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

**IN RE: REGULATION ON  
WHEELING**

**CASE NO.: CEPR-MI-2018-0010  
SUBJECT: Notice of Proposed Regulation and  
Request for Public Comments.**

**DATE: Monday, August 26, 2019**

**COMMENTS OF THE SOLAR AND ENERGY STORAGE ASSOCIATION OF  
PEURTO RICO (SESA-PR)**

SESA-PR thanks the Puerto Rico Energy Bureau's ongoing development of a regulation on wheeling. As discussed in the March 1st Resolution and Order, the Energy Bureau has the power and duty to create and regulate a “Regulation on Wheeling, pursuant Act 57-2014 and Act 38-2017”, as well as Act 17-2019.

**About SESA-PR**

SESA-PR is the Puerto Rico trade association representing companies who develop solar and energy storage systems at all scales on the island. Our member companies focus on marketing, design, manufacturing, financing, procurement, installation and maintenance of solar and/or energy storage systems. Founded in February 2018, SESA-PR is the local affiliate of the national Solar Energy Industries Association (SEIA). SESA-PR has commented and testified on the March 1<sup>st</sup> version of proposed wheeling rules as well.



## SESA Comments on Procedure

1) We appreciate the publication and solicitation of stakeholder feedback of a new iteration of draft wheeling rules. There are some aspects of comment solicitation that could make the crafting of useful comments more efficient:

- A) Publish proposed rules in “searchable PDF” format. While the legibility of the proposed rules is adequate, the publication in non-searchable format could result in loss of valuable time in stakeholder analyses of proposed rules.
- B) Publish a version of revised rules which makes it clear what the changes are. Using the legislative markup format could be applicable here, so that it’s clear what the changes are in proposed rule changes. Alternatively, a “track changes” version of the new rules versus previous version of the rules would also provide transparency.
- C) Publish the Energy Bureau’s rationale for each change made to the revised rule.
- D) Publish the Energy Bureau’s response to comments submitted by stakeholders on the previous version of the rule.

**2) Lack of explanation regarding reasons for changes in the proposed rules.** While some changes between the March version of these proposed rules and the July version are minor and their intent is apparent, other changes drastically and substantially impact the substance of the rule. Many of the substantial changes appear to have been made without any input from stakeholders on the March version suggestion that they be made. Without any explanation of



why the Energy Bureau made these changes, especially the changes that weren't suggested by any stakeholders, it makes it impossible for stakeholders to know the rationale behind many of the changes proposed, and therefore difficult to comment on whether large swaths of deleted, and added, language are in fact appropriate or not.

We request that when subsequent version of draft or final rules are published by the Bureau, that they include the Bureau's rationale for general and specific changes, that they be published in searchable PDF format, and that they include an easily understandable version contrasting the next version of the rules with the previous versions.

**3) Timing of public hearing versus written comments** – For the first iteration of public input on the previous publication of the draft wheeling rule in March and April, the public comment day was scheduled after the written comment and written response comment period. For this current procedure, the public verbal comment day was scheduled for two days before the written comment deadline.

Scheduling the public verbal comment day after both rounds of written comments allows the possibility of stakeholders having formulated written comments, and read other stakeholders comments and response comments, and the verbal comment day therefore being informed of other stakeholders' thinking on the proposed rules.

While there are benefits to either procedural timing, it would help stakeholders' ability to anticipate preparation of both written and verbal input if the Bureau were to choose a standard rationale and implementation of timing of written and verbal comments for draft rules.



## **SESA General Comments on test of Proposed Rule**

The wheeling regulations are important to the solar and storage industry. Currently the only mechanisms for solar and storage systems on the island are via Net Metering (for systems under 5 Megawatts) or utility-scale solar projects, which to date have required case-by-case negotiations with PREPA. The vast majority of utility-scale projects planned on the island have not been constructed, despite having been negotiated and finalized with PREPA.

Although it's possible that some or all of these utility-scale projects may eventually move forward, PREPA is currently not considered to be a "credible offtaker", and there is no predictable timeline for when, or if, they might ever be considered a credible offtaker in the future.

Our anticipation is that the final published rules on wheeling will establish an effective and comprehensive framework for private developers who wish to construct utility-scale systems, contract with creditworthy credible private or public offtakers, and utilize some portion of PREPA's infrastructure to "Wheel" the electricity from the point of production to the point of consumption.

We would like to note, however, that even the most perfect wheeling rules will be unusable by the industry until the conclusion of the separate docket establishing the pricing paradigm required for determination of the financial contractual component of wheeling<sup>1</sup>. If this paradigm establishes financial values that are too high, then these wheeling rules will be useless, as no projects could move forward if the pricing to use PREPA's transmission and/or distribution infrastructure is too high.

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<sup>1</sup> The "Unbundling Proceeding", Docket No NEPR-AP-2018-0004



We would also like to implore the urgency of the finalization of both the wheeling and the unbundling docket. Beyond the urgency of climate change mitigation effects, and improved air quality due to eliminated pollution from fossil fuel plants, the construction of projects requiring wheeling will be essential to Puerto Rico's compliance with Law 17. Law 17 establishes the most rapid transition away from fossil fuels ever attempted in the nation – possibly in the world – requiring Puerto Rico to go from 4% renewable energy today to 40% by 2024 (to meet 2025 requirements). This transition will require many Gigawatts of renewables, at a cost of many billions of dollars; and currently all privately developed and contracted projects with offtakers other than PREPA cannot move forward. Meanwhile, the federal tax incentives applicable to all solar projects is scheduled to rapidly disappear.

We note also that it isn't apparent what the process that is to take place when a customer and a provider wish to enter into a Wheeling agreement. Questions arise such as:

- Must the customer and/or the provider ask permission from the Energy Bureau to enter into such an agreement?
- If so, what specific information must be included in an application for permission of approval from the Energy Bureau?
- Are details of such agreements made available for comment by other stakeholders?
- Are not-confidential aspects of all agreements published publicly?

We also question why all references to customer aggregation which were included in the March version of this rule have been deleted in this version. If the Bureau has decided to open a separate proceeding to address customer aggregation, please state this. Customer-sited solar is the primary scale of renewable energy that has been constructed in Puerto Rico, and is essentially



the only scale of systems being constructed today. Since customer aggregation could play a key role in accelerating solar and storage deployment in the short and medium term, we encourage that the Bureau consider restating the definitions and text similar to what was included in the March version of these draft rules.

Our comments below are focused on those elements of the proposed wheeling rule which directly and indirectly impact the possibility of solar and storage projects, which are dependent upon wheeling, moving forward.

### **SESA Specific Comments on Text of Proposed Rule**

**Section 1.02 – Please be much more specific in citing upon which statutory authority these rules are based.** Given the extreme circumstances involved with Puerto Rico’s electric grid, it should be assumed that any action taken by the Energy Bureau will be challenged in court by one or more parties. If the statutory authority, including reference to specific sections and subsections which trigger the need for the Energy Bureau’s creation of rules, aren’t cited in this section, it would leave the rules vulnerable to arguments during judicial review that the Bureau overreached its statutory authority with the creation of these rules.

**Section 1.07 – Please specify which specific regulations are required for the wheeling regulation to be used, including which regulations actually exist today, which regulations don’t exist today, and the projected timeline for creation or finalization of any regulations essential to the meaningfulness of the wheeling regulation.**



**Section 1.10 B(6).** To allow for the wheeling of the aggregation of residential customers, add “Residential Customers” among the examples allowed following the words “...Person’s usage, including...”

**Section 1.10 B(6).** Defining “Wheeling customer” as equivalent to “Customer” doesn’t allow for a distinction between customers with wheeling contracts and customers without wheeling contracts. Consider altering the definitions to clarify this distinction.

**Section 1.10 B(26).** Defining “interconnection” as being equivalent to “connection” could inadvertently include systems which are “connected” to the power grid, but never backfeed power onto the grid, as falling under this regulation. Since this regulation is limited only to the wheeling of electricity from the point of production onto the power grid, clarifying language could be added to this definition to avoid misinterpretation to include customers which don’t actually produce any electricity to wheel anywhere.

**Additionally, language could be added to Section 4.05 “Interconnection”** could be added to the phrase “...for the Interconnection of generating facilities and Microgrids and Distributed Generators as applicable, that use the Transmission and Distribution System,” to clarify that systems that are connected to the grid but don’t actually export any electricity to the power grid, and therefore don’t involve power to wheel, aren’t subject to these rules.

**Section 1.10 B(33).** Since the phrase and concept of a “non-bypassable charge” is not used in this rule, and also is not legal per the passage of Law 17, the inclusion of this definition is moot.

**Section 1.10 B(51).** Although Act 57-2014 defines “Wheeling” as “...the transmission of electricity from one system to another through Puerto Rico’s electric power grid”, the transmission of, and tracking of, actual electricity from one point to another using a power grid is



literally impossible unless 100% of the infrastructure used to transmit said electricity is dedicated only for that purpose, between the specific producer and the specific offtaker of said electricity. Although definitions included in rules normally mirror definitions in laws predating the need for rules, it should be noted that any wheeling rules will be useless if this definition is maintained and enforced. The tracking of specific electrons from point of production to point of consumption is physically impossible for the same reasons that the tracking of the injection of water into a water grid is physically impossible to route to the point of consumption. Drops of water will go to the most nearby point of consumption on a water transmission and distribution system, and electrons will go to the closest point of demand on an electric transmission and distribution system.

For example, if a theoretical industrial power user with 20 MW of demand is located in close proximity to a fossil fuel power generator with 100 MW of capacity, and contracts for the power output from a new utility scale solar facility with 20 MW of production that's located 20 miles away, and there's a power consumer with more than 20 MW of demand located in close proximity to the solar facility, then in practice 100% of the industrial power customer's consumption will continue to come from the natural gas plants, and 100% of the actual power output from the solar facility will go elsewhere on the grid.

In this case, given the responsibility of the Energy Bureau to draft rules which enable the meaningful implementation of the law, we recommend avoiding mirroring the physically impossible definition in the text of the law, and instead defining wheeling in such a way that producers of electricity can contract with consumers of electricity, utilizing PREPA's infrastructure, that does not require or imply the requirement of physical delivery of electrons from point of production to point of consumption. As a practical matter, wheeling (unless





there's dedicated transmission and / or distribution lines) means a *financial transaction* representing power produced at one point on the grid and consumed at another point.

**Section 3.01 (B)** Please clarify if the phrases “invest in the system...subject to Energy Bureau approval” and “plan, maintain, and invest in that system...subject to Energy Bureau approval” refer to the need for pre-approval from the Energy Bureau for any and all expenditures to the power grid (ie, via a rate case or other separate formal proceeding), or if these phrases refer to something else.

**Section 4.06 (C)** Please clarify if the phrase “The budget shall be filed with the Energy Bureau” means if the budget shall be filed for the approval or rejection by the Energy Bureau, or filed simply to inform the Energy Bureau, or something else.

**Section 4.09 (B)** Please clarify the meaning of the phrase “...support a level playing field for all resources, including Distributed Energy Resources” applies to this rule. If it refers to special financial consideration being assigned to the value of Distributed Energy Resources to the utility grid, the utility, and/or to utility customers, please specify this, and also please specify how such a “level playing field” might be developed and implemented.

**Section 4.10 (A)** Consider striking this subsection, or erasing the beginning phrase “Given the high cost of energy in Puerto Rico and the island’s aging generation fleet”, as the remainder of this subsection is applicable regardless of the cost of energy or age of the generation fleet.

**Section 4.10** Consider whether this entire section is necessary, given the existence of extensive IRP rules.

**Section 7.02 (A)** Consider the impact of this subsection; if a customer returns to the Provider of Last Resort out of necessity because of the failure of another Provider, and the



Provider of Last Resort doesn't have adequate or reliable enough power to serve said customer, should said customer not have the ability to engage with an agreement with a different Provider after a period of time of less than 6 months?

**Section 7.02 (B)** If a customer needs to leave a Provider because of failure of the Provider, should it be required that sixty days notice be given to the Provider of Last Resort? For example, if a customer was dependent upon a Provider, but the Provider's facility is destroyed because of a hurricane, should the customer not have the ability to return to the Provider of Last Resort?

**Section 9.04 (P)** Can Energy Bureau rules regulate the amount of time an employee is with an affiliate to be a minimum of 2 years? What if the affiliate goes out of business within 2 years, or otherwise wants to decide not to retain a given employee?

### **SESA Recommendations on Next Steps**

Upon review of stakeholder comments, if the Energy Bureau finds substantial agreement on the structure and details of concepts and specific text included in these draft Wheeling Regulations, then we recommend proceeding with publication of a proposed Final Rule.

If however the Bureau finds that stakeholder comments vary widely in their feedback about the structure and / or substance of this draft, then we recommend the Bureau host interactive, professionally facilitated workshops on the topic, similar to workshops focused on Interconnection, Renewable Energy Credits, and Distributed Generation hosted this summer.

We acknowledge the broad array of policymaking required of the Energy Bureau at this time, and commend the Bureau on its moving forward with these important rules in tandem with other inter-related rules. Final publication of these rules is important to happen in a timely



manner – however it's also important that they be well understood and, if possible, every effort should be made to facilitate agreement among producers, consumers, the utility and other crucial stakeholders which will be integral to the implementation and utilization of wheeling.

Especially if the separate Unbundling Docket is going to take a period of months to reach final rule publication, it could be prudent to gather more comprehensive facilitated stakeholder input on Wheeling, perhaps combining a series of workshops on the combined topics of Wheeling and Unbundling, since implementation of the Wheeling rules is completely dependent on the Unbundling docket.

Thank you for the opportunity to submit these comments.

Respectfully Submitted on August 26, 2019,

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