

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

NEPR

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IN RE: REGULATION ON WHEELING

CASE NO.: NEPR-MI-2018-0010

SUBJECT: Notice of Proposed
Regulation and Request for Public
Comments

REPLY COMMENTS OF THE PUERTO RICO ELECTRIC POWER AUTHORITY

On July 23, 2019, the Puerto Rico Energy Bureau (“Bureau”) set out a new proposal for regulations implementing wheeling for power producers to serve industrial and large commercial (“C&I”) customers. The Puerto Rico Electric Power Authority (“PREPA”) filed initial comments and submits its reply comments. PREPA recommends that the Bureau not adopt the proposed rules in their current form because they are non-compliant with the law, overbroad and premature.

The Rulemaking Process Must Be Fixed

It is a complex task to develop wheeling rules for Puerto Rico. As several parties indicated in their initial comments, the Bureau must adopt a more orderly process for developing large C&I wheeling rules. The Bureau should: (1) provide a written rationale for its proposed rules; (2) provide a written rationale for why it accepted or rejected the comments of specific parties, or made changes on its own; (3) explain its specific legal authority for enacting the proposed rules and changes to those rules; (4) explain and indicate in subsequent draft versions of the wheeling rules what has been changed (including through a “redline” or “blackline” written mark-up of changes from the previous

draft rules); and (5) allow sufficient time and opportunity for stakeholders and the Bureau to review the comments of others to try to reach agreement and narrow areas of disagreement.¹

To further accelerate the drafting of effective proposed rules, PREPA and other parties suggest that the Bureau first conduct a stakeholder technical conference and workshop process to arrive at appropriate and technically viable large C&I Wheeling Regulations.² This stakeholder process will facilitate the rulemaking effort and will allow the Bureau to: (1) conduct the required studies regarding the implementation of wheeling, unbundling and other market changes; (2) provide stakeholders with the necessary opportunity to review these required studies; (3) coordinate with other critical dockets, such as the current unbundling and interconnection dockets;³ and (4) make sure the rules make sense and are complete.⁴

The deliberate process outlined above is consistent with rulemaking under the Administrative Procedure Act utilized by the United States government (and used as a

¹ See Initial Comments of the Solar and Energy Storage Association of Puerto Rico (“SESA-PR Comments”) at pp. 2-3; Initial Comments of the Borincana Foundation (“Borincana Comments”) at pp. 1-2; PREPA Initial Comments at pp. 2-9 (“PREPA Comments”); Initial Comments of AES Puerto Rico, LP (“AES Comments”) at p. 2; and Initial Comments of National Public Finance Guarantee Corporation (“National Comments”) at p. 2 (the Bureau did not address or include many recommendations, or explain reasons for acceptance or rejection of past comments or proposed provisions). The Borincana Foundation notes that PREPA does not have the resources to set wheeling rates and procedures, and the draft rules set no timeframes or process for final regulations. See Borincana Comments at p. 1.

² SESA-PR suggests professionally-facilitated workshops that are coordinated with relevant dockets like unbundling. See SESA-PR Comments at p. 10.

³ See Initial Comments of the Institute for Energy Economics and Financial Analysis, the Public Utility Law Project of New York, CAMBIO P.R. and El Puente Latino Climate Action Network (“IEEFA Comments”) at p. 3 (expressing concern regarding lack of coordination between the wheeling and IRP proceedings); PREPA Comments at p. 7.

⁴ For example, as one commenter noted, the proposed Wheeling Regulations lack critical details. For example, the proposed rules do not designate any process governing how a customer and a provider will enter into a Wheeling Agreement. See SESA-PR Comments at p. 5.

model by many states), which promotes an efficient and open public participatory process where stakeholders can, on an iterative basis, identify areas of agreement and disagreement to arrive at viable final rules. This also makes the process of agency regulatory and judicial review of final rules more efficient, allowing the Bureau to narrow areas of disagreement and focus on its rationale and reasoned decision-making to justify final rules.

In the end, the Bureau must base its reasoning and conclusions on the rulemaking record, consisting of the comments, scientific and engineering data, expert opinions and facts accumulated during the pre-rule and proposed rule stages. The agency must conclude that its proposed solution is within its statutory authority and will help accomplish the goals identified and whether alternate solutions would be more effective or less costly. Policy decisions and changes in the proposed rule must be explained by the Bureau in writing, and may result in publishing supplemental proposed rules.

Such an organized administrative process to rule development also is expected by potential investors in PREPA's existing generation, developers of new generation and infrastructure projects and concessionaires that may eventually purchase or administer aspects of PREPA's assets and operations. PREPA urges the Bureau to adopt such a rulemaking process.

Introduction of a Wholesale Market is Premature

As the Institute for Energy Economics and Financial Analysis ("IEEFA") and PREPA state in their initial comments, the proposed Wheeling Regulations contemplate

the implementation of a competitive wholesale electricity market that was not mandated by Act 57-2014 and is not necessary to implement a large C&I wheeling mechanism.⁵ Moreover, as IEEFA states, Act 17-2019 does not require the Bureau to submit a study on the viability or necessity of a competitive wholesale electricity market until 2025.⁶ Or, said another way, the Bureau has not yet conducted such a required study to justify its proposed imposition of a wholesale market on top of an emerging wheeling market.⁷

The Bureau also has not provided citation or support for the claimed benefits of wheeling—reduced cost, efficiency and renewable power promotion—or how introducing an unfocused and broad market restructuring achieves these benefits.⁸ The draft rules also do not account for PREPA’s current system costs and technical challenges, or the interaction of the wheeling rules with other critical dockets reviewing unbundling, interconnection and renewable power deployment. Moreover, as PREPA stated in its initial comments, the Bureau should use PREPA’s existing draft for wheeling rules as the base to build upon for this rulemaking.⁹ The proposed Wheeling Regulations also do not address the possibility that the implementation of wheeling for large customers will hurt non-wheeling customers through loss of load and reduced system cost recovery opportunities. This potential customer harm has not been studied in this docket or in the Integrated Resource Plan docket.

⁵ See IEEFA Comments at pp. 1-3.

⁶ *Id.*

⁷ See PREPA Comments generally.

⁸ See IEEFA Comments at p. 2 and PREPA Comments at p. 9.

⁹ See PREPA Comments at p. 20.

Therefore, as IEEFA and PREPA state, the Bureau's effort to force a wholesale market is premature, unsupported, contrary to the law and, given the specific wheeling legislative mandate, possibly outside of the Bureau's legal power and authority.¹⁰

The attempt of the proposed Wheeling Regulations to establish a competitive wholesale energy market goes far beyond the scope of the legislatively-mandated wheeling regime and is not necessary to establish wheeling. For example, as IEEFA and PREPA stated in their initial comments, the introduction of a balancing price mechanism and System Operator incorrectly assumes that basic wholesale market conditions exist in Puerto Rico—generally, a sufficient number and diversity of third-party owned generators—necessary to support a Regional Transmission Organization (“RTO”) or Independent System Operator (“ISO”) wholesale market. Such conditions do not yet exist in Puerto Rico.

As IEEFA points out, PREPA already has the tools to gain the benefits of efficient generation dispatch and promote new generation resources without requiring the complexity, confusion and costs caused by forcing an ISO or RTO solution on Puerto Rico. Mainland electricity markets typically had utilities like PREPA dispatching privately-owned generators through long-term bilateral contracts and did not immediately require a jump to a wholesale competitive market or an ISO/RTO structure.¹¹

On the other hand, besides currently not having the necessary infrastructure, trying to force an RTO/ISO wholesale market now with a balancing price on Puerto Rico absent

¹⁰ See *generally* IEEFA Comments.

¹¹ See IEEFA Comments at pp. 3-6.

the necessary market conditions would: (1) create cost recovery uncertainty and price settlement confusion for market participants and investors thwarting efficiency and the development of new generation and other resources; (2) raise the specter of undue market power if there only are a few third-party generators; and (3) make it more, not less difficult to integrated distributed energy resources and demand-side measures into Puerto Rico's resource mix because pricing and payments will be uncertain.¹²

The Bureau should take a step-wise approach to this rulemaking and transformation process, as was done in prior major restructuring efforts at the federal and state level in the United States.¹³ First, large C&I wheeling (including certain cooperative, municipal and microgrid structures) should be explored, examined and judged for benefits, costs and viability. Then, if conditions allow and once there is a better understanding of the results of unbundling, concessions, and interconnection and third-party ownership of generation, stakeholders and the Bureau could consider rulemaking enhancements to promote wholesale power market competition. In turn, if such a functional wholesale market develops free from undue market power influences and with sufficient consumer protections in place then, and only then, might it make sense to

¹² The Borincana Foundation's indicate that PREPA does not have resources or competency to develop balancing price mechanism. See Borincana Comments at p. 1.

¹³ See IEEFA Comments at pp. 3-7; SESA-PR Comments at p. 5 (wheeling should be limited to large scale projects and C&I customers, and other dockets like pricing and unbundling must be completed before the final wheeling rules are implemented). PREPA disagrees with AES to the extent it suggests proceeding quickly to open market competition without a deliberate, studied approach.

expand competitive choice to smaller retail customer classes.¹⁴ This step-by-step approach also will protect consumers by avoiding profound changes that may result in the inability to recover system costs, unfair marketing practices and other unintended consequences.

A Non-Bypassable Charge is Required to Recover Costs Caused by Wheeling

AES indicates that transition charges or stranded costs should be scrutinized, while SESA-PR appears to resist non-bypassable charges related to wheeling.¹⁵ As PREPA stated in its initial comments, the Bureau must ensure that such transition charges, stranded costs and non-bypassable charges are designed to recover all costs posed by the transition to wheeling, and are chargeable to wheeling customers to avoid harm to non-wheeling customers.¹⁶

Higher and Lower Voltage Customers

The Borincana Foundation indicates that Section 11 of the proposed rules lacks details as to who will pay for contribution to low voltage stability and resiliency, and how low and high voltage networks will be distinguished in terms of cost causation and recovery. AES wants different rates according to the interconnection voltage levels at

¹⁴ Sunrun desires the aggregation of residential solar-plus-storage system into a “virtual power plant.” See Additional Comments of Sunrun (“Sunrun Comments”) at p. 1. Centro Unido de Detallistas; Camara de Mercadeo, Industria y Distribucion de Alimentos; Puerto Rico Manufactures Association; Unidos por Utuado; and El Instituto de Competitividad y Sostenibilidad Economica de Puerto Rico (“Electrical Consumers”) support aggregation of small customer loads to have access to wheeling and purchasing of Energy Service. See Electrical Consumers Comments at p. 2. These concepts are interesting but premature because large C&I wheeling has yet to be implemented, and each comment incorrectly presupposes that a functioning wholesale market exists.

¹⁵ AES Comments at p. 2; SESA-PR Comments at p. 7.

¹⁶ PREPA Comments at p. 13.

which the end-use customer is serviced, such that the T&D charge for higher voltage customers does not include costs associated with customers of lower voltage.¹⁷ As mentioned in PREPA's previous comments, regular rates should also be updated for charges to be unbundled. Previous rates included different Fuel and Purchased Power factors by voltage level, which was replaced by a common Fuel and Purchased Power factors for all customers. PREPA intended this change to be accompanied by the unbundling of charges in the Basic Rate to account for difference in costs due to the service voltage level, but this unbundling of charges was not approved by the Bureau.

These important topics warrant further investigation and discussion. A wheeling stakeholder process that coordinates with the functional network unbundling effort (including the technical identification of different grid system components and system balancing) is critical to assisting the Bureau and interested parties in determining the best policy to govern such voltage-related cost recovery issues.

Metering and Billing for Wheeling Customers

AES wants a separate billing system for C&I customers.¹⁸ This topic warrants further investigation and discussion. For example, the operational and technical aspects of metering and billing must be examined with wheeling in mind, including whether a separate system for C&I wheeling customers increases cost and complexity for non-wheeling customers. This topic also presents questions regarding confidentiality, specific charge collection and payment allocations as between utility and generator services,

¹⁷ AES Comments at p 4.

¹⁸ AES Comments at p. 5.

overall invoice settlements, required metering technology and how to address the data and technical requirements of returning wheeling customers that may have their own meters or billing systems in place. A wheeling stakeholder process will assist the Bureau and interested parties in determining the best policy to govern metering and billing under an emerging large C&I wheeling regime.

Provider of Last Resort Functions and Requirements Must be Discussed

AES does not want PREPA to be the Provider of Last Resort (“POLR”) for wheeling customers, but instead wants another competitive generator to step in and charge a spot market price if the customer is no longer served. AES also wants a one-month, not a six-month, minimum stay for the Wheeling Customers returning to POLR.¹⁹ PREPA disagrees. A market does not yet exist for another party to assume the POLR role for returning wheeling customers and no spot market price exists. As stated in our initial comments, PREPA favors a minimum stay period of at least one year for returning customers.²⁰ PREPA’s Term and Conditions for existing rates are based on a 12-month contract, and other jurisdictions usually utilize a 12- or 24-month minimum stay period.

Conclusion

Despite the legislative mandate in Act 57-2014, as amended, the proposed Wheeling Regulations do not acknowledge PREPA’s system status, reasonable cost recovery, cost impacts of wheeling on wheeling nonsubscribers, power producers’ cost causation and contributions, and technical considerations that may help or hinder

¹⁹ AES Comments at p. 5.

²⁰ PREPA Comments at p. 14.

wheeling. The proposed Wheeling Regulations do not reference or compare the best practices of other jurisdictions and are not supported by the required studies and rulemaking evidentiary record. The large C&I wheeling regime is not sufficiently defined in the proposed rules to allow for its implementation. Instead, the proposed rules jump ahead to a competitive wholesale open market and retail choice.

As discussed herein and in our initial comments, for the benefit of Puerto Rican electricity consumers, PREPA urges the Bureau to stay within its legislative mandate and: (1) focus first on the large C&I wheeling rules and a limited customer group for wheeling as required by the law; (2) use PREPA's existing draft wheeling regulation as a base to implement an achievable wheeling regime; (3) establish immediately a more orderly and rational rulemaking process focused on developing the large C&I wheeling rules; and (4) hold technical conferences, workshops or similar discussions with stakeholders to arrive at viable final rules. PREPA looks forward to working with the Bureau to implement successfully appropriate Wheeling Regulations.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 3RD DAY OF SEPTEMBER 2019.

**The Puerto Rico Electric Power
Authority**

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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 sent a courtesy copy of this filing via e-mail 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; mgrcorp@gmail.com; thomas@fundacionborincana.org; pwalker@theseusllc.net.

In San Juan, Puerto Rico, this 3rd day of September 2019.

/s Katuska Bolaños
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