I. Rodríguez Cruz

Jorge R. Ruíz Pabón

PO Box 363928

San Juan P.R. 00936-3928

For the record, I sign this in San Juan, Puerto Rico, today March 1, 2019.

María del Mar Cintrón Alvarado  
Clerk

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



IN RE: REGULATION ON WHEELING

CASE NO.: CEPR-MI-2018-0010

SUBJECT: Request for Public Comments.

Exhibit A

Request for Public Comments

This request for public comments is issued pursuant to Article XV of Regulation No. 8543 and Act 38-2017. Public comments must be filed with the Energy Bureau **on or before March 31, 2019** and all reply comments must be filed with the Energy Bureau **on or before April 10, 2019**.

**I. General Instructions**

1. Any party filing public comments shall use the case heading identified above.
2. Any party filing public comments shall provide their names, the name of their representative (if any), and their contact information, consisting of postal address, email and telephone number.
3. If filing supporting documents along with any comments, the party shall identify the document provided and shall describe the nature of the document, by whom the document was prepared and for what purposes, and the question or topic identified herein to which such document relates to.
4. When responding to the questions and topics identified herein, parties should identify the specific question or topic being addressed using the number of the question as listed herein. General comments not specifically related to the questions and topics identified by the Energy Bureau are permissible but shall be identified under a separate section titled "General" or "Miscellaneous".
5. For immediate assistance regarding the filing of comments or any of the instructions provided herein, please contact the Energy Bureau's Clerk at 787-523-6262.



## II. Questions:

1. Are the proposed rules adequate to support non-discriminatory open access to the transmission network in support of wheeling transactions?
2. Please comment on the overall industry structure outlined in Article 3 of the proposed rules. Are there key entities or elements missing? Are the roles and responsibilities of the proposed entities appropriate?
3. Is it appropriate that PREPA (or its successor(s)) continue to operate as the Default Service Provider? What responsibility should the Default Service Provider have to serve load in the event that an Energy Service Provider defaults?
4. What changes need to be made to the current transmission of information between PREPA and generators to support the SO's functions?
5. Prior to the development of an independent monitor and monitoring plan, what specific actions or oversight activities should the Energy Bureau undertake to ensure the reasonableness of the market structure to be set up under the SO Protocols?
6. What additional customer protection measures should be included in the proposed rules?
7. The Energy Bureau envisions integrated resource planning to evolve to focus on both wholesale-level resources as well as distribution-level distributed energy resources. This would occur through a collaborative effort between the TDP and SO, as described in Article 7.05 of the proposed regulations. Are there any good examples of this process from other jurisdictions that Puerto Rico should consider?
8. It is possible that in the near-term, the SO will not be completely independent from other system components. This is especially true during the time that the SO is still embedded in PREPA, where it will have some affiliation with generation assets. Please comment on how the proposed rules address this issue.
9. If the SO and TDP are the same entity, the proposed rules would require corporate or functional separation between the SO and any other part of the organization that has an interest in any generation facility or other resource on the grid. Please comment on how the proposed rules address this issue.
10. The proposed rules require PREPA to file an embedded cost of service study, a marginal cost of service study, and a total system long-run incremental cost (TSLRIC)



study. The purpose of the embedded cost of service study is to ensure that historical costs are allocated across classes in an equitable manner. The purpose of the marginal cost of service study is to ensure that rate designs provide efficient price signals. The purpose of the TSLRIC study is to ensure that services are priced competitively. Please comment on this proposal and the associated provisions of the proposed rules.

11. Are the proposed sections regarding Terms and Conditions for Transmission Service and Initiating Transmission Service reasonable and comprehensive?
  
12. Should the generation sources related to wheeling be limited to renewable sources?



GOVERNMENT OF PUERTO RICO

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Public Service Regulatory Board  
Puerto Rico Energy Bureau

## **REGULATION FOR WHEELING**

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## **REGULATION FOR WHEELING**

### **ARTICLE 1.- GENERAL PROVISIONS**

#### **Section 1.01.- Title.**

This Regulation shall be known as the Regulation on Wheeling of the Puerto Rico Energy Bureau.

#### **Section 1.02.- Legal Basis.**

This Regulation is adopted pursuant to Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act; Act 73-2008, as amended, known as the Economic Incentives Act for the Development of Puerto Rico; and Act 38-2017, known as the Uniform Administrative Procedure Act of the Government of Puerto Rico (“LPAU” for its Spanish acronym).

#### **Section 1.03.- Purpose and Executive Summary.**

The Puerto Rico Energy Bureau (“Bureau”) adopts and enacts this Regulation to implement wheeling in Puerto Rico. The Legislative Assembly first mandated wheeling in Act 73-2008. In Act 57-2014, the Legislative Assembly granted to the Energy Bureau the power and duty to create and regulate a wheeling mechanism.

The Energy Bureau recognizes that the power sector in Puerto Rico is changing and believes wheeling can and should act as a vehicle for positive change. The Energy Bureau agrees with the Legislative Assembly that wheeling has the potential to reduce energy costs and maximize energy efficiency, as well as to foster investment in Renewable Resources at competitive costs. Further, the Energy Bureau agrees that wheeling has the potential to promote transparency, open access, and non-discrimination in the power sector. With this Regulation, therefore, the Energy Bureau intends to facilitate the realization of wheeling’s potential benefits.

#### **Section 1.04.- Applicability.**

- A) This Regulation shall apply to all companies offering electric service that are operating in Puerto Rico at the time that this Regulation enters into force as well as to all companies that intend to operate or offer electric services in Puerto Rico.
- B) This Regulation shall establish wheeling in the Commonwealth of Puerto Rico.
- C) This Regulation also addresses how wheeling will operate under various ownership or leasing structures that have been contemplated by the General Assembly of the Commonwealth of Puerto Rico. To the extent that any scenarios emerge that have not been contemplated by the Energy Bureau, the Energy Bureau will either issue an Order, conduct further proceedings, issue supplemental rules, amend these rules, or

take whatever action it deems necessary to accommodate the ownership and leasing structures so as to assist in the development of wheeling consistent with the public interest.

D) This Regulation shall enable any Person to make an informed decision in choosing an Energy Service Company.

E) Upon its effective date, this Regulation shall apply to Industrial Customers and Large Commercial Customers only. At a later date, upon an order of the Energy Bureau, the applicability of this Regulation may apply to other customer classes.

a. The following Articles and Sections of these regulations shall be applicable upon its effective date:

1) Article 1, with the caveat that the terms defined in Section 1.09(B)(2), (3), (26), (29), (42), (43), (47) and (48) may not be necessary for industrial or large commercial wheeling and may become more applicable when residential and other commercial wheeling are implemented;

2) Article 2;

3) Article 3;

4) Article 4;

5) Article 5, except Section 5.04;

6) Article 6;

7) Article 7;

8) Article 8;

9) Article 9;

10) Article 10;

11) Article 11;

12) Article 12; and,

13) Article 13, with the exception of the following sections:

- a) Section 13.01(F);
- b) Section 13.04 (A) (6), (7), (8), (9) and (10), and (B), (C), (D) and (E);
- c) Section 13.05 (C), (D) and (E);
- d) Section 13.06 (C) (3) and (4);
- e) Section 13.07 (B)(7) and (C);
- f) Section 13.09 (C)(3), (D) and (E);
- g) Section 13.10 (H) (I) and (J);
- h) Section 13.11 (B); and,
- i) Section 13.12 (D), (E), (F) and (G).

**Section 1.05.- Interpretation.**

This Regulation shall be interpreted in a way that promotes the highest public good and the protection of the interests of the residents of Puerto Rico, and in such a way that proceedings are carried out rapidly, justly, and economically.

**Section 1.06.- Provisions of Other Regulations.**

The provisions of this Regulation may be supplemented by the provisions of other regulations of the Puerto Rico Energy Bureau that are compatible with the provisions of this Regulation.

**Section 1.07.- Unforeseen Proceedings.**

When a specific proceeding has not been planned for in this Regulation, the Energy Bureau may attend to it in any way that is consistent with Act 57-2014.

**Section 1.08.- Dates and Time Periods.**

In computing any time period established in this Regulation, or by order of the Energy Bureau, the day of the occurrence of the act, event, or noncompliance that triggers the period shall not be counted, and the established period shall begin to elapse on the following day. Whenever a due date falls on a Saturday, Sunday, or legal holiday, said due date shall be extended until the next workday.

## **Section 1.09.- Definitions.**

- A) These definitions are to be used for this Regulation and are not intended to modify the definitions used in any other Energy Bureau regulation or order.
- B) For the purposes of this Regulation, the following terms will have the meaning established below, except when the context of the content of any provision clearly indicates something else:
  - 1) "Affiliated Energy Service Provider" refers to any entity providing any Competitive Service to Customers but that is corporately or legally affiliated with a Monopoly Service Provider.
  - 2) "Aggregation" refers to entering into an agreement with multiple Customers and combining the electric load of said Customers for the purpose of purchasing Energy Service to meet the combined load on an aggregated basis.
  - 3) "Aggregator" refers to a Municipality or a Person Certified by the Energy Bureau to contract with multiple retail Customers and to combine said Customers' electric load for the purpose of purchasing Energy Service on an aggregated basis.
  - 4) "Applicant" refers to PREPA and its successor entities that will have responsibility for filing an application regarding unbundling, transmission and distribution services and/or system operations as set forth in Articles 5 and 6 of these Regulations.
  - 5) "Bill" refers to the document sent periodically by the Transmission and Distribution Provider to a Customer listing all the components, charges, and rates that make up the final cost each Customer must pay for electric service.
  - 6) "Energy Bureau" refers to the Puerto Rico Energy Bureau.
  - 7) "Certification" refers to the process by which an Energy Service Company seeks approval by the Energy Bureau to offer Competitive Services to a Customer.
  - 8) "Competitive Service" refers to any electric service function for which there are two or more options from which a Customer may choose.
  - 9) "Competitive Service Provider" refers to any entity providing Competitive Service.
  - 10) "Customer" refers to any Person who receives Energy Service for that Person's usage.

- 11) "Customer Class" refers to the classification of a customer in accordance with PREPA's tariff provisions that define applicability and rates.
- 12) "Customer Energy Usage Data" refers to data obtained from a Customer's Meter and which is identifiable to that Customer.
- 13) "Default Service Provider" refers to the entity responsible for providing Energy Service to each Customer that is not served, in whole or in part, by an Energy Service Company.
- 14) "Demand-Side Management Provider" refers to any Person that is engaged in the provision of Demand-Side Management Services to Customers.
- 15) "Demand-Side Management Services" refers to the provision of any service directly to a Customer besides generation, such as the provision of energy efficiency and demand response services, that aids in meeting that Customer's electric load.
- 16) "Deposit" refers to a reasonable financial payment from a Customer that is required as a precondition for Energy Service.
- 17) "Direct Solicitation" refers to solicitation of a Customer that is face-to-face and that occurs at a place other than a business office of the soliciting Energy Service Company.
- 18) "Distributed Energy Resource" refers to Distributed Generation, Energy Storage, Microgrids, or any other resource, including but not limited to energy efficiency or demand response, that is connected to the Distribution Infrastructure and that assists in meeting at least one Customer's electrical load.
- 19) "Distributed Generation" refers to an electric power generation facility in Puerto Rico connected to the Distribution Infrastructure and producing power for self-supply or sale.
- 20) "Distribution Infrastructure" or "Distribution Plant" refers to the physical equipment used to distribute electric power at voltages below 38,000 volts, including but not limited to poles, primary lines, secondary lines, service drops, transformers, and Meters.
- 21) "Distribution Service" refers to the delivery of electric power from any electric substation or generator to any Customer through Distribution Infrastructure.

- 22) "Electric Power Grid" refers to the electric power Transmission and Distribution Infrastructure of the Commonwealth of Puerto Rico.
- 23) "Energy Service" refers to the provision of electricity to Customers in Puerto Rico by the Default Service Provider or by an Energy Service Company.
- 24) "Energy Service Company" refers to any Person engaged in the sale or resale of electric power to Customers, other than the Default Service Provider.
- 25) "Energy Storage" refers to any resource that is capable of receiving electric energy from the Electric Power Grid or any other generation resource for later injection of electricity back to the Electric Power Grid or to serve any load.
- 26) "FERC" refers to the Federal Energy Regulatory Commission, an independent agency of the national government of the United States of America.
- 27) "Independent Market Monitor" or "IMM" refers to the entity assigned responsibility for monitoring the operations of the System Operator, the Transmission and Distribution Provider, Energy Service Companies, and any other entity participating in wholesale and retail market exchanges to prevent market manipulation and market power abuses.
- 28) "Industrial Customer" refers to any customer receiving electric service from PREPA under an industrial rate schedule.
- 29) "Interconnection" refers to the connection of generating resources or Energy Storage to the Electric Power Grid.
- 30) "Large Commercial Customer" refers to any customer receiving electric service from PREPA under a commercial rate at a Transmission level voltage and whose maximum monthly demand is at least 250 kVA.
- 31) "Market Monitor" refers to an entity within the Energy Bureau that is responsible for monitoring the wholesale market.
- 32) "Meter" refers to the equipment used to measure consumption and/or generation of energy at the point of connection between an individual Customer and Distribution Infrastructure as well as associated communications and control capabilities.
- 33) "Microgrid" refers to a group of Interconnected loads and Distributed Energy Resources within clearly defined electrical boundaries that acts as a single controllable entity that can connect and disconnect from the Electric Power Grid to enable it to operate in either grid-connected or off-the-grid (islanded) mode.

- 34) "Monopoly Service" refers to any electric service function for which there is only one entity providing that service and for which a Customer has no alternative option for the provision of that service.
- 35) "Monopoly Service Provider" refers to any entity providing a Monopoly Service.
- 36) "Municipality" refers to the local government legal entity organized and existing pursuant to Article VI, §1 of the Constitution of the Commonwealth of Puerto Rico and Act No. 81 of August 30, 1991, as amended, known as the Autonomous Municipality Act of the Commonwealth of Puerto Rico.
- 37) "Operating Agreement" refers to an agreement entered into between the Energy Service Company and the Default Service Provider, the Transmission and Distribution Provider and the System Operator that is designed to: protect the Default Service Provider, the Transmission and Distribution Provider and the System Operator from any financial incurrence in the event of a default by the Energy Service Company; and, provide the details for the exchange and information and access needed in order for the Energy Service Company to provide service to Customers.
- 38) "Person" refers to a natural person; a legal entity created, organized, or existing under the laws of the Commonwealth of Puerto Rico, the United States of America, any state of the union, or any foreign state or country; a Municipality or a consortium of Municipalities; or a government entity (other than PREPA).
- 39) "Power Purchase Agreement" refers to any Agreement between the Default Service Provider and the owner of a generating unit for the purpose of providing wholesale generation to the Default Service Provider for resale to its Customers.
- 40) "Postmark Date" refers to the date that physical mail was processed by the appropriate delivery company, as indicated by a stamp or other mark on the mail, or to the date that electronic mail was transmitted.
- 41) "PREPA" refers to the Puerto Rico Electric Power Authority, a corporate entity created by virtue of Act No. 83 of May 2, 1941, as amended, and any successor entity.
- 42) "Renewable Resource" means any combination of Alternative Renewable Energy Resources or Sustainable Renewable Energy Resources as such terms are defined in Act 82-2010, as amended, known as the Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in

Puerto Rico. Such resources shall be located within the Commonwealth of Puerto Rico.

- 43) "Ring-Fencing" refers to a process whereby a regulated entity with captive Customers takes measures to protect those Customers from any liability or impacts that occur due to the financial instability or bankruptcy of any of its unregulated affiliates.
- 44) "Slammer" refers to an entity that is guilty of Slamming a Customer.
- 45) "Slamming" refers to the switching of a Customer's supplier of Energy Service without the Customer's authorization and consent.
- 46) "Standard Generation Interconnection Agreement" refers to the Interconnection of generation to the Electric Power Grid.
- 47) "Stranded Costs" refer to the historical financial obligations incurred by PREPA that may become unrecoverable due to regulatory changes, such as wheeling, as determined by the Energy Bureau.
- 48) "System Benefits Charge" refers to a non-bypassable charge imposed on customers to support specific energy-system goals. The System Benefits Charge may be used to finance one or more of the following: energy efficiency, conservation, or demand-side management; renewable energy; efficiency or alternative energy-related research and development; low-income energy assistance; and/or other similar programs defined by applicable Territory or Federal law.
- 49) "System Operator" or "SO" refers to the entity assigned responsibility for overseeing and facilitating wholesale exchanges of electricity, operating the Transmission System in a reliable and efficient manner, and ensuring open access to the transmission system, in coordination with the Transmission and Distribution Provider.
- 50) "System Operator Procedure" or "SO Procedure" refers to a market protocol, operating guide, market guide, or other procedure that constitutes a statement of general policy and that has an impact on the governance of the SO or on reliability, settlement, Customer registration, or access to the Transmission System.
- 51) "Third-Party Administrator" refers to an entity approved by the Energy Bureau to use ratepayer funds to deliver energy efficiency, demand response, and any other related service to Customers.

- 52) "Transition Charges" refers to those charges defined in Chapter 31(6) of Act 4-2016, known as the Revitalization Act.
- 53) "Transmission" or "Transmission System" refers to the physical equipment used to transmit electric power at voltages of at least 38,000 volts, including but not limited to poles, lines, and transformers.
- 54) "Transmission and Distribution Provider" or "TDP" refers to the entity that owns or leases the Electric Power Grid and maintains that Electric Power Grid.
- 55) "Transmission Service" refers to the delivery of electricity across the Transmission System by a Transmission Customer for its own purposes or to another Transmission Service Customer.
- 56) "Transmission Service Customer" refers to the Default Service Provider, as well as any Energy Service Company, power generation facility, utility-scale Energy Storage facility, or other Person who uses Transmission Service.
- 57) "Unaffiliated Competitive Service Provider" refers to any entity that is offering a Competitive Service to Customers and that has no legal or corporate affiliation with a Monopoly Service Provider.
- 58) "Unbundling" refers to the process whereby the generation, transmission, and distribution functions of utility electric service are separated, and the appropriate costs associated with each function are allocated to separate rates.
- C) Every word used in the singular in this Regulation shall be understood to also include the plural unless the context indicates otherwise.

#### **Section 1.10.- Controlling Version.**

Should any discrepancy between the Spanish version and the English version of this Regulation arise, the provisions of the English version shall prevail.

#### **Section 1.11.- Severability.**

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed, for any reason, before a court and declared unconstitutional or null and void, such ruling shall not affect, damage, or invalidate the remaining provisions of this Regulation, rather the effect shall be limited to the article, provision, word, sentence, paragraph, subsection, or section that has been declared unconstitutional or null and void. The nullity or invalidity of any article, word, sentence, paragraph, subsection, or section, in any specific case, shall not affect or jeopardize in any way its application or validity in any other case, except where it has been specifically and expressly invalidated for all cases.

**Section 1.12.- Forms.**

The Energy Bureau shall establish the forms it deems necessary to conduct the proceedings pursuant to this Regulation and shall inform the public via its website. The fact that the Energy Bureau has not adopted one or more forms, is in the process of reviewing them, or the Internet website is out of service, shall not relieve any party of its obligation to comply with the provisions stated herein, provide the information required by this Regulation, or otherwise comply with any applicable Energy Bureau order.

**Section 1.13.- Mode of Submission.**

The forms, documents, and appearances required by virtue of this Regulation or any order of the Energy Bureau must be submitted before the Energy Bureau in electronic format according to the instructions which, from time to time, the Energy Bureau establishes through an order in relation to the electronic filing system.

If the electronic filing system is temporarily not operating or functioning, the forms, documents, and appearances required by virtue of this Regulation or by any order of the Energy Bureau shall be submitted before the Energy Bureau in accordance with any instructions that the Energy Bureau shall provide at that time through an order.

**Section 1.14.- Effect of Submission.**

In filing any document before the Energy Bureau, the party undersigning such document shall be deemed to have Certified that the content of said document is true and that, according to the signer's best knowledge, information, and belief, formed after reasonable inquiry, the document is based on reliable and trustworthy facts, arguments, judicial sources, and information.

**Section 1.15.- Confidential Information.**

If in compliance with the provisions of this Regulation or any of the Energy Bureau's orders, a Person has the duty to disclose information to the Energy Bureau considered to be privileged, pursuant to applicable evidentiary privileges, said Person shall identify the alleged privileged information and request in writing for the Energy Bureau to treat such information as confidential, pursuant to Article 6.15 of Act 57-2014. In identifying privileged information and requesting confidential treatment by the Energy Bureau, the requesting party shall follow the rules and procedures established by the Energy Bureau in Resolution CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information. Except in the case of information protected under the attorney-client privilege, the claim of confidential treatment shall, under no circumstances, be grounds for denying such information from being filed with the Energy Bureau.

### **Section 1.16.- Validity.**

Pursuant to Section 2.8 of LPAU, this Regulation shall enter into effect thirty (30) days after its submission to the Department of State and the Legislative Library of the Office of Legislative Services.

### **Section 1.17.- Penalties for Non-Compliance.**

Any Person who fails to comply with any of the requirements set forth in this Regulation may be subject to a Notice of Non-Compliance pursuant to Chapter IV of Regulation 8543<sup>1</sup> and, as a result of such non-compliance, may, after opportunity for hearing, be subject to any and all of the following available under the law, including but not limited to:

- A) Forfeiture to the Commonwealth of not more than ten thousand dollars for each such failure. Each day's continuance of the violation is a separate offense.
- B) Suspension, rescission, conditional rescission, or revocation of the Energy Service Company's certificate or denial of a request for renewal of a certificate.
- C) Rescission of a Customer contract.
- D) Restitution or damages to the Customer.

### **Section 1.18.- Compliance with Other Applicable Legal Requirements.**

Compliance with this Regulation shall not relieve any party affected by this Regulation from fully complying with other applicable legal and regulatory requirements enforced by any other government entity.

## **ARTICLE 2.- ENERGY BUREAU AUTHORITY**

### **Section 2.01.- General Regulatory Authority.**

In order to ensure that wheeling achieves its objectives to promote lower rates, more options, cleaner energy sources, and economic development, in addition to the authority and duties set forth in this Regulation, the Energy Bureau shall have the authority to do the following:

- A) Ensure fair, just, reasonable, and prudent rates for the provision of Distribution Service and Transmission Service and oversee the operations of the System Operator;
- B) Regulate the terms and conditions of all electric services provided to Persons receiving electric service in Puerto Rico;

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<sup>1</sup> Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures

- C) Monitor the competitive market to ensure that no one entity exercises market power and to take whatever corrective actions are necessary;
- D) Oversee the competitive market to ensure that Energy Service Companies have full access to the Electric Power Grid, that there are no unreasonable barriers to entry, and that there is transparency in the availability of information, and to take whatever corrective actions are necessary; and,
- E) Oversee and take measures as appropriate to ensure that all aspects of and all entities operating in the competitive market are functioning in accordance with this Regulation and the laws of the Commonwealth of Puerto Rico.

### **ARTICLE 3.- INDUSTRY STRUCTURE**

#### **Section 3.01.- Default Service Provider.**

The Default Service Provider shall be the energy provider for any Customer who is not served by an Energy Service Company for its generation. The generation shall be supplied through generating units that remain within the possession of the Default Service Provider, through Power Purchase Agreement, and, once a wholesale market is established, through generation procured in that market. In the event that an Energy Service Company (or combination of Energy Service Companies) provides less energy to a Customer than the Customer's consumption, the Default Service Provider shall serve the Customer's remaining load. The Default Service Provider shall also serve Customers who switch to an Energy Service Company in the event that the Energy Service Company defaults. The Default Service Provider shall enter into an Operating Agreement with each Energy Service Company for the purposes of meeting all of each Customer's load and guaranteeing sufficient funds in the event of a default.

#### **Section 3.02.- Transmission and Distribution Provider.**

The Transmission and Distribution Provider shall be responsible for maintaining the Electric Power Grid and investing in that grid in a cost-effective manner, subject to Energy Bureau approval. Regarding the Transmission System, the TDP shall maintain and invest in the system in accordance with the IRP and planning processes coordinated with the System Operator, subject to Energy Bureau approval. Regarding the Distribution System, the TDP shall plan, maintain, and invest in that system, in accordance with the IRP, subject to Energy Bureau approval. The TDP shall also be responsible for operating the Distribution System in a least-cost non-discriminatory fashion.

#### **Section 3.03.- System Operator.**

The SO will oversee and facilitate wholesale exchanges of electricity throughout Puerto Rico. The SO will be regulated by the Energy Bureau under regulations to be reviewed and approved by the Energy Bureau in accordance with Article 5 of this Regulation. The SO shall have several areas of responsibility:

- A) To ensure that the Transmission System and all generation units operate in a reliable and economic fashion.
- B) To ensure that sufficient generation capacity is available and maintained to meet resource adequacy goals.
- C) To ensure open access to the transmission and distribution system, in coordination with the TDP.
- D) To conduct annual planning for transmission needs and capabilities, in coordination with the TDP.
- E) To conduct long-term Integrated Resource Planning of the Puerto Rico electricity system, in coordination with the TDP.
- F) To collect information from Energy Service Companies and other wholesale market actors to enable it to meet its responsibilities.
- G) To report information to the Energy Bureau and other interested stakeholders regarding short-term and long-term operations of the electricity industry.
- H) The SO shall have no ownership of, or interest in, any generation facility or other resource on the grid. Should the SO be integrated in the same organization with the TDP or Default Service Provider, then there should be corporate or functional separation between the SO and any other part of the organization that has ownership of, or interest in, any generation facility or other resource on the grid.
- I) The SO may be integrated in the same entity with the TDP, subject to the above requirements.

### **Section 3.04.- Energy Service Companies.**

Energy Service Companies shall be permitted to compete to provide Energy Service to Customers through marketing to those Customers and through Aggregation. An Energy Service Company may provide all or a portion of an Industrial Customer or Large Commercial Customer's load, and an Industrial Customer or Large Commercial Customer may be served by more than one Energy Service Company. An Energy Service Company shall be required to file an application for Certification for approval by the Energy Bureau.

### **Section 3.05.- Demand-Side Management Providers.**

A Demand-Side Management Provider may make its offerings to any Customer, including Customers of the Default Service Provider or any Energy Service Company. A Demand-Side Management Provider shall be presumed not to be an Energy Service Company. The same penalties as set forth in Section 1.17 of this Regulation shall apply for any Demand-Side Management Provider that acts as an Energy Service Company without proper Certification, or without complying with all requirements of Energy Service Companies, as delineated in this Regulation and any other regulation or law.

### **Section 3.06.- Third-Party Administrator of Demand-Side Management Services.**

The Third-Party Administrator shall be responsible for implementing Demand-Side Management programs to all Customer classes throughout the Commonwealth of Puerto Rico under a plan that is approved by the Energy Bureau. The Third-Party Administrator shall be compensated through a Systems Benefit Charge applied to all Customer Bills.

## **ARTICLE 4.- UNBUNDLING PROPOSAL**

### **Section 4.01.- Purpose of Unbundling.**

In order to implement wheeling, it is necessary to separate the various functions that PREPA performs and to allocate the costs appropriately. This will provide to stakeholders and the public the cost of generation which is necessary in choosing another provider and the costs of transmission and distribution service. The unbundling proceeding will also determine which generation-related costs are non-bypassable and must be paid by all customers whether they remain a customer of PREPA or switch to an Energy Service Company.

### **Section 4.02.- Unbundling Plan.**

- A) In accordance with any orders issued by the Energy Bureau in a relevant docket, PREPA shall file an unbundling plan that consists of (i) an embedded cost of service study; (ii) a marginal cost of service study; (iii) a proposal for fully unbundled rates for transmission, distribution, and generation service; and (iv) a proposal regarding any non-bypassable charges. The cost of service studies shall be used to establish fully unbundled cost-based rates for electric service. The purpose of such studies is to form the basis for establishing cost-based rates for each component of electric service.
- B) Depending on the ownership of and concessions for PREPA's assets, the Energy Bureau may designate the entity that shall be responsible for filing various portions of the unbundling plan among PREPA and the successor entities as appropriate.

#### **Section 4.03.- Embedded Cost of Service Study.**

- A) PREPA shall maintain its books and records in accordance with the Federal Energy Regulatory Commission uniform system of accounts.
- B) PREPA shall perform an embedded cost of service study to be filed with the Energy Bureau. Alternatively, this study may be performed by an independent contractor selected by the Energy Bureau. In this event, PREPA shall fully cooperate with such independent contractor in preparing this study.
- C) Functionalization: Costs shall be functionalized in a manner that generally follows the FERC uniform system of accounts. At a minimum, the embedded cost of service study shall functionalize costs across the following categories:
  - 1) Generation;
  - 2) Transmission services;
  - 3) Distribution services;
  - 4) Ancillary services;
  - 5) Consumer services:
    - a) Billing services;
    - b) Metering services; and
    - c) Other consumer services;
  - 6) Retail services such as the marketing, sale, design, construction, installation or retrofitting, financing, operation and maintenance, warranty and repair of or consulting with respect to:
    - a) Energy consuming equipment located on the Customer's premises;
    - b) Provision of technical assistance relating to any Customer-premises process or device that consumes electricity, including energy audits;
    - c) Transformation equipment, power-generation equipment, and related services located on the Customer's premises that are not owned by PREPA;

- d) Building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;
  - e) Facilities operations and management; and
  - f) Other activities identified by the Energy Bureau.
- 7) Investment for public purposes; and
- 8) Any other functions the Energy Bureau deems appropriate.
- D) PREPA shall separately identify costs as direct or indirect for each function. Costs must be directly assigned where information is available. To the extent possible, all costs must be assigned to the functions based on cost causation. Common costs and taxes allocated to each of these functions must be separately identified.
- E) Costs must be directly assigned to the functions identified in Section 4.03(C), where information is available. Costs that cannot otherwise be charged directly to the appropriate function shall use the allocation procedures below:
- 1) Plant and Capital Expenditures:
    - a) Intangible Plant (FERC Accounts 301-303) must be directly assigned where possible. The remainder of the costs must be allocated based on gross plant;
    - b) Generation Plant (FERC Accounts 310-346) must be directly assigned to the Generation function, except that some costs may need to be reclassified;
    - c) Transmission Plant (FERC Accounts 350-359) must be directly assigned to the Transmission function, except that some costs may need to be reclassified;
    - d) Distribution Plant (FERC Accounts 360-373) must be directly assigned to the Distribution function unless PREPA submits, and the Energy Bureau accepts, alternative classifications as described in Section 4.03(H);
    - e) General Plant (FERC Accounts 389-399) must be directly assigned where possible. The remainder of the costs must be allocated to the appropriate functions using an O&M Labor allocator;

- f) Accumulated Depreciation must be functionalized in the same manner as the respective Plant accounts;
- g) PREPA must review its other Plant-related items and where possible directly assign the costs to the appropriate function. The remaining costs must be allocated to the appropriate functions using general allocators to be determined in PREPA's filing

2) Operation and Maintenance (O&M) Expense:

- a) Production O&M Expense (FERC Accounts 500-557) must be directly assigned to the Generation function, unless PREPA submits, and the Energy Bureau accepts, alternative classifications as described in Section 4.03(H);
- b) Transmission O&M Expense (FERC Accounts 560-574) must be directly assigned to the Transmission function, unless PREPA submits, and the Energy Bureau accepts, alternative classifications as described in Section 4.03(H);
- c) Distribution O&M Expense (FERC Accounts 580-598) must be directly assigned to the Distribution function, unless PREPA submits, and the Energy Bureau accepts, alternative classifications as described in Section 4.03(H);
- d) Customer Accounts O&M Expense (FERC Accounts 901-905) must be directly assigned where possible. The remainder of the costs must be allocated to the appropriate functions using general allocators to be determined in PREPA's filing, except for FERC Account 904, Uncollectible Accounts, which must be allocated using a Total Revenue Requirement allocator;
- e) Customer Service and Information O&M Expense (FERC Accounts 906-910) must be directly assigned where possible. The remainder of the costs must be allocated to the appropriate functions using general allocators to be determined in the company's filing;
- f) Sales O&M Expense (FERC Accounts 911-917) must be allocated exclusively to Competitive Service functions; and
- g) Administrative and General O&M Expense (FERC Accounts 920-935) must be allocated to the appropriate functions using the O&M Labor allocator.

3) Other Expenses:

- a) Amortization and Depreciation Expenses must be functionalized in the same manner as the respective Plant accounts;
  - b) Debt service must be functionalized based on the proportion of net Plant assigned to each function; and
  - c) All taxes must be identified as Federal, Commonwealth, or Local Taxes;
    - i) Taxes other than income taxes must be allocated in the following manner:
      - a. Ad Valorem Taxes or Contributions in Lieu of Taxes: Net Plant in Service;
      - b. Payroll Taxes: Labor;
      - c. Revenue Related Taxes: Total Revenue Requirement;
    - ii) Income Tax Expenses must be calculated for each of the functions identified above.
- F) Classification: After the costs have been assigned to uniformly defined functional categories, the costs should be classified based on the components of utility service being provided. These classifications shall primarily include demand-related costs, energy-related costs, and Customer-related costs.
- G) Allocation: The functionalized and classified costs shall be allocated among the Customer Classes. Costs should be further subdivided within a class by voltage level. The allocation factor(s) used must be clearly identified.
- H) If PREPA proposes to assign, allocate, or reclassify costs using procedures that differ from those contained herein, PREPA must include in its filing testimony that:
- 1) Supports the allocation factors and procedures PREPA proposes to use to unbundle its costs;
  - 2) Justifies the deviation from the procedures contained in this rule; and
  - 3) Presents the results of the allocation factors and procedures set forth in this rule and the results of the alternative factors and procedures that are proposed.
- I) The cost allocation factors in Section 4.02(G) of this Regulation are subject to Energy Bureau review and approval.

- J) The embedded cost of service study shall be prepared using two separate periods: (i) a recent historical period; and (ii) a forecast test period. The underlying data may be normalized or adjusted to reflect major changes as appropriate consistent with the practices adopted for rate cases.

**Section 4.04.- Marginal Cost of Service Study.**

- A) PREPA shall perform a marginal cost of service study to be filed with the Energy Bureau. Alternatively, this study may be performed by an independent contractor selected by the Energy Bureau. In this event, PREPA shall fully cooperate with such independent contractor in preparing this study.
- B) This study shall identify the total system long-run marginal cost of serving additional load on PREPA's system.
- C) PREPA shall functionalize its marginal costs at a minimum across the following categories:
  - 1) Generation;
  - 2) Transmission services; and
  - 3) Distribution services.
- D) PREPA's marginal costs shall be classified as demand-, energy-, or Customer-related.
- E) PREPA shall allocate its marginal costs to Customer classes based on cost causation.

**Section 4.05.- Total System Long-Run Incremental Costs (TSLRIC) Study**

PREPA shall perform a Total System Long-Run Incremental Cost (TSLRIC) study to be filed with the Energy Bureau. Alternatively, this study may be performed by an independent contractor selected by the Energy Bureau. In this event, PREPA shall fully cooperate with such independent contractor in preparing this study.

This study should:

- A) Estimate the costs needed to build an optimal new system from scratch, regardless of embedded costs and the existing assets;
- B) Present the cost of rebuilding the system with the best available technology, assuming no prior system exists; and

- C) Provide total system long-run incremental costs separately for generation, transmission, distribution, and customer costs.

**Section 4.06.- Unbundled Rates.**

- A) PREPA shall propose fully unbundled cost-based rates for electric service, unbundled by generation, transmission, and distribution.
- B) PREPA's unbundled rate proposal shall also include cost-based rates for nonstandard electric service and use of facilities, such as for the use or lease of utility equipment to Microgrid owners.

**Section 4.07.- Non-Bypassable Charges.**

- A) PREPA may propose non-bypassable charges to be collected from all retail Customers, regardless of whether these Customers take service from competitive suppliers. The sum of all the unbundled charges for Customers served by the Default Service Provider shall not be greater than the rates currently in effect. The proposal must identify:
  - 1) The nature of the cost to be collected through the charge;
  - 2) The revenue to be collected from each Customer class;
  - 3) The proposed charge itself;
  - 4) The frequency by which the charge will be billed; and
  - 5) The timing and duration of the cost recovery period.
- B) Examples of non-bypassable charges may include, but are not limited to:
  - 1) Transition Charges;
  - 2) System Benefit Charges such as the Energy Efficiency Rider; and
  - 3) Stranded Cost Charges.
- C) All non-bypassable charge proposals are subject to review and approval by the Energy Bureau.
- D) System Benefit Charges may be considered for approval if they:
  - 1) Fairly allocate costs among Customers;

- 2) Avoid unreasonable cost shifting; and
  - 3) Further the achievement of Puerto Rico's energy policy goals.
- E) Stranded Cost Charges may be considered for approval if they:
- 1) Fairly allocate costs among Customer classes;
  - 2) Are fair, just, reasonable, and prudent;
  - 3) Are the same for all Customers of the same customer class whether they are provided service from PREPA or an Energy Service Company;
  - 4) Are based on fixed costs that PREPA must recover that would otherwise be unfairly allocated to remaining Customers of PREPA;
  - 5) Are unavoidable;
  - 6) Have been demonstrated to have been mitigated to the extent possible; and
  - 7) Any other factors the Energy Bureau deems appropriate.

**Section 4.08. - Operating Agreements.**

PREPA shall also include a copy of its proposed operating agreement for Energy Service Companies as set forth in Article 10.

**ARTICLE 5.- PROCEEDINGS BEFORE THE ENERGY BUREAU TO IMPLEMENT WHEELING**

**Section 5.01.- Description of Proceedings.**

Establishing a competitive and well-functioning competitive market will require detailed review and consideration of multiple categories of issues in proceedings in which all interested stakeholders may be represented. The process for the proceedings described below shall be in accordance with Article 6.

**Section 5.02.- Application to Unbundle Rates.**

- A) In accordance with any orders issued by the Energy Bureau in a relevant docket, the Applicant shall file an application before the Energy Bureau for approval that sets forth its proposal for unbundling its rates as described in Article 4 above and shall include any other information the Energy Bureau may require in its Order.
- B) The Application shall include the form for a proposed operating agreement between the Applicant and the Energy Service Companies as set forth in Article 10.

- C) The Applicant shall also file a tariff that sets forth any and all charges it proposes to assess on wheeling entities, the classifications and amounts for which shall conform with the Energy Bureau's order in accordance with Section 4.02 above.
- D) The Applicant shall file tariffs that include all non-price terms and conditions for service to its Customers.
- E) The Energy Bureau shall review the application for completeness and shall issue an Order either accepting the application or requiring the filing of additional information to complete the application.

**Section 5.03.- Initial Regulations, Proceedings and Pricing Proposals for System Operator and Transmission and Distribution Providers to Enable Industrial and Large Commercial Wheeling.**

- A) Upon the issuance of an Order, the System Operator and Transmission and Distribution Provider shall file an application before the Energy Bureau for approval of the operations of the Transmission System and shall include any other information the Energy Bureau may require in its Order. The System Operator will file proposed System Operator Protocols regarding the operation of the Transmission System and shall include any other information the Energy Bureau may require in its Order. The TDP and the SO shall file, either jointly or separately as required by the Order, an application before the Energy Bureau for approval of their organizational structures.
- B) Should the SO or Default Service Provider functions be integrated within the same organizational structure as the TDP, the TDP shall provide information regarding functional or corporate separation of the SO and Default Service Provider, pursuant to Section 3.03 and Section 11.05.
- C) The Energy Bureau shall issue an order establishing the proceeding and setting forth in more detail the information that shall be included in the application.
- D) The Energy Bureau shall review the application for completeness and shall issue an Order either accepting the application or requiring the filing of additional information to complete the application.

**Section 5.04.- Regulations and Proceedings Governing System Operators Overseeing the Wholesale Market.**

- A) This proceeding shall occur after the issuance of an Order by the Energy Bureau permitting wheeling for residential and commercial customers, or as required by the Energy Bureau to facilitate Industrial Customer and Large Commercial Customer wheeling.

- B) The SO shall file an application that includes the development and plans for the operation of a wholesale energy market, including methodologies for the compensation of any wholesale energy market services that are managed by the System Operator. Based upon the ownership and/or operational structure of the System Operator, the TDP Provider and the Default Service Provider, the Energy Bureau may request that additional information be provided regarding the corporate or functional separation including codes of conduct, pursuant to Sections 3.03 and 11.05.
- C) The Energy Bureau shall issue an order establishing the proceeding and setting forth in more detail the information that shall be included in the application.
- D) The Energy Bureau shall review the application for completeness and shall issue an Order either accepting the application or requiring the filing of additional information to complete the application.

## **ARTICLE 6.- EVIDENTIARY PROCEEDINGS TO IMPLEMENT WHEELING**

### **Section 6.01.- Applicability.**

- A) The evidentiary proceeding set forth below shall apply to all proceedings as described in Article 5.
- B) Depending on the ownership of and concessions for PREPA's assets, the Energy Bureau may designate the entity that shall be responsible for filing each of the applications under Article 5. For purposes of this Article, the entity shall be referred to as the Applicant.
- C) Article 5 addresses the proceedings that will need to occur to establish wheeling. Other issues such as rate cases or Integrated Resource Planning are addressed in other regulations of the Energy Bureau.

### **Section 6.02.- Prefiled Written Direct Testimony by Applicant as part of the Application.**

- A) The formal application shall include a list of each Applicant's witness and must identify the portions of the Applicant's filing schedules and exhibits that are being supported by the testimony of each of the listed witnesses.
- B) Concurrently with the filing of Applicant's formal application, each witness listed pursuant to paragraph (A) of this Section shall file written testimony stating his or her qualifications, educational background, work experience, subject matter that is being addressed, conclusions and recommendations, and the basis for such conclusions and recommendations. Each witness's prefiled written testimony and report must include a statement and explanation concerning the witness's

professional view on whether the costs, cost-allocation, and terms and conditions of wheeling that the witness is addressing are reasonable and prudent.

- C) Each witness's prefiled written testimony must be accompanied by a signed, notarized statement that contains the following declaration: "Affiant, [(witness name)], being first duly sworn, states the following: The prepared Prefiled Direct Testimony and any attachments thereto and the sections of the Application (listed here) that I am sponsoring constitute the direct testimony of Affiant in the above-styled case. Affiant states that he/she would give the answers set forth in the Prefiled Direct Testimony if asked the questions propounded therein at the time of the filing. Affiant further states that, to the best of his/her knowledge, his/her statements made are true and correct."
- D) Prefiled written testimony and accompanying workpapers must contain all analyses, facts, and calculations necessary for the Energy Bureau to perform a comprehensive analysis and assign it the appropriate probative value.
- E) The formal application and prefiled written testimony shall avoid generalized or vague statements that would require time-consuming discovery to understand the supporting reasoning or to gather the supporting facts.

### **Section 6.03.- Confidentiality Claims.**

The confidential nature of a document or information is not a basis for or reason to violate or avoid compliance with the Filing Requirements established in Article 4 of this Regulation. If the Applicant understands that any information contained, pursuant to this Regulation or a Energy Bureau's order, in its formal application or in any supplement is of confidential or privileged nature, the Applicant shall follow the rules and procedures established by the Energy Bureau in Resolution CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information.

### **Section 6.04.- Public Notice.**

- A) The Applicant shall include in its formal application a draft public notice. The purpose of this public notice is to (i) inform the public that the Applicant has filed a formal application proposing unbundled rates and (ii) invite public participation in the unbundling proceeding to implement wheeling. The draft public notice shall contain, at minimum, the following information:
  - 1) The fact that the Applicant has submitted a formal application proposing unbundled rates and provisions for wheeling.
  - 2) The proposed unbundled rates for Customers of different classes.
  - 3) A statement indicating how a Person may intervene, in the following form: "Any person desiring to intervene in this proceeding must submit to the

Puerto Rico Energy Energy Bureau a petition to intervene, in accordance with Section 5.05 of Regulation No. 8543, known as the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, the provisions of Act 38-2017, known as the Uniform Administrative Procedure Act of the Government of Puerto Rico, and the interpretive case law. A petition to intervene shall be filed no later than [date to be inserted by the Energy Bureau] and must be served in accordance with the provisions in Regulation No. 8543.”

- 4) A statement about the procedures the Energy Bureau will follow in the proceeding, in the following form: "Upon receiving the formal application and the requests for intervention, the Energy Bureau will issue an order granting or denying the petitions to intervene and determining who may intervene. Such order will also establish a schedule for (i) public technical hearings at which expert witnesses shall testify before the Energy Bureau and (ii) public citizen hearings at which members of the public may state their views to the Energy Bureau."
  - 5) A statement that more detailed information about the Applicant may be found at [insert Applicant's web site] and more detail about the Energy Bureau may be found at [insert Energy Bureau's web site].
- B) After inserting the appropriate information, the Energy Bureau will publish the public notice on its website and direct the Applicant to publish the notice in newspapers of general circulation in Puerto Rico. PREPA and the Applicant shall also publish the notice on their websites.

#### **Section 6.05.- Access to the Filing.**

When filing its complete formal application, the Applicant shall simultaneously publish on its website a true and exact copy of the formal application submitted to the Energy Bureau, in order to provide complete access for those who want to examine the document. The Applicant may only redact the content of the filing that is the object of a confidentiality claim presented and pending before the Energy Bureau in accordance with Section 6.03 of this Regulation.

#### **Section 6.06.- Additional Information.**

In addition to the information and content required in Sections to 4.01 and 4.02 of this Regulation, the Energy Bureau may require by order that the Applicant includes or submits supplementary information either prior to or after the filing of the Applicant's formal application.

**Section 6.07.- Intervening Parties.**

- A) Any entity may file a Petition to Intervene in the proceeding to implement wheeling within thirty (30) days after the Energy Bureau determination that the Wheeling Application is complete. The Energy Bureau shall retain the discretion to grant petitions to intervene filed after the expiration of the thirty-day time frame.
- B) The Energy Bureau will address petitions to intervene in accordance with Section 5.05 of Regulation No. 8543, known as the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, and Sections 3.5 and 3.6 of Act 38-2017.

**Section 6.08.- Technical Hearings.**

- A) The purpose of the technical hearing is to provide the Energy Bureau an overview of the Applicant's Application along with an opportunity to ask questions and seek further information in order to help expedite the review process.
- B) There shall be a minimum of two technical hearings to discuss the Applicant's filing.
  - 1) The first technical hearing shall occur within twenty (20) days of the Energy Bureau's acceptance of the Applicant's filing and shall take place at the Energy Bureau's offices and shall be open to intervenors and the public. The Applicant should be prepared to provide a discussion of each section of its filing and to answer questions from the Energy Bureau. Attendees who have filed Petitions to Intervene or have been granted intervenor status may be granted the opportunity to ask questions at the Energy Bureau's discretion.
  - 2) A second technical hearing shall be held at a time to be determined by the Energy Bureau and shall be open to intervenors and the public for the purpose of gaining further information and clarity with respect to the Applicant's application. Intervenors may be granted the opportunity to ask questions at the Energy Bureau's discretion.
- C) The Energy Bureau may schedule additional technical hearings as needed.

**Section 6.09.- Procedural Schedule.**

- A) Once the application has been accepted, the Energy Bureau will set forth a procedural schedule and any additional directives governing the proceeding that will include, but not be limited to:
  - 1) An opportunity for intervenors to conduct discovery;
  - 2) Due dates for prefiled testimony to be filed by the Applicant and the intervenors;

- 3) The filing of any pleadings;
- 4) A schedule for the evidentiary hearing; and
- 5) A schedule for public hearings.

**Section 6.10.- Prefiled Testimony.**

Any intervenor may provide prefiled testimony in accordance with the Energy Bureau's orders setting forth an opportunity to do so.

- A) Each witness shall file written testimony stating his or her qualifications, educational background, work experience, the subject matter that is being addressed, conclusions and recommendations, and the basis for such conclusions and recommendations.
- B) Each witness's pre-filed written testimony must be accompanied by a signed, notarized statement that contains the following declaration: "Affiant, [(witness name)], being first duly sworn, states the following: The prepared Prefiled Direct Testimony and any attachments thereto and the sections of the Application (listed here) that I am sponsoring constitute the direct testimony of Affiant in the above-styled case. Affiant states that he/she would give the answers set forth in the Prefiled Direct Testimony if asked the questions propounded therein at the time of the filing. Affiant further states that, to the best of his/her knowledge, his/her statements made are true and correct."
- C) Prefiled written testimony or accompanying workpapers must contain all analyses, facts, and calculations necessary for the Energy Bureau to perform a comprehensive analysis and assign it the appropriate probative value.
- D) The formal application and prefiled written testimony shall avoid generalized or vague statements that would not lead to probative evidence.

**Section 6.11.- Evidentiary Hearing.**

- A) The purpose of the evidentiary hearing is to formally gather evidence on the record under oath from the Applicant and the intervenors in order for the Energy Bureau to render a final order on the application.
- B) The Energy Bureau shall fix the date and time of the hearing and notify the parties in writing at least fifteen (15) days prior to the date of the hearing. The Energy Bureau shall include in its Order, the sequence for the presentation of testimony by the parties to the proceeding. Each witness providing prefiled testimony shall be subject to cross-examination by the legal counsel for all parties represented.

- C) At the discretion of the Energy Bureau, an opportunity for rebuttal testimony may be granted.
- D) The parties to the proceeding shall be granted the opportunity to file briefs and/or present oral arguments before the Energy Bureau at the conclusion of the evidentiary hearing. Parties shall be granted a reasonable period of time to prepare their summary arguments in the form designated by the Energy Bureau. The Energy Bureau may set forth the format for the presentation of briefs or oral arguments at its discretion, which all parties are required to follow.

**Section 6.12.- Energy Bureau Order.**

At the conclusion of the proceeding, the Energy Bureau shall issue an order containing findings of fact based on evidence in the record of the proceedings and supported by conclusions of law. The Energy Bureau's order shall establish the appropriate unbundling charges, any exit fees, and other charges and address all other major issues included the Application.

**Section 6.13.- Approval of Tariffs.**

- A) Within thirty (30) days of the issuance of the Energy Bureau order in this proceeding, the Applicant shall file tariffs consistent with the Energy Bureau's order that includes all the appropriate rates and charges and terms and conditions for wheeling and any other items the Energy Bureau orders to be included in tariffs.
- B) Any party may within twenty (20) days of the filing of the documents provide comments to the Energy Bureau restricted to areas of the tariff filing that the intervening party believes is inconsistent with the Energy Bureau's order.
- C) Within sixty (60) days of the date that PREPA filed its tariff, the Energy Bureau shall issue an order either approving or disapproving the tariffs or requiring PREPA to amend portions of its tariff.

**ARTICLE 7.- THE SYSTEM OPERATOR**

**Section 7.01.- System Operator.**

- A) Applicability. This section applies to the System Operator (SO). It also applies to the Transmission and Distribution Provider (TDP) and Transmission Service Customers, as defined in this Regulation, with respect to their interactions with the SO.
- B) Functions. The SO shall ensure access to the Electric Power Grid for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the Transmission System; ensure efficient economic dispatch and scheduling of resources to serve loads; ensure that information relating to a Customer's choice of Energy Service Company is conveyed in a timely manner to the Persons who need

that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in Puerto Rico. The SO shall:

- 1) Administer, on a daily basis, the operational and market functions of the Transmission System, including procuring and deploying ancillary services, scheduling and dispatching resources and loads, and managing transmission congestion, as set forth in this Regulation, Energy Bureau orders, and SO Procedures;
- 2) Administer settlement and billing for services provided by the SO;
- 3) Assess the creditworthiness of market participants and establish and enforce reasonable security requirements in relation to their responsibilities under SO Procedures;
- 4) Maintain the reliability and security of the Transmission System, including the instantaneous balancing of generation and load and monitoring the adequacy of resources to meet demand;
- 5) Provide for non-discriminatory access to the Transmission System, consistent with this Regulation, Energy Bureau orders, and SO Procedures;
- 6) Supervise, in coordination with the TDP, the processing of all requests for Interconnection to the Transmission System from owners of new generating facilities;
- 7) With the TDP, coordinate and schedule planned Transmission facility outages;
- 8) Perform system screening security studies, in coordination with the TDP;
- 9) Plan the Transmission System in coordination with the TDP, in accordance with this Regulation including the effect of Integrated Resource Planning on transmission system needs;
- 10) Establish and administer procedures for the registration of Certified Energy Service Companies in accordance with Article 12;
- 11) Conduct planning for integration of Renewable Resources as part of the Integrated Resource Planning function;
- 12) Monitor generation planned outages;
- 13) Disseminate information relating to market operations, market prices, and the availability of services, in accordance with this Regulation, Energy Bureau orders, and the SO Procedures;

- 14) Operate an electronic transmission information network, in coordination with the TDP; and
  - 15) Perform any additional duties required under this this Regulation, Energy Bureau orders, and SO Procedures.
- C) Planning. The SO, in coordination with the TDP, shall conduct Transmission System planning. The SO in coordination with the TDP shall submit to the Energy Bureau for review and approval guidelines and procedures for Transmission System planning. Any revisions or additions to the planning guidelines and procedures will be subject to review and approval of the Energy Bureau. The SO shall evaluate and make recommendations to the Energy Bureau as to the need for any transmission facility, in coordination with the TDP. These recommendations shall also be included and accounted for in the Integrated Resource Plans.
- D) Information and coordination. The TDP and Transmission Service Customers shall provide such information as may be required by the SO to carry out the functions prescribed by this article, Energy Bureau orders, and SO Procedures. The SO shall maintain the confidentiality of competitively sensitive information and other protected information. Other parties shall maintain the confidentiality of competitively sensitive information entrusted to them by the SO or a Transmission Service Customer.
- E) Interconnection standards. In coordination with the TDP and the Energy Bureau, the SO may prescribe reliability and security standards for the Interconnection of generating facilities and Microgrids and Distributed Generators as applicable, that use the Transmission System.
- F) SO Budget.
- 1) The SO must prepare a budget for each fiscal year setting forth (a) the estimated expenditures, costs and expenses of the SO to carry out its powers, duties, responsibilities and functions, which may include expenditures for capital assets allocated over the expected useful life of the asset; (b) the aggregate estimated expenditures, costs and expenses in the approved budget of the Independent Monitor; (c) its estimated revenue from SO fees; and (d) its estimated revenue from the SO tariff.
  - 2) The SO may amend its budget as needed.
  - 3) The budget shall be filed with the Energy Bureau.
- G) The SO administrative fee. The SO shall charge an administrative fee, and the fees it charges are subject to Energy Bureau approval, in accordance with this Regulation.

H) Reports.

- 1) In addition to any other reporting requirements, the TDP and each Energy Service Company shall on an annual basis provide to the SO historical information concerning peak loads and resources connected to the Transmission System.
- 2) The SO must, within 120 days after the end of its fiscal year, provide to the Energy Bureau an annual report (a) reporting on its business and affairs in the fiscal year, and (b) containing its audited financial statements for the fiscal year. After providing the annual report to the Energy Bureau, the SO must make it available to the public.
- 3) The SO must provide to the Energy Bureau any other reports and information relating to its duties, responsibilities and functions that the Energy Bureau requests.

**Section 7.02.- Wholesale Market Design and Function.**

- A) General. The protocols and other rules and requirements of the SO that implement this section shall be developed in accordance with Section 5.04 with consideration of microeconomic principles and shall promote economic efficiency in the production and consumption of electricity; promote the most economical utilization of resources, subject to necessary operational and other constraints; minimize system costs, including consideration of the external costs associated with fossil-fueled generator emissions; support wholesale and retail competition; support the reliability of electric service; support a level playing field for all resources, including Distributed Energy Resources, on the basis of capabilities and costs, and reflect the physical realities of the electric system. Except as otherwise directed by the Energy Bureau, the SO shall determine the marginal system price of energy on an hourly basis. It shall also design and implement efficient mechanisms to procure and compensate ancillary services.
- B) The SO shall submit design market mechanisms to achieve these outcomes and encourage efficient and reliable provision of generation and ancillary services in accordance with Section 4.02 of this Regulation.
- C) Collection and use of operational information. The SO shall develop procedures to gather and verify information on capabilities and variable costs associated with each available resource. These will include rules regarding hourly, daily, monthly, and annual updates to various aspects of this information. Variable costs may include, but are not limited to, generator fuel costs, maintenance costs, start-up costs, opportunity

costs, and social costs of emissions. The SO shall use this information in its operational decisions and financial settlements.

**Section 7.03.- Oversight of Wholesale Market Participants.**

- A) The SO in accordance with Article 5 of this Regulation will develop SO Procedures or Protocols that:
- 1) Protect Customers from unfair, misleading, and deceptive practices in the wholesale markets;
  - 2) Ensure that ancillary services necessary to facilitate the reliable transmission of electric energy are available at reasonable prices;
  - 3) Afford Customers safe, reliable, and reasonably priced electricity;
  - 4) Ensure that all wholesale market participants observe all scheduling, operating, reliability, and settlement policies, rules, guidelines, and procedures established in the SO Procedures;
  - 5) Clarify prohibited activities in the wholesale market;
  - 6) Monitor and mitigate market power and prevent market power abuses;
  - 7) Provide standards and criteria for the Energy Bureau to consider when reviewing wholesale market activities;
  - 8) Clarify the remedies for non-compliance with the Protocols relating to wholesale markets;
  - 9) Prescribe the SO's role in enforcing SO Procedures relating to the reliability of the electric network and accounting for the production and delivery among generators and all other market participants, and monitoring and obtaining compliance with operating standards within the transmission network;
  - 10) Provide an Annual Report to the Energy Bureau on how the wholesale market is functioning and report on the status and operation of the SO Procedures outlined in this Section; and,
  - 11) Provide any other information that the Energy Bureau may request.
- B) The SO shall monitor material occurrences of non-compliance with SO Procedures, which shall mean occurrences that have the potential to impede SO operations or represent a risk to system reliability.

- C) Investigation. The Energy Bureau may initiate an informal fact-finding review based on a complaint or upon its own initiative to obtain information regarding facts, conditions, practices, or matters that it may find necessary or proper to ascertain in order to evaluate whether any Energy Service Company or the SO has violated any provision of this section.
- D) Remedies. If the Energy Bureau finds that a market entity is in violation of this section, the Energy Bureau may seek or impose any legal remedy it determines appropriate for the violation involved, in accordance with Section 1.17.

**Section 7.04- Independent Market Monitor.**

- A) Purpose. The purpose of this section is to define the responsibilities and authority of the Independent Market Monitor (IMM) which shall be put into effect upon the issuance on an Order by the Energy Bureau to implement a wholesale market.
- B) Objectives of market monitoring. The IMM shall monitor wholesale market activities so as to:
  - 1) Detect and prevent market manipulation strategies and market power abuses; and,
  - 2) Evaluate the operations of the wholesale market, the current market rules, and proposed changes to the market rules and recommend measures to enhance market efficiency.
- C) The IMM shall gather and analyze information and data as needed for its market monitoring activities. The duties and responsibilities of the IMM shall include:
  - 1) Monitoring all markets and compensation mechanisms for practices that affect supply, demand, and the efficient functioning of such markets;
  - 2) Identifying and analyzing abnormal events in the wholesale markets;
  - 3) Developing and regularly monitoring performance measures to evaluate market participants' compliance with the SO Procedures;
  - 4) Assessing the effectiveness and efficiency of the SO's design and operation of various markets and resource compensation mechanisms;
  - 5) Conducting market power tests and other analyses related to market power;

- 6) Analyzing the SO Procedures, Protocols and other market rules and proposed changes to those rules to identify opportunities for strategic manipulation and other economic inefficiencies, as well as potential areas of improvement;
  - 7) Conducting investigations of specific market events; and,
  - 8) Any other task the Energy Bureau may require.
- D) The Independent Market Monitor shall report to the Energy Bureau and shall be compensated through funds collected in the non-bypassable Systems Benefit Charge.

**Section 7.05.- Continued Obligation to Conduct Integrated Resource Planning.**

- A) Given the high cost of energy in Puerto Rico and the island's aging generation fleet, the need for energy planning through an Integrated Resource Planning process remains necessary.
- B) The System Operator shall file an Integrated Resource Plan in accordance with Energy Bureau Regulation 9021. The Energy Bureau by order may require the System Operator to file additional information as may be necessary due to these rules.
- C) As directed by the Energy Bureau, at least once every year that precedes the filing of an Integrated Resource Plan, the System Operator shall provide to the Energy Bureau a minimum of twelve months of historical and five years of projected annual and monthly energy and peak demand served or to be served, the electrical location of the load served (nearest substation), and an hourly load profile for the load at each location. The Default Service Provider and the Energy Service Companies shall also provide parameters for the resource(s) serving the load. These parameters shall include size (megawatt or kilowatt), type (wind, solar, other fuel), expected hourly output patterns including any differences in different months or seasons, and electrical location of the resource (nearest substation). The Default Service Provider and each Energy Service Company shall indicate the level of confidence of the usefulness it assigns to having its projected load used in System Operator's forecasting process and shall provide a "low," "expected," and "high" range for the load anticipated and the resource deployment to meet that load.
- D) The Default Service Provider and the Energy Service Companies shall provide the System Operator with any information it needs to comply with paragraph (C) above and any other information that the System Operator may reasonably require.

## **ARTICLE 8.- THE TRANSMISSION SYSTEM**

### **Section 8.01.- Non-Discriminatory Transmission Access.**

- A) Purpose. The purpose of this section is to clearly state the terms and conditions that govern transmission access in order to:
- 1) Facilitate competition in the production and sale of electric energy services;
  - 2) Preserve the reliability of electric energy service;
  - 3) Enhance economic and technical efficiency in the consumption and production of electric power from all sources of generation of electricity, including production from Distributed Energy Resources; and
  - 4) Support efficient and reliable least-cost decision-making with respect to investments and operation, where costs include the social costs of emissions and other environmental impacts.
- B) Nature of Transmission Service. Transmission Service shall be provided in a non-discriminatory manner pursuant to Energy Bureau-approved tariffs, and Energy Bureau-approved System Operator Procedures.
- C) Obligation to provide Transmission Service. The TDP shall provide Transmission Service in a non-discriminatory manner in accordance with the provisions of this Article.
- 1) Where the TDP has contracted for another Person to operate its transmission facilities, the Person assigned to operate the facilities shall carry out all the responsibilities of the TDP.
  - 2) The TDP shall Interconnect its facilities with new generating sources and construct facilities needed for such an Interconnection, in a non-discriminatory manner, in accordance with this article. The TDP shall use all reasonable efforts to communicate promptly with a power generation company to resolve any questions regarding the requests for service in a non-discriminatory manner. If the TDP or a power generation company is required to complete activities or to negotiate agreements as a condition of service, each party shall use due diligence to complete these actions within a reasonable time.

## **Section 8.02.- Terms and Conditions for Transmission Service.**

- A) Transmission Service requirements. As a condition to obtaining Transmission Service, a Transmission Service Customer that owns electrical facilities shall execute Interconnection agreements with the TDP. The approved Standard Generation Interconnection Agreement (SGIA) for the Interconnection of new generating facilities shall be used by the power generation companies, unless otherwise required by the Energy Bureau, and by the TDP. A standard agreement may be modified by mutual agreement of the parties to address specific facts presented by a particular Interconnection request as long as the modifications do not interfere with the goal of expeditious, non-discriminatory Interconnection and are not otherwise inconsistent with the principles underlying the SGIA.
  
- B) TDP responsibilities. The TDP will plan, construct, and maintain its Transmission System in accordance with good utility practices in order to provide Transmission Service Customers with Transmission Service over its Transmission System in accordance with this Regulation. The TDP shall, in coordination with the System Operator, and in accordance with the current integrated resource plan, endeavor to construct and place into service sufficient transmission capacity to ensure adequacy and reliability of the network to deliver power to Transmission Service Customer loads. In line with the integrated resource plan, as approved by the Energy Bureau, and in coordination with the System Operator, the TDP will plan, construct, and maintain facilities that are needed to relieve transmission constraints.
  
- C) Construction of new facilities. If additional transmission facilities are needed to provide Transmission Service pursuant to a request for such service or to alleviate a constraint, the TDP shall construct or acquire the facilities necessary to permit the Transmission Service to be provided in accordance with good utility practice, unless there is an alternative means of providing the Transmission Service that is less costly, operationally sound, and relieves the transmission constraint at least as effectively as would additional transmission facilities. Careful consideration and evaluation of possibilities for such alternatives shall be the responsibility of the TDP, in coordination with the SO. Consideration of alternatives for alleviating the constraint must include consideration of cost-effective investment in non-wires alternatives, including Demand-Side Management measures, Energy Storage, and Distributed Generation. Before constructing new Transmission facilities, the TDP shall seek Energy Bureau approval if it is not included in a Energy Bureau-approved IRP and shall demonstrate that the option chosen is the least-cost, best option.
  - 1) When a Transmission Service Customer requests Transmission Service for a new generating source that is planned to be Interconnected with the TDP's transmission network, the Transmission Service Customer shall be responsible for the cost of installing step-up transformers to transform the

output of the generator to a transmission voltage level. The Transmission Service Customer shall also be responsible for the cost of installing protective devices at the point of Interconnection capable of electrically isolating the generating source owned by the Transmission Service Customer. The TDP shall be responsible for the cost of installing any other Interconnection facilities that are designed to operate at a transmission voltage level and any other upgrades on its Transmission System that may be necessary to accommodate the requested Transmission Service.

- 2) The TDP may require the Transmission Service Customer to pay a reasonable Deposit or provide another means of security, to cover the costs of planning, licensing, and constructing any new transmission facilities that will be required in order to provide the requested service.
  - 3) If the new generating source is completed and the Transmission Service Customer begins to take the requested Transmission Service, the TDP shall return the Deposit or security to the Transmission Service Customer. If the new generating source is not completed and new transmission facilities are not required, the TDP may retain as much of the Deposit or security as is required to cover the costs it incurred in planning, licensing, and construction activities related to the planned new transmission facilities. Any repayment of a cash Deposit shall include interest at a commercially reasonable rate based on that portion of the Deposit being returned.
- D) Curtailment of service. In an emergency situation, as determined by the System Operator and at its direction, the TDP may interrupt Transmission Service on a non-discriminatory basis, if necessary, to preserve the stability of the Transmission System and service to Customers. Such curtailments shall be carried out in accordance with System Operator Procedures.
- E) Filing of contracts. The TDP shall file with the Energy Bureau all new Interconnection agreements within 30 days of their execution, including a cover letter explaining any deviations from the SGIA. These Interconnection agreements shall be filed for the Energy Bureau's information. Interconnection agreements are subject to Energy Bureau review and approval upon request by any party to the agreement. Upon a showing of good cause, appropriate portions of the filings required under this subsection may be subject to provisions of confidentiality to protect competitively sensitive commercial or financial information.

### **Section 8.03.- Initiating Transmission Service.**

- A) Initiating service. Where a Transmission Service Customer uses transmission facilities, it shall apply for Transmission Service pursuant to this section, the System Operator Procedures, and Energy Bureau-approved tariffs.
  
- B) Conditions precedent for receiving service. Subject to the terms and conditions of this section and in accordance with System Operator Protocols and Energy Bureau-approved tariffs, the TDP will provide Transmission Service to any Transmission Service Customer as that term is defined in this Regulation, provided that:
  - 1) The Transmission Service Customer has complied with the applicable provisions of the System Operator Procedures;
  - 2) The Transmission Service Customer and the TDP have completed the technical arrangements set forth in subsection (E) of this section; and
  - 3) If the Transmission Service Customer operates electrical facilities that are interconnected to the facilities of the TDP, it has executed an Interconnection agreement for service under this section or requested in writing that the TDP file a proposed unexecuted agreement with the Energy Bureau.
  
- C) Procedures for initiating Transmission Service. A Transmission Service Customer requesting Transmission Service under this section must comply with the System Operator Procedures and Energy Bureau-approved tariffs.
  - 1) The Transmission Service Customer shall provide all information deemed necessary by the System Operator and TDP to evaluate the Transmission Service.
  - 2) The SO must acknowledge the request within ten (10) days of receipt. When the request is complete, the acknowledgment must include a date by which a response will be sent to the Transmission Service Customer and a statement of any fees associated with responding to the request (e.g., system studies).
  - 3) If a Transmission Service Customer fails to provide the SO with all information deemed necessary, then the SO shall notify the Transmission Service Customer requesting service within fifteen (15) business days of receipt and specify the reasons for such failure. Wherever possible, the SO will attempt to remedy deficiencies in the application through informal communications with a Transmission Service Customer.
  - 4) If the SO, in coordination with the TDP, determines that a system security screening study is required, upon approval of the requesting Transmission Service Customer, the SO will initiate such a study. If this study concludes that

the Transmission System is adequate to accommodate the request for service, either in whole or in part, or that no costs are likely to be incurred for new transmission facilities or upgrades, the Transmission Service will be initiated or tendered within fifteen (15) business days of completion of the system security screening study. If the SO, in coordination with the TDP, determines that no system security screening study is required, the Transmission Service will be initiated or tendered within no more than fifteen (15) business days of the determination.

- 5) If the SO determines, as a result of the system security screening study, that additions or upgrades to the Transmission System are needed to supply the Transmission Service Customer's forecasted transmission requirements, the TDP will, upon the approval of the requesting Transmission Service Customer, initiate a facilities study. When completed, a facilities study will include an estimate of the cost of any required facilities or upgrades and the time required to complete such construction and initiate the requested service.
  - 6) When a Transmission Service Customer requests Transmission Service for a new resource under this section, the SO, in coordination with the TDP, shall establish the scope of any system security screening study. The study will be used to determine the feasibility of integrating such new resource into the Transmission System, and whether any upgrades of facilities providing transmission are needed. The SO, in coordination with the TDP, will perform the system security screening study.
    - a) The SO shall complete the system security screening study and provide the results to the Transmission Service Customer within ninety (90) days after the receipt of an executed study agreement and receipt from the Transmission Service Customer of all the data necessary to complete the study. In the event the SO is unable to complete the study within the ninety-day (90) period, it will provide the Transmission Service Customer a written explanation of when the study will be completed and the reasons for the delay.
    - b) The requesting Transmission Service Customer shall be responsible for any reasonable cost of the system security screening study and shall be provided with the results thereof, including relevant workpapers to the extent such results and workpapers do not contain protected competitive information as reasonably determined by the SO.
    - c) The SO will use a methodology consistent with good utility practice to conduct the system security screening study and shall coordinate with the TDP.
- D) Facilities study. Based on the results of the system security screening study, the TDP shall perform, pursuant to an executed facilities study agreement with the

Transmission Service Customer, a facilities study addressing the detailed engineering, design, and cost of the Transmission System required to provide the requested Transmission Service.

- 1) The facilities study will be completed in no more than sixty (60) days.
  - 2) The Transmission Service Customer shall be responsible for the reasonable cost of the facilities study pursuant to the terms of the facilities study agreement and shall be provided with the results of the facility study, including relevant workpapers.
  - 3) The TDP shall be responsible for the costs of any planning, designing, and construction of the facilities of the TDP associated with its addition of new facilities used to provide Transmission Service.
- E) Technical arrangements to be completed prior to commencement of service. Service under this section shall not commence until the installation has been completed of all equipment specified under the Interconnection agreement, consistent with guidelines adopted by the North American Electric Reliability Corporation and the SO Procedures, except that the TDP shall provide the requested Transmission Service, to the extent that such service does not impair the reliability of other Transmission Service. The TDP shall exercise reasonable efforts, in coordination with the Transmission Service Customer, to complete such arrangements as soon as practical prior to the service commencement date.
- F) Transmission Service Customer facilities. The provision of Transmission Service shall be conditioned upon the Transmission Service Customer's constructing, maintaining, and operating the facilities on its side of each point of Interconnection that are necessary to reliably Interconnect and deliver power from a resource to the Transmission System and from the Transmission System to the Transmission Service Customer's loads.
- G) Changes in service requests. A Transmission Service Customer's decision to cancel or delay the addition of a new resource shall not relieve the Transmission Service Customer of the obligation to pay for any study conducted in accordance with this section.
- H) Annual load and resource information updates. A Transmission Service Customer shall provide the SO with annual updates of load and resource forecasts for the following five-year (5) period. The Transmission Service Customer also shall provide the SO with timely written notice of material changes in any other information provided in its application relating to the Transmission Service Customer's load, resources, or other aspects of its facilities or operations affecting the TDP's ability to provide reliable service.

- I) Termination of Transmission Service. A Transmission Service Customer may terminate Transmission Service after providing the SO and the TDP with written notice of its intention to terminate. A Transmission Service Customer's provision of notice to terminate service under this section shall not relieve the Transmission Service Customer of its obligation to pay TDP any rates, charges, or fees, including contributions in aid of construction, for service previously provided under the applicable Interconnection service agreement, and which are owed to TDP as of the date of termination.

#### **Section 8.04.- Metering and Billing.**

The Transmission and Distribution Provider shall have the responsibility to measure the usage of all Customers and send Bills, irrespective of whether a Customer is served by the Default Service Provider or an Energy Service Company. The terms and conditions for the exchange of data to enable billing shall be included in the Operating Agreement as described in Section 10.01. In the event that an Energy Service Company seeks to offer more advanced Metering and Billing options, such offering shall be subject to the approval of the Energy Bureau, and it shall be the responsibility of the Energy Service Company to install, maintain, and manage such advanced Metering infrastructure, including any and all data management requirements, and to coordinate billing with the Transmission and Distribution Provider, in accordance with the Operating Agreement as described in Section 10.01.

### **ARTICLE 9.- OBLIGATIONS OF DEFAULT SERVICE PROVIDER**

#### **Section 9.01.- Default Service Provider.**

- A) PREPA shall operate as the Default Service Provider as long as it has sufficient generation either through its ownership of generation or through long-term power purchase agreements. In the event that PREPA does not have sufficient capacity to serve as the Default Service Provider, the Energy Bureau will hold a hearing and render a decision with respect to the entity that shall be responsible for default service.
- B) The Default Service Provider shall have the obligation to provide power under the following circumstances:
- 1) A retail Customer elects not to be served by an Energy Service Company.
  - 2) The Energy Service Company does not provide sufficient amounts of energy to meet the entirety of its Customers' needs at any time. In such an event, the terms of the operating agreement as described in Section 10.01 shall apply.
  - 3) The Energy Service Company defaults on its contract with a retail Customer and fails to find another Energy Service Company to assume its contracts under the same prices, terms, and conditions and the Customer does not find another Energy Service Company to provide service.

- C) In the event that a Customer takes service from a Default Service Provider, the Customer's rates shall be set in accordance with the existing applicable tariff as filed with the Energy Bureau.
- D) The Default Service Provider shall file tariffs setting forth the terms and conditions for default service along with its operating agreement with Energy Service Companies for the Energy Bureau's approval. The terms of the tariffs and operating agreements as it pertains to default service shall apply.

**ARTICLE 10. - OPERATING AGREEMENTS BETWEEN THE ENERGY SERVICE COMPANIES AND THE DEFAULT SERVICE PROVIDER AND THE TRANSMISSION AND DISTRIBUTION PROVIDER**

**Section 10.01.- Proposed Operating Agreement between the Energy Service Companies and the Default Service Provider and the Transmission and Distribution Provider.**

- A) The Energy Service Companies shall enter into Operating Agreements with the Default Service Provider and the Transmission and Distribution Provider as necessary to set forth operating arrangements.
- B) The Default Service Provider and the Transmission and Distribution Provider shall file an application for approval of the terms and conditions contained in a proposed operating agreement between the Default Service Provider and the Energy Service Company as referenced in Article 5. The proposed agreement shall be fair and reasonable and shall not discriminate against any Energy Service Company and shall be designed so as to protect the electric system without creating barriers to wheeling. The operating agreement shall consist of the terms, conditions, and charges to be applied to Energy Service Companies and shall include but not be limited to, as applicable to the Default Service Provider and/or the Transmission Service Provider, the following:
  - 1) A statement that in the event of a default, the Default Service Provider shall assume responsibility for providing Energy Service to the defaulting Energy Service Company's Customers.
  - 2) In the event that an Energy Service Company or set of Energy Service Companies does not deliver sufficient amounts of energy to meet the entirety of one or more Customers' consumption, the Default Service Provider shall provide Energy Service to those Customers sufficient to cover any energy shortages. The Default Service Provider shall, in its agreements, set forth any fees or charges to the Energy Service Company or Companies to provide this service.

- 3) The agreements shall include requirements for the provision of an irrevocable letter of credit, a surety bond or cash Deposit, or other guarantee for the required energy collateral in the event that the Energy Service Company is deemed to not be sufficiently creditworthy. The security shall cover events under which the Energy Service Company defaults and the Default Service Provider must provide service.
- 4) Requirements and protocols for the exchange of data, materials, or other information between the Default Service Provider, the Transmission and Distribution Provider, and the Energy Service Company. This section of the proposed agreement shall also include a detailed description of how any electronic data interchanges shall function.
- 5) Notification that the Default Service Provider shall post average Customer load profile information for classes that will utilize load profiling which shall be for informational purposes only.
- 6) A statement that Customer-specific information will not be provided without the Customer's affirmative authorization and a requirement that the Energy Service Company treat that information as confidential.
- 7) In the exchange of information between the Default Service Provider, the Transmission and Distribution Provider, and the Energy Service Company, a description of what information is to be treated as confidential.
- 8) Information on billing options for the Energy Service Company in terms of the information that can be included on the Customer Bill regarding the Customer's charges due to the Energy Service Company.
- 9) The terms for the Transmission and Distribution Provider reimbursing the Transmission and Distribution Provider for amounts collected for the provision of services to the Customer as set forth in Section 8.04. This section of the agreement shall also include the Transmission and Distribution Provider's proposal for the allocation of revenues collected between the Transmission and Distribution Provider, Default Service Provider, and the Energy Service Company when a Customer makes a partial payment.
- 10) A description of the Metering services the Transmission and Distribution Provider can offer the Energy Service Company's Customers along with any terms and conditions associated with those options.
- 11) A discussion of how the Metering and Billing functions shall operate so that the Transmission and Distribution Provider can provide the appropriate Metering data to the Energy Service Company and the Default Service

Provider, and the Energy Service Company and the Default Service Provider can each provide the Transmission and Distribution Provider with billing information on a timely basis.

- 12) A description of the settlement process for under- and over-deliveries on either a daily or monthly basis or based on predefined intervals using Metered Customer load obligations.
  - 13) A discussion of the events that constitute a default and the remedies.
  - 14) A description of the dispute resolution procedure.
- C) The Energy Bureau shall approve, disapprove, or modify the proposed Operating Agreement based on the testimony and comments received into the record in the proceeding to unbundle rates.

## **ARTICLE 11.- CODES OF CONDUCT.**

### **Section 11.01.- Purpose and Scope of the Codes of Conduct.**

- A) This Regulation is established in order to create a fair and functioning market that provides Customers with the optimum array of choices, and with the purpose of avoiding any form of undue discrimination against any Energy Service Company and its Customers. This Regulation is also intended to eliminate any possibility of cross-subsidization in which captive utility Customers pay for any portion of Competitive Service in their Monopoly Services.
- B) The Default Service Provider shall not be permitted to establish a separate affiliate engaged in wheeling. The Default Service Provider is required to provide Energy Service to those Customers who do not switch to an Energy Service Company for its supply of electricity or to those Customers whose Energy Service Company defaults as may be applicable, in accordance with Section 9.01 of this Regulation.

### **Section 11.02.- Scope of Article 11.**

Article 11 shall apply to any and all entities under the jurisdiction of the Energy Bureau, including but not limited to: PREPA; the Default Service Provider; the Transmission and Distribution Provider; the System Operator; the generation providers; the Energy Service Companies; and any other entity providing any electric services or products. Any entity engaged in providing one or more Monopoly Services shall abide by the code of conduct.

### **Section 11.03.- General Principles for the Operation of the Code of Conduct.**

- A) All data and information shall be made available on a non-discriminatory basis to all Energy Service Companies.

- B) Any entity that is engaged in the provision of default service to captive Customers and any other separate business shall provide the Energy Bureau with assurances that the captive Customers are Ring-Fenced.
- C) Any entity engaged in providing a Monopoly Service to captive Customers in Puerto Rico shall operate its competitive businesses as a separate corporate entity and shall be required to provide the Energy Bureau with information demonstrating that its competitive businesses are corporately separated from its monopoly business
- D) Each Monopoly Service Provider that has an Affiliated Energy Service Provider offering Competitive Service in the Commonwealth of Puerto Rico shall submit to the Energy Bureau detailed internal policies and procedures governing the code of conduct and its plans for the execution of that code of conduct.

**Section 11.04.- Codes of Conduct.**

- A) No Monopoly Service Provider shall provide a competitive advantage to its Affiliated Energy Service Provider through any kind of preferential treatment that would extend to any service or price unless the same offer or advantage is contemporaneously provided to all Unaffiliated Competitive Service Providers. This includes the provision or procurement of any goods, services, facilities, information, or the establishment of standards. The timing of any special pricing (such as a discount, rebate, or fee waiver), service, or condition should be the same and simultaneously offered to all.
- B) A Monopoly Service Provider is prohibited from requiring as a condition of any service or special rate that the Customer must procure Competitive Service from its Affiliated Energy Service Provider.
- C) Customer information shall be provided on a nondiscriminatory basis to both the Affiliated Energy Service Provider and the Unaffiliated Competitive Service Provider, but only with a Customer's written consent. The Monopoly Service provided shall employ the same procedures for any entity requesting such information. For any Energy Service Company needing Customer usage history and past Bills, a standard sample permission form prepared by the Monopoly Service Provider and approved by the Energy Bureau shall be used.
- D) Any Monopoly Service Provider shall not share with the Affiliated Energy Service Provider any information it receives from an Unaffiliated Competitive Service Provider.

- E) Any Monopoly Service Provider shall maintain a list of Certified Energy Service Companies, as approved by the Energy Bureau. The Monopoly Service Provider shall not provide Customers with any information or advice pertaining to the selection of an Energy Service Company beyond the list of qualified service providers on the list, which shall be arranged in a random, rotating order.
- F) Each Affiliated Energy Service Provider is required to have its own separate identification and shall not use or trade upon, promote, or advertise its business using the Monopoly Service Provider's name or logo.
- G) Any kind of joint advertising or marketing between the Monopoly Service Provider and the Affiliated Energy Service Provider is prohibited.
- H) A Monopoly Service Provider and an Affiliated Energy Service Provider shall maintain separate books and records in accordance with the applicable Uniform System of Accounts and the Generally Accepted Accounting Principles. The Monopoly Service Provider shall document all tariffed and non-tariffed transactions with the Affiliated Energy Service Provider, including but not limited to: all discounts, waivers of tariffs, or contract provisions; the names of parties involved in transactions; a description of the transaction; the terms and conditions of the transaction; and, the time period involved. These records should be maintained for a term of three (3) years and shall be available for review to any requesting party.
- I) To the extent that there is any transfer of goods or services between the Monopoly Service Provider and the Affiliated Energy Service Provider, the Monopoly Service Provider shall have the burden of demonstrating in all proceedings, complaints, investigations, and filings, that the transaction was based on the fair market price and that there was no cross-subsidy in the transfers of goods and services from the Monopoly Service Provider to the Affiliated Energy Service Provider. The transfer of goods and services from the Monopoly Service Provider to the Affiliated Energy Service Provider shall be set at the higher of fully allocated cost or fair market price to protect the captive Customer from subsidizing the affiliate operation. Any transfer from the Affiliated Energy Service Provider to the Monopoly Service Provider shall be at the market price to prevent the affiliate from selling any asset or service at an inflated price at the expense of the captive Customers.
- J) Any assets, goods, or services that are developed for sale on the open market by the Monopoly Service Provider shall be available to the Affiliated Energy Service Provider and Competitive Service Providers on an equal and non-discriminatory basis. The transference of goods and services also extends to risk from the Affiliated Energy Service Provider not being borne by the Monopoly Service Provider.

- K) A Monopoly Service Provider shall not share any office space, equipment, services, and systems with an Affiliated Energy Service Provider with the sole exception as determined by the Energy Bureau of corporate support functions such as legal and accounting services. The computer systems of the Monopoly Service Provider and the Affiliated Energy Service Provider shall be kept separate.
- L) A Monopoly Service Provider is prohibited from making joint purchases with the Affiliated Energy Service Provider that are associated with the marketing of the Affiliated Energy Service Provider's products and services.
- M) The Monopoly Service Provider shall not share with the Affiliated Energy Service Provider or employ the same staff personnel at the same time, with the possible exception as determined by the Energy Bureau of employees handling corporate support functions. Any shared corporate support shall be priced to prevent subsidies and shall be recorded and made available for review. The use of combined corporate support shall exclude the transfer of confidential information and eliminate the opportunity to provide preferential treatment or an unfair competitive advantage or lead to Customer confusion.
- N) Transfers of employees between affiliates is discouraged and shall be limited. Any employee transferred to an affiliate shall remain with the affiliate for a minimum of two (2) years. Employees transferred from one affiliate to another shall not share information obtained from the previous position that would provide a competitive advantage to the Affiliated Energy Service Provider. Employees that transfer from one affiliate to the other shall be required to sign a non-disclosure statement.
- O) The Monopoly Service Provider shall file a compliance plan detailing how it plans to implement the code of conduct and keep all aspects of its operation separate from the affiliate. A plan shall also be filed for the affiliate detailing the affiliate's plans to keep its operations separate. These plans shall include an educational component for all employees that covers training and a handbook to ensure that all employees of both the Monopoly Service Provider and the Affiliated Energy Service Provider understand what conduct is and is not permissible. Upon completion of the training, all employees shall be required to sign a document acknowledging that they understand the codes of conduct.
- P) An annual compliance audit shall be conducted by an independent auditor, filed with the Energy Bureau, and made available to public.
- Q) To allow an informal resolution of complaints regarding the code of conduct, the Monopoly Service Provider shall establish a complaint process to record and investigate any complaint. Within thirty (30) days of receipt of the complaint, the Monopoly Service Provider shall provide a written response to the complainant

regarding the Monopoly Service Providers findings and any corrective action being taken. If the matter is not resolved to the complainant's satisfaction, the complainant retains the right to file a complaint at the Energy Bureau.

- R) The Energy Bureau shall have the authority to levy fines for violations of the code of conduct in accordance with Section 1.17 of this Regulation.
- S) The Default Service Provider shall report to the Energy Bureau any evidence of market power abuse among the Energy Service Companies.

#### **Section 11.05.- Separation of Corporate Entities.**

The Energy Bureau reserves the right to require functional or corporate separation for any entities offering any energy services or products in order to protect the competitive market and the Customers in Puerto Rico.

### **ARTICLE 12.- CERTIFICATION OF ENERGY SERVICE COMPANIES OFFERING WHEELING**

#### **Section 12.01.- Requirements for Certification.**

Any Energy Service Company that offers Energy Service shall comply with the Certification requirements of Regulation 8701 as applicable and shall apply for Certification before the Energy Bureau, prior to offering any Energy Service.

### **ARTICLE 13.- REGULATION OF ENERGY SERVICE COMPANIES**

#### **Section 13.01.- General Provisions.**

- A) An Energy Service Company shall comply with all applicable requirements of Regulation 8863 (Regulation on the Procedure for Bill Review and Suspension of Electric Service Due to Failure to Pay) and Regulation 8543 (Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings). In the event of any conflict between the provisions of those regulations and this Section, the provisions of those regulations shall control.
- B) An Energy Service Company may not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:
  - 1) The marketing, solicitation, or sale of Energy Service;
  - 2) The administration of contracts for Energy Service; or
  - 3) The provision of Energy Service, including interactions with current or potential Customers.

- C) An Energy Service Company may not cause or arrange for the disconnection of Distribution service, or employ the threat of such actions, as a consequence of contract termination, Customer nonpayment, or for any other reason.
- D) An Energy Service Company may not change or authorize the changing of a Customer's supplier of Energy Service without the Customer's prior consent.
- E) Duties of Energy Service Companies engaged in wheeling shall include:
  - 1) Each Energy Service Company shall be knowledgeable about SO Procedures.
  - 2) An Energy Service Company shall comply with this Regulation and the SO Procedures, and any official interpretation thereof.
- F) Each Energy Service Company shall furnish at least one (1) current offer for posting on the Energy Bureau's website within four (4) calendar days of making any new residential contract offers to Customers in Puerto Rico. The information so furnished will be used to provide comparative information to the public about all Energy Service Companies' offers and to facilitate effective market monitoring.

**Section 13.02.- Services Offered.**

Each Energy Service Company shall pursue the least-cost options for procuring Energy Service, including through the acquisition of demand-side as well as supply-side measures.

**Section 13.03.- Records and Record Retention.**

- A) Each Energy Service Company shall establish and maintain sufficient records, including underlying data, for:
  - 1) Verifying that provider's compliance with the provisions of this Regulation and any other applicable regulation or law; and
  - 2) Supporting any investigation of Customer complaints.
- B) Each Energy Service Company shall retain all records required under this rule for a minimum of two (2) years, unless otherwise prescribed in this Regulation.
- C) Each Energy Service Company shall respond to any request from the Energy Bureau for records required under this rule within three (3) business days, unless otherwise prescribed by the Energy Bureau or its representatives.

### **Section 13.04.- Marketing, Solicitation, and Customer Information.**

- A) Per Section 13.01, an Energy Service Company may not engage in unfair, misleading, deceptive, or unconscionable acts or practices in the marketing, solicitation, or sale of any service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:
- 1) Soliciting Customers to enroll after the Energy Bureau has suspended, rescinded, conditionally rescinded, or denied Certification or Certification renewal.
  - 2) Engaging in any solicitation that will lead the Customer to believe that the Energy Service Company is soliciting on behalf of or is an agent of any entity, including without limitation the Default Service Provider or Transmission and Distribution Provider, other than the Energy Service Company.
  - 3) Engaging in Direct Solicitation to Customers without complying with all applicable ordinances and laws of the potential Customer's jurisdiction
  - 4) Making advertising or marketing offers that:
    - a) Claim that a specific price advantage, savings, or guarantee exists if it does not;
    - b) Claim to provide an electric service when such an offer is not a bona fide offer to sell such service; or
    - c) Offer a variable price for Energy Service that is not based on verifiable factors.
  - 5) Claiming, in marketing or advertising materials or elsewhere, that the environmental characteristics of any generation service energy source(s) provide an environmental advantage that does not exist.
  - 6) Failing to comply with paragraph (B) or (C) of this Section.
  - 7) Soliciting via telephone calls initiated by the Energy Service Company (or its agent) without first taking both of the following actions:
    - a) Obtaining the list of Puerto Rico individuals who have requested to be placed on the Federal Trade Commission's National Do Not Call Registry for all appropriate area codes.
    - b) Subscribing to, and obtaining as they become available, monthly updates of the Federal Trade Commission's National Do Not Call Registry for all appropriate area codes.

- 8) Engaging in telephone solicitation of individuals who have been placed on the Federal Trade Commission's National Do Not Call Registry and who are not otherwise exempted.
  - 9) Engaging in telephone solicitation to residential Customers either before nine (9) a.m. or after nine (9) p.m.
  - 10) Engaging in Direct Solicitation to residential Customers where the Energy Service Company's sales agent fails to wear and display a valid Energy Service Company photo identification. The format for this identification shall be preapproved by the Energy Bureau.
- B) Each Energy Service Company that offers service to residential or small commercial Customers shall provide such Customers with sufficient information for them to compare costs against other offers, including those from other Energy Service Companies.
- 1) Such information must be provided in any marketing materials that include or accompany a service contract.
  - 2) Such information must, at minimum, include the following:
    - a) For fixed-rate offers: the cost per kilowatt-hour for generation service and, if applicable, transmission service.
    - b) For discounted rates: an explanation of the discount and the basis on which any discount is calculated.
    - c) For variable rate offers: a clear and understandable explanation of the factors that may cause the price to vary, including any related indices, and of how often the price may change.
    - d) For all offers:
      - i) The amount of any other recurring or nonrecurring Energy Service Company charges.
      - ii) A statement of any material limitations, exclusions, contract contingencies, conditions precedent, and offer expiration dates.
      - iii) A toll-free telephone number and address for printed materials which any potential Customer may call or write to in order to request more detailed information such as the price, terms, conditions, limitations, restrictions, and, if applicable, environmental characteristics of the service offered.

- C) Each Energy Service Company shall provide to the Energy Bureau or its representative all marketing materials, including promotional and advertising material, within three (3) business days of a request by the Energy Bureau.
- D) Energy Service Companies shall perform criminal background checks on all employees and agents engaged in door-to-door marketing and enrollment. The criminal background check shall be done by an independent contractor and the Energy Service Company shall confirm that the independent contractor has performed a comprehensive criminal background check on its employees or agents in accordance with this rule.
- E) In the absence of local ordinances or regulations and to ensure the safety of all involved, Energy Service Companies and their agents shall not conduct door-to-door marketing, Direct Solicitation or indirect solicitation, or enrollment outside the hours of nine (9) a.m. to seven (7) p.m. in the local time zone.

**Section 13.05.- Customer Enrollment and Consent.**

- A) Energy Service Companies shall coordinate Customer enrollment with the Transmission and Distribution Provider in accordance with the Transmission and Distribution Provider's procedures set forth in its tariff documents.
- B) Energy Service Companies are prohibited from enrolling Customers without their prior consent and documented proof of that consent.
- C) Energy Service Companies shall provide Customers, prior to enrollment, a copy of the offered contract and all required provisions specified in Section 13.11 of this Regulation.
- D) Energy Service Companies may enroll residential and small commercial enrollment through any of the following methods:
  - 1) By physical mailing, facsimile, and Direct Solicitation.
    - a) If the Energy Service Company seeks to enroll a Customer through this method, the Customer's signature on a physical contract shall constitute consent.
    - b) Prior to obtaining a signature from the Customer, the Energy Service Company shall:
      - i) Provide a fair opportunity for the Customer to read all enrollment documents, which shall include a copy of the offered contract and all required provisions as specified in Section 13.11 of this Regulation;

- ii) If enrolling through Direct Solicitation, verbally advise the Customer that the Transmission and Distribution Provider will send a confirmation notice of the transfer of service; that the Customer will have seven (7) calendar days from the date of signing to rescind the contract, and that the Customer must contact the Transmission and Distribution Provider to rescind the contract; and
  - iii) Answer any and all questions posed by the Customer about information provided verbally or in the enrollment documents.
- c) Immediately upon obtaining the Customer's signature, the Energy Service Company shall provide the Customer a legible copy of the signed contract for the Customer's records. The Customer's copy and the signed contract must have an identical version number.
- i) The copy of the contract shall include all terms and conditions.
  - ii) A copy of the unsigned contract shall suffice in the case of a direct mailing where the Customer is provided an extra copy of the unsigned contract for the Customer's records.
  - iii) A paper copy must be printed in dark ink on white or pastel paper and be ten- (10) point type or greater.
  - iv) An electronic copy may only be used in place of a paper copy if:
    - a. The Customer has agreed to receive an electronic copy and has provided an electronic mail address; or
    - b. The Customer receives an unsigned paper copy in addition to the signed electronic copy; and if
    - c. The Customer provides an electronic signature.
  - v) If an electronic copy is sent, the Energy Service Company shall record the time and date of both the submission and receipt of the same.
- d) The Energy Service Company shall send an electronic enrollment request to the Transmission and Distribution Provider within three (3) business days of enrolling the Customer, unless a later start date is agreed to in the contract. However, in the case of Direct Solicitation, the Energy Service Company shall, prior to sending a request to the

Transmission and Distribution Provider, obtain independent third-party verification (TPV) of the validity of the enrollment.

- i) Upon leaving the Customer's premises, the Energy Service Company representative shall contact the TPV entity and provide the necessary information to initiate the TPV process.
- ii) The Energy Service Company representative shall not return to the Customer's premises before, during, or after the TPV process.
- iii) The TPV entity shall contact the Customer through a telephonic interview. The TPV entity shall record the entire conversation, and the Energy Service Company shall be responsible for retaining the recording for no less than one (1) year after the Customer's contract has terminated. The Energy Service Company shall provide a copy of the recording to the Energy Bureau within three (3) business days of such request.
- iv) The TPV entity must provide the Customer sufficient time to respond to questions. The TPV entity must not lead the Customer in providing a response.
- v) The TPV entity must identify itself and the purpose for the call.
- vi) The TPV entity must inform the Customer that the call is being recorded and obtain their acknowledgment of the same.
- vii) The TPV entity must ask and receive confirmation that the Person on the line is the Customer of record.
- viii) The TPV entity must ask and receive confirmation that the Energy Service Company representative has left the Customer's premises.
- ix) The TPV entity must ask and receive confirmation that the Customer wishes to enroll with the Energy Service Company.
- x) The TPV entity must state and receive acknowledgment of all material terms of the contract.
- xi) If applicable, the TPV process shall include a confirmation of the Customer's consent to receive an electronic copy of the signed contract.

- e) In the case of Direct Solicitation, any Energy Service Company representative shall immediately leave the Customer's premises if requested to do by the Customer or any other owner or occupant of the premises.
- f) The Energy Service Company shall remove a Customer's name and contact information from the marketing/sales database upon the Customer's request to the Energy Service Company or to the TPV entity.

2) By telephonic enrollment.

- a) If the Energy Service Company seeks to enroll a Customer through this method, an audio recording obtained in accordance with the following provisions shall constitute consent.
- b) The Energy Service Company must stamp the audio recording with the date and time of the conversation.
- c) The Energy Service Company representative must provide the Customer sufficient time to respond to questions or to provide acknowledgment of statements. The Energy Service Company must not lead the Customer in providing a response.
- d) To enroll a residential or small commercial Customer:
  - i) The Energy Service Company must identify itself and the purpose for the call.
  - ii) If the Energy Service Company engages any entity on a three-way call during the conversation, the Energy Service Company shall immediately inform and receive acknowledgment from the Customer of the same.
  - iii) The Energy Service Company must inform the Customer that the call is being recorded and obtain their acknowledgment of the same.
  - iv) The Energy Service Company must ask and receive confirmation the Person on the line is the Customer of record.
  - v) The Energy Service Company must ask and receive confirmation that the Customer is not currently served by the Energy Service Company.
  - vi) The Energy Service Company must state and receive acknowledgment that the Customer has the ability to choose to

be served by the Default Service Provider or by another Energy Service Company.

- vii) The Energy Service Company must state and receive acknowledgment of each material term of the contract, including without limitation:
  - a. The service(s) to be provided;
  - b. The price;
  - c. The duration of the contract;
  - d. Whether the contract has an automatic renewal clause;
  - e. An approximate start date for service under the contract;
  - f. An approximate termination date for service under the contract;
  - g. Any fees for Customer termination prior to the termination date;
  - h. Any other fees or costs to the Customer;
  - i. The structure and design of the rate;
  - j. Any material limitations, exclusions, contract contingencies, or conditions precedent;
  - k. Whether the Energy Service Company offers budget billing for generation service, if applicable;
  - l. Whether the Energy Service Company will require a Deposit and the amount; and
  - m. Whether the Energy Service Company will perform a credit check, if applicable.
- viii) The Energy Service Company must ask and receive confirmation that the Customer wishes to enroll with the Energy Service Company.
- ix) The Energy Service Company must state and receive acknowledgement that the Energy Service Company will send,

within one (1) business day, a written contract including all terms and conditions discussed in the call.

- x) The Energy Service Company must ask, receive, and confirm the Customer's mailing address.
  - xi) The Energy Service Company must state and receive acknowledgment that the Transmission and Distribution Provider will send the Customer a confirmation notice before switching services.
  - xii) The Energy Service Company must state and receive acknowledgment that the Transmission and Distribution Provider, and not the Energy Service Company, shall continue to bill the Customer and such Bill shall include the charges for the Energy Service Company's services provided.
  - xiii) The Energy Service Company must state and receive acknowledgment that the Customer has seven (7) calendar dates from the Postmark Date of the Transmission and Distribution Provider's confirmation notice to cancel the contract without charge and that the confirmation notice shall include a toll-free number for the Transmission and Distribution Provider that the Customer may call to cancel.
  - xiv) The Energy Service Company must state the unique enrollment confirmation number for the recording.
- e) After the telephone conversation, the Energy Service Company shall:
- i) Send the Customer a printed copy of the contract as discussed within one (1) business day. The contract shall have the same terms and conditions as discussed on the audio recording.
  - ii) Send the Transmission and Distribution Provider an electronic enrollment request no sooner than three (3) business days and no more than five (5) business days after mailing the printed contract to the Customer, unless a later start date is agreed to in the contract.
  - iii) Retain the audio recording for no less than one (1) year after contract termination.
  - iv) Provide a copy of the audio recording to the Customer or the Energy Bureau within three (3) business days of such request.

- f) The Energy Service Company shall remove a Customer's name and contact information from the marketing/sales database upon the Customer's request to the Energy Service Company or to the TPV entity.

3) By Internet enrollment.

- a) If the Energy Service Company seeks to enroll a Customer through this method, an electronic signature obtained in accordance with the following provisions shall constitute consent.
- b) The Energy Service Company's enrollment website shall use appropriate encryption to protect Customer privacy and Customer information.
- c) Prior to obtaining a signature from the Customer, the Energy Service Company shall provide a fair opportunity for the Customer to read all enrollment documents, which shall include a copy of the offered contract and all required provisions as specified in Section 13.11 of this Regulation.
- d) The Energy Service Company's enrollment website shall make conspicuous the following statements:
  - i) A statement that the Transmission and Distribution Provider will send a confirmation notice of the transfer of service.
  - ii) A statement that the Customer may rescind the contract by contacting the Transmission and Distribution Provider by calling the toll-free number that will be provided on the Transmission and Distribution Provider's confirmation notice and a statement of any termination fee that would apply to such rescission.
  - iii) For residential and small commercial Customers, a statement that the Customer may cancel enrollment within seven (7) calendar days from the Postmark Date of the confirmation notice from the Transmission and Distribution Provider.
  - iv) A statement that the Customer should print or save an electric copy of the contract.
  - v) A statement of the version of the contract offered.

- e) To obtain the Customer's electronic consent, the Energy Service Company must use an electronic consent form in a format retrievable by the Energy Service Company that includes without limitation:
    - i) The name of the Energy Service Company.
    - ii) The name of the Customer.
    - iii) The version number of the electronic contract.
    - iv) The date of enrollment.
    - v) The Customer's consent to the terms and conditions.
    - vi) The Customer's PREPA account number or similar identification number.
    - vii) The Customer's mailing address.
  - f) The Energy Service Company's website shall acknowledge the Customer's submission of the consent form by conspicuously notifying the Customer that the Customer has been enrolled and providing the Customer with a unique enrollment identification number.
  - g) The Energy Service Company shall record the time and date of the submission and the receipt of the electronic consent form.
  - h) After the Customer submits the consent form, the Energy Service Company shall
    - i) Send an electronic enrollment request to the Transmission and Distribution Provider within three (3) business days, unless a later start date is agreed to in the contract.
    - ii) Retain a copy of the Customer's signed contract for no less than one (1) year following contract termination.
    - iii) Provide a complete copy of the Customer's contract to the Customer or Energy Bureau within three (3) business days of such request.
- E) If enrollment shall be delayed for any reason, the Energy Service Company shall promptly notify the Customer of such delay and the reason(s) for the same.

### **Section 13.06.- Credit and Deposits.**

- A) Each Energy Service Company shall establish creditworthiness standards for the Customers it agrees to serve. Such standards must be reasonable and nondiscriminatory. Each Energy Service Company must disclose its standards to Customers in service contracts.
- B) In its standards, each Energy Service Company may require Customers, as a precondition to providing Energy Service, to demonstrate creditworthiness by paying a reasonable cash Deposit. An Energy Service Company may also offer alternative options for demonstrating creditworthiness that are reasonable and nondiscriminatory.
- C) If an Energy Service Company requires Customers to pay a Deposit, such Energy Service Company shall:
  - 1) Disclose to Customers in service contracts its Deposit policy, including the amount of any Deposit, the applicable rate of interest to be paid on a Deposit, the allocation of the Deposit, and the return of any balance.
  - 2) When service is terminated, apply the Deposit to the final Bill and promptly refund any excess to the Customer.
  - 3) Provide a receipt for a Deposit to the Customer within ten (10) business days of collecting the Deposit.
  - 4) If a Customer cancels the contract during the rescission period, return the Deposit within seven (7) business days of cancellation.

### **Section 13.07.- Customer Access, Complaint Handling Procedures, and Slamming Complaints.**

- A) Customer Access
  - 1) Each Energy Service Company shall provide Customers with reasonable access to service representatives for making inquiries or Complaints, for discussing charges on Customer Bills, for terminating service, and for transacting any other pertinent business.
  - 2) Telephone access shall be toll-free or local and shall provide prompt answer times during normal business hours.
  - 3) Each Energy Service Company shall provide an automated telephone message twenty-four (24) hours each day that instructs callers to report any service interruptions or electrical emergencies to the Transmission and Distribution Provider.

B) Procedures for Handling Complaints

- 1) Each Energy Service Company shall make good-faith efforts to resolve disputes and to cooperate in the resolution of any joint dispute with the Transmission and Distribution Provider or with the Default Service Provider.
- 2) Each Energy Service Company shall investigate Customer Complaints against it and provide a status report within three (3) business days following receipt of the Complaint to:
  - a) The Customer, when the Complaint is made directly to the Energy Service Company.
  - b) The Customer and the Default Service Provider, when the Complaint is referred to the Energy Service Company by the Default Service Provider.
  - c) The Customer and the Transmission and Distribution Provider, when the Complaint is referred to the Energy Service Company by the Transmission and Distribution Provider.
  - d) The Customer and the Energy Bureau, when the complaint is referred to the Energy Service Company by the Energy Bureau.
- 3) The Energy Service Company shall provide status reports, either orally or in writing, to those entities specified in paragraph (B)(1) every three (3) business days until the investigation is complete, unless all parties agree otherwise.
- 4) The Energy Service Company shall provide a final report, either orally or in writing, to those specified in paragraph (B)(1) within three (3) business days after completion of the investigation. The Energy Service Company shall provide the final report in writing without charge upon request.
- 5) The Energy Service Company shall retain records of Customer complaints, investigations, and resolutions for no less than one (1) year after receipt of the complaint. Upon request, the Energy Service Company shall provide such records to the Energy Bureau within three (3) business days of the request.
- 6) If the complaint is a Slamming complaint, the Energy Service Company shall additionally comply with the provisions of paragraph (C) of this rule and any Energy Bureau Orders that may identify further processes or requirements that may apply.

- 7) For residential or small commercial Customers, the Energy Service Company shall include in the final report a reminder that the Energy Bureau is available to help resolve informal complaints, a statement of the Energy Bureau's telephone number and website, and a statement that the Customer may contact the Energy Bureau if the Customer disputes the Energy Service Company's report.

C) Slamming Complaints

- 1) The Energy Bureau shall make the final determination of whether a Customer was the victim of Slamming. The Energy Bureau shall recognize a rebuttable presumption that the Customer was Slammed, unless the alleged Slammer can provide one (1) of the following to confirm that the Customer authorized the switch:
  - a) In the case of direct enrollment, a signed contract.
  - b) In the case of telephonic enrollment, an audio recording.
  - c) In the case of Internet enrollment, an electronic consent.
- 2) If a Customer initiates a Slamming complaint with the Customer's current or former Energy Service Company, the contacted Energy Service Company shall notify the other Energy Service Company, and both Energy Service Companies shall independently:
  - a) Furnish the Customer with the enrollment information in its records;
  - b) Refer the Customer to the Energy Bureau and provide the Customer with the Energy Bureau's current address, telephone number, and website; and
  - c) Cooperate with the Energy Bureau in any subsequent investigations of the Slamming complaint, including in determining any restitution owed to the Customer if the Customer was switched without authorization.
- 3) If a Customer initiates a Slamming complaint with the Energy Bureau within thirty (30) calendar days after being issued a Bill with charges from the alleged Slammer, the Customer shall not be required to pay any current charges assessed by the alleged Slammer until and unless the Energy Bureau determines that the switch in Energy Service Company was authorized by the Customer.
- 4) If the Customer was switched to the Default Service Provider's default service without the Customer's authorization, such switch shall not constitute

Slamming if it was done pursuant to a Energy Bureau order or pursuant to the provisions for an Energy Service Company's default and exit from the market.

- 5) If the Energy Bureau determines that the Customer was Slammed, the Slammer shall:
  - a) Provide the Customer with each of the following, if applicable, by no later than the end of the subsequent billing period following the Customer's return to the correct supplier of Energy Service:
    - i) A credit or refund for any fees previously charged from switching the Customer to and from the correct supplier of Energy Service;
    - ii) If the Slamming Complaint was made within thirty (30) calendar days after the Customer was issued a Bill with charges from the Slammer, a refund to the Customer for any charges collected by the Slammer and an absolution of any liability for charges assessed by the Slammer;
    - iii) If the Slamming Complaint was made more than thirty (30) calendar days after the Customer was issued a Bill with charges from the Slammer, a refund to the Customer for any fees the Slammer charged in excess of what the Customer would have paid its former supplier of Energy Service for the same usage or period of time, as applicable; and
    - iv) If the Customer cannot be returned to the original contract terms with its former supplier of Energy Service, a credit or refund for the value difference of (A) the Customer's contract with the Customer's former supplier of Energy Service for the duration of the contract remaining immediately prior to the Slam and (B) of the Customer's new contract terms following the Slam for the same period of time.
  - b) Reimburse the Customer's former Energy Service Company or the Default Service Provider, whoever is not the Slammer, and the Transmission and Distribution Provider within thirty (30) calendar days for any reasonable incremental costs incurred by them to correct the Slam. The former Energy Service Company or the Default Service Provider, whoever is not the Slammer, shall each provide an itemized list to the Slammer of any such costs.
- 6) If the Energy Bureau determines that the Customer was Slammed, the Customer's former supplier of Energy Service (either an Energy Service Company or the Default Service Provider) shall do each of the following:

- a) If possible, re-enroll the Customer without penalty under the Customer's original contract price and terms. If not possible, offer the Customer the option to enroll in a new contract with the supplier of Energy Service, enroll in a contract with a different Energy Service Company, or return to the Default Service Provider's default service (if the Customer was not previously served by the Default Service Provider's default service). If the Customer was improperly switched away from the Default Service Provider's default service and the Customer chooses to return to the Default Service Provider's default service, the Customer shall be exempt from any requirement for returning Customers, unless the Customer would have been subject to such requirement regardless of the Slam's occurrence.
  - b) If the Customer re-enrolls with the former supplier of Energy Service, provide the Customer on the first Bill following the Customer's re-enrollment, a credit or refund for any exit fees charged as a result of the Slam. If the Customer does not re-enroll with the former supplier of Energy Service, provide a direct reimbursement to the Customer for such fees.
- 7) The Transmission and Distribution Provider shall make the corrective switch to return a Customer to its correct supplier of Energy Service in accordance with the following:
- a) If the Customer will be served by the Energy Service Company, the Transmission and Distribution Provider shall make the switch at the next regularly scheduled Meter reading date following receipt of the enrollment request from the Energy Service Company.
  - b) If the Customer will be served by the Default Service Provider's default service, the Transmission and Distribution Provider shall make the switch at the next regularly scheduled Meter reading date.
  - c) In either case, the Transmission and Distribution Provider shall make the corrective switch in accordance with its normal practices and procedures for switching Customers, except that it shall not charge the Customer any switching fees and it shall not be required to notify the Customer of the corrective switch.

**Section 13.08.- Environmental Disclosure.**

- A) The Default Service Provider and each Energy Service Company shall be responsible for facilitating the availability of and access to information regarding the generation resource mix and environmental characteristics associated with electrical power in Puerto Rico.

- B) These disclosures are for the purpose of enabling Customers to make informed decisions about their provider. Compliance with this Section shall not be construed as satisfying the requirements of the Environmental Quality Board of Puerto Rico or any other agency with jurisdiction over environmental matters.
- C) The Default Service Provider and each Energy Service Company shall exercise all reasonable efforts to identify and provide the information requested and shall maintain records sufficient to demonstrate the efforts undertaken to do so. The Default Service Provider and each Energy Service Company shall submit the proposed methodology for determining the necessary information to the Energy Bureau for review.
- D) The Default Service Provider and each Energy Service Company shall, for each type of contract offered, determine and disclose the following information:
- 1) The approximate generation resource mix, including the specific identification and percentage share of each Alternative Renewable Energy Resource, of each Sustainable Renewable Energy Resource, and of any unidentified resource.
  - 2) The environmental characteristics of each resource identified, including without limitation:
    - a) Any characteristics typically associated with that resource (e.g., water pollution, wildlife impacts, solid waste, radioactive waste); and
    - b) Any air emissions, including nitrogen oxides, sulfur dioxide, and carbon dioxide, associated with the generation being offered under the contract.
  - 3) Whether any Renewable Energy Credits (RECs) were generated and associated with the resource offered under contract. If RECs were generated but are not associated with the contract, an explanation of whether the RECs were sold, were used in compliance with the Renewable Portfolio Standard, or were otherwise disassociated from the generation offered to Customers. However, no information disclosed under this rule shall replace the existing requirements for complying with Puerto Rico's Renewable Portfolio Standard.
- E) The Default Service Provider and each Energy Service Company shall disclose the data detailed in paragraph (C) of this rule to the Energy Bureau and to each Customer it serves or offers to serve.
- 1) Disclosures to the Energy Bureau shall be made through biannual (i.e., twice each year) reports with sufficient documentation provided for the Energy Bureau to verify the accuracy of the data provided. Each biannual report shall include a record of actual data for the previous six (6) months, a record of

projected data for the previous six (6) months, a comparison of the projected and actual data for the previous six (6) months, and a projection of data for the next six (6) months.

- 2) Disclosures to Customers shall be made through a website, Bill inserts, or separate mailings. A copy of all such disclosures to Customers shall also be provided to the Energy Bureau for review.
  - a) Disclosures to Customers shall be made in a standardized format to facilitate comparisons by Customers.
  - b) The report shall be in not less than ten- (10) point type.
  - c) The generation resource mix for each contract offered shall be illustrated through the use of a pie chart. The pie chart shall include text percentages rounded to the nearest one-half (.5) percent. The pie chart shall not include colors but shall use shading and labels to communicate clearly.
  - d) The typical environmental characteristics of each resource shall be illustrated through the use of a table. The table shall name each resource and assumptions, including, without limitation:
    - i) Biomass power - results in air emissions and solid waste.
    - ii) Coal-fired power - results in air emissions and solid waste.
    - iii) Hydro power - results in wildlife impacts.
    - iv) Natural gas-fired power - results in air emissions and solid waste
    - v) Diesel - results in air emissions
    - vi) Solid waste incineration - results in air emissions
    - vii) Nuclear power - results in radioactive waste.
    - viii) Oil-fired power - results in air emissions and solid waste.
    - ix) Other sources - results in unknown impacts.
    - x) Solar power - results in no significant impacts.
    - xi) Wind power - results in wildlife impacts.

- e) The air emissions characteristics of each resource shall be illustrated through the use of a bar chart, alongside a regional average emission reference. The Energy Bureau will update the regional reference data annually or as conditions warrant. The product-specific emission rates, for at least the three (3) types of emissions identified, shall appear as a percentage of the average regional emission rate. The percentages shall be calculated on the basis of pounds emitted per megawatt-hour.
- 3) Any other relevant information may also be provided, so long as it is distinctly separate from the required and standardized information. Similar documentation must be made and retained for verifying the accuracy of any additional information provided.

**Section 13.09.- Customer Information.**

- A) Each Energy Service Company shall timely provide to each Customer who requests it up to twenty-four (24) months of that Customer's payment history without charge, if the Energy Service Company possesses such information. However, each Energy Service Company shall not be required to provide such information to a Customer more than twice within a twelve-month (12) period.
- B) No Energy Service Company shall disclose Customer Energy Usage Data to any Person other than the Customer without the Customer's consent and proof of that consent as delineated in paragraph (E) of this rule or pursuant to a Energy Bureau or court order. Consumption data for no fewer than eight (8) Customers may be provided in an aggregated form so long as no individual Person's Customer Energy Usage Data is identifiable.
- C) No Energy Service Company shall disclose a Customer's account number to a Person other than the Customer without the Customer's consent and proof of that consent as delineated in paragraph (E) of this rule or a Energy Bureau or court order, except for the following purposes:
  - 1) To further an Energy Service Company's collections and credit reporting activities;
  - 2) To transfer a Customer to the Default Service Provider's default service in event of the Energy Service Company's default; or
  - 3) To enable a Customer's participation in benefit programs such as the Low-Income Home Energy Assistance Program.
- D) No Energy Service Company shall disclose a Customer's Social Security Number to a Person other than the Customer without the Customer's consent and proof of that

consent as delineated in paragraph (E) of this rule or a Energy Bureau or court order, except for the following purposes:

- 1) To further an Energy Service Company's own credit evaluation;
- 2) To further an Energy Service Company's collections and credit reporting activities;
- 3) To enable a Customer's participation in benefit programs such as the Low-Income Home Energy Assistance Program; or
- 4) To transfer a Customer to the Default Service Provider's default service in event of the Energy Service Company's default.

E) A Customer may provide consent on a physical paper form or electronically as follows:

- 1) A printed consent form shall be clearly identified on its face as a release of personal information. All printed text on the consent form shall be in at least sixteen- (16) point type. Immediately prior to the signature shall be printed in a type darker and larger than the type of surrounding sentences the following statement in both English and Spanish: "I realize that under the rules and regulations of the Puerto Rico Energy Energy Bureau, I may refuse to allow [name of Energy Service Company] to release the information set forth above. By my signature, I freely give [name of Energy Service Company] permission to release the information designated above." The form to be used for the release of Customer Energy Usage Data shall, in addition, specify the identity of any recipients of the data, type and granularity of the data being provided, and uses for which the data is being provided. No Energy Service Company may use a form requiring a Customer to circle or check off preprinted types of information to be released.
- 2) An electronic consent release shall appear in a substantially similar format to the printed consent delineated in paragraph (E)(1) of this rule. The following statement shall appear prominently in both English and Spanish: "I realize that under the rules and regulations of the Puerto Rico Energy Energy Bureau, I may refuse to allow [name of Energy Service Company] to release the information set forth above. By my electronic signature, I freely give [name of Energy Service Company] permission to release the information designated above."

### **Section 13.10.- Contract Administration.**

- A) Each Energy Service Company shall arrange for the provision of Energy Service to their Customers by contracting. In the administration of all such contracts, all Energy Service Companies are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.

- B) No Energy Service Company contract shall limit a Customer's right to make formal or informal complaints to the Energy Bureau. An Energy Service Company shall not require a Customer as part of the terms of service to engage in alternative dispute resolution.
- C) Each Energy Service Company shall number a copy of each version of its standard contract form (including price), retain each copy for no less than two (2) years, and provide such copies to the Energy Bureau within three (3) business days of a request.
- D) Each Energy Service Company shall retain a copy of each Customer's contract for no less than two years following the termination of that contract. Energy Service Companies may save copies in electronic formats so long as the image of the original signatures on signed documents are preserved.
- E) Each Energy Service Company shall respond promptly to a Customer's request to rescind, cancel, or otherwise terminate the contract.
- F) In any instance where the Customer and the Energy Service Company agrees to a material change to an existing contract, the Energy Service Company shall obtain proof of consent and provide details of the revised contract terms and conditions.
- G) In the event of the Energy Service Company's default, the Energy Service Company shall notify its Customers, the Transmission and Distribution Provider, and the Default Service Provider a minimum of fourteen (14) calendar days prior to default. Such notification will include:
- 1) The date upon which the Energy Service Company shall cease to provide services;
  - 2) A statement that the Customer will automatically default to the Default Service Provider's default service unless the Customer enrolls with another Energy Service Company; and
  - 3) To the Default Service Provider, an explanation of the type of contracts to be assigned (i.e., residential, small commercial).
- H) Residential and small commercial Customers shall have the right to rescind their contracts within seven (7) calendar days following the Postmark Date on the electric utility's confirmation notice by either:
- 1) Calling the Transmission and Distribution Provider at the designated local or toll-free number, or
  - 2) By mailing written notice to the Transmission and Distribution Provider, which is effective as of the Postmark Date.

- I) Contracts may include an automatic renewal clause for a new contract that is for no longer than the length of the original contract.
- J) For all contracts with a contract period of more than one (1) month, the Energy Service Company shall provide written notice to the Customer of pending contract expiration a minimum of forty-five (45) calendar days, but no more than ninety (90) calendar days, prior to such expiration. Such notice shall be made by a separate physical mailing or by a conspicuously placed Bill message or Bill insert. The front cover of any physical mailing containing such notice shall contain the following statement in both English and Spanish: "Important notice regarding your energy service contract's expiration."
  - 1) If the contract does not contain an automatic renewal clause, the notice shall include a statement that the Customer will automatically default to the Default Service Provider's default service if the Customer does not re-enroll with the Energy Service Company or enroll with a different Energy Service Company.
  - 2) If the contract contains an automatic renewal clause and also contains an early termination or cancellation option with no fee for early termination or cancellation, the Energy Service Company shall accurately describe or highlight any changes between the existing contract and renewal contract and state clearly that the Customer Contract will renew automatically at the specified rate in the renewal contract unless the Customer cancels the contract. The Energy Service Company shall include in the notice a clear description of the length of the renewal contract, of how the Customer may terminate, cancel, and/or extend the existing contract, and the deadline by which the Customer must act to cancel. The notice shall be made by a separate physical mailing (although the mailing may be the same as used to notify a Customer of a contract expiration); the front cover of the mailing shall state in both English and Spanish: "Important notice regarding your energy service contract."
  - 3) If the contract contains an automatic renewal clause and also includes an early termination or cancellation option with a fee of twenty-five (25) dollars or less for early termination or cancellation, the Energy Service Company shall provide the Customer with the notice specified in paragraph (2) as well as a second notice. The second notice shall provide the same information detailed in paragraph (2). The second notice must additionally specify the rate or, in the case of a variable rate, the applicable formula at which the Customer's contract will renew. The second notice shall be provided at least thirty-five (35) calendar days in advance of the contract expiration. The second notice may be provided in a physical mailing in accordance with the requirements of the first notice or may be provided by telephone, by inclusion in the Customer's monthly Bill mailing, or by electronic mail.

- a) If the Energy Service Company provides the second notice by telephone, the Energy Service Company must confirm that the Customer of record is on the telephone line and must record the call. Such recording must be retained for a minimum of two (2) years.
  - b) If the Energy Service Company provides the second notice on the Customer's monthly Bill, the Energy Service Company shall be responsible for ensuring that the notice is conspicuous, which may be done by using a different color, highlighting, or a similar means of differentiating the notice from the remainder of the bill.
  - c) If the Energy Service Company provides the second notice by electronic mail, the Energy Service Company must state in the subject line of the message "Important notice regarding your energy service contract"; the Energy Service Company must send the notice from an electronic mail address that is clearly identifiable as being the Energy Service Company; and the Energy Service Company must document the date and time of both the submission and receipt of the renewal notice.
- 4) If the contract contains an automatic renewal clause and also includes an early termination or cancellation option with a fee greater than twenty-five (25) dollars for early termination or cancellation, the Energy Service Company shall provide the Customer with the notice specified in paragraph (2), and the Energy Service Company must obtain the Customer's affirmative consent to any changes in accordance with the enrollment provisions of this Regulation. The Energy Service Company must further notify the Customer that a failure to respond will result in the Customer automatically reverting to the Default Service Provider's default service unless the Customer enrolls with another Energy Service Company.

**Section 13.11.- Contract Disclosure.**

- A) All contracts offered by an Energy Service Company shall include, without limitation, the following information:
- 1) A notification that the Default Service Provider may charge an exit fee to the Customer, if applicable.
  - 2) A notification that the Customer has the right to request, twice within a twelve-month (12) period, up to twenty-four (24) months of the Customer's payment history from the Energy Service Company without charge and that the Energy Service Company must provide such payment history if the Energy Service Company possesses it.

B) All contracts offered by an Energy Service Company for residential and small commercial Customers shall additionally include, without limitation, the following information:

- 1) The Energy Service Company's name, mailing address, Internet address (if applicable), and at least one toll-free telephone number (with the hours of operation) for Customer contacts.
- 2) A clear description of the services to be provided by the Energy Service Company and those to be provided by the Transmission and Distribution Provider, and a statement that the Transmission and Distribution Provider shall bill the Customer for all services.
- 3) A statement that the Customer will incur additional service and delivery charges from the Transmission and Distribution Provider.
- 4) A statement that the failure to pay charges due to the Transmission and Distribution Provider may result in the Customer being disconnected in accordance with the Transmission and Distribution Provider's tariff.
- 5) A statement that if the Customer switches back to the Default Service Provider, they may or may not be served under the same rates, terms, and conditions that apply to other Customers served by the Default Service Provider.
- 6) The Energy Service Company's creditworthiness standards, including any Deposit or other requirements and the terms and conditions associated with the return of the Deposit when the contract terminates.
- 7) An itemized list and explanation of all prices and fees associated with the services offered.
  - a) For fixed-rate offers, such information must include, at minimum, the cost per kilowatt-hour for generation service and, if applicable, transmission service.
  - b) For percent-off discounted rate offers, an explanation of the discount and the basis on which such discount is determined.
  - c) For variable rate offers:
    - i) If the rate shall be determined by the Energy Service Company, then the Energy Service Company must provide the formula in a clear and understandable way and must identify the indices or data to be used. Such indices or data must be publicly available. If the Energy Service Company chooses to offer such a variable

rate, then the Energy Service Company must clearly specify in the contract terms and conditions the indices or data to be used.

- ii) If the rate shall vary based on external factors, then the Energy Service Company must provide a clear and understandable explanation of all of the factors that may cause the price to vary, including any related indices, and must clearly identify how often the price can change. If the Energy Service Company chooses to offer such a variable rate, then no early termination fee may be charged.
  - d) For all offers that consider kilowatt-hours consumed, the unit price per kilowatt-hour.
  - e) For flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.
  - f) The amount of any other Energy Service Company charges, recurring or nonrecurring.
  - g) A statement that the Energy Service Company may lower the price per kilowatt-hour charged to the Customer under an existing contract without the Customer's consent, provided that there are no other changes to the terms and conditions of the contract.
- 8) The billing intervals and any late payment fees.
  - 9) A statement indicating whether the Energy Service Company offers budget billing.
  - 10) The duration of the contract, including the estimated starting and expiration dates, and a commitment that service shall begin with the next available Meter reading after the Customer request has been processed by the Transmission and Distribution Provider and the Energy Service Company.
  - 11) The number of days a Customer has to cancel the contract without charge.
  - 12) The manner in which a Customer may cancel the contract (i.e., by contacting the Transmission and Distribution Provider orally, electronically, or in writing).
  - 13) The policies, procedures, and penalties (if any) for contract termination by the Energy Service Company and by the Customer after the cancellation period.

- 14) A notification that the Energy Service Company may terminate the contract by providing at least fourteen (14) calendar days' written notice if the Customer fails to pay the Bill or fails to meet any contracted payments.
- 15) A notification that the Customer has the right to terminate the contract without charge under the following circumstances:
- a) If the Customer moves outside the Energy Service Company's service area or into an area where the Energy Service Company charges a different price or rate, or
  - b) If the contract allows the Energy Service Company to terminate the contract for any reason beyond those specified in paragraph (4) above or that of a force majeure event, including without limitation, a change in any governing law or regulation that physically prevents or legally prohibits the Energy Service Company from performing under the terms of the Customer's contract.
- 16) The terms and conditions of service, including any restrictions, limitations, contingencies, or conditions precedent associated with the service or product offered.
- 17) A notification that the Energy Service Company is prohibited from disclosing the Customer's Social Security Number and/or account number(s) without the Customer's consent, except for the reasons delineated in Section 13.09 of this Regulation.
- 18) If the contract has an automatic renewal provision and renewal does not require the Customer's affirmative consent, a conspicuous statement that the Energy Service Company can renew the contract without the Customer's affirmative consent even when there is a change in the rate or in other terms and conditions.
- 19) If the contract includes generation service, the contract must be accompanied by information regarding the approximate generation resource mix and environmental characteristics of the power supplies, and an incorporation by reference of the same.
- 20) The procedures for handling complaints and disputes, including the following statement in both English and Spanish: "If your complaint is not resolved after you have called your Energy Service Company and/or the Transmission and Distribution Provider, or for general information about energy services, residential and business customers may contact the Puerto Rico Energy Energy Bureau for assistance at [insert the Energy Bureau's phone number] or at [insert the Energy Bureau's website]."

### **Section 13.12.- Customer Billing and Payments.**

- A) An Energy Service Company shall not bill Customers directly but shall instead arrange for the Transmission and Distribution Provider to bill on behalf of the Energy Service Company according to a tariff approved by the Energy Bureau.
- B) Each Energy Service Company shall furnish to the Transmission and Distribution Provider sufficient information for including all required notices or other Bill inserts. The Energy Service Company shall remain responsible for ensuring that any notice or insert complies with the requirements of this Rule.
- C) An Energy Service Company shall not hold a Customer liable for any charge to the extent that the Customer has made a payment to the Transmission and Distribution Provider that is applicable to that charge.
- D) When a Customer pays a Bill at a payment center or to an authorized payment agent, such payment shall be credited to the Customer's account as of the day the payment is received by such center or agent.
- E) Upon request, the Energy Service Company or the Transmission and Distribution Provider shall provide Customers with the name and street address of the nearest payment center or authorized payment agent.
- F) Each Energy Service Company shall establish policies and procedures for handling billing disputes and Customer requests for payment arrangements.
- G) Each Energy Service Company shall furnish to the Transmission and Distribution Provider sufficient information such that Bills for residential and small commercial Customers may enable the recipient Customer to calculate and compare the total cost of services from the Energy Service Company. Such Bill information shall include, without limitation:
  - 1) The Customer's name, billing address, service address, PREPA account number, and, if applicable, the Energy Service Company account number.
  - 2) The dates of the service period covered by the Bill.
  - 3) The total amount due and payable, the amount billed for the current period, any unpaid due from a previous billing period, any late payment charges or gross and net charges, if applicable, and any nonrecurring charges.
  - 4) The date by which payment is due to keep the account current. Such date shall be no less than fourteen (14) calendar days after the Postmark Date on the Bill for residential Customers and no less than twenty-one (21) calendar days after the Postmark Date for nonresidential Customers.

- 5) An identification of the provider of each service on the Bill and a listing of each such provider's toll-free telephone number and address for billing questions or complaints.
- 6) A conspicuous notice explaining any change in provider, rates, terms, or conditions of service. Such notice must appear on at least the first two Bills following such change and must indicate the date of the change.
- 7) The determinants of the Bill, including energy Meter reading(s), demand Meter reading(s), multiplier(s), consumption(s), and demand(s).
- 8) An identification of estimated Bills or Bills not based on actual Meter reading(s).
- 9) An itemized list of each type of service covered by the Bill, including the charge for each type of service, any other Bill components, and any other information necessary for the Customer to recalculate the bill.
- 10) The average unit price per kilowatt-hour charged to the Customer for service from the Energy Service Company, as calculated by dividing the current billing period's charges to the Energy Service Company by the current billing period's total consumption.
- 11) An explanation of any codes and abbreviations used.

## **ARTICLE 14.- AGGREGATION OF CUSTOMERS**

### **Section 14.01.- General Provisions.**

Any local government entity may become Certified to negotiate an Aggregation agreement with a wheeling entity that can be offered to its residents on an opt-in basis.

### **Section 14.02.- Certification of Government Aggregators.**

#### **Section 12.01.- Requirements for Certification.**

Any governmental Aggregator shall comply with the Certification requirements of Regulation 8701 as applicable and shall apply for Certification before the Energy Bureau, prior to executing an Aggregation agreement.

### **Section 14.03.- Aggregation Process.**

- A) An Aggregator may only negotiate with a Certified Energy Service Company for Energy Services.

- B) Aggregators are encouraged but not required to obtain competitive proposals from multiple electric providers for Energy Service.
- C) The executed Aggregation agreement shall be posted on the local government's website and made available upon request.

**Section 14.04.- Public Notification of the Opportunity to Participate in the Aggregation Program.**

- A) No sooner than thirty (30) days after filing the Aggregation agreement with the Energy Bureau, the Aggregator may begin notifying its residents of the opportunity to participate in the plan. Notification to the residents shall include but not be limited to the following:
  - 1) The name and contact information of the Energy Service Company with whom the Aggregator contracted;
  - 2) The term of the Agreement;
  - 3) The rates and charges applicable over the term of the agreement so that it includes any escalations;
  - 4) The terms and conditions of the Aggregation agreement;
  - 5) A comparison that shows the rates and charges under the Default Service Provider's rates with those under the Aggregation agreement;
  - 6) A statement that a Customer may choose to terminate its agreement with the Energy Service Company at any time but must provide thirty (30) days' notice. The statement should also indicate if early termination charges will apply, and if so, what the amount of that charge is;
  - 7) A statement that a copy of the agreement is available upon request as well as information on locating the agreement on the local government's website;
  - 8) Information stating that a resident who participates in the Aggregation becomes the Customer of the Energy Service Company and that the resident has no individual legal agreement with the Aggregator;
  - 9) The role of the Aggregator in facilitating the availability of a rate option available to its residents;
  - 10) That the Customer is not obligated to participate in the Aggregation program and can remain a Customer of the Default Service Provider or any other service provider;

- 11) A statement that if the Customer has already chosen and contracted with another service provider and the Customer desires to join the Aggregation program, the Customer should check its agreement to determine if there are any applicable termination charges;
  - 12) Any other significant terms of the Aggregation agreement of which the public should be aware; and,
  - 13) The deadline and mechanism for enrolling in the Aggregation program.
- B) Once a Customer decides to participate in the program, the following shall apply:
- 1) The Customer shall submit a signed form prepared by the Aggregator acknowledging the Customer's desire to participate in the Aggregation program.
  - 2) The Aggregator shall provide a copy of the signed form to the Energy Service Company who will then send the Customer a written agreement for service that shall be signed by the Customer and returned to the Energy Service Company. The form shall be a standard form that is sent to all Customers of the same Customer class and shall be appended to the agreement between the local government and the Energy Service Company.

**Section 14.05.- Customer Rights.**

- A) Aggregation Customers shall have all the rights and protections set forth in Article 8.
- B) Any Aggregation Customer may choose to leave the Aggregation program at any time, provided, however, that the Customer first gives thirty (30) days' notice of its intent to exit the program and pays any applicable termination charge.