

COMISIÓN DE ENERGÍA DE PUERTO RICO
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**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.
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**ECOELÉCTRICA LLC'S COMMENTS TO REGULATION ON WHEELING PROPOSED
BY THE PUERTO RICO ENERGY BUREAU**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW, EcoEléctrica LLC (hereinafter, "EcoEléctrica"), through the undersigned, and respectfully submits to the Puerto Rico Energy Bureau of the Public Service Regulatory Board (hereinafter, "PREB"), its comments in connection with the above-referenced matter.

I. INTRODUCTION

First of all, on behalf of EcoEléctrica, we would like to congratulate the PREB on its immense efforts conducted towards the drafting of such a detailed and thorough proposed wheeling regulation and for the opportunity provided to all interested parties to comment upon such draft pursuant to PREB's Resolution and Order notified on March 1st, 2019 (hereinafter, the "Resolution and Order"). In this regard, in accordance with a Public Notice published on April 18th, 2019, the PREB granted further opportunity to all interested parties to submit additional comments and/or replies in connection with the proposed regulation and the set of questions and topics included in **Appendix A** of the Resolution and Order within twenty (20) days of its publication.

Therefore, in compliance with PREB's Public Notice and in lieu of the recent enactment of Act Num. 17, signed into law on April 11, 2019, known as the "*Puerto Rico Energy Public Policy Act*" ("Act 17-2019"), which amends in part Act Num. 57 of May 27, 2014, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014"), EcoEléctrica hereby submits its reply in connection with the proposed wheeling regulation and the comments presented by the Puerto Rico Electric Power Authority ("PREPA") and other interested parties. Our comments are directed towards supporting the sound and effective implementation of the wheeling regulation in an open and non-discriminatory manner due to its important benefits for our Island and its citizens in terms of ensuring a more reliable and competitive electric power service.

II. DESCRIPTION OF ECOELECTRICA

EcoEléctrica is a corporation which owns and operates a combined cycle natural gas electric power generating plant located in Barrio Tallaboa in Punta Guayanilla, Peñuelas, Puerto Rico. Such plant contains, among other things: (i) a 540 MW combined cycle electric power cogeneration facility; (ii) a 1MMBBL storage capacity LNG Terminal for the import, storage and regasification of liquefied natural gas ("LNG") to Puerto Rico; and (iii) a 2 MGD seawater desalinization water production plant. More importantly and hence EcoEléctrica's interest in the proposed wheeling regulation is the fact that EcoEléctrica produces clean, safe and reliable energy.

In addition to the above, it is important to point out that EcoEléctrica has a power purchase and operating agreement (PPOA) with PREPA since March of 2000 and was the first independent power generator integrated into the Puerto Rico electric system and is the

only generating plant by combined cycle technology operating on natural gas in the electric system. EcoEléctrica is responsible for providing approximately 17% of the Island's electric energy production.

EcoEléctrica is a high efficiency energy production facility and has the lowest rate of emissions to the environment among PREPA's thermal generating system. During the past 18 years it has maintained high standards of performance in the areas of compliance, reliability, security and efficiency in energy production. Finally, EcoEléctrica provides ancillary services to the Puerto Rico electric system such as primary and secondary frequency control, reactive power production for voltage support and emergency response.

III. GENERAL COMMENTS

A. The recent amendments to Act 57-2014 by the recently enacted Act 17-2019, clearly establish the Legislative Assembly's policy of making wheeling accessible to all electric service companies. (This general comment addresses in part Questions #1 and #12 of Appendix A of the Resolution and Order).

1. Act 57-2014 (Puerto Rico Energy Transformation and RELIEF Act)

From its inception, it was the clear intention of Act 57-2014 to carry out a reform of the energy sector focused on the promotion and operation of an efficient system at just and reasonable costs, while taking into consideration that our Island is an isolated jurisdiction in need of a secure and stable electric power grid. In its Statement of Motives, Act 57-2014 highlights how the development of the Island's infrastructure for the generation, transmission, and distribution of electric power has been "stagnant and excessively

dependent on oil in spite of the worldwide evolution to adopt more efficient electric power sources and systems". Depending on oil at such a high level contributes to greater pollution by the toxic emissions of this fuel into our environment causing an array of problems.

As further indicated the Statement of Motives, it became clear that after years of its creation and complete electrification of our Island, PREPA had turned into a self-regulatory monopoly that set its own rates without oversight, incurring in operational, managerial, and administrative deficiencies whose cost is shouldered directly by customers; and whose governance lacks transparency and citizen participation. All of those characteristics contributed to Puerto Rico being among the jurisdictions with the highest energy cost within all of the United States. Therefore, through Act 57-2014, the Legislative Assembly embarked on its commitment to the People of Puerto Rico for the creation and implementation of an Energy Reform that consisted on various initiatives working towards a common goal for the permanent reduction of the energy costs and providing a "reliable, affordable, efficient, and transparent electric power service."

With the creation of the Energy Commission (now PREB), the Legislative Assembly envisioned a "key component" for the execution of the Energy Reform, in which an independent government entity would be in charge of regulating, overseeing, and ensuring compliance with the public policy on energy of Puerto Rico. As part of the Energy Reform, the PREB was assigned with the task of adopting rules for ensuring high efficiency in the generation of electricity based on fossil fuels, which in turn would lead to a more efficient use of fuel and, consequently, to lower energy production costs, impacting the electricity bill. Moreover, the PREB would approve the electricity rates proposed by PREPA and other

electric power companies in the Island, and would oversee all types of operations, processes, and mandates related to the efficiency of Puerto Rico's energy sector. PREB shall be the entity in charge of overseeing PREPA and other power producers, promoting the diversification of our energy sources as well as the reduction of energy costs.

Pursuant to the above, Article 6.30 of Act 57-2014 (as originally enacted) granted the PREB with the authority to regulate the wheeling mechanism in Puerto Rico. In this regard, Article 6.30 originally read as follows:

"The Energy Commission shall regulate the wheeling mechanism in the Commonwealth of Puerto Rico. In doing so, the Commission shall establish the rules and conditions to ensure that wheeling does not affect in any way whatsoever (including technical problems and rate increases) nonsubscribers of wheeling services, as well as the rules necessary for implementation of a system that allows exempt business described in Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended, known as the "Economic Incentives Act for the Development of Puerto Rico," or similar provisions in other incentive laws, to purchase electric power from other entities through wheeling services..."

In terms of the reference to exempt business as described in Section 2(d)(1)(H) of Article 1 of Act 73-2008, it referred to:

"(d) Eligible Business.- (1) For the purposes of this Act, the following shall be tax-exempt businesses: ... (H) Any business that is devoted to the production, whether on commercial scale or not of energy for consumption in Puerto Rico, through the use of natural gas or coal, or through the use of renewable sources, including but without being limited to: solar energy, wind energy, geothermal energy, ocean thermal energy, ocean kinetic energy, hydroelectric energy, biomass or hydrogen or solid waste, recovery of methane through the use of high technology to produce energy at competitive costs, including but not limited to alternate thermal conversion technology. Three (3) years after the approval of this Act, the energy generated with fossil or nonrenewable resources shall not be eligible. Units in participating public or public-private consortiums whose main objective is that which is mentioned in this clause shall be included in this subclause."

Thus, even though it became clear through the enactment of Act 57-2014 that the establishment of a wheeling mechanism was an important component of the Energy Reform and that the PREB was designated as the independent entity in charge of regulating such mechanism in the best interests of the People of Puerto Rico, it originally contemplated in Article 6.30 that it was limited to "exempt businesses". This in turn referred to "eligible businesses" under paragraph (H) cited above, and that after three years of the approval of Act 57-2014, energy generated with fossil or non-renewable resources would no longer be considered as eligible for engaging in the wheeling mechanism. Nonetheless, as explained below, the enactment of Act 17-2019 modified the above-cited sections and other sections of Act 57-2019, in order to eliminate such limitation established by Act 73-2008 and make wheeling available to all electric service companies.

2. Act 17-2019 ("Puerto Rico Energy Public Policy Act")

As part of the aftermath of hurricanes Irma and María, on April 11, 2019, Act 17-2019 was approved creating what is known as the "Puerto Rico Energy Public Policy Act", which has as its purpose the creation of *"parameters that will guide a resilient, reliable, and robust energy system, with just and reasonable rates for all types of consumers, to make viable that the energy service user produce and participate in energy generation, to facilitate the interconnection of distributed generation and microgrids, and to separate and transform the electric system into an open one."*

In its Statement of Motives, the Legislative Assembly reiterates that our Island's electric power service system should be one that is reliable and accessible, that promotes the industrial, commercial, community development and the improvement in quality of life

at a reasonable and fair cost and that allows for the economic growth of the Island. The Legislative Assembly also indicated that a change was needed in Puerto Rico's energy public policy, since the current system, contributes to unreasonable rates, a deficient and unreliable service that causes the loss of competitive value and adversely affects our economic development, among other issues.

The Statement of Motives adds that the destruction and damages caused by hurricanes Irma and María exacerbated and undermined even further the deteriorated condition of the electric system, leading to the enactment of Act 120-2018, on June 20, 2018, known as the "Puerto Rico Electric Power System Transformation Act". Through Act No. 120-2018, the process by which the energy system would be transformed into a modern, sustainable, reliable, efficient, cost-effective, and resilient one before the battering of nature was defined.

The Legislative Assembly took it upon itself to revise the current legislation related to the regulatory framework and the current energy public policy in Puerto Rico, including Act No. 57-2014, while at the same time it integrated the materials and recommendations of various sectors of specialized knowledge in the area, of the general public, the market, and the Government of Puerto Rico, to establish the parameters that will guide Puerto Rico to a future vision with a resilient, reliable, and robust electric system that allows the consumer to be an active agent, the modernization of the transmission and distribution grid, the transition from the use of fossil fuels to sources of renewable energy, the integration of distributed generation, microgrids, and advanced technologies that benefit consumers.

To reach these objectives, the Act 17-2019 establishes the means to establish an effective programming that allows for the achievement of the clear parameters and goals regarding power efficiency, the Renewable Portfolio Standard, the interconnection of distributed generation and microgrids, **the wheeling of energy**, and the management of demand. Likewise, the PREB's faculties and powers were strengthened, its budget increased, and was provided for the implementation of alternate mechanisms that achieve the execution of the public policy, among others.

In terms of wheeling, Act 17-2019 proceeded to amend Article 6.30 of Act 57-2014, in order for it to read as follows:

"Section 6.30. Wheeling.

*The PREB of Energy [sic] shall regulate the wheeling mechanism in Puerto Rico at both the transmission level as well as the distribution level. In doing so, the PREB shall establish the rules and conditions to ensure that wheeling does not affect in any way whatsoever (including technical problems and rate increases) nonsubscribers of wheeling services. The PREB shall establish through regulation the rules necessary for implementation of a system that allows exempt business described in Section 2(d)(1)(H) of Act 73-2008, known as the 'Economic Incentives Act for the Development of Puerto Rico', or similar provisions in other incentive laws, **as well as electric service companies, microgrids, energy cooperatives, municipal enterprises, and solar communities, to purchase electric power from other entities through wheeling services....**" (Emphasis ours)(Translation ours).*

Therefore, through such amendment it became clear that the Legislative Assembly extended the wheeling provisions contemplated in Article 6.30 to electric service companies, as well as other entities, by including such companies in the aforementioned provisions. In addition, also note that the amendments of Act 17-2019 to the definitions of the terms

"wheeling rate"¹ and "wheeling"² eliminated all references to Act 73-2008, as a limitation of whom can engage in the wheeling mechanism.

In support of the above and as indicated in the Statement of Motives of Act 17-2019, it is the intention of the Legislative Assembly to transform the electric system into an open one. In this regard, Article 1.3 of Act 17-2019, indicates the following in terms of the Puerto Rico Electric System:

*The Puerto Rico Electric System is comprised by the functions of electric power generation, transmission, distribution and commercialization, as well as the planning and control of the system. The electric power service is one of the basic and essential services over which the sustainable development of the Puerto Rican people is based, thus all of the functions of the Electric System are of public interest and strategic importance for every private and governmental function. However, after the approval of this Act the Authority shall not possess the exclusive right of producing, transmitting, distributing and commercializing the provision of electric power. **The Electric System of Puerto Rico shall function in an open manner and not be discriminatory, but subject to the regulation of the Puerto Rico Energy Bureau.** (Translation ours).*

Also, in terms of the electrical system planning and operation, Article 1.7 of Act 17-2019 indicates the following:

*The Energy Bureau shall, subject to what is provided in this Act pursuant to the planning parameters contemplated in the Integrated Resource Plan, adopt the norms that will regulate the process through which the larger scale commercial and industrial consumers, energy cooperatives and other aggregated demand structures, shall contract the purchase of energy directly from an independent energy producer. Likewise, **the Bureau shall regulate the norms that shall***

¹ The amended definition of "wheeling rate" indicates the following: "(rr) "Wheeling rate".- Shall mean a just and reasonable amount of money that may be charged to a power producer for using the transmission and distribution facilities of the Authority for wheeling and for the right to interconnect the electrical power generation facility of such power producer to the electric power grid of Puerto Rico."

² The amended definition of "wheeling" indicates the following: "(uu) "Wheeling".- Shall mean the transmission of electricity from an independent generator until the end consumer of such energy through Puerto Rico's electric power grid and that does not constitute distributed energy generation through any version of net metering."

apply to the wheeling service for such energy through the Electric System, and the rates applicable to the consumers and the producers of independent energy for such services. (Translation ours).

Moreover, in terms the scope open system, of Article 1.8 of Act 17-2019 indicates the following:

*(a) Open system. The Puerto Rico Electrical System cannot be a vertically integrated monopoly. Neither can a horizontal monopoly be established for the generation function. ... The electric service companies, the distributed generators and the microgrids that request it, shall have the right to demand interconnection to the transmission and/or distribution network **in conditions not discriminatory**, when it is technically feasible, consistent with the Integrated Resource Plan [,] and the Bureau's regulation allows it.*

The enactment of Act 17-2019 and its amendments to Act 57-2019, make it clear that the Legislative Assembly allowed for the electric system of Puerto Rico to function in an open manner and not be discriminatory, subject to the regulation of the PREB.

B. Wheeling has great benefits and should not be limited to renewable sources only. (This general comment addresses in part Question #12 of Appendix A of the Resolution and Order).

Undoubtedly, allowing electric service companies, microgrids, energy cooperatives, municipal enterprises, and solar communities, to purchase electric power from other entities through wheeling services (as now included in Act 17-2019) has great benefits. Limiting the generation sources within the proposed regulation for wheeling to renewable sources only is something that should no longer be considered as it would be contrary to the Act 17-2019's clear mandate for an open and non-discriminatory electric system. Limiting the generation sources in the wheeling regulation to renewable sources would only hinder the competitive edge that Acts 57-2014 and 17-2019 are seeking through the enabling of an open exchange

comprised by independent buyers and sellers. The goal is to encourage greater competition in the electricity sector and to provide more alternatives with regards to source of electricity to the consumers of electricity. There are other ways to benefit renewable sources that do not entail limiting the participation of other electric service companies in wheeling.

Among the benefits of allowing all electric service companies to participate in wheeling when there is a need for reliable power are the following: grid stability, reduction in power loss and on-peak operating costs, improvement in voltage profiles and load factors, deferment or elimination of system upgrades, improvement of system integrity, reliability and efficiency, lowers the Island's overall costs of producing and delivering power. In addition, it not only promotes the development and use of renewable energy sources and but also fuel-efficient technologies, which could improve the quality of the air and the security of the energy supply.

Thus, wheeling is something that will rather complement the main electricity supply infrastructure for Puerto Rico and will allow further regional load growth on an efficient central generation and T&D asset base.

Among the general principles of wheeling we find the creation of a framework that is fair and promotes competition. It also requires a governing system that inspires confidence in the established regulatory framework, while at the same time encourages new market participants. Moreover, it promotes non-discriminatory behavior, as indicated in Act 17-2019. In other words, this means the equal treatment of network users who have the same impact.

C. The Default Service Provider should be independent from the System Operator in order to guarantee the transparency and optimization of the resources. (This general comment addresses in part Questions #2, #8 and #9 of Appendix A of the Resolution and Order).

The proposed wheeling regulation defines "Default Service Provider" (hereinafter, "DSP") as an entity responsible for providing energy service to each customer that is not served by an energy service company. Under the proposed regulation, the DSP is required to serve the customer's remaining load in the event an Electric Service Company (hereinafter, "ESC") provides less energy to a customer than the customer's consumption, or a customer who switches to an ESC if the electric service company defaults.

The System Operator (hereinafter, "SO") is the entity responsible for overseeing and facilitating wholesale exchanges of electricity throughout Puerto Rico. Among the areas of responsibility, the SO shall ensure that the transmission system and all generation units operate in a reliable and economic fashion, ensure open access to the transmission and distribution system in coordination with the Transmission and Distribution Provider (TDP).

Under Section 3.03 of the proposed regulation, the SO shall have no ownership of, or interest in, any generation facility or other resource on the grid. In the event the SO is integrated in the same organization with the TDP or DSP, the regulation provides for 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.

EcoEléctrica believes that the SO should be performed by an independent entity other than the DSP to guarantee transparency and optimization of resources. If the SO is integrated

into the DSP, the intended purpose of the wheeling regulation would be defeated. One of the purposes of this regulation is to reduce energy costs and maximize energy efficiency as well to promote transparency and open access in the energy sector. If the SO is integrated into the DSP, there would be no unbundling if the DSP controls market operations. Thus, to achieve the transparency and efficiency needed to foster and promote Puerto Rico's new energy policy, it is important to guarantee a market model in which the SO is an independent entity.

In terms of Question #2, as indicated above, EcoEléctrica supports a market model where the SO is an independent entity to avoid conflict of interest between the DSP, SO or TDP.

In terms of Question #8, Rules should be developed to provide for a transitional period until the SO is completely independent from other system components. This period should be limited to a specific term to be included in the proposed rules.

WHEREFORE, EcoEléctrica respectfully requests that the Honorable Puerto Rico Energy Bureau takes into consideration the above-indicated comments, and that its proceeds accordingly to the goals established in Acts 57-2014, as amended and 17-2019, as enacted.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico this 8th day of May 2019.

CERTIFICATION OF FILING AND SERVICE.

I hereby certify that EcoEléctrica has proceeded with the filing to the Puerto Rico Energy Bureau by electronic mail to: comentarios@energia.pr.gov; and copies have been sent by electronic mail to: Nitza D. Vázquez Rodríguez at n-vazques@prepa.com, Jorge R.

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