

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

SECRETARIA
COMISION DE ENERGIA DE
PUERTO RICO

'19 ABR 15 P2:51

IN RE: PROPOSED REGULATION ON PROPOSED WHEELING REGULATION

CASE NO. CEPR-MI-2018-0010

SUBJECT: Notice of Proposed Rulemaking and
Request for Public Comments

April 15th, 2019

COMMENTS OF THE SOLAR + STORAGE ASSOCIATION OF PUERTO RICO

I. INTRODUCTION

The Solar + Energy Storage Association of Puerto Rico (SESA) represents companies responsible for the financing, manufacturing, sales, installation, operation and maintenance of solar and energy storage technologies in Puerto Rico. Formed in February 2018, SESA is committed to the expansion of the solar + storage industries in Puerto Rico, through advocacy in policymaking, regulatory implementation, stakeholder dialogue with the utility and other key stakeholders, and advocacy for new incentive and financing. SESA is the local affiliate of the national Solar Energy Industries Association (SEIA).

II. RESPONSES TO ORDER EXHIBIT A

Question #12: Should the generation sources related to wheeling be limited to renewable sources?

SESA's answer: If the wheeling law provides flexibility to the Bureau in making this determination, then our recommendation is that any approved new wheeling be comprised of, at a minimum, at least as much renewable power generation to be in compliance with the next subsequent stairstep in the Renewable Portfolio Standard.

Since the stairsteps of the new RPS law require 40% renewable energy by 2025, 60% by 2040 and 100% by 2050, this would mean that we recommend considering a requirement that any new wheeling that comes online between now and 2025 be comprised of at least 60% renewable energy, and that after 2025 it be comprised of 100% renewable energy. New wheeling power could be all-renewable, mostly-renewable with some percentage of nonrenewable, or all-renewable projects could be bundled with non-renewable projects so that these thresholds are met.

III. GENERAL COMMENTS

SESA offers the following comments on the proposed text of the draft wheeling document:

Public posting of public comments

The regular public posting timeframe of comments for this proposed rule was between March 1st and March 31st, 2018; however none of the comments posted between March 29th and April 1st were posted in the online docket until April 9th, with reply comments due by April 10th. This timeframe made it all but impossible for any stakeholder to post reply comments by April 10th, since it was unknown to any stakeholders what regular comments were posted by March 31st. Because of this delay in document posting, it's currently unclear whether or not there's been anything publicly filed since the last document currently appearing in the docket, dated April 8th, called "Asunto: Motion to Notify the Intent to Participate as Deponents in Public Hearing."

SESA recommends that this timeline delay for stakeholders' access to publicly accessible information be taken into consideration with the Bureau chooses how to proceed with the further development of this rule.

SESA also recommends that, going forward, the Bureau adopt a general transparency policy of posting any publicly submitted comments on already-open dockets right away, so that they appear for all stakeholders to see the same business day or within one business day of the Bureau's receipt.

General Provisions

- Section 1.01: Legal Authority: We recommend revisiting the text of this subsection so that it's very clear which specific portions of which laws this Regulation are pursuant to.

Taking a "begin with the end in mind" approach, we suggest assuming that regardless of the outcome of these rules, judicial review will be exercised, which would put the Bureau in a position of needing to justify specifically what legal authority is being referenced in the development of these rules. In order to best prepare for judicial review, and in order to provide clarity to all stakeholders regarding which statutory authority the Bureau is leaning on, we recommend expanding upon this section to spell out in greater detail which sections of which law are being referenced, and if feasible, to paste the text of the applicable portions of referenced laws within this document itself, or attach as an appendix.

- Section 1.02: We recommend revisiting of the current statement of purpose being "...to implement wheeling in Puerto Rico."

Some of the text of this draft rule addresses that issue, but much of the draft goes far beyond the scope of implementing wheeling and into issues regarding restructuring the entire way that PREPA itself, and a potential future Concessionaire, operates, regardless of the presence or absence of wheeling.

If the purpose of this document is truly to create a rule only that elaborates the wheeling law, then we recommend keeping the substance of this document to fit that narrow scope. Or if the Bureau desires to maintain all areas included in this draft rule, we recommend revisiting the purpose, and the title of this rule itself, to so reflect

- Section 1.04(A) – The text of this subsection currently says that the entire rule applies to companies currently operating in Puerto Rico and to ones that intend to operate or offer electric services. This could mean implicitly that it does not apply to companies that decide to offer services in the future.
- Section 1.04(C) – Please clarify what is meant by the phrase “contemplated by” in the first sentence:

“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.”
- Section 1.04(D) – Is this rule aspiring to create the entire framework for retail choice in Puerto Rico, or is it limited to creating wheeling? Retail choice for “any Person” in Puerto Rico is a policy much broader than wheeling. If the intention of this rule is to enable full retail choice, we recommend considering changing the title and purpose to reflect that intention.
- Section 1.04(E) - Does the wheeling law require wheeling for any specific customer classes, for all customer classes, or does it leave it up to PREB to choose which customer class(es) it applies to?

If the wheeling rule needs to apply to all customer classes, then we recommend that the Bureau either include all customer classes in this document, or else specify upon which timeframe the Bureau plans to include the remaining customer classes.

Unbundling Proposal

- Section 4.07: Non-Bypassable Charges. What does the term “non-bypassable” mean, as compared to a “bypassable” charge?
- Section 4.07(C): Currently states “All non-bypassable charge proposals are subject to review and approval by the Energy Bureau.” Please add language to clarify that no charges whatsoever are approved by the Energy Bureau without ample opportunity for stakeholder participation and intervention.

System Operator

The draft regulation provides that the System Operator (SO) will be 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 (TDP). Section 1.09(B)(49). Among others, the SO would administer the operational and market functions of the Transmission System on a daily basis, including procuring and deploying ancillary services, scheduling and dispatching resources and loads; provide for the instantaneous balancing of generation and load; provide for non-discriminatory access to the

Transmission System; and supervise all requests for interconnection in coordination with the TDP. Section 7.01(B).

The draft regulation strives to establish a firewall between the activities of the SO and those of the TDP, although it contemplates the possibility of having both functions under the same roof. In this regard, the System Operator would be required to have corporate or functional separation, should it be part of the same organization with the TDP or Default Service Provider. Section 3.03(H).

Although not specifically mentioned, the draft regulation describes the SO as having some of the functions currently performed by the Energy Control Center created under Art. 2.5 of Act 57-2014. Pursuant to Act 57-2014, the Energy Control Center is required to operate in an autonomous manner per the mechanisms established by PREPA's Board. The Energy Control Center, however, is part of PREPA. The recently enacted Puerto Rico Energy Policy Act did not modify its functions or its organization, nor did it provide for the creation of a SO that is an independent entity.

Given the overlap of functions of the Energy Control Center and the SO, and the fact that the draft regulation does not mention the Energy Control Center, we would recommend clarifying their respective roles.

Additionally,

- The draft regulations appear to allow for the possibility that a for-profit entity could be the SO. If the goal is to a SO that is impartial and unbiased, that can only really happen if the SO is independent and does not have a profit motivation. The independent system operators in the continental US are all nonprofits (e.g. ISO-NE, NYISO, PJM, CAISO). If it is not sufficiently clear, we recommend adding language to clarify that the SO would be a non-profit entity.
- Section 7.01: We recommend adding a requirement for the SO to provide live updates publicly on the status of the grid. It should be possible for the public to go to a website and see the status of generation, transmission and distribution network. Hawaii provides a good model for how to achieve this.
- Section 7.05: We recommend checking whether specific requirements regarding the IRP fit within the scope of this rule, and also checking to ensure that, if any such requirements are appropriate, that they are in compliance with new provisions of PS1121.

Interconnection

The draft regulation provides that the SO may prescribe reliability and security standards for the interconnection of generating facilities in coordination with the TDP and the PREB. Section 7(E). In addition, as noted before, the SO would supervise all requests for interconnection in coordination with the TDP. Section 7.01(B). It is not clear, however, who would establish the interconnection procedures nor in what timetable. Would interconnection procedures be addressed through regulation, PREB-approved SO Procedures or other?

Because the interconnection application process is an essential step to enable wheeling, the PREB should address this subject in the wheeling regulation or describe how it will be handled under separate regulation. If the PREB's intention is for the request for Transmission Service (see Section 8.03) to serve as the vehicle for authorizing interconnection, this should be clarified. We would also recommend that the regulation include diagrams to better illustrate process flows.

Standard Generation Interconnection Agreement

The draft regulation provides that, as a condition to obtaining Transmission Service, a Transmission Service Customer that owns electrical facilities shall execute an interconnection agreement with the TDP. Section 8.02(A). The draft regulation further provides that the "approved" Standard Generation Interconnection Agreement ("SGIA") shall be used for this purpose, unless modified by mutual agreement to address specific facts. The SGIA is not included as part of the draft regulation. The draft regulation could be referring to the Federal Energy Regulatory Commission SGIA forms, or to a Puerto Rico-specific document. We would therefore suggest that the matter be clarified, or the draft SGIA included as part of the draft regulation.

Operating Agreements

Article 10 governs the Operating Agreements Energy Service Companies must enter into with the TDP to set forth operating arrangements. These include the provision by the Default Service Provider of sufficient amounts of energy to meet the Customers' consumption if the Energy Service Company is unable to supply the entire load, and the exchange of metering data to enable customer billing on a timely basis.

Section 10.01(B)(3) in particular requires Energy Service Companies to provide collateral in the form of an irrevocable letter of credit, surety bond, cash, or other guarantee, to cover events in which the Company defaults and the Default Service Provider must provide service. This requirement is triggered, however, when the Energy Service Company is "deemed to not be sufficiently creditworthy." The draft regulation does not specify who makes the determination about creditworthiness nor does it provide an objective basis for making such determination. This requirement should be further clarified to avoid the potential for disputes and arbitrariness.

In addition, the first sentence in of Section 10.01(B)(9) appears to be incorrect, as it provides that the Operating Agreement shall establish the terms for the TDP reimbursing the TDP for the provision of services to the Customer. The second reference to the TDP should be to the Energy Service Company.

Application of Residential Customer Protection Provisions to Industrial and Large Commercial Customers

Initially, the draft regulation is intended to apply only to Industrial Customers and Large Commercial Customers. Section 1.04(E). At a later date, the PREB may extend its application to other customers.

Notwithstanding the foregoing, the draft regulation contains numerous customer-protection provisions which are more appropriate for residential and small business customers. The application of these provisions to Industrial and Large Commercial Customers could have unintended consequences. These provisions would introduce requirements which may unnecessarily interfere with commercial arrangements that involve substantial investments between sophisticated parties. Keeping such provisions may be a disincentive to pursuing business in this area. Among others:

- Section 13.01(A): Application of "all applicable" requirements of the Regulation on the Procedures for Bill Review and Suspension of Electric Service Due to Failure to Pay, Department of State Regulation No. 8863. We would expect contracts between Energy Service Companies and Industrial and Large Commercial Customers to contain detailed provisions on these subjects.
- Section 13.02: Requiring the Energy Service Company to pursue the least-cost option for procuring Energy Service, including the acquisition of demand-side or supply-side measures, when a commercial arrangement may make perfect sense to the parties irrespective of whether such option or measures were secured.
- Section 13.06(C): Requiring the Energy Service Company to establish reasonable and non-discriminatory creditworthiness requirements which must be disclosed, when in all likelihood contracts between Energy Service Companies and Industrial and Large Commercial Customers will be subject to individual negotiations and specific arrangements.
- Section 13.07: Requiring detailed customer complaint investigation and resolution procedures. We would expect contracts between Energy Service Companies and Industrial and Large Commercial Customers to contain detailed provisions on these subjects.
- Section 13.08(E)2(d): Is this rule saying that the proposed text of this subsection regarding environmental characteristic is to be, verbatim, what is listed here? Or is this an example? If the purpose is for it to be listed verbatim, SESA recommends inviting further comment on the text of this before final publishing of this rule.
- Section 13.10: Imposing limitations and requirements on, among others, contract renewal and expiration provisions. Again, we would expect that these matters will be the subject of detailed negotiations between sophisticated parties.
- Section 13.10(C): SESA recommends changing the timeframe requirement for copies of standard contract forms from the stated "within three (3) business days of a request" to "within ten (10) business days of a request".

Non-Wires Alternatives

- Section 8.02(C) could be strengthened in order to require Non-Wires Alternative solicitations at certain thresholds.

V. CONCLUSION

Thank you for the opportunity to comment on the proposed rules. SESA looks forward to assisting the Bureau in whatever ways possible through the development of these important rules and many more.

Respectfully Submitted,

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Attachment 1: Selection of noteworthy written comments submitted by other stakeholders, and SESA response

- PREPA states:

1. Regarding interference with Concession process:

A. "The wheeling regulation should be consistent with, and not undercut or jeopardize, the restructuring and transformation efforts."

B. "...PREPA believes that the proposed Regulation contains provisions that are a good start for discussion of a wheeling Regulation, but that many other provisions have significant problems, have serious gaps, and/or need clarification."

C. "PREPA also is deeply concerned that the proposal contains provisions that are out of sync with, or that could even undercut or jeopardize, aspects of the restructuring and transformation efforts."

D. "The shifting of burdens and risk, in particular, might discourage private interest in privatization or a concession for the provision of T&D services, or might make private interest in privatization or a concession contingent on terms and conditions that are less favorable, or unfavorable, for the people of Puerto Rico."

2. Regarding 1121:

A. "...PREPA and other interested parties preparing Comments on the proposed Regulation have had relatively little time to consider whether and, if so, how, it is practical to factor pending Bill 1121 into the Comments. Accordingly, PREPA has prepared its Comments and its responses to Order Exhibit A's questions based on its understanding of existing law, ie, without Bill 1121. PREPA did not believe that it could practically prepare Comments and responses that assumed Bill 1121 enactment, in the time available. Other interested parties might or might not factor in Bill 1121 in their Comments."

B. "If the Governor signs Bill 1121 into law, then PREPA strongly encourages the Energy Bureau to consider how best to move forward in this docket. Whatever procedures and schedule the Energy Bureau adopts would allow both the Energy Bureau and PREPA and interested parties a timely and full opportunity to revise, or propose revisions to, the proposed Regulation, respectively, in order to reflect the provisions of an enacted Bill 1121."

3. Regarding changing of the rulemaking process and timeline:

1. "...regardless of Bill 1121, PREPA strongly encourages the Energy Bureau to conduct a Comments process on the "final" version of the proposed Regulation. Allowing comments on a "final" draft regulation that has any material changes from the version on which interested parties have commented is a common and best practice in utility rulemaking. The practice serves the interests of the public, the regulated entities, and the regulator. Indeed, this practice is a general principle of administrative agency rulemaking."

2. "...the proposed Regulation is an 82-page single-spaced, extremely complicated document with many provisions that, for PREPA's part, were unexpected, including provisions that PREPA is unsure how they are intended to work in isolation and/or in combination with other provisions, because there has not yet been a technical conference or other procedure by which PREPA and other interested parties could inquire about what is intended before preparing their Comments."

SESA Response: SESA supports an extended comments process, and further suggests the Bureau either dedicate significant staff time, or contract with a 3rd-party facilitator, to oversee at least three in-person workshops to cultivate understanding, dialogue and agreement between stakeholders to the greatest extent possible on these important rules.

3. Regarding reference to "A Guide to the Rulemaking Process" prepared by the Office of the Federal Register:

SESA Response & Questions

1. Has PREB adopted this guide for use in its rulemaking process?

2. If not, what guide is PREB using to guide the rulemaking process?

3. Would whatever process PREB currently has in place prevent administration of a more thorough, robust stakeholder input process, focused on cultivation of synergistic agreement between impacted parties?

- AES-PR states:

A. "...many of the issues that the Energy Bureau will need to address have been previously debated and addressed by FERC, individual US States and regulatory commissions, and the regulatory authorities of many other countries throughout the hemisphere."

B. "...the initial legislative enactment authorizing the Energy Bureau to investigate wheeling dates back to 2008 and there was a proposed wheeling tariff drafted by a Wheeling Committee that was issued December 30, 2009."

SESA Response & Question: How has the previous history of wheeling legislation and attempted regulation impacted PREB's development of the wheeling regulations?

C. "...the Bureau should consider splitting this proceeding into two regulatory proceedings", "separate billing by ESCOs and PREPA".

SESA Response: SESA would be supportive of the concept of splitting this proceedings into two (or more) proceedings.

- IEEFA et al states:

A. "...this proposed regulation goes far beyond the scope of Act 57-2014 in creating the structure for a wholesale electricity market and for retail competition in Puerto Rico, neither of

which are necessary for the implementation of a wheeling mechanism. It is unclear under what legal jurisdiction the Bureau is developing regulations for these new market structures...”

- National Public Finance Guarantee Corporation states:

A. “National is concerned with the relationship between the wheeling process and other important processes such as unbundling, the Integrated Resource Plan (“IRP”), the regulatory reform legislation, the Transmission and Distribution (“T&D”) concession, and the privatization of PREPA’s generation assets. (Consider also that the Bureau has rejected PREPA’s IRP as noncompliant since the Proposed Regulation was promulgated.) All these processes are funning more or less concurrently, on what appear to be aggressive timelines. Without a clear process to assess, define, and value the end-state electrical system vision, as well as a roadmap delineating the relationship between the above processes, each of the independent processes has the potential to introduce significant uncertainty into the nature and value of the end-state system.”

B. “Particularly concerning is the fact that PREPA has yet to submit a compliant IRP - even though various provisions of the Proposed Regulation re explicitly interrelated to the IRP.”

C. “The Proposed Regulation would redefine PREPA’s business and revenue models in substantial ways, requiring PREPA to effectively manage the resulting transformation processes, be a primary leader in the regulatory review and associated proceedings, and effectively engage with key stakeholders.”

- Neil Watlington-Armstrong states

A. “...my first general suggestion/comment is for the Bureau to take notice of the previous administrative proceedings regarding proposed wheeling regulation that took place in the 2010 timeframe, and make the most pertinent documents of that process available for public review. With the benefit of hindsight there are practical lessons there which could be useful in guiding a smoother path to the effective implementation of wheeling regulations, as well as indicative benchmarks of the purported costs of unbundling, and the administrative process that accompanies the formulation and discovery of those.”

B. “...it would not likely bode well in a Judicial Review that the public comment period ended just before the policy legislation that would prospectively drive the regulation was signed into law and made available in final form to the public.”

C. “Reviewing the proposed regulation with the benefit of the final text of the signed new law should result in a more complete final product as well as strengthening the administrative record of the public participation process.”

D. “...if the Bureau used a model for the draft regulations of an existing operational framework, could it make that information known to the public in order to research the functional history of that system, and derive potential best practices as well as pitfalls?”

- Comments of Sunrun

SESA Response: SESA supports all comments submitted by Sunrun.