

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

IN RE: REGULATION ON WHEELING

CASE NO.: NEPR-MI-2018-0010

SUBJECT: Notice of Proposed Regulation and
Request for Public Comments.

RESOLUTION

I. Introduction.

On March 1, 2019, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a proposal for the Regulation on Wheeling, pursuant Act 57-2014¹ and Act 38-2017.² The public notice announcing the proposed Regulation and the instructions on public participation was published in the newspaper *Primera Hora* on that same date. The Energy Bureau granted the general public a term of thirty (30) days, starting from the publication date of the March 1, 2019 notice, to submit comments in writing or request a public hearing about the Regulation. Furthermore, the Energy Bureau granted ten (10) days following the general commenting period to submit replies to the comments filed before the Energy Bureau.

On April 15, 2019, the Energy Bureau held a Public Hearing with the purpose of gathering more information from the general public related to the proposed Regulation.

On April 17, 2019, in order to provide interested parties with further opportunity to reply to the comments filed in response to the proposed Regulation, the Energy Bureau extended the period to submit replies to comments by twenty (20) additional days. On April 18, 2019, the aforementioned notice was published in the newspaper *Primera Hora*.

II. Proposed Rules.

Act 17, 2019,³ was enacted on April 11, 2019. Act 17-2019 establishes the provisions for governing the electric industry, including specific provisions regarding the structure of the industry and the establishment of wheeling. Based on the fact that Act 17-2019 was enacted after the Energy Bureau issued its proposed Regulation, the Energy Bureau determined necessary to adapt the proposed Regulation to the new Puerto Rico energy public policy, as established in Act 17-2019.

¹ *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

² *Uniform Administrative Procedures Act of the Government of Puerto Rico*, as amended.

³ *Puerto Rico Energy Public Policy Act*.

In light of the above, the Energy Bureau has developed a new proposal for the Regulation on Energy Wheeling, which shall govern the wheeling mechanism in Puerto Rico, and aims to implement wheeling for power producers to serve industrial and large commercial customers once it enters into effect.

III. Request for Comments on Wheeling.

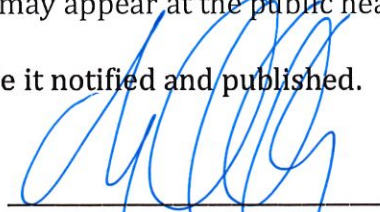
Pursuant to Act 38-2017, the Energy Bureau will publish a notice on the proposed rulemaking process in a newspaper of general circulation. Pursuant to Section 2.2 of Act 38-2017, within thirty (30) days following the date of publication of said notice (*i.e.*, August 24, 2019), the general public may present its comments regarding the new proposed regulation. The Energy Bureau further invites the filing of reply comments to be filed within ten (10) days, following the close of the general commenting period (*i.e.*, September 3, 2019).

Comments may be filed through any of the following means:

- a. By email to the following address: comentarios@energia.pr.gov;
- b. Online, using the Energy Bureau's Electronic Filing System, at the following address: <https://radicacion.energia.pr.gov>.
- c. By 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 **August 22, 2019, at 10:00 a.m.**, at the Energy Bureau Hearing Room located 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.


Be it notified and published.



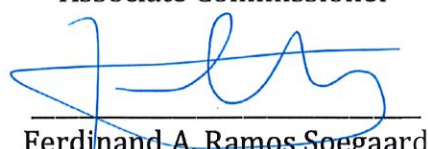
Edison Avilés-Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ángel R. Rivera de la Cruz
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on July 23, 2019. I also certify that on July 23, 2019 a copy of this Resolution regarding the Case No. CEPR-MI-2018-0010 was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@prepa.com, I also certify that today, July 23, 2019, I have proceeded with the filing of the Resolution 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 July 23, 2019.

Wanda I. Cordero Morales
Clerk



GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board
Puerto Rico Energy Bureau

REGULATION FOR ENERGY WHEELING

TABLE OF CONTENTS

ARTICLE 1.- GENERAL PROVISIONS.....	4
Section 1.01.- Title.....	4
Section 1.02.- Legal Basis and Authority.....	4
Section 1.03.- Purpose.....	4
Section 1.04.- Executive Summary.....	4
Section 1.05.- Applicability.....	5
Section 1.06.- Interpretation.....	5
Section 1.07.- Provisions of Other Regulations.....	5
Section 1.08.- Unforeseen Proceedings.....	5
Section 1.09.- Dates and Time Periods.....	5
Section 1.10.- Definitions.....	5
Section 1.11.- Controlling Version.....	11
Section 1.12.- Severability.....	11
Section 1.13.- Forms.....	11
Section 1.14.- Mode of Submission.....	11
Section 1.15.- Effect of Submission.....	12
Section 1.16.- Confidential Information.....	12
Section 1.17.- Validity.....	12
Section 1.18.- Penalties for Non-Compliance.....	12
Section 1.19.- Compliance with Other Applicable Legal Requirements.....	13
ARTICLE 2.- ENERGY BUREAU AUTHORITY.....	13
Section 2.01.- General Authority.....	13
ARTICLE 3.- INDUSTRY STRUCTURE.....	13
Section 3.01.- Puerto Rico Electric Power Authority.....	13
Section 3.02.- Electric Power Generation Companies.....	14
Section 3.03.- Wheeling Customers.....	15
Section 3.04.- Electric Power Service Companies.....	15
ARTICLE 4.- THE SYSTEM OPERATOR.....	15
Section 4.01.- Applicability.....	15
Section 4.02.- Functions.....	15
Section 4.03.- Planning.....	16
Section 4.04.- Information and coordination.....	17
Section 4.05.- Interconnection.....	17
Section 4.06.- System Operator Budget.....	17
Section 4.07.- Administrative fee.....	18
Section 4.08.- Reports.....	18
Section 4.09.- Operation of the Balancing Price Mechanism.....	18
Section 4.10.- Continued Obligation to Conduct Integrated Resource Planning.....	19
ARTICLE 5.- ENERGY BUREAU MONITORING.....	19

ARTICLE 6.- THE TRANSMISSION AND DISTRIBUTION PROVIDER	20
Section 6.01.- Non-Discriminatory Transmission Access.....	20
Section 6.02.- Transmission and Distribution Provider Roles and Responsibilities.	21
Section 6.03.- Metering and Billing.....	22
ARTICLE 7.- OBLIGATIONS OF THE PROVIDER OF LAST RESORT	22
Section 7.01.- Provider of Last Resort.....	22
Section 7.02. – Provisions for Wheeling Customers Returning to the Provider of Last Resort.	23
ARTICLE 8. - OPERATING AGREEMENTS.....	23
Section 8.01.- Proposed Operating Agreement between the CEPSC, the DSP and the Transmission and Distribution Provider.....	23
ARTICLE 9.- CODES OF CONDUCT	26
Section 9.01.- Applicability.....	26
Section 9.02.- Purpose.....	26
Section 9.03.- General Principles for the Operation of the Code of Conduct.....	26
Section 9.04.- Codes of Conduct.....	27
Section 9.05.- Separation of Corporate Entities.....	30
ARTICLE 10.- CERTIFICATION OF COMPANIES	30
Section 10.01.- Certification.	30
ARTICLE 11.- WHEELING RATES	30
Section 11.01.- Wheeling Rates.....	30
Section 11.02.- Wheeling Rates Procedure.....	31
ARTICLE 12.- RECONSIDERATION AND JUDICIAL REVIEW	31
Section 12.01.- Reconsideration.....	31
Section 12.02.- Judicial Review.....	31

REGULATION FOR ENERGY WHEELING

ARTICLE 1.- GENERAL PROVISIONS

Section 1.01.- Title.

This Regulation shall be known as the *Regulation on Electric Energy Wheeling*.

Section 1.02.- Legal Basis and Authority.

This Regulation is adopted pursuant to the provisions of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014"); Act 17-2019, known as the *Puerto Rico Energy Public Policy Act* ("Act 17-2019"); and Act 38-2017, as amended known as the *Uniform Administrative Procedure Act of the Government of Puerto Rico* ("LPAU" for its Spanish acronym). More specifically, the Energy Bureau has the authority under the law to implement wheeling. Act 57-2014, as recently affirmed by Act 17-2019, states that the Energy Bureau has the power and duty to "regulate the wheeling mechanism in Puerto Rico in accordance with the applicable laws."¹ Moreover, the Energy Bureau has the power and duty to "oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico." The Energy Bureau also has "all those additional, implicit, and incidental powers that are pertinent and necessary to enforce and carry out, perform, and exercise the powers granted by law and to achieve the energy public policy."²

Section 1.03.- Purpose.

The Puerto Rico Energy Bureau ("Energy Bureau") adopts and enacts this Regulation to implement the energy wheeling mechanism (wheeling) in Puerto Rico, in accordance with applicable legislative mandates.

Section 1.04.- Executive Summary.

The Energy Bureau recognizes that the energy sector in Puerto Rico is changing and believes wheeling can and should act as a vehicle for positive change since 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, 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. This Regulation shall enable any Person to make an informed decision in choosing an Electric Power Service Company.

¹ Section 6.3(g) of Act 57-2014, as amended by Section 5.10 of Act 17-2019.

² Section 6.3 of Act 57-2014, as amended by Section 5.10 of Act 17-2019.

Section 1.05.- Applicability.

This Regulation shall apply to all companies offering electric service that are operating in Puerto Rico at the time that this Regulation enters into effect, as well as to all companies that intend to operate or offer electric services in Puerto Rico now or in the future.

Section 1.06.- 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 1.07.- 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 1.08.- 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 and other applicable laws.

Section 1.09.- 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 1.10.- 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" means any entity providing any Competitive Service to Customers but that is corporately or legally affiliated with a Monopoly Service Provider.

- 2) "Balancing Price" means an energy price, in \$/MWh, to be established by the System Operator on an hourly or sub-hourly basis for the purpose of enabling buyers and sellers of electricity to settle differences between electricity generation and electricity demand.
- 3) "Bill" means 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.
- 4) "Certification" means the process by which an Electric Power Service Company seeks approval by the Energy Bureau to operate or offer services in Puerto Rico.
- 5) "Competitive Electric Power Service Company" means any Electric Power Service Company other than the Provider of Last Resort that provides or seeks to provide Generation Service to Wheeling Customers.
- 6) "Customer" or "Wheeling Customer" means any Person who receives Generation Service for that Person's usage, including Industrial Customers, Large Commercial Customers, Electric Power Service Companies, microgrids, energy cooperatives, municipal ventures, and community solar, pursuant to the provisions of Act No. 57-2014 and any other applicable laws.
- 7) "Customer Class" means the classification of a Customer in accordance with PREPA's tariff provisions that define applicability and rates.
- 8) "Customer Energy Usage Data" means data obtained from a Customer's Meter and which is identifiable to that Customer.
- 9) "Demand-Side Management Provider" means any Person engaged in the provision of Demand-Side Management Services to Customers.
- 10) "Demand-Side Management Services" means the provision of any energy efficiency, demand response, and customer-sited generation services provided directly to a Customer that aids in meeting that Customer's electric load.
- 11) "Deposit" means a reasonable financial payment from a Customer that is required as a precondition for Generation Service.
- 12) "Distributed Energy Resource" means 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 System and that assists in meeting at least one Customer's electrical load.

- 13) "Distributed Generation" means an electric power generation facility in Puerto Rico connected to the Distribution System and producing power for self-supply or sale.
- 14) "Distribution Service" means the delivery of electric power from any electric substation or generator to any Customer through Distribution System.
- 15) "Distribution System" means 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.
- 16) "Electric Power Grid" means the electric power Transmission and Distribution System of Puerto Rico.
- 17) "Electric Service" means the provision of Generation Service, Distribution Service, and Transmission Service, including all necessary ancillary services.
- 18) "Energy Bureau" means the Puerto Rico Energy Bureau established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, and Act No. 211-2018, formerly the Puerto Rico Energy Commission created under Act No. 57-2014, as amended, which is a specialized independent entity in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico.
- 19) "Electric Power Generation Company" or "EPGC" means any natural or juridical Person engaged in the production or generation of electric power in Puerto Rico to be sold through Power Purchase Agreements or any other legal transaction authorized by the Energy Bureau. This term shall include cogenerators already established in Puerto Rico that supply energy to PREPA through a Power Purchase Agreement, energy cooperatives, and renewable energy producers. An independent power producer shall be deemed to be an Electric Power Generation Company. All Electric Power Generation Companies shall be deemed to be Electric Power Service Companies.
- 20) "Electric Power Service Company" or "EPSC" means any Person, engaged in the rendering of energy generation, transmission, and distribution services, billing, wheeling, grid services, energy storage, the resale of electric power, as well as any other electric power service as defined by the Energy Bureau. PREPA, the Provider of Last Resort, the Transmission Distribution Provider / System Operator, and the Third Party Administrator shall be deemed to be Electric Power Service Companies.

- 21) "Energy Storage" means 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.
- 22) "FERC" means the Federal Energy Regulatory Commission, an independent agency of the government of the United States of America.
- 23) "Generation Service" means the provision of electric generation to Customers in Puerto Rico by the Provider of Last Resort, or by a Competitive Electric Power Service Company.
- 24) "Independent Monitor" or "IM" means the entity designated by the Energy Bureau to monitor the operations of all Electric Power Service Companies and any other entity participating in wheeling to prevent market manipulation and market power abuses.
- 25) "Industrial Customer" means any customer receiving electric service from PREPA under an industrial rate schedule.
- 26) "Interconnection" means the connection of a Distributed Energy Resource, to the Electric Power Grid.
- 27) "Large Commercial Customer" means any Customer receiving Electric Service from PREPA under a commercial rate at a Transmission level voltage, whose maximum monthly demand is at least 250 kVA.
- 28) "Meter" means the equipment used to measure consumption and/or generation of energy at the point of connection between an individual Customer and the Distribution System as well as associated communications and control capabilities.
- 29) "Microgrid" means 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.
- 30) "Monopoly Service" means 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.
- 31) "Monopoly Service Provider" means any entity providing a Monopoly Service.
- 32) "Municipality" means 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*.

- 33) "Non-Bypassable Charge" means any Transition Charge or other charge which a Customer is required to pay irrespective of whether they receive Generation Service from the Provider of Last Resort or a Competitive Electric Power Service Company.
- 34) "Operating Agreement" means an agreement entered into between the Competitive Electric Power Service Company and the Provider of Last Resort, and the Transmission and Distribution Provider/System Operator that is designed to: protect the Provider of Last Resort, and the Transmission and Distribution Provider from any financial incurrence in the event of a default by the Competitive Electric Power Service Company; and, provide the details for the exchange and information and access needed in order for the Competitive Electric Power Service Company to provide service to Wheeling Customers.
- 35) "Person" means a natural person or a legal entity created, organized, or existing under the laws 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 any other government entity, including PREPA.
- 36) "Power Purchase Agreement" or "PPA" means any Agreement between the Provider of Last Resort, or Competitive Electric Power Service Company.
- 37) "PREPA" means 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.
- 38) "Provider of Last Resort" means the entity responsible for (i) providing Generation Service to each Customer that is not served, in whole or in part, by a Competitive EPSC and (ii) providing Generation Service to any Wheeling Customer whose Competitive EPSC has defaulted by either failing to provide sufficient energy to meet the Wheeling Customers load for any given period, or by terminating the contract with the Wheeling Customer. The Provider of Last Resort shall be PREPA or its successor.
- 39) "Renewable Resource" means jointly 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*.

- 40) "Ring-Fencing" means 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.
- 41) "Security" means an irrevocable letter of credit, a surety bond or cash Deposit, or other guarantee for the required energy collateral that a Competitive Electric Power Service Company may be required to provide to the Transmission and Distribution Provider and the Provider of Last Resort to cover the costs of providing Generation Service to its Customers in the event of a default by the Competitive Electric Power Service Company.
- 42) "Stranded Costs" means the historical financial obligations incurred by PREPA that may become unrecoverable due to regulatory changes, such as wheeling, as determined by the Energy Bureau or any other applicable authority.
- 43) "System Benefits Charge" means 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 response; 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.
- 44) "System Operator" or "SO" means the entity assigned responsibility for overseeing and facilitating wholesale exchanges of electricity, operating the Electric Power Grid in a reliable and efficient manner, and ensuring open access to the Electric Power Grid, in coordination with the Transmission and Distribution Provider.
- 45) "System Operator Procedure" or "SO Procedure" means a protocol, operating 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 Electric Power Grid.
- 46) "Transition Charges" means those charges defined in Chapter 31(6) of Act 4-2016, known as the PREPA Revitalization Act, or similar charges established under any other applicable authority.
- 47) "Transmission" or "Transmission System" means 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.
- 48) "Transmission and Distribution Provider" or "TDP" means the entity that owns or leases the Electric Power Grid and maintains that Electric Power Grid.

49) "Transmission Service" means the delivery of electricity across the Transmission System by a Transmission Customer for its own purposes or to another Transmission Service Customer.

50) "Transmission Service Customer" means the Provider of Last Resort, as well as any Competitive Electric Power Service Company, Energy Power Generation Company, or other Person who uses Transmission Service.

51) "Wheeling" means the transmission of electricity from an independent power producer to the end consumer through Puerto Rico's Electric Power Grid and which does not constitute distributed generation through any net metering mechanism.

C) Every word used in the singular in this Regulation shall be understood to also include the plural unless the context indicates otherwise.

Section 1.11.- 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 1.12.- 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 1.13.- 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 1.14.- 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 1.15.- 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 1.16.- 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 1.17.- Validity.

Pursuant to Section 2.8 of the 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 1.18.- Penalties for Non-Compliance.

Any Person who fails to comply with any of the requirements set forth in this Regulation may be subject to the impositions of penalties under Act 57-2014, Section 3.05 and 3.06 of

Regulation 8701,³ and pursuant to the procedures established in Regulation 8543⁴.

Section 1.19.- 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 Authority.

The scope of authority of the Energy Bureau includes 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 Transmission and Distribution Provider / System Operator;
- B) Regulate the terms and conditions of all Electric Services provided to Persons receiving Electric Service in Puerto Rico;
- C) Monitor wheeling to ensure that no one entity exercises market power and to take whatever corrective actions are necessary;
- D) Oversee wheeling to ensure that Electric Power 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 context of wheeling are functioning in accordance with this Regulation and the laws of Puerto Rico.

ARTICLE 3.- INDUSTRY STRUCTURE

Section 3.01.- Puerto Rico Electric Power Authority.

Until the transformation of the energy sector established in Act 120-2018 takes place, PREPA shall play the following roles:

³ Amendment to Regulation No. 8618, on Certifications, Annual Charges and Operational Plans of Puerto Rico Electric Service, February 17, 2016.

⁴ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, December 18, 2014.

- A) Provider of Last Resort. In this capacity PREPA shall be responsible for providing Generation Service to each Customer that is not served, in whole or in part, by a Competitive Electric Power Service Company. Furthermore, PREPA shall be responsible for providing Generation Service to any Customer whose Competitive Electric Power Service Company has defaulted by either failing to provide sufficient energy to meet the Wheeling Customer's load for any given period, or by terminating the contract with the Wheeling Customer. This Generation Service could be provided using generation facilities owned by PREPA, using Power Purchase Agreements with Electric Power Generation Companies, or a combination of both.
- B) Transmission and Distribution Provider. In this capacity, PREPA shall be responsible for maintaining the Electric Power Grid and investing in that grid in a cost-effective manner, subject to Energy Bureau approval in accordance with its Orders. Regarding the Transmission System, the Transmission and Distribution Provider 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 Transmission and Distribution Provider shall plan, maintain, and invest in that system, in accordance with the IRP, subject to Energy Bureau approval. The Transmission and Distribution Provider shall also be responsible for operating the Distribution System in a least-cost non-discriminatory fashion. To the extent that a Concessionaire is retained to assume some or all of PREPA's obligations as a Transmission and Distribution Provider, the Concessionaire shall assume all the duties and responsibilities including those set forth in this Regulation, that PREPA would have otherwise assumed.
- C) System Operator. In this capacity, PREPA will be responsible for overseeing and facilitating all wholesale exchanges of electricity in Puerto Rico. In coordination with the Transmission and Distribution Provider, the System Operator 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; and ensure that electricity production and delivery are accurately accounted for and settled among the generators and wholesale buyers and sellers in Puerto Rico.

Section 3.02.- Electric Power Generation Companies.

Electric Power Generation Companies shall be permitted to engage in the production or generation of electric power in Puerto Rico to be sold through Power Purchase Agreements or any other legal transaction authorized by the Energy Bureau.

Section 3.03.- Wheeling Customers.

Wheeling Customers shall be permitted to purchase Generation Services from Electric Power Service Companies through Power Purchase Agreements or other legal transactions authorized by the Energy Bureau.

Section 3.04. Electric Power Service Companies.

Electric Power Service Companies shall be permitted to be engaged in the rendering of energy generation, transmission, and distribution services, billing, wheeling, grid services, energy storage, the resale of electric power, as well as any other electric power service as defined by the Energy Bureau. PREPA, the Transmission Distribution Provider / System Operator, and the Third Party Administrator shall be deemed to be Electric Power Service Companies. A Competitive Electric Power Service Company may provide all or a portion of a Wheeling Customer's load, and a Wheeling Customer may be served by more than one Competitive Electric Power Service Company. A Competitive Electric Power Service Company shall be required to file an application for Certification for approval by the Energy Bureau in accordance with these Regulations.

ARTICLE 4.- THE SYSTEM OPERATOR

Section 4.01.- 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 System Operator.

Section 4.02.- Functions.

The System Operator shall ensure access to the Electric Power Grid for all buyers and sellers of electricity on non-discriminatory terms; ensure the reliability and adequacy of the Electric Power Grid; ensure efficient economic dispatch and scheduling of resources to serve loads; ensure that information relating to a Wheeling Customer's choice of Competitive Electric Power Service Company is conveyed in a timely manner to the Wheeling Customer; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in Puerto Rico. The System Operator shall:

- A) Administer, on a daily, hourly, and subhourly basis, the operational and market functions of the Electric Power Grid, 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 System Operator Procedures;
- B) Establish a Balancing Price Mechanism;

- C) Administer settlement and billing for services provided by the System Operator;
- D) Maintain the reliability and security of the Electric Power Grid, including the instantaneous balancing of generation and load and monitoring the adequacy of resources to meet demand;
- E) Provide for non-discriminatory access to the Electric Power Grid, consistent with this Regulation, Energy Bureau orders, and System Operator Procedures;
- F) Supervise, in coordination with the Transmission and Distribution Provider, the processing of all requests for Interconnection to the Electric Power Grid from owners of new generating facilities;
- G) With the Transmission and Distribution Provider, coordinate and schedule planned Transmission facility outages;
- H) Perform system screening security studies, in coordination with the Transmission and Distribution Provider;
- I) Plan the Electric Power Grid in coordination with the Transmission and Distribution Provider, in accordance with this Regulation including the effect of Integrated Resource Planning on transmission and distribution system needs;
- J) Conduct planning for integration of Renewable Resources as part of the Integrated Resource Planning function;
- K) Monitor generation planned outages;
- L) Develop protocols to be applied to microgrids and any other structural or service divisions or subdivisions or the Electric Power Grid (*e.g.*, minigrids.), as appropriate.
- M) Operate an electronic transmission information network, in coordination with the Transmission and Distribution Provider; and
- N) Perform any additional duties required under this this Regulation, Energy Bureau orders, and System Operator Procedures.

Section 4.03.- Planning.

The System Operator, in coordination with the Transmission and Distribution Provider, shall conduct Transmission System planning. The System Operator in coordination with the Transmission and Distribution Provider 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 System Operator shall evaluate and make recommendations to the Energy Bureau as to the need for any transmission facility, in coordination with the Transmission and Distribution Provider. These recommendations shall also be included and accounted for in the Integrated Resource Plans.

Section 4.04.- Information and coordination.

The Transmission and Distribution Provider and Transmission Service Customers shall provide such information as may be required by the System Operator to carry out the functions prescribed by this article, Energy Bureau orders, and System Operator Procedures. The System Operator 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 System Operator or a Transmission Service Customer.

Section 4.05.- Interconnection.

The System Operator and Transmission and Distribution Provider shall be responsible for complying with interconnection protocols subject to approval by the Energy Bureau, for the interconnection of generating facilities and Microgrids and Distributed Generators as applicable, that use the Transmission and Distribution System.

Section 4.06.- System Operator Budget.

- A) The System Operator must prepare a budget for each fiscal year setting forth:
 - 1) 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;
 - 2) the aggregate estimated expenditures, costs and expenses in the approved budget of the Independent Monitor;
 - 3) its estimated revenue from System Operator fees; and
 - 4) its estimated revenue from the System Operator tariff.
- B) The System Operator may amend its budget as needed.
- C) The budget shall be filed with the Energy Bureau.

Section 4.07.- Administrative fee.

The System Operator shall charge an administrative fee, and the fees it charges are subject to Energy Bureau approval, in accordance with this Regulation.

Section 4.08.- Reports.

- A) In addition to any other reporting requirements, the Transmission and Distribution Provider and each Competitive Electric Power Service Company shall on an annual basis provide to the System Operator historical information concerning peak loads and resources connected to the Electric Power Grid.
- B) The System Operator 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 System Operator must make it available to the public.
- C) The System Operator must provide to the Energy Bureau any other reports and information relating to its duties, responsibilities and functions that the Energy Bureau requests.

Section 4.09.- Operation of the Balancing Price Mechanism.

- A) General. The protocols and other rules and requirements of the System Operator that implement this section shall be developed in accordance with Section 5.04 of this Regulation 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 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.
- B) Except as otherwise directed by the Energy Bureau, the System Operator shall operate the Balancing Price Mechanism on a sub-hourly or hourly basis. The Balancing Price Mechanism shall identify and reveal the marginal system price that can be used by buyers and sellers of electricity to settle differences between electricity generation and electricity demand. The System Operator shall also design and implement efficient mechanisms to procure and compensate ancillary services.
- C) The System Operator shall submit a design for the Balancing Price Mechanism to achieve these outcomes in accordance with Section 4.02 of this Regulation.

- D) Collection and use of operational information. The System Operator shall develop procedures to gather and verify information on capabilities and variable costs associated with each available generation and demand-side resource. These will include rules regarding sub-hourly, 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 System Operator shall use this information in operating the Balancing Price mechanism.

Section 4.10.- 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 Provider of Last Resort and the Competitive Electric Power 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 Provider of Last Resort and each Competitive Electric Power 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 Provider of Last Resort and the Competitive Electric Power 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 5.- ENERGY BUREAU MONITORING.

- A) Two years from the date of the approval of this Regulation and, at least every two years thereafter, the Energy Bureau will evaluate the implementation of Wheeling,

including its operations and the current rules. The Energy Bureau may propose changes to these rules and implement measures to promote and enhance Wheeling.

- B) If in the judgment of the Energy Bureau there is evidence of market manipulation, market power abuse, discriminatory or preferential treatment within the protocols necessary for the implementation of Wheeling, the Energy Bureau, by Order may require the establishment of an Independent Monitor and shall set forth the structure, compensation, duties, and responsibilities of the Independent Monitor.

ARTICLE 6.- THE TRANSMISSION AND DISTRIBUTION PROVIDER

Section 6.01.- Non-Discriminatory Transmission Access.

- A) Purpose. Access to the Electric Power Grid should be organized in such a way as to:
 - 1) Facilitate competition in the production and sale of Generation Services;
 - 2) Ensure the reliability of electric 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 Bureau-approved tariffs, System Operator Procedures, generation interconnection rules, and microgrid interconnection rules.
- C) Obligation to provide Transmission Service. The Transmission and Distribution Provider 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 manage and operate its transmission facilities, the Person assigned to manage and operate the facilities shall carry out all the responsibilities of the Transmission and Distribution Provider.
 - 2) The Transmission and Distribution Provider shall Interconnect its facilities with new generating sources and Microgrids and construct facilities needed for such an Interconnection, in a non-discriminatory manner, in accordance

with this Article and the tariffs, procedures, and rules stated in Section 6.01(B) of this Regulation. The Transmission and Distribution Provider shall use all reasonable efforts to communicate promptly with Transmission Service Customers to resolve any questions regarding the requests for service in a non-discriminatory manner. If the Transmission and Distribution Provider or a Transmission Service Customer 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 6.02.- Transmission and Distribution Provider Roles and Responsibilities.

- A) Transmission and Distribution Provider responsibilities. The Transmission and Distribution Provider will plan, construct, and maintain its Transmission System and Distribution System in order to provide Transmission Service Customers and Distribution Service Customers with Transmission Service and Distribution Service in accordance with this Regulation. This shall be done in accordance with good utility practices and pursuant to Bureau-approved tariffs, System Operator Procedures, integrated resources plans, generation interconnection rules, and microgrid interconnection rules. The Transmission and Distribution Provider 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 and distribution capacity to ensure adequacy and reliability of the network to deliver power to Transmission Service Customer and Distribution Service customer loads. In line with the Integrated Resource Plan, as approved by the Energy Bureau, and in coordination with the System Operator, the Transmission and Distribution Provider will plan, construct, and maintain facilities that are needed to relieve transmission and distribution constraints.
- B) Construction of new facilities. If additional transmission or distribution facilities are needed to provide Transmission Service or Distribution Service pursuant to a request for such service or to alleviate a constraint, the Transmission and Distribution Provider shall, in accordance with Bureau-approved tariffs, System Operator Procedures, integrated resources plans, generation interconnection rules, and microgrid interconnection rules, construct or acquire the facilities necessary, including through nonwires alternatives, to allow the Transmission Service or Distribution Service to be provided in accordance with good utility practice.
- C) Curtailment of service. In an emergency situation, as determined by the System Operator and at its direction, the Transmission and Distribution Provider 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.

Section 6.03.- Metering and Billing.

The Transmission and Distribution Provider shall have the responsibility to meter the usage of all Wheeling Customers and send Bills, irrespective of whether a Wheeling Customer is served by the Provider of Last Resort or a Competitive Electric Power 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 8.01 of this Regulation. In the event that a Competitive Electric Power 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 Competitive Electric Power 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 8.01 of this Regulation. The Transmission and Distribution Provider may enter into a different arrangement for billing and metering with a Competitive EPSC.

ARTICLE 7.- OBLIGATIONS OF THE PROVIDER OF LAST RESORT

Section 7.01.- Provider of Last Resort.

- A) PREPA shall operate as the Provider of Last Resort 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 Provider of Last Resort, the Energy Bureau will hold a hearing and render a decision with respect to the entity that shall be responsible for service.
- B) The Provider of Last Resort shall have the obligation to provide power to any Wheeling Customer under the following circumstances:
 - 1) The Customer elects not to be served by an Competitive Electric Power Service Company.
 - 2) The Competitive Electric Power Service Company fails to provide sufficient energy to meet the Wheeling Customer's load for any given period. In such an event, the terms of the operating agreement as described in Section 8.01 shall apply.
 - 3) The Competitive Electric Power Service Company defaults on its contract with a Wheeling Customer and fails to find another Competitive Electric Power Service Company to assume its contracts under the same prices, terms, and conditions and the Wheeling Customer does not find another Competitive Electric Power Service Company to provide service.

- C) In the event that a Wheeling Customer takes service from the Provider of Last Resort, the Wheeling Customer's rates shall be set in accordance with the existing applicable tariff as filed with the Energy Bureau.
- D) In the event that a Competitive Electric Power Service Company defaults by failing to provide sufficient power to meet the Wheeling Customer's load for any given period, the Competitive Electric Power Service Company shall continue to charge the Wheeling Customer under the rates and terms of its contract with the Wheeling Customer and shall be liable to compensate the Provider of Last Resort for its costs of providing service in accordance with the provisions of the tariff filed in paragraph (E) below, unless the contract between the Competitive Electric Power Service Company and the Wheeling Customer sets forth a different arrangement.
- E) The Provider of Last Resort shall file tariffs setting forth the terms and conditions for service along with its operating agreement with Competitive Electric Power Service Companies for the Energy Bureau's approval. The terms of the tariffs and operating agreements as it pertains to service shall apply.

Section 7.02. – Provisions for Wheeling Customers Returning to the Provider of Last Resort.

- A) Any Wheeling Customer that has chosen to return to the Provider of Last Resort from a Competitive Electric Power Service Company shall be required to stay with the Provider of Last Resort for a minimum period of six (6) months.
- B) In the event that a Wheeling Customer's peak load exceeds five (5) megawatts, the Wheeling Customer shall provide the Provider of Last Resort a minimum of sixty days notice of its intent to return to receive its service.

ARTICLE 8. - OPERATING AGREEMENTS

Section 8.01.- Proposed Operating Agreement between the CEPSC, the DSP and the Transmission and Distribution Provider.

- A) The Competitive Electric Power Service Companies shall enter into Operating Agreements with the Provider of Last Resort and the Transmission and Distribution Provider as necessary to set forth operating arrangements.
- B) The Provider of Last Resort and the Transmission and Distribution Provider shall file, before the Energy Bureau, an application for approval of the terms and conditions contained in a proposed operating agreement between the Provider of Last Resort and the Competitive Electric Power Service Company, and the Transmission and Distribution Provider and the Competitive Electric Power Service Company. The proposed agreement shall be fair and reasonable and shall not discriminate against

any Competitive Electric Power 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 Competitive Electric Power Service Companies and shall include but not be limited to, as applicable to the Provider of Last Resort and/or the Transmission and Distribution Provider, the following:

- 1) A statement that in the event of a default, the Provider of Last Resort shall assume responsibility for providing Generation Service to the defaulting Competitive Electric Power Service Company's Wheeling Customers.
- 2) In the event that a Competitive Electric Power Service Company or set of Competitive Electric Power Service Companies does not deliver sufficient amounts of energy to meet the entirety of one or more Wheeling Customers' consumption, the Provider of Last Resort shall provide Generation Service to those Wheeling Customers sufficient to cover any energy shortages. The Provider of Last Resort shall, in its agreements, set forth any fees or charges to the Competitive Electric Power 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 Competitive Electric Power Service Company is deemed to not be sufficiently creditworthy in accordance with customary U.S. standards in the energy market. The security shall cover events under which the Competitive Electric Power Service Company defaults by breaching its contract with the Wheeling Customer or providing insufficient energy to meet its Wheeling Customer's load. The security provided by the Competitive Electric Power Service Company shall cover a minimum period of 60 days and a maximum period of 90 days and shall be based on providing sufficient coverage for the number of Wheeling Customers to whom the Competitive Electric Power Service Company is providing energy services.
- 4) Requirements and protocols for the exchange of data, materials, or other information between the Provider of Last Resort, the Transmission and Distribution Provider, and the Competitive Electric Power 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 Provider of Last Resort 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 Competitive Electric Power Service Company treat that information as confidential.
- 7) In the exchange of information between the Provider of Last Resort, the Transmission and Distribution Provider, and the Competitive Electric Power Service Company, a description of what information is to be treated as confidential.
- 8) Information on billing options for the Competitive Electric Power Service Company in terms of the information that can be included on the Customer Bill regarding the Customer's charges due to the Competitive Electric Power Service Company.
- 9) The terms for the Transmission and Distribution Provider reimbursing the Competitive Electric Power Service Company for amounts collected for the provision of services to the Wheeling Customer as set forth in Section 6.03 of this Regulation. 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, Provider of Last Resort, and the Competitive Electric Power Service Company when a Wheeling Customer makes a partial payment.
- 10) A description of the Metering services the Transmission and Distribution Provider can offer the Competitive Electric Power Service Company's Wheeling 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 Competitive Electric Power Service Company and the Provider of Last Resort, and both of them, in turn, 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. In its evaluation process, the Energy Bureau will consider any comments provided by the public.

ARTICLE 9.- CODES OF CONDUCT

Section 9.01.- Applicability.

This Article shall apply to any and all entities under the jurisdiction of the Energy Bureau, including but not limited to: PREPA; the Provider of Last Resort; the Transmission and Distribution Provider; the System Operator; the Electric Power Generation Companies ; the Competitive Electric Power 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 9.02.- Purpose.

- A) This Article is established in order to create fair and functioning wheeling that provides Wheeling Customers with the optimum array of choices, and with the purpose of avoiding any form of undue discrimination against any Competitive Electric Power Service Company and its Wheeling Customers. This Article 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.

Section 9.03.- 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 Competitive Electric Power Service Companies.
- B) Any entity that is engaged in the provision of 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 9.04.- Codes of Conduct.

- A) The Provider of Last Resort shall not establish a separate affiliate engaged in wheeling.
- B) The Provider of Last Resort is required to provide Generation Service to those Wheeling Customers who do not switch to a Competitive Electric Power Service Company for its supply of electricity, and to those Wheeling Customers whose Competitive Electric Power Service Company defaults as may be applicable, in accordance with Section 7.01 of this Regulation.
- C) 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.
- D) 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.
- E) 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 Competitive Electric Power 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.
- F) Any Monopoly Service Provider shall not share with the Affiliated Energy Service Provider any information it receives from an Unaffiliated Competitive Service Provider.
- G) Any Monopoly Service Provider shall maintain a list of Certified Competitive Electric Power 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 a Competitive Electric Power Service Company beyond the list of qualified service providers on the list, which shall be arranged in a random, rotating order.

- H) 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.
- I) Any kind of joint advertising or marketing between the Monopoly Service Provider and the Affiliated Energy Service Provider is prohibited.
- J) 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.
- K) 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.
- L) 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.
- M) 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.

- N) 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.
- O) 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.
- P) 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.
- Q) 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.
- R) An annual compliance audit shall be conducted by an independent auditor, filed with the Energy Bureau, and made available to public.
- S) 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.
- T) 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.

- U) The Provider of Last Resort and Competitive Electric Power Service Companies shall report to the Energy Bureau any evidence of market power abuse among the Competitive Electric Power Service Companies.
- V) With respect to any generation owned by the Transmission and Distribution Provider or an affiliate of the Transmission and Distribution Provider, the Transmission and Distribution Provider shall not discriminate in favor of generation owned by the Transmission and Distribution Provider or an affiliate or provide any competitive advantage or preferential treatment to that generation. This includes, but is not limited to: the preparation of studies; designing interconnection facilities or identifying any additional transmission facilities that are needed to interconnect the generation; and, requests for interconnection.
- W) The Transmission and Distribution Provider shall not discriminate in favor of its own generation or generation owned by an affiliate with respect to operational matters including but not limited to daily scheduling and outage scheduling and shall be required to follow procedures that are consistent with good utility practices.

Section 9.05.- 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 10.- CERTIFICATION OF COMPANIES

Section 10.01.- Certification.

Any Person who offers Generation Service through Wheeling shall file a certification application with the Energy Bureau, pursuant to the provisions of Regulation 8701 prior to providing any such services.

ARTICLE 11.- WHEELING RATES

Section 11.01.- Wheeling Rates.

The Energy Bureau will establish, through an Order, the rates that the Transmission and Distribution Provider would charge Wheeling Customers for the use of the transmission and/or distribution system.

Section 11.02.- Wheeling Rates Procedure.

The Energy Bureau will establish through Order the procedure to determine the Wheeling rates, in accordance with applicable Regulations. Such procedure will require the unbundling of the costs associated to the generation, transmission, and distribution functions of the PREPA system. The Energy Bureau may establish a different procedure to determine PREPA's unbundled costs.

ARTICLE 12.- RECONSIDERATION AND JUDICIAL REVIEW

Section 12.01.- Reconsideration.

Any person who is not satisfied with a decision made by the Energy Bureau under this Regulation may file, within the term of twenty (20) days from the date copy of the notice of such decision is filed by the Energy Bureau's Clerk, a request for reconsideration before the Energy Bureau wherein the petitioner sets forth in detail the grounds that support the request and the decisions that, in the opinion of the petitioner, the Energy Bureau should reconsider.

Section 12.02.- Judicial Review.

Any person dissatisfied with a final decision of the Energy Bureau under this Regulation may, within thirty (30) days from the date copy of notice of a final decision addressing a request for reconsideration is filed by the Energy Bureau's Clerk, or within thirty (30) days from the date copy of the notice of an Energy Bureau final decision is filed by the Energy Bureau's Clerk, if a request for reconsideration has not been filed, appear before the Puerto Rico Court of Appeals by way of writ of judicial review, pursuant to Section 4.2 of the LPAU and the applicable Rules of the Court of Appeals.