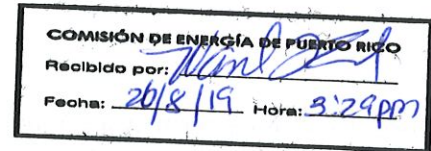


In re: Regulation on Wheeling  
Case Number: CEPR-MI-2018-0010



August 26, 2019

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

Dear Mr. Avilés-Deliz,

National Public Finance Guarantee Corporation (“National”) hereby submits these comments regarding the Puerto Rico Energy Bureau’s (the “Bureau”) revised proposed Regulation for Wheeling (the “Revised Proposed Regulation”), in response to the Bureau’s Notice of Proposed Regulation and Request for Public Comments issued on July 23, 2019. National is the single largest creditor of the Puerto Rico Electric Power Authority (“PREPA”), and holds or insures a significant amount of the outstanding bonds issued by other Commonwealth entities, and therefore has a significant stake in the implementation of a fair, transparent, and ultimately successful wheeling regime for PREPA.

### Background

On March 1, 2019, the Bureau promulgated the prior proposed wheeling regulation (the “Original Proposed Regulation”).<sup>1</sup> The Original Proposed Regulation comprised 82 pages and covered topics such as industry/market structure, unbundling, proceedings to implement wheeling, roles and responsibilities of different system participants, operating agreements, codes of conduct, and standards for energy service companies.<sup>2</sup> The Bureau solicited public comments on the Original Proposed Regulation.<sup>3</sup>

National submitted initial comments regarding the Original Proposed Regulation on April 1, 2019. Among other things, National observed that: (i) development of this regulation is occurring simultaneously with other important transformation processes, potentially creating ambiguity about the end-state electrical system; (ii) the unbundling plan associated with this regulation is complicated and requires technical studies that PREPA has had trouble completing in the past; and (iii) the timeline for implementing wheeling appears to be ambitious, at least based on prior experiences.<sup>4</sup>

The Bureau thereafter granted parties additional time to review each other’s comments and submit supplemental comments, if desired. National submitted supplemental comments regarding the Original Proposed Regulation on May 8, 2019. National’s supplemental comments reiterated the points described above, as well as observing that: (i) implementation of wheeling

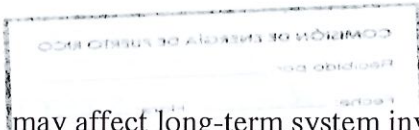
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<sup>1</sup> *Notice of Proposed Rulemaking and Request for Public Comments*, Case No. CEPR-MI-2018-0010 (Mar. 1, 2019).

<sup>2</sup> *See generally id.* at Ex. B.

<sup>3</sup> *See id.* at pp.1-4 & Ex. A.

<sup>4</sup> *See generally National’s Comments to Proposed Wheeling Regulation*, Case No. CEPR-MI-2018-0010 (Apr. 1, 2019) (“National’s Initial Comments”).



may affect long-term system investment and contracting; (ii) an open market in Puerto Rico should be carefully considered and studied, in light of geographic and economic challenges; and (iii) any such studies should be harmonized with the Integrated Resource Plan (“IRP”) proceeding.<sup>5</sup>

On July 23, 2019, the Bureau promulgated the Revised Proposed Regulation.<sup>6</sup> The Revised Proposed Regulation comprises 31 pages (less than half the length of the Original Proposed Regulation) and now covers fewer topics, in a more limited manner: industry/market structure, roles and responsibilities of different system participants, and codes of conduct, for example.<sup>7</sup> The Bureau also solicited public comments on the Revised Proposed Regulation.<sup>8</sup> National submits these comments in response.

### Comments

At a high level, National is concerned that the Bureau appears to have approached the revision process not by specifically accounting for the comments of National and other parties, but rather by deleting most of the substantive content in the Original Proposed Regulation.<sup>9</sup> A comparison of the Original and Revised Proposed Regulations shows that large swaths of the regulation have been struck—without necessarily being replaced with anything. Indeed, this is readily confirmed by the fact that the Revised Proposed Regulation dropped to 31 pages from 82. And many of those remaining 31 pages are prefatory material like definitions,<sup>10</sup> as opposed to substantive material providing guidance on how and when wheeling will be implemented.

National does not mean to suggest that length is the only, or even the primary, yardstick by which to measure a proposed regulation. Yet, given the far-reaching nature of wheeling, its interconnectedness with other important transformation processes, and the various relevant issues identified by parties during prior rounds of comments, a deletion-centric approach does not seem to be moving the regulation in the best direction. Thus, National reiterates its prior comments that further analysis of wheeling is necessary, which should take into account extant challenges, transformation processes, and the ongoing IRP.<sup>11</sup>

In terms of specific examples where substantive content was removed, it appears that the Bureau deleted much of the content in the Original Proposed Regulation regarding wheeling

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<sup>5</sup> See generally *National’s Supplemental Comments to Proposed Wheeling Regulation*, Case No. CEPR-MI-2018-0010 (May 8, 2019) (“National’s Supplemental Comments”).

<sup>6</sup> See *Notice of Proposed Regulation and Request for Public Comments*, Case No. CEPR-MI-2018-0010 (July 23, 2019).

<sup>7</sup> See generally *id.* at Ex. A.

<sup>8</sup> See *id.* at pp.1-2.

<sup>9</sup> At the August 22 public hearing on the Revised Proposed Regulation, Javier Rúa of Sunrun also voiced a lack of understanding as to how the Bureau considered parties’ prior comments when making revisions.

<sup>10</sup> See, e.g., Revised Proposed Regulation at pp.5-11 (approximately 6 pages of definitions—or nearly 20% of the regulation); pp.1-3 (3 pages of title page and table of contents—or nearly 10% of the regulation); pp.4-5 (approximately 1.5 pages of other prefatory language—or nearly 5% of the regulation).

<sup>11</sup> See generally *National’s Initial Comments*; *National’s Supplemental Comments*.



proceedings—which were presumably meant to establish what wheeling would involve, and how it would be accomplished. *Compare* Original Proposed Regulation at pp.25-32, Articles 5 & 6, *with* Revised Proposed Regulation (deleting these Articles). By removing any discussion of such proceedings, it is now even less clear what course will be followed to implement wheeling. Indeed, major deletions like these have left the Revised Proposed Regulation as more of a general policy statement than a detailed regulation. The goal is stated, but not the path to it.

As another example, the Bureau removed almost all content related to unbundling, even though—as observed in the Original Proposed Regulation—it is “necessary” to accomplish wheeling. Original Proposed Regulation at p.18 (stating unbundling is necessary because it “separate[s] the various functions that PREPA performs and [] allocate[s] the costs appropriately”). The Revised Proposed Regulation, by contrast, contains only one brief paragraph mentioning unbundling. *Compare* Original Proposed Regulation at pp.18-25, Article 4, *with* Revised Proposed Regulation at p.31, § 11.02. Though the Revised Proposed Regulation still acknowledges that unbundling is “require[d],” it leaves this area an open question by vaguely stating, “The Energy Bureau may establish a different procedure to determine PREPA’s unbundled costs.” Leaving such large open questions does not promote stability for stakeholders and potential investors.<sup>12</sup> Indeed, it is conceivable that some entities could take advantage of regulatory ambiguity to advance their own interests at the expense of the electrical system.

It is true that National previously observed the potential difficulty of PREPA completing the predicate unbundling studies.<sup>13</sup> But that was not to say that unbundling should simply be struck from the regulation. Indeed, National respectfully suggests that the way to overcome difficulties like these is to address them head-on, not to avoid them by reducing clarity.

Finally, National is concerned that an issue identified by several parties in prior rounds of comments—the degree of separation between entities serving different system functions—has not been adequately addressed. Several stakeholders with divergent interests agreed that system roles should be fulfilled by different entities, in order to ensure transparency and fairness.<sup>14</sup> The Revised Proposed Regulation seems to concentrate all or substantially all these roles in PREPA for an unknown period of time—*i.e.*, “[u]ntil the transformation of the energy sector ... takes place.”<sup>15</sup> Revised Proposed Regulation at p.13, § 3.01. Specifically, it states that PREPA shall be the Provider of Last Resort, the Transmission and Distribution Provider, and the System Operator (*id.*), which shall encompass numerous roles including—as especially relevant to

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<sup>12</sup> Another open question arises from the abbreviated Article 11, which mentions wheeling rates. *See* Revised Wheeling Regulation at p.30, § 11.01 (“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.”). Would such rates be set based on a Cost of Service Study, in an open market, or in some other way? It is not clear.

<sup>13</sup> *See* National’s Initial Comments at pp.1-2.

<sup>14</sup> *See, e.g.,* AES-PR’s Motion to Facilitate Additional Miscellaneous Comments to the Proposed Rulemaking on Public Wheeling, CEPR-MI-2018-0010, at p.2 (May 7, 2019); EcoEléctrica LLC’s Comments to Regulation on Wheeling Proposed by the Puerto Rico Energy Bureau, CEPR-MI-2018-0010, at pp.12-13 (May 8, 2019); Comments of the Solar + Storage Association of Puerto Rico, CEPR-MI-2018-0010, at pp.3-4 (Apr. 15, 2019).

<sup>15</sup> It is not entirely clear what shall constitute the completion of transformation for these purposes, and therefore how long PREPA will remain in these roles.

wheeling customers and electric service companies—metering and billing. *See id.* at p.22, § 6.03; *see also id.* at p.21, § 6.02 (discussing interaction between ostensibly different roles that would, however, all be filled by PREPA until transformation is “complete”). The concerns expressed by several parties about creating a fair, transparent, and segmented wheeling system therefore do not appear to have been addressed.

In sum, National is concerned that the Bureau’s apparent approach to drafting the Revised Proposed Regulation—wholesale deletions of entire sections—has further decreased the clarity of what was already a relatively murky and complicated process. The Revised Proposed Regulation no longer details how wheeling proceedings will occur, how unbundling will be accomplished, or how independence will be coherently maintained between different system roles that remain concentrated in PREPA for at least the near future. While National certainly appreciates the Bureau’s decision to issue a revised regulation and solicit further stakeholder engagement, National respectfully suggests that further time and effort be spent outlining the specific details of this market restructuring to ensure that future rules and processes are transparent and reasonably align various stakeholders’ interests.

Submitted by:

/s/ John Jordan

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