

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

NEPR Received: Aug 26, 2019 9:26 PM
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IN RE:

REGULATION ON WHEELING

CASE NO.:

NEPR-MI-2018-0010

SUBJECT:

PREPA's Initial Comments

INITIAL COMMENTS OF THE PUERTO RICO ELECTRIC POWER AUTHORITY

On July 23, 2019, Act 17-2019 governing the electricity industry was enacted after the Puerto Rico Energy Bureau (“Bureau”) issued initial proposed wheeling regulations. As such, the Bureau developed a new proposal for regulations implementing wheeling for power producers to serve industrial and large commercial (“C&I”) customers (“proposed Wheeling Regulations”) and set an initial comment deadline of August 24, 2019, and a reply comment deadline of September 3, 2019. The Puerto Rico Electric Power Authority (“PREPA”) appreciates the Bureau’s efforts regarding wheeling, and respectfully requests consideration of the following initial comments. PREPA’s initial comments are organized in two parts: Policy Comments discussing critical policy issues, and Specific Comments addressing specific topics in the draft Wheeling Regulations.

PREPA recommends that the Bureau not adopt the proposed rules in their current form as non-compliant with the law, overbroad and premature and, instead, conduct a stakeholder technical conference and workshop process to arrive at appropriate and technically viable large C&I Wheeling Regulations. PREPA looks forward to working constructively with the Bureau regarding the rules for wheeling to large C&I customers.

POLICY COMMENTS

Consideration of Act 57-2014 Wheeling Service Factors to be Considered

The proposed Wheeling Regulations do not appear to consider in any meaningful or deliberate manner the different required elements, established in Act 57-2014, as amended (“Act 57-2014”), when proposing a regulatory framework for Wheeling. For example, Section 6.30 of Act 57-2014, – Wheeling, states that the Energy Commission (now, the Bureau) must consider, among others, the following factors when regulating wheeling service:

- (a) The state of the transmission and distribution infrastructure, the loss of energy related to this stage of operations, and the cost thereof.
- (b) The reasonable conditions that must be established to guarantee the protection and the proper and efficient maintenance of the transmission and distribution infrastructure.
- (c) The criteria that must be considered in determining the rates to be charged for transmission and distribution services, so that the costs remain at a reasonable level, thus making the use of this mechanism feasible, and promoting production of energy and the competitiveness of Puerto Rico in terms of service costs and availability, thus safeguarding the interests of the People, including the distance between the electric power company and energy subscribers without adversely affecting wheeling nonsubscribers.
- (d) In determining wheeling rates there shall be included a contribution from power producers for grid maintenance, as well as ancillary services in proportion to the amount of energy injected into the grid, the distance between the producer and the private customer, and any other necessary technical considerations recognized worldwide that make wheeling feasible taking into account the particularities and geographic and physical limitations of the electric power infrastructure of Puerto Rico.
- (e) The best practices of other jurisdictions that have implemented the wheeling mechanism and the convenience of applying them in Puerto Rico.

Despite this legislative mandate, the resolution setting out the proposed Wheeling Regulations does not acknowledge the present status of the utility system, system maintenance, reasonable cost recovery, the cost impact of wheeling on wheeling nonsubscribers, power producers’ cost

causation and contributions, and technical considerations that may help or hinder wheeling. The resolution and the proposed rules must address these requirements in a systematic manner.

Importantly, the resolution and the proposed Wheeling Regulation do not cite, reference or compare the best practices of other jurisdictions. Instead, as discussed herein, the proposed Wheeling Regulations speak in generalities about large C&I wheeling—the relevant legislative mandate before the Bureau—and instead launch into an effort to restructure the entire power sector by general references to wholesale unbundling and full competitive retail access. If such factors had been considered, then the proposed rules likely would have been more sharply focused on what other jurisdictions have realized – a stepwise and deliberate approach to wheeling by first allowing large C&I initial access to qualified generators via the grid is the appropriate and most viable approach.

This does not mean that other consumers should not eventually be allowed to choose their electricity commodity supplier at some future point. However, such a deliberate, focused approach on large C&I wheeling first would allow stakeholders including the Bureau sufficient time and experience to address appropriately the Act 57-2014 wheeling factors including system status, maintenance, cost recovery and technical considerations.¹

The Proposed Wheeling Regulations are Unlawfully Broad in Scope and Premature

¹ PREPA has many current economic responsibilities including additional cost recovery problems posed by the grid access of net metering customers that wheeling likely will exacerbate. For example, PREPA must absorb net metering program costs, by crediting power exported to its system by this type of customers at the full retail energy price (reflecting generation, T&D and other costs) while only recovering a portion of their costs through charges based on their load contribution. This creates significant and material cost recovery pressure on PREPA that could be made worse if large C&I wheeling is not introduced in a deliberate and responsible manner.

Act 57-2014 (as modified by Act 17-2019), Section 1.3(uu), defines Wheeling as “*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.*” Wheeling also has been defined as “The transmission of electricity by an entity that does not own or directly use the power it is transmitting.”² Moreover, Act 57-2014, Section 6.30, also requires that the Bureau “*establish the rules and conditions to ensure that wheeling does not affect in any way whatsoever (including technical problems and rate increases) nonsubscribers of wheeling services.*” As required by the law, the Bureau must carefully consider this statutory mandate and any negative technical and fiscal impact of the proposed Wheeling Regulations.

The proposed Wheeling Regulations go far beyond the statutorily-allowed wheeling of power to large C&I customers. Instead, the proposed rules contemplate a broad and ill-defined “free competition” “Open Market” regime, where there is a competitive wholesale power market and, in turn, all retail electricity customers appear “up for grabs” by future competitive electricity marketers without regards to the impact of such a regime on service reliability and ultimate service costs to non-wheeling customers, whether C&I or residential consumers.³

Proposed Section 1.04 of the Wheeling Regulations suggests that any Person should be allowed to choose an Electric Power Service Company. Indeed, the proposed definition of Customer envisions any “Person” receiving Generation Service while the proposed definition of Electric Power Service Company is not limited to generators, but also could include marketers that

² This definition is used generally by the U.S. Federal Energy Regulatory Commission (“FERC”). *See also* <http://www.iepa.com/wheeling.asp>.

³ *See also* PREPA’s April 1, 2019 comments expressing the same concerns in this docket regarding the originally proposed Regulation for Wheeling.

do not own generation and, in either case, such companies can sell to any Person. This “free competition” down to all retail customers is far beyond traditional “wheeling” to large C&I customers (or even basic open transmission access of new generators to the grid) and thus beyond the scope of the wheeling legislative mandate.⁴ Such overbroad provisions should be removed from the proposed rules.⁵

Developing specific, targeted wheeling rules that allow a qualified and eligible generator to use the transmission and distribution (T&D”) system to access large C&I customers, in accordance with strict technical rules and for a fee (and allowing for necessary cost recovery), is fundamentally different than a free competition Open Market regime allowing various competitive generators and marketers to sell power directly to all electricity customers. Act 57-2014 and Act 17-2019 mandate electric industry restructuring and wheeling for larger customers. Respectfully, however, the Bureau should focus its efforts on the legislatively-mandated targeted wheeling rules in this docket. This does not mean that rules governing competitive retail access should not be developed, just not at this time and not under the guise of large C&I wheeling.

⁴ The proposed regulations promote this overbroad and premature “free competition” regime in several other provisions including but not limited to: Section 1.04 (stating that the “enable any Person to make an informed decision in choosing an Electric Power Service Company); Section 1.10 (defining “Certification” as a process by which an Electric Power Service Company seeks approval from the Bureau to offer services in Puerto Rico); Section 3.04 (describing the permitted activities of Electric Power Service Companies including generation, transmission, and “any other electric power service defined by the Energy Bureau”); and Section 4.09(A) (stating that the protocols of the System Operator should “support retail competition” and “a level playing field for all resources”). Such overbroad provisions should be removed from the proposed rules.

⁵ There are several definitions that also should be eliminated or revised (and as they appear in other definitions and sections) because they anticipate functional unbundling and full competitive retail choice prematurely, including but not limited to: “Affiliated Energy Service Provider”, “Competitive Electric Power Service Company” and related power company and generator terms, “Independent Monitor”, etc.

Moreover, establishing a freely competitive Open Market regime in this manner is not consistent with existing law. Act 17-2019, Section 1.8, mandates the elimination and unbundling of vertical and horizontal monopolies in Puerto Rico’s electrical system (described as an “Open System”), but this functional unbundling of monopolies and potential wholesale competitive market is different than allowing free competitive retail access by suppliers to all retail consumers. As stated in Act 17-2019, Article 1.19 “Future Establishment of an Electricity Market”, the Bureau *“shall conduct a study on the viability and convenience of establishing an electricity market governed by free competition in Puerto Rico and shall submit a report with the results of such study to the Legislative Assembly and the Governor on or before June 30, 2025.”* Therefore, any reference to an Open Market regime, including but not limited to retail competition for or competitive access to retail customers, should be eliminated as contrary to the law, unsupported by the required study, and premature. PREPA is likewise not aware of such a Bureau study demonstrating the viability and convenience of a “free competition” Open Market. In turn, PREPA understands that the Bureau shall comply with this study requirement prior to embarking on developing rules governing such an Open Market.

The Proposed Wheeling Regulations Do Not Reflect Current Reality

The proposed Wheeling Regulations do not reflect the status of Puerto Rico’s energy sector. The proposed rules frequently mention that the wheeling regime may function either with PREPA as a vertically-integrated utility (bundled generation, T&D and customer care services),

or unbundled with segregated providers for different services (e.g., System Operator, Transmission and Distribution Provider, Provider of Last Resort).⁶

Inclusion in the proposed Wheeling Rules of the second, segregated approach unnecessarily complicates the scenario and invites inaccuracy and misinterpretation since the proposed wheeling scheme is based on an unbundled system and deregulated electricity market, which as of now is nonexistent. The Bureau seems to acknowledge this in its proposed rules (Sections 3.01 and 11.02) stating that PREPA is a bundled utility and a wheeling rate procedure first will require the unbundling of generation, transmission and distribution, and customer care (e.g., administrative, metering and billing functions) costs. Such unbundling also will require the identification and functional unbundling of the specific assets used to provide these services, which is a complex task.

There are processes occurring to functionally identify and unbundle generation, T&D, and customer care (e.g., administrative, metering and billing) assets, as well as other services provided by PREPA, and, in turn, to allow different companies or concessionaries to administer those assets and services. However, there remains significant uncertainty regarding how and when this unbundling and third-party administration process will eventually be resolved.

For example, the proposed rules mention that any Person should be able to make an informed decision in choosing an Electric Power Service Company. According to the proposed Wheeling Regulations, an Electric Power Service Company is defined (emphasis added) as *“any Person, engaged in the rendering of energy generation, transmission and distribution services,*

⁶ For example, see sections 1.10 (defining these unbundled roles); 2.01 (describing the scope of the Bureau as overseeing the operations of separate function providers); 3.01 (describing how PREPA will fulfill these unbundled roles); 4.02 (describing System Operator functions); 6.02 (describing Transmission and Distribution Provider roles and responsibilities); and 7.01 (describing the obligations of the Provider of Last Resort).

billing, wheeling, grid services, energy storage, the resale of 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.” Although PREPA’s services may eventually be unbundled and provided by others, it does not make sense to mention choosing between Electric Power Service Companies (since currently there is only one). And if unbundling occurs, customers will require all the services mentioned in the Electric Power Service Company (“EPSC”) definition, which appears to be somewhat equivalent to a “Retail Service Provider”. This is at best confusing and distracts from the specific task of establishing large C&I wheeling regulations.

Moreover, *if* functional unbundling occurs is achieved and *if*, in turn, a wholesale market is established and, *if*, in turn, retail access is allowed for all customers such that there are competitive options for electricity supply then a customer will need to evaluate their choices. To do so, customers will need access to and the ability to review carefully and compare a competitive retail EPSC’s generation technology, price offers, terms and conditions, reliability, credit requirements, switching rules and other conditions of service and supply agreements and that certified supplier must be in good standing with the utility. None of this is included in the draft rules and must be developed prior to any launch of a competitive open retail market. Without the implementation of such detail requirements, the referenced to customer choice is, at best, premature.

Such retail choice references should be removed and simplified to reflect current reality. The proposed rules very likely will vary significantly from the future results of an unbundling and third-party administration effort, while adding today unneeded complication for consumers, PREPA, regulators and future investors and asset operators. Indeed, it is very likely that the

unbundled, retail access regime included in the proposed Wheeling Regulations will not fit the eventual concessionaire/third-party operator structures, and this disparity may negatively impact these efforts and add more costs to the detriment of consumers.

For these reasons, the Bureau should revise its approach in the proposed Wheeling Regulations to include only those measures that reflect PREPA's current situation. The Bureau should remain focused on its statutory call to implement wheeling for eligible and certified generators to reach large C&I customers, rather than prematurely re-arrange the market segments. This does not mean, however, that the Bureau should not revise its rules in the future once the unbundling and third-party process is more fully developed and understood by all stakeholders.

The Data Justifying the Proposed Rules Should be Examined

The wheeling concept, as an energy business sector modality alternative, is included as part of the most recent Puerto Rico electric public policy without mention of specific benefits or added costs. Act 57-2014 (as amended), Section 6.30, requires that the Bureau establish wheeling rules that do not *“affect in any way whatsoever (including technical problems and rate increases) nonsubscribers of wheeling services.”* The proposed Wheeling Regulations, however, include an affirmative statement in proposed Section 1.04, that the Wheeling scheme is as a beneficial alternative for Puerto Rico's energy sector without any supporting data or documentation.

PREPA and all other interested parties should have the opportunity to evaluate the data proving that wheeling will have *“the potential to reduce energy costs and maximize energy efficiency, as well as to foster investment in Renewable Resources at competitive costs.”* If such documentation does not exist, then this statement should be eliminated from the proposed rules

because it will raise misleading expectations of the outcome of the Wheeling System to be implemented. Additional studies also are required to determine how PREPA's current Integrated Resource Process needs to be updated to account for wheeling, and how distributed energy resources, renewables and wheeling will work together on the grid. Moreover, the statement seems inaccurate or incomplete. Any preamble describing wheeling should address that: (1) it is prudent to assume that the transition from a regulated to a deregulated system will involve additional costs for the utility and to all customers taking utility service; and (2) wheeling cannot threaten system reliability, which must be protected and improved.

Articles 4, 6 and 7 Recovery of the costs associated with maintaining, operating and upgrading transmission facilities is a complex process. These articles should refer to the development of rules, contracts and analytical procedures and additional supplemental documentation to govern transmission maintenance, operations, and upgrades and interconnection requests that may trigger the required transmission system updates because, currently, the proposed rules are too general in this regard.

SPECIFIC COMMENTS

As discussed herein, PREPA recommends that the Bureau: (1) not adopt the proposed rules in their current form as non-compliant with the law, overbroad and premature; (2) eliminate all references to competitive retail open markets, unbundled monopoly services, and restructured markets that do not yet exist; and (3) focus on the legislative mandate at hand – large C&I wheeling. PREPA urges the Bureau to conduct a stakeholder technical conference and workshop process to arrive at appropriate and technically viable large C&I Wheeling Regulations. However, if the Bureau intends to proceed based on the currently-proposed Wheeling Regulations, then

PREPA offers initial specific comments and looks forward to reviewing the initial comments of other stakeholders.

The Proposed Rules Do Not Correctly Reference Generators as Eligible Businesses

The proposed Wheeling Regulations do not appear to be limited to generators under the Eligible Business definition that are eligible to wheel power under the wheeling statutory provisions. In fact, it does not include the definition of an Eligible Business as per Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended. The mentioned Act, allows eligible generators to “wheel” power over PREPA’s electric grid. If a generator does not meet the statutory eligibility requirements, then the generator should not be able to wheel power under the proposed Wheeling Regulation. Therefore, the proposed rules should be limited to eligible generators – generators that meet the Eligible Business definition.⁷

The Electric Power Generation Company (“EPGC”) definition includes co-generators, cooperatives, and renewable energy producers established in Puerto Rico to exclusively supply energy to PREPA, but there is no clarification or a reference to long term Power Purchase Operating Agreements already in place between PREPA and these companies. Also, a review is necessary to determine if some of these producers could indeed be included to wheel power, as Eligible Businesses under Acts 73-2008 and 57-2014, as amended, using additional energy not already included in previous agreements with PREPA.

⁷ See also similar comments made in PREPA’s April 1, 2019 comments in this docket.

Regarding the “EPGC” definition, the Bureau should confirm an EPGC should not be deemed to be an EPSC, since it will not necessarily be able to provide all the services an EPSC is envisioned to provide.

Section 3.04 should be modified to indicate that initially PREPA will be the only EPSC and eliminate all references to Competitive Electric Power Service Companies.

Tariff and Rates: Regular Rates Should Be Adjusted Prior to Wheeling Implementation; Avoiding Cross-Subsidization; Wheeling Rate Should be Handled Like Regular Rates

Regular Rates: Prior to implementing Wheeling (1) **regular rates** should be adjusted to reflect the actual costs for providing service, and (2) **charges** should be unbundled according to the services provided. These revisions should be made through a process in which PREPA is given the opportunity to present a rate structure proposal in the normal course, as per Acts 83-1941, 57-2014, and 38-2017. All rate adjustments should acknowledge the legislative mandate that additional costs resulting from the wheeling regime should not affect in any way non-wheeling customers, and should guarantee affordable, just and reasonable rates for all.

Cross-Subsidies: Proposed Section 9.02 “is intended to eliminate any possibility of cross-subsidization in which captive utility Customers pay for any portion of Competitive Service in their Monopoly Services.” It is critical that the proposed Wheeling Regulations affirmatively recognize that all charges in which captive utility Customers subsidize other customers (e.g. Subsidies, Municipalities or CILT), must be considered Stranded Costs and therefore included as non-bypassable charges to Wheeling Customers. Moreover, the proposed Wheeling Regulations also should affirmatively recognize that Wheeling Customers remain responsible for the cost of

natural

cross-subsidization that exists between rates, such as part of residential customers' costs currently covered by C&I rate charges.

Wheeling Rates: Wheeling rates should be proposed and approved in a process like the one used for PREPA's regular rates in the normal course, since currently PREPA provides all the services necessary for wheeling to be in place. The wheeling rates must consider the location of the generator and the Wheeling Customer, to prevent cross-subsidization among Wheeling Customers. Wheeling rates must include non-bypassable charges to recover costs associated with wheeling implementation and reduced recovery of system costs.

Provider of Last Resort "Returning Customer" Rules Must Be Carefully Considered

As the wheeling rules are developed and implemented, costs for non-wheeling customers served by PREPA in its role as Provider of Last Resort ("POLR") likely will increase as large C&I customers depart PREPA's electricity commodity service and potentially contribute less to overall system costs.

The POLR has and will incur fixed and variable costs, including maintaining its generation and power purchase agreements to remain ready and able to provide Customers with POLR service. To accommodate new market structures, the POLR also will need to invest in and implement new information systems to assist in tracking switching customers, billing settlements between independent power producers and serving customers, and overall billing and collection. This is yet another cost that must be recovered through non-bypassable wheeling rates. This cost incurrence and recovery issue can be exacerbated by POLR rules governing customers

that return to POLR services after obtaining electricity commodity service from a third-party. To prevent this, Wheeling rates must include non-bypassable charges to account for these costs, as well as provisions to periodically update them.

Proposed Sections 7.01 and 7.02 allow any returning Wheeling Customer to stay on POLR service for a minimum period of six months. PREPA suggests that this “stay” period should be one year, which will make the proposed rule consistent with PREPA’s Terms and Conditions (the minimum term of the relevant electric service contract is one year). Section 7.02 also allows a 5 MW or greater Wheeling Customer to provide a minimum of sixty days’ notice before returning to POLR service. Returning customers must be subject to PREPA’s current load interconnection evaluation process to determine PREPA’s capabilities at the time to receive the returning customer, which among others applies to loads starting at 50 kVA instead of 5 MW. This will assist PREPA’s management of its system and its ability to receive the Wheeling Customer back on POLR service.

The proposed Wheeling Regulations address the necessity for the POLR to maintain a reserve generation equivalent to the EPGCs capacity connected to the system in order to serve returning wheeling customers. The proposed rules do not recognize that there is a cost to PREPA that must be recovered through wheeling rates to maintain such reserve generation. Finally, possible entities that are interested in becoming the T&D concessionaire should be made aware of the likely POLR responsibilities that will attach to the T&D assets.

Eventual Metering and Billing Responsibilities

Proposed rule, Section 6.03, states that “*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.*” Contrasting this provision with Section 4.02 where the System Operator is suggested as having a role in billing and settlements,⁸ PREPA suggests that the Electric Power Service Company shall be responsible for their Customers’ metering and billing and corresponding services.

Section 1.06 – Interpretation

This Section states that “... and the protection of the interests of the residents of Puerto Rico,” This section should be revised to read: “... and the protection of the interests of ~~the residents~~ **all electric service customers** of Puerto Rico,”

Section 1.10 – Definitions

- The definition section should include the **Eligible Business** definition as per Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended.⁹ This is consistent with PREPA’s comments regarding “Eligible Business” herein. If a generator seeking to wheel does not qualify as an Eligible Business then it should not be allowed to wheel power to large C&I customers, or any customers.
- A definition of **Independent Power Producer** should be included, such as FERC’s definition: “A corporation, person, agency, authority, or other legal entity or instrumentality that owns or operates facilities for the generation of electricity for use primarily by the public, and that is not an electric utility.” This is a more appropriate and traditional definition to apply to C&I Wheeling rules than the confusing and premature Competitive Electric Power Service Company, and tracks previous legislative mandates.

⁸ The proposed rules contemplate creation of a “System Operator” with features akin to an Independent System Operator (“ISO”), as regulated by FERC. The conditions that lead to a need for FERC to develop and approve ISOs in California, New York and New England, for example, and ISO planning, generation dispatch, market administration and market settlement functions, do not currently exist in Puerto Rico.

⁹ See also PREPA’s April 1, 2019 comments on this topic in this docket.

- **“Customer or Wheeling Customer”**: For the purposes of this wheeling rule, the term should simply be “Wheeling Customer” as an entity using transmission service to purchase and delivery power from a certified and qualified generator taking wheeling services. Using the term “Customer” in the “Wheeling Customer” definition could be confused with a non-wheeling subscriber customer.
- The **“Deposit”** definition states that it “means a reasonable financial payment,” but there are no criteria for “reasonable.” This definition should be revised as follows: “means a reasonable financial payment...” In addition, this definition seems only to address Generation Service. The Bureau should clarify that the Deposit is meant to address all services (generation, System Operator, T&D, etc.).
- **“Distributed Generation”** seems to be limited to the Distribution System. PREPA has currently Distributed Generators interconnected to the Transmission Voltage Level. This definition may need to be clarified and modified.
- The **“Distribution System”** definition should be modified as follows: “means the physical equipment used to distribute electric power at distribution primary voltages ~~below 38,000 volts~~ of 4.16, 4.8, 7.2, 8.32 and 13.2 kV, including but not limited to poles, primary lines, secondary lines, service drops, transformers, and meters.”
- The **“Electric Power Generation Company”** definition, as established in Section 1.3 of Act 17-2019, is presented as “‘Electric Power Generation Company’ or ‘Independent Power Producer’ and “[s]hall mean 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 Bureau. This term shall include cogenerators already established in Puerto Rico that supply energy to the Authority through a Power Purchase Agreement, energy or electric cooperatives and renewable energy producers.” The proposed Electric Power Generation Company definition should be harmonized with the Act 17-2019 definition. In addition, the definition should be clarified to a reference to long term PPOAs already in place between PREPA and existing co-generation companies.
- The **“Electric Power Service Company”** definition should be conformed with the same term defined in Section 1.3 of Act 17-2019, which defines the term as “any natural or juridical person or entity, energy cooperative, engaged in the provision of generation services, transmission and distribution services, billing, wheeling, grid services, energy storage, resale of electric power as well as any other electric power service as defined by the Bureau. The Electric Power Authority or its successor as well as any Contractor under a Partnership or Sales Contract executed in relation to PREPA Transactions conducted by virtue of Act No. 120-2018 shall be deemed Electric Power Service Companies for purposes of this Act.” It is more appropriate to use the definition provided by Act 17-2019. For example, there is a difference between generation services versus energy generation because the generation services term applies beyond energy generation as it includes also generation ancillary services.
- The **“Generation Services”** definition seems to be limited. In the electric service industry, this term is generally applied beyond “the provision of electric generation” to include

generation associated ancillary services, such as regulation and frequency response, reactive supply and voltage control, spinning and supplemental reserve, among others.

- The “**Large Commercial Customer**” definition seems to establish a different treatment between industrial and commercial customers, which can be interpreted as discrimination among customer classes.
- The “**Meter**” definition should be modified as follows: “. . . point of connection between an individual Customer and the ~~Distribution System~~ Electric Power Grid as well as associated communications . . .”.
- The “**Non-Bypassable Charge**” definition does not appear to include the different behind-the-meter generation alternatives, and should be clarified to do so. The definition also must be amended to include costs associated with or caused by wheeling, as described in these initial comments, including wheeling implementation, reduced contributions to system costs, and efforts to avoid cross-subsidization realized by wheeling implementation, for example. Wheeling customers must pay such costs.
- The “**Operating Agreement**” definition appears incomplete and should include references to the counterparty abiding by stringent interconnection, operational, disconnection, credit (including adequate security assurances), and confidentiality provisions to ensure that the POLR/T&D Provider (here, PREPA) and its customers are adequately protected from financial and operational harm.
- It is unclear whether the Bureau intended the “**Power Purchase Agreement**” definition to include PREPA’s current Power Purchase Agreements.
- The “**Ring-Fencing**” definition is used in the Code of Conduct section such that captive Customers must be shown to be “Ring-Fenced” from any liability that occurs due to financial instability of an unregulated affiliate. This is a technical financial term and there are many methods to ring-fence payments or other financial assets, e.g., make them unavailable for another purpose. The Bureau should clarify what funds should be ring-fenced, by what method a party should demonstrate that it has adding this financial protection, and how this method is an appropriate public policy.
- The Bureau should clarify whether the broad “**System Benefits Charge**” definition applies only to Wheeling Customers and whether it meant to include items such as “energy efficiency” that already has a dedicated charge (the Energy Efficiency Rider) under PREPA’s current rates.
- The “**Transmission Service**” definition – “the delivery of electricity across the Transmission System by a Transmission Customer for its own purposes or to another Transmission Service Customer” is confusing and does not appear to be a traditional industry definition.
- It is not clear whether the “**Transmission Service Customer**” definition is intended to include Wheeling Customers.

Section 3.01 – Puerto Rico Electric Power Authority

This Section states that PREPA will play the roles of Provider of Last Resort, Transmission and Distribution provider and System Operator, until the transformation of the energy sector established in Act 120-2018 takes place. The proposed Wheeling Regulations should make it clear that the establishment of these roles are contingent and will be based on the implementation of the energy sector transformation under Act 120-2018. Moreover, possible entities that are interested in becoming the T&D concessionaire should be made aware of these potential roles that will attach to the T&D assets.

PREPA is also the System Operator and, according to the proposed rules, “shall ensure access to the Electric Power Grid for all buyers and sellers of electricity on nondiscriminatory terms.” The phrase must include at the end “subject to load and operational limitations” to reflect the reality that not every possible buyer or seller of electricity may be able to access the grid because of operational, technical or cost issues. This change applies to the present status of the system as well as any future unbundled or competitive retail open access regime.

PREPA, as the current System Operator, also must administer a Balancing Price providing an energy price on an hourly and sub-hourly process. PREPA is not able to provide a Balancing Price on this frequency at this time. It appears that this concept is meant to anticipate an unbundled, fully competitive market with, possibly a two-part day-ahead and real-time energy market, such that a Balancing Price would be equivalent to a real-time locational marginal price that, in turn, could be applied to generators that fall short on their scheduled deliveries or to load that consumers beyond what was scheduled. Such a market does not exist in Puerto Rico and further guidance is needed to understand how the Balancing Price would apply to the present status of PREPA and the energy market in Puerto Rico.

Article 9 – Codes of Conduct

PREPA supports the concept of such codes of conduct to avoid undue discrimination and cross-subsidization. However, this proposed Article applies to POLR, T&D Provider, the System Operator, the EPGC, the CEPSC and similar entities, each based on a functional unbundling and restructuring that has yet to occur. Thus, it is premature to review the proposed Codes of Conduct in depth because the names, functions and corporate relationship of entities is likely to change as the power sector transformation proceeds. In the interim, the Bureau may benefit by reviewing FERC’s Standards of Conduct for Transmission Providers, including the “independent functioning rule”, “no-conduit rule” and “transparency rule” found in FERC Order Nos. 717, 807, 787 and related orders as well as other Federal and state examples of affiliate separation rules.¹⁰

Important Next Steps: Collaborative Process

PREPA appreciates the constructive efforts reflected in the proposed Wheeling Regulations and intends to work collaboratively and constructively with the Bureau and all other interested parties regarding the development of the rules. PREPA urges the Bureau to hold a technical conference, workshop or similar discussion with all interested and affected parties to work through the details of appropriate wheeling rules prior to the circulation of revised rules. Such stakeholder discussion will be more productive to determine the feasibility and potential benefits of specific wheeling proposals. The Distribution System Planning workshops hosted by the Bureau are recent examples of a similar initiative.

¹⁰ See <https://www.ferc.gov/legal/maj-ord-reg/stand-conduct.asp> and the similar affiliate rules adopted by various states with restructured and unbundled power markets.

PREPA also urges the Bureau to meet with PREPA to discuss and evaluate PREPA's existing draft wheeling regulation as a base to implement an achievable wheeling regime. PREPA's existing draft wheeling regulation is a more suitable starting point because this regulation considers many of PREPA's technical, safety and regulatory limitations and realities, to support and ensure electric system reliability. Improvements to the existing draft wheeling regulation also must include provisions for a wheeling rate structure and an appropriate reflection of wheeling costs in rates. PREPA also suggests that, because of the complexity of implementing a system of this magnitude, the Bureau should consider working in phases, identifying a smaller number of customers that could be part of Wheeling at first, and as mentioned before, considering only one Electric Power Service Company.

Conclusion

The Wheeling System (and related initiatives such as unbundling and microgrids) to be developed and implemented for the benefit of Puerto Rico's citizens, must (1) guarantee and not threaten system resiliency, stability and reliability; (2) be able to incorporate different technologies such as microgrids into the grid; (3) ensure that PREPA will comply with all of its many economic responsibilities to its creditors and bondholders, while maintaining just and reasonable rates for all of the services provided to their customers. PREPA looks forward to working with the Bureau to implement successfully appropriate Wheeling Regulations.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 26th day of August, 2019.

The Puerto Rico Electric Power Authority

/s Katuska Bolaños

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CERTIFICATE OF SERVICE

We hereby certify that, on this same date we have filed the above motion at the office of the Clerk of the Puerto Rico Energy Bureau; and a courtesy copy of the filing was sent via e-mail to the Puerto Rico Energy Bureau Clerk to the following: secretaria@energia.pr.gov; wcordero@energia.pr.gov; legal@energia.pr.gov; sugarte@energia.pr.gov; astrid.rodriguez@prepa.com; Jorge.ruiz@prepa.com; n-vazquez@prepa.com; thomas@fundacionborincana.org; agraitfe@agraitlawpr.com; tsanzillo@ieefa.org; cambiopuertorico@gmail.com; rberley@utilityproject.org; flucerna@elpuente.us; gabriel@blueplanetenergy.com; john.jordan@nationalpfg.com; ccf@tcm.law; axel.colon@aes.com; pjcleanenergy@gmail.com; Javier.ruajovet@sunrun.com; mgrpcorp@gmail.com; thomas@fundacionborincana.org; pwalker@theseusllc.net.

In San Juan, Puerto Rico, this 26th day of August, 2019.

/s Katuska Bolaños
Katuska Bolaños