



In re: Regulation on Wheeling
Case Number: CEPR-MI-2018-0010

May 8, 2019

VIA E-MAIL to comentarios@energia.pr.gov
Attention: Edison Avilés-Deliz, Chairman, Puerto Rico Energy Bureau

Dear Mr. Avilés-Deliz,

National Public Finance Guarantee Corporation (“National”) hereby submits these supplemental comments regarding the Puerto Rico Energy Bureau’s (the “Bureau”) proposed Regulation for Wheeling (the “Proposed Regulation”), in response to the Bureau’s Notice of Proposed Rulemaking and Request for Public Comments. National is the single largest creditor of the Puerto Rico Electric Power Authority (“PREPA”), and holds or insures a significant amount of the outstanding bonds issued by other Commonwealth entities, and therefore has a significant stake in the implementation of a fair, transparent, and ultimately successful wheeling regime for PREPA. National submitted comments regarding the Proposed Regulation on April 1, 2019, and hereby supplements those comments in light of the Bureau’s decision to afford parties the opportunity to review and respond to each other’s comments.

As an initial matter, National would like to reiterate the importance of public comments to the regulatory process. Members of the Bureau have recently suggested that low in-person attendance at regulatory hearings reflects a lack of interest in the related proceedings.¹ Respectfully, those remarks are misplaced. A number of parties, including National, invested time and effort in preparing detailed written comments for due consideration in this and other proceedings. National submits these written comments with the understanding and expectation that they will be treated no differently than in-person comments at a regulatory hearing.

National also shares the general concerns of other stakeholders that the Bureau rushed into the rulemaking process and provided an abbreviated notice-and-comment period for the Proposed Regulation, preventing meaningful public engagement.² Notably, the Proposed Regulation was drafted and issued for public comment *before* the Puerto Rico Energy Public Policy Act (then SB 1121) was enacted into law as Act 17-2019. This sequencing necessarily prevented the Bureau from considering the final scope and effect of Act 17-2019 when drafting

¹ These statements occurred during the April 15, 2019 hearing on the Proposed Regulation, and at the April 30, 2019 Solar Power Puerto Rico Summit.

² See, e.g., Comments of Solar + Storage Association of Puerto Rico (“SESA Comments”), CEPR-MI-2018-0010 (Apr. 15, 2019), at p.2 (explaining that the Bureau allowed only one day to reply to comments, making it “all but impossible for any stakeholder to post reply comments,” and recommending “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”); Comments of Fundación Borincana (“Fundación Borincana Comments”), CEPR-MI-2018-0010 (Aug. 15, 2018), at p.1 (“While we understand the desire to move quickly, we caution against the haste with which this comment period has been undertaken.”); Reply Comments of PREPA (“Third PREPA Comments”), CEPR-MI-2018-0010 (May 7, 2019), at pp.1-2.



the Proposed Regulation.³ On April 17, 2019, the Bureau extended the notice-and-comment period for thirty days, but even this extension may not suffice to address the complexities of the Bureau's expansive wheeling policies and to harmonize those policies with other critical-path projects.⁴ National therefore suggests that the Bureau initiate a more comprehensive "workshop" of the Proposed Regulation, with broad public engagement and "an efficient process to share points of view and data, clarify misunderstandings, and resolve disputes."⁵ *At the very least*, the Bureau should revise its Proposed Regulation based on the specific comments below, and then provide an additional notice-and-comment period as to the next draft.

First, National is concerned that the Proposed Regulation conflicts with ongoing transformation and privatization projects, and wishes to emphasize the risk posed by such inconsistency to Puerto Rico's long-term energy future. "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 [transformation and regulatory] processes, each of the independent processes has the potential to introduce significant uncertainty into the nature and value of the end-state system."⁶ Other public comments on this docket echo National's concern.⁷

The transformation of PREPA—as envisioned by Act 120-2018 and the certified PREPA Fiscal Plan—involves selling generation assets and entering into long-term contracts with private generators, among other things.⁸ The Proposed Regulation undermines these goals by creating an entirely new, competitive wholesale market. Having to contend with suppliers on an open

³ It also prevented interested parties from considering Act 17-2019 when submitting their initial comments, as several observed. *See, e.g.*, Comments of the Puerto Rico Electric Power Authority ("Second PREPA Comments"), CEPR-MI-2018-0010 (Apr. 1, 2019), at p.4; Comments of Neil Watlington-Armstrong, CEPR-MI-2018-0010 (Mar. 31, 2019), at p.2.

⁴ *See, e.g.*, Comments of the Puerto Rico Electric Power Authority ("First PREPA Comments"), CEPR-MI-2018-0010 (Aug. 27, 2018), at p.3 ("[A]dding the subject of the wheeling to the above mix [*i.e.*, the mix of transformation projects and regulatory proceedings], at this time, adds even more complexity, and it potentially invokes one of the most powerful laws of all, the law of unintended consequences.").

⁵ Third PREPA Comments at p.11.

⁶ Comments of National Public Finance Guarantee Corporation ("National Comments"), CEPR-MI-2018-0010 (Apr. 1, 2019), at p.1.

⁷ *See* Second PREPA Comments at p.3 ("PREPA also is deeply concerned that the proposal contains provision that are out of sync with, or that could even undercut or jeopardize, aspects of the restructuring and transformation efforts."); First PREPA Comments at p.3 ("PREPA is unaware of the considerations that led the Bureau to move forward on the subject of regulation of wheeling at this time. Now may not have been the best time to do so . . . PREPA is of the view that this may not be the best time because PREPA and the Puerto Rico electric sector are in transition."); Fundación Borincana Comments at p.5 ("[W]e are very concerned that adoption of wheeling regulations before a final decision on market structure is made is only going to have to unwind or amended to reflect the market structure's needs."); IEEFA Comments at p.5 (explaining that the load reduction caused by wheeling, if not properly forecasted, can affect privatization by leading to an overbuild of generation); SESA Comments at p.10 (reiterating National's comments that there is substantial risk to having critical-path processes, including wheeling and privatization, running concurrently on aggressive timelines); Third PREPA Comments at p.3 noting "significant financial and/or operational risks" posed to PREPA, and any T&D concessionaire, by the Proposed Regulation).

⁸ *See* August 1, 2018 PREPA Certified Fiscal Plan at p.53; Act 120-2018; *see also* Second IEEFA Comments at p.4 ("[T]he privatization mechanism enacted by Law 120 envisions not a wholesale electricity market but a series of long-term, bilateral contracts for new generation.").

market—rather than within the tighter market envisioned by Act 120 and the PREPA Fiscal Plan—may deter private investors from committing to long-term, fixed-price supply contracts.⁹ The marginal benefits (if any) of a competitive wholesale market on customer rates may not be worth the risk that PREPA would be unable to negotiate and execute long-term supply contracts.

Second, privatization aside, it may be premature to open wholesale energy markets in Puerto Rico. Whereas private generators engaged in long-term contracts may not wish to compete against a competitive wholesale market, the converse is also true. An open market may not work given the current situation in Puerto Rico, as parties will be deterred from investing in generation projects without the safety of long-term contracts or other financial guarantees.¹⁰

Nor are Puerto Rico's size and geography conducive to an open-market system. Because its electrical system is geographically isolated from any larger network, Puerto Rico may not be able to achieve the critical mass of private generators necessary to create market efficiencies and lower costs.¹¹ While municipal electricity systems and electric cooperatives may seek to use PREPA's transmission and distribution assets, "these needs can be met without wholesale market and retail choice mechanisms."¹² Those mechanisms may even lead to "less transparency, more opportunities for gaming and corruption, and additional expense for a system . . . that is already unsustainably expensive."¹³ Finally, as a general matter, wholesale markets are not set up to incentivize distributed generation, and therefore an open-market policy does not support Puerto Rico's long-term goals of decentralized generation.¹⁴

Thus, not only is it possible that the open-market concept could hinder privatization efforts and conflict with Puerto Rico's long-term energy policy, but it may also be premature and

⁹ See Second PREPA Comments at pp.3-4 ("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."); Third PREPA Comments at p.7.

¹⁰ See Comments of the Institute for Energy Economics and Financial Analysis ("First IEEFA Comments"), CEPR-MI-2018-0010 (Aug. 27, 2018) at pp.3-4 ("[W]e are skeptical investors would be interested in developing generation projects in Puerto Rico without long-term contracts for power sales or other taxpayer-backed guarantees.").

¹¹ See Second IEEFA Comments at p.4; First IEEFA Comments at p.3 ("One of the advantages of establishing wholesale electricity markets in the mainland United States was the ability to integrate multiple utility balancing authorities and economically dispatch resources over a broader geographic region in order to lower costs, an advantage that is obviously not available to an island such as Puerto Rico. . . . In short, we do not see how the implementation of a wholesale electricity market at the current time would offer advantages in achieving the goals of an affordable, renewable, and reliable electrical system.").

¹² Second IEEFA Comments at pp.1-2.

¹³ *Id.* at p.2

¹⁴ See *id.* at p.6. Even if the open-market concept were feasible in Puerto Rico, and even if it were compatible with PREPA's privatization goals, the Proposed Regulation lacks sufficient details about market design and structure. A comprehensive market regulation would include various features such as day-ahead, intra-day, and real time balances, ancillary services, transmission congestion pricing, and capacity obligation mechanisms. Without these important features, there will be significant uncertainty for market participants, which will deter private investment.

unproductive generally. These issues simply have not been analyzed.¹⁵ For example, there has not been an economic study to determine whether an open electricity generation market in Puerto Rico would yield net benefits—as opposed to being cost-ineffective. Such a significant policy shift should be supported by wide-ranging public engagement and debate, as well as analyses of the relevant facts and data, all of which are missing here.¹⁶ After all, success of an open-market regime is not a foregone conclusion: some have succeeded, but others have failed. And those that have succeeded first underwent, and continue to go through, extensive regulatory processes to study and address economic consequences.

The Bureau should, at a minimum, require PREPA to consider the effects of the Proposed Regulation on its in-progress Integrated Resource Plan (“IRP”).¹⁷ Wheeling will ultimately lead to a loss of load and changes in supply and demand—which, although of critical importance, were not factored into PREPA’s draft IRP.¹⁸ “[N]or have the implications of that loss of load on rates been fully thought through,”¹⁹ even though PREPA also has a rate case pending before the Bureau. Load projections are particularly important given that PREPA may have to serve as the provider of last resort.²⁰ PREPA cannot adequately fulfill that role without first understanding its future obligations. Wheeling ultimately distorts the resource picture by changing demands.

Specifically, PREPA’s IRP should account for the impact of wheeling on the load that PREPA services and determine how a reduced load will affect its least-cost expansion plan.²¹ Second, PREPA should study and determine whether the existing transmission and distribution infrastructure is even capable of supporting wheeling. Third, PREPA should estimate the costs of integrating and administering retail wheeling—for example, PREPA may need to incur

¹⁵ Third PREPA Comments at p.8 (observing that “development of [] a future [open] market and related structures should follow lengthy, careful study, and a determination that it is in the public interest.”); *id.* at p.10 (urging the adoption of a “workshop process” to study the efficacy of an open-market design in Puerto Rico).

¹⁶ These deficiencies may result from the fact that the type of market policy embodied in the Proposed Regulation is outside the scope of the Bureau’s Act 57-2014 mandate to promulgate wheeling regulations. As others have noted, “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.” SESA Comments at p.2; *see also* Second PREPA Comments at p.3 (“PREPA is deeply concerned that the proposed Regulation goes far beyond allowing eligible generators to wheel and far exceeds, in many other respects, the requirements and scope of statutory wheeling.”); *id.* at p.7 (“[T]he scope of the proposed Regulation far exceeds the requirements and scope of statutory wheeling.”); First PREPA Comments at p.4 (noting that the Bureau’s August 7, 2018 questions includes “many items not about wheeling”); Third PREPA Comments at p.5.

¹⁷ Consistent with the Bureau’s April 26, 2019 order, PREPA should be held to its May 10, 2019 deadline for submitting its revised IRP, with the ability to submit updated model runs at a later date. *See Resolution and Order*, CEPR-AP-2018-0001 (Apr. 26, 2019), at p.5 (permitting PREPA to evaluate the AES retirement or fuel switch by submitting a compliance filing on May 17, 2019 and the final results of the modeling runs on or before June 14, 2019).

¹⁸ *See* Second IEEFA Comments at pp.2-3 (“In particular, we are concerned that PREPA’s February 19, 2019 Integrated Resource Plan filing did not take into consideration the implementation of wheeling, even as a sensitivity to its load forecast.”).

¹⁹ *Id.* at p.3; *see also* Comments of Rocky Mountain Institute, CEPR-MI-2018-0010 (Mar. 31, 2019), at p.2 (“PREPA’s IRP must account for this risk of load defection from its system.”).

²⁰ *See* Act 17-2019 at Ch. I, Art. 1.7; *id.* at Ch. II, Art. 2.8.

²¹ *See* Second IEEFA Comments at p.3.

additional costs to reinforce and maintain its infrastructure to support wheeling.²² Fourth, because wheeling will likely affect PREPA's costs, PREPA should determine the appropriate allocations of those costs in its rate design, and calculate the rate impact on nonsubscribers of wheeling services. Finally, the IRP should answer questions—otherwise unaddressed by the Proposed Regulation—about ancillary services. For example, will PREPA provide regulation services and spinning reserve, or will the independent power producer be required to provide a prorated share? Who has responsibility for procuring the resources identified in the IRP? Will PREPA be able to collect exit fees to recover stranded asset costs resulting from the loss of customers through wheeling?

Third, the Proposed Regulation sets timelines that are too ambitious for PREPA under current management. PREPA has proven unable to meet numerous regulatory deadlines (including ones that it has set), and PREPA will also likely fail to implement wheeling policies by Summer or Fall 2019 as envisioned in the Proposed Regulation.²³ It is even more doubtful that PREPA can conduct the three studies required by the Proposed Regulation in the time allotted.²⁴ PREPA acknowledges that certain deadlines are too aggressive: “the target of implementing wheeling for industrial and large commercial customers by January 2020 seems overly optimistic, given the additional major steps that the Order itself states are needed.”²⁵

Finally, National notes that two of the public comments offer unrealistic proposals about limiting wheeling to renewables. SESA, for example, proposes that all new wheeling coming online between now and 2025 should be comprised of at least 60% renewable energy, and 100% renewable after 2025.²⁶ Similarly, Sunrun suggests that *all* generation related to wheeling be limited to renewables, as this would supposedly comport with Act 17-2019's renewable portfolio standards.²⁷ Yet, both of these proposals are far more aggressive than the renewable portfolio standards in Act 17-2019—which have themselves been deemed “undoable.”²⁸ Moreover, even

²² Among other things, PREPA notes that it “likely would have to incur significant information technology costs to support [wheeling].” Third PREPA Comments at p.4.

²³ See National Comments at p.3; see also Motion to Submit AES Puerto Rico, LP, Comments to the Notice of Proposed Rulemaking on Wheeling, CEPR-MI-2018-0010 (Mar. 29, 2019), at p.3 (noting that the Proposed Regulation set forth a “very ambitious schedule”).

²⁴ See National Comments at pp.1-2. PREPA recently admitted that it has not conducted any studies since the 2015 rate review that would: (i) support unbundling, (ii) update the embedded Cost of Service (“COS”) study, or (iii) value its assets. PREPA's Compliance Filing for Information Due January 25, 2019, Case No. NEPR-AP-2018-0004. This caused the Bureau to conclude that PREPA “does not reflect a readiness to undertake the necessary studies and consequently the Unbundling Plan in the time required.” Resolution and Order re: PREPA's Compliance Filing of January 25, 2019, Case No. NEPR-AP-2018-0004, p.2 (deciding to hire a consultant for this function instead of PREPA, the cost of which would be passed on to PREPA).

²⁵ Second PREPA Comments at p.8.

²⁶ SESA Comments at p.1.

²⁷ Comments of Sunrun, CEPR-MI-2018-0010 (Apr. 1, 2019), at p.9.

²⁸ *Puerto Rico - Congressional Hearing on PREPA Includes Discussion of More Federal Oversight*, REORG AMERICAS (Apr. 10, 2019) (quoting testimony of Bruce Walker, the Assistant Secretary of the Office of Electricity, U.S. Department of Energy, at an April 9, 2019 hearing before the U.S. House Committee on Natural Resources, to the effect that “the renewable energy portfolio as set forth today given the technology is undoable,” and that “[t]he DoE believes increasing natural gas generation capacity in San Juan would be one of the single most valuable investments for Puerto Rico's long-term recovery”); see also *Written Testimony of Bruce J. Walker Assistant*

assuming that Puerto Rico could benefit from an open-market energy system,²⁹ these artificial constraints on resources would prevent market-based efficiencies. The technology must drive the market, not the other way around. Thus, “[t]o have a functioning market, wheeling cannot be limited to certain types of generation.”³⁰

In sum, National is concerned about the scope of the Proposed Regulation as a matter of policy. There are reasons to believe that the open-market design would fail in Puerto Rico, but in any event there are no studies supporting this major policy shift. Moreover, National is concerned that there has not been adequate time for the Bureau or PREPA’s stakeholders to consider both the effects of Act 17-2019 on wheeling policy and the effects of wheeling policy on PREPA’s ongoing privatization. Because it is critical to have an orderly and successful transformation, National recommends an extended “workshop” of the Proposed Regulation, with full public engagement, in order to define and develop the market features. At the very least, the Bureau should ensure that PREPA models the effects of wheeling on its load and demand forecasts in the pending IRP. Finally, National is concerned that the Proposed Regulation imposes overly ambitious timelines on PREPA, particularly in light of PREPA’s unimpressive track record with meeting deadlines. Similarly, other stakeholders have proposed overly ambitious timelines for limiting wheeling to renewables, which are not feasible for various reasons. All aspects of the Proposed Regulation must be realistic, lest the wheeling project fail and disrupt the overall energy system transformation.

Submitted by:

/s/ John Jordan

John Jordan
Managing Director
National Public Finance Guarantee Corporation
E-mail: john.jordan@nationalpfg.com

Secretary, Office of Electricity, U.S. Department of Energy Before the Committee on Natural Resources U.S. House of Representatives (April 9, 2019) (explaining that the renewable standards in Act 17-2019 are “very ambitious”).

²⁹ As explained above, Puerto Rico likely may not benefit from an open-market system—and the question has not been adequately analyzed.

³⁰ Fundación Borincana Comments at p.2.