

SECRETARIA
COMISION REGULADORA DE
ENERGIA DE
PUERTO RICO

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

'19 MAY -7 P2:10

IN RE:

CASE NO.: CEPR-MI-2018-0010

REGULATION ON RETAIL WHEELING

SUBJECT: PREPA's Reply
Comments

PREPA'S REPLY COMMENTS


TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") and respectfully submits to the Puerto Rico Energy Bureau (the "Energy Bureau") "PREPA's Reply Comments" in accordance with the Energy Bureau's Resolution of April 17, 2019.

**I. PREPA'S CONCERN ABOUT WHETHER
ALL COMMENTS HAVE BEEN POSTED**

Before presenting its Reply Comments, PREPA must note that it has a concern about whether all Comments of PREPA and other interested parties have been posted on the Energy Bureau's web site.

The basis for PREPA's concern is as follows. The Energy Bureau's Resolution and Order of March 1, 2019, issued an 82-page single-spaced draft "Regulation for Wheeling".¹ The March 1st order provided for Comments by April 1, 2019, and for Reply Comments by April 11, 2019. PREPA filed Comments on April 1st and it filed Limited Reply Comments on April 11th.² However, as of May 7, 2019, at 10:00 a.m. AT, the

 ¹ The proposed Wheeling Regulation goes far beyond the subject of statutory wheeling, and was developed and issued after a limited opportunity for input from PREPA and other interested parties and with no advance workshops, as discussed further below.

² PREPA's Limited Reply Comments of April 11th explained that those Comments necessarily were very limited in scope, primarily because most other interested parties' original Comments filed on or before April 1st were not posted on the Energy Bureau's web site until sometime on April 9th or 10th.

Energy Bureau's web site does not show PREPA's Limited Reply Comments of April 11th or any other interested parties' Reply Comments that were due on April 11th. PREPA does not know, but it seems likely that one or more other interested parties might have submitted Reply Comments. The Energy Bureau held a public hearing on April 15, 2019. The Energy Bureau's web site shows new Comments submitted by two interested parties on April 15th.

If not all Comments of other interested parties have been posted on the Energy Bureau's web site, then PREPA must qualify its instant Reply Comments by stating that PREPA has not had the opportunity to review all Comments of other interested parties, PREPA may or may not agree with the Comments it has not yet seen, and PREPA reserves the right to seek to provide further input to the Energy Bureau.

II. REPLY COMMENTS

PREPA is presenting ten overall Reply Comments. Some of the Reply Comments have subsidiary points.

First, the Energy Bureau, in assessing PREPA's and the other interested parties' Comments, should and must keep in mind the larger context in which this docket is being conducted. The Government of Puerto Rico is engaged in the fifth year (if one starts with the enactment of Act 57-2014) of its ongoing efforts to restructure PREPA and to transform the Puerto Rico electric system in the interests of the people of Puerto Rico. Some major milestones of those efforts are anticipated to be accomplished later this year or in early 2020. The implementation of statutory wheeling is not an intellectual exercise and it is not an activity that is occurring in a vacuum.

The Government of Puerto Rico's restructuring and transformation efforts include, but are not limited to, the enactment of a series of statutes³ and the work being performed by the Government under those statutes, and under the federal "PROMESA" statute.⁴ In brief, among other things, the Government's efforts include the ongoing work of the Public-Private Partnerships ("P3") Authority under Act 120-2018 to develop partnership contracts for the disposition of PREPA generation assets and for a private concession for the operation of the transmission and distribution ("T&D") system and the provision of T&D services, in order to attract necessary private investment, while at the same time maximizing the use of federal funds, for the restoration and modernization of the electric system. Act 17-2019, Section 1.8, reaffirms those efforts.

For example, the Energy Bureau should not adopt a Wheeling Regulation that shifts significant financial and/or operational risks to PREPA's other customers and/or to PREPA or any successor provider of T&D services, such that costs and risks are not fairly and efficiently allocated and/or private parties will or may have diminished interest in a T&D concession or in investing in the T&D system. PREPA notes that such a shifting of cost and/or risks not only would be inconsistent with what the Government of Puerto Rico is trying to accomplish in terms of restructuring and transformation, but also would be contrary to the specific wheeling statutory provision that the Energy Bureau "must establish the rules and conditions to ensure that wheeling does not affect in any

³ Including but not limited to Acts 57-2014, 4-2016, 2-2017, and 120-2018, and the very recently enacted Act 17-2019.

⁴ The Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. 114-187, 48 U.S.C. § 2121, *et seq.*

way whatsoever (including technical problems and rate increases) nonsubscribers of wheeling services...." Act 57-2014, Section 6.30.

Causing unnecessary costs and risks, or misidentifying or misallocating costs and risks, could drive major operational problems and major uneconomic outcomes such as uneconomic loss of load. For example, PREPA likely would have to incur significant information technology costs to support alternate suppliers (*i.e.*, suppliers entitled to supply customers under the wheeling statutory provisions), supplier switching, and the billing of customers electing supply service from alternate suppliers. For another example, wheeling should not be used as a means for customers to evade responsibility for "stranded" or other costs that legally or fairly must or should not be bypassable.


While PREPA appreciates the efforts of other interested parties to develop Comments, PREPA observes that the other parties, in their Comments, for the most part, do not appear to have considered or addressed the larger context surrounding this docket or that specific wheeling statutory provision. The Energy Bureau, when evaluating the other parties' comments, should take into consideration whether, or to what degree, the other parties took those major factors into account.

PREPA does not mean to suggest that all other parties entirely ignored those factors in all of their Comments. While PREPA does not agree with a number of the Comments of ICSE and IEEFA, PREPA notes that ICSE's March 27th Comments (at pp. 2-3) do express concern about shifting costs and/or risks to other customers and the Default Service Provider ("DSP") (PREPA or its successor initially and at least for some years would be the DSP under the proposed Wheeling Regulation); and, that IEEFA's

March 29th Comments (at p. 2) do emphasize Act 57-2014, Section 6.30's above provision on protecting other customers.

Ultimately, after a full and fair administrative process, the Energy Bureau should adopt a Wheeling Regulation that properly considers the surrounding circumstances, is lawful, is practical, properly allocates costs and risks, and is in the best interests of the people of Puerto Rico.

Second, PREPA agrees with several other interested parties that the initial focus of this docket (1) should be statutory wheeling as provided for under Acts 73-2008 and 57-2014 (also referenced in Act 17-2019) and (2) should be on wheeling for industrial and large commercial customers (initially the ones connected to PREPA's grid at transmission voltage level). The proposed Wheeling Regulation goes far beyond the subject of statutory wheeling and also includes provisions on redesign of the wholesale energy market, non-statutory wheeling open access, etc. While PREPA disagrees with, and/or considers to be premature or out of scope, many of the Comments of AES, PREPA agrees with AES's March 29th Comments (at p. 16) and April 15th Comments (at p. 7) to the effect that this docket should be split into two proceedings and that the next stage of this proceeding should address wheeling for industrial and large commercial customers, in particular. IEEFA's March 29th Comments (at pp. 1-7, 11) also advocate that this docket should focus on wheeling under Act 57-2014, and that generation resources allowed for wheeling should be limited to those allowed by the wheeling statutory provisions (as is provided by Act 57-2014, Section 6.30, and by Act 73-2008), although IEEFA did not explicitly advocate prioritizing the wheeling of specific customer groups and, instead, urges the Energy Bureau to study, among other things, customers'




actual desire for wheeling. PREPA agrees with IEEFA that the Energy Bureau should not (or cannot) authorize "wheeling" by generation resources that are not eligible for statutory wheeling. Not only would that be contrary to those statutory provisions, but it would be contrary to the legislature's choice in enacted laws to favor in this specific context the statutorily defined eligible resources, which essentially are renewable generation resources that qualify for certain tax treatment. PREPA also agrees with IEEFA that it makes sense to study the extent of customers' desire for wheeling, although, at this time, PREPA supports moving ahead with a next stage of this docket that focuses on industrial and large commercial customers. Knowing the actual extent of customers' interest in wheeling likely would be helpful to customers, potential suppliers, other interested parties, PREPA, and the Energy Bureau, for planning, investment, and resource allocation purposes, although knowing more about interconnection and rates also will be important or essential. ICSE's March 27th Comments, while they go beyond supporting just statutory wheeling, also appear to support separate timelines for implementation and starting with industrial and large commercial customers (at p. 3). Finally, the Solar and Energy Storage Association's April 15th Comments also go beyond statutory wheeling, but they also appear to accept the premise of starting with statutory wheeling to industrial and large commercial customers (at pp. 5-6).

Third, PREPA agrees with IEEFA's March 29th Comments (at pp. 4-5) to the effect that the proposed Wheeling Regulation should not seek to set up, and design the regulation of, a full wholesale market in the sense of the kind of competitive and largely unregulated wholesale market that operates in areas such as the PJM footprint on the

US mainland, although PREPA might not agree with every subsidiary point that IEEFA makes on this subject.

Puerto Rico has a wholesale energy market now, in the sense that PREPA has power bilateral purchase and operating agreements ("PPOAs") with AES, EcoElectrica, and certain utility-scale renewables producers. The Energy Bureau has jurisdiction to review new PPOAs under which PREPA is an energy purchaser, and the Energy Bureau has a joint Regulation with PREPA (No. 8815) for that purpose, setting aside any special statutory provisions regarding new P3 contracts under Act 120-2018 and any complications of federal law (PROMESA).

The proposed Wheeling Regulation, and some parties' comments, however, appear to contemplate setting up, and designing the regulation of, the kind of competitive and largely unregulated wholesale market that operates in areas such as the PJM Interconnection, LLC., regional transmission organization footprint. To do so at this time would be inconsistent with Act 17-2019, Section 1.19, which provides for the Energy Bureau conducting a study of the feasibility and convenience of establishing an electric market based on free competition and reporting to the Legislative Assembly and the Governor on or before June 30, 2025.⁵ Moreover, to create major uncertainties now about potential wholesale market changes also seems inadvisable given the stage of PREPA restructuring and generation privatization efforts. PREPA also does not believe that any good reason has been shown for this docket to go beyond the implementation of statutory wheeling to venture into setting up a new loosely regulated wholesale


⁵ Act 17-2019, Section 1.19, does not explicitly call the referenced market a wholesale market, but PREPA interprets the statutory language, in context, to include study of such a wholesale market.

market. IEEFA's March 29th Comments (at pp. 4-5) also raise several other legal and practical concerns on this subject. PREPA does not wish to comment "line by line" on those IEEFA points, but it is fair to acknowledge that IEEFA made some other sound points on this topic even if PREPA does not agree with every point.

Fourth, PREPA believes that other interested parties' comments on wholesale market regulation and related topics generally do not carefully or properly distinguish between the two different kinds of wholesale markets referenced above and, for the most part, are premature. Those Comments largely anticipate a PJM-style wholesale market, one that does not exist now and that cannot / should not exist for several years, at the earliest, in Puerto Rico. Those Comments do not make legal or practical sense when applied to Puerto Rico's existing wholesale energy market dominated by bilateral contracts in which the Energy Bureau regulates new PPOAs under which PREPA purchases energy. For example, creating an independent market monitor, or splitting PREPA into separate pieces such as breaking off an independent system operator, does not make practical sense at this time. Nor has any reason been shown to interfere with how PREPA conducts economic dispatch. That is not to say that all of the other interested parties' ideas for how a potential future competitive and lightly regulated wholesale energy market and related structures might work automatically would be invalid or poor ideas. Down the road, some (not all) of those ideas may be sound. The points PREPA is making here are that those ideas do not apply now (*i.e.*, to the wholesale market and electric sector that actually exists now in Puerto Rico), and that the development of such a future market and related structures should follow lengthy, careful study, and a determination that it is in the public interest.

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Fifth, on a related note, ICSE's March 27th Comment (at p. 5) that the default service provider should be required to purchase power through auctions is inappropriate and premature. Puerto Rico statutes and Regulation No. 8815 provide multiple proper methods for PREPA to enter into new PPOAs. There is no legal or practical basis for ICSE's suggestion now or in the near term.

Sixth, AES' March 29th Comments make a number of out-of-scope and premature proposals for details of unbundling and rate design. Those topics should be addressed in the separate unbundling docket (case no. NEPR-AP-2018-0004) and/or a separate ratemaking proceeding, to be conducted in a manner that complies with the Puerto Rico statutes on ratemaking.

Seventh, the proposed Wheeling Regulation's provisions and other parties' Comments regarding transition charges, stranded costs, and/or other non-bypassable charges, are premature. The restructuring and ratemaking processes are not yet at stages where it is possible to properly address those subjects here.

Eighth, PREPA finds it difficult to evaluate and reply to the other "detail level" Comments of other parties at this time, *i.e.*, before the Energy Bureau reacts to the proposals to conduct this docket in stages, to focus first on statutory wheeling for industrial and large commercial customers, and not to address, or at least to defer addressing, other topics. For example, PREPA's perspectives on whether, when, or how to set up "standard offer" versus "default service" pricing, or regulations about access to the transmission system, dispatch, or rules for customer aggregation, could be significantly affected by what assumptions are made about where this docket, or at least the first stage of this docket, is headed.

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Ninth, IEEFA's March 29th Comments (at p. 2) and RMI's March 31st Comments (at p. 2) relating to integrated resource planning, insofar as they relate to the 2018 integrated resource plan docket (case no. CEPR-AP-2018-0001), are beyond the scope of this Wheeling Regulation docket.

Finally, PREPA agrees with AES's April 15th Comments (p. 7) urging the Energy Bureau to conduct workshop processes (in dockets involving major new regulations or major modifications to existing regulations).⁶ PREPA understands that there has been a significant amount of time since the enactment of Act 57-2014's wheeling provision, but it still is important to get this subject right. PREPA's understanding is that the experience on the US mainland has been that workshops generally are very useful, perhaps even essential, in practical terms, in designing and implementing electricity sector restructuring and retail open access. PREPA notes, as it did in its August 27, 2018, General Comments and Responses to Specific Questions (at pp. 5-6), that the successful discussion, design, and implementation of residential open access takes very careful study over a long period, even in jurisdictions that, unlike Puerto Rico, have an electric sector that does not face major structural and financial issues, and that such processes commonly have taken 2 to 3 years, and even up to 5 years, on the US mainland. Puerto Rico can take advantage of applicable "lessons learned", but Puerto Rico also has unique objectives, situations, and concerns. Both "concept level" items as well as "detail level" items, if within the scope of the docket, are candidates for

⁶ PREPA also agrees with AES's March 29th Comment (at p. 3) that it would have been preferable for the Energy Bureau to conduct workshops before developing and preparing the proposed Wheeling Regulation, although, at this stage, PREPA's focus is on how properly and in the best manner to proceed going forward in this and other rulemakings.

"workshopping". Workshops can be an efficient process to share points of view and data, clarify misunderstandings, and resolve disputes. Even if this docket were to be narrowed to focus on statutory wheeling going forward, as it should be, workshops still are likely to provide value.

Please note that PREPA's not addressing any specific Comments of any other interested parties should not be understood to mean that PREPA agrees, or disagrees, with the Comments.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Honorable Puerto Rico Energy Bureau accept PREPA's Reply Comments, subject to PREPA's expression of concern about whether all parties' comments have been posted; and, that the Energy Bureau, if and as it proceeds further with this docket, proceed in a manner that is consistent with applicable law and the circumstances and PREPA's sets of Comments.

Respectfully submitted, in San Juan, Puerto Rico, this 7th day of May, 2019.

I HEREBY CERTIFY that the foregoing Reply Comments filing was, on this day, filed in person in hard copy format at the office of the Clerk of the Puerto Rico Energy Bureau, and, further, that the filing was sent via email to the Puerto Rico Energy Bureau through secretaria@energia.pr.gov and wcordero@energia.pr.gov; and to the office of the Energy Bureau's internal legal counsel via email to legal@energia.pr.gov and sugarte@energia.pr.gov.



Nitza D. Vázquez Rodríguez

TSPR No. 9311

Senior Attorney

Puerto Rico Electric Power Authority

P.O. Box 363928

San Juan, Puerto Rico 00936-3928

Tel. 787-521-4499

Email: nitza.vazquez@prepa.com