



Sep 3, 2019

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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.**

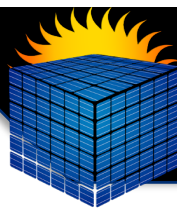
DATE: Tuesday, September 3, 2019

**REPLY COMMENTS OF THE SOLAR AND ENERGY STORAGE ASSOCIATION OF
PUERTO RICO (SESAPR)**

SESAPR thanks the Puerto Rico Energy Bureau's ongoing development of a regulation on wheeling.

General Comments

SESAPR represents the solar and storage industry, of all scales, in Puerto Rico. Our review of stakeholder comments filed thus far in this proceeding is viewed through the lens of encouraging a rule which opens the market to new producers of solar and storage systems, to be able to contract directly to wheel power to large scale consumers, microgrids and groups of commercial and/or residential customers, thus resulting in more solar and storage existing on the island than would have otherwise been possible without this wheeling rule.



Implementing wheeling in Puerto Rico in the short term will face a variety of challenges and will need to have a wide array of factors well thought through in order to be successful, as outlined in many of the stakeholder comments as filed. An entirely separate topic, which is orders of magnitude more complex, is the transition of Puerto Rico's entire energy paradigm from that of a regulated monopoly to that of an open-access, customer-choice, essentially deregulated market.

The pretext for these wheeling rules is the wheeling law, which requires these rules to be promulgated. The wheeling law is clear in its directive. Multiple stakeholders commented that the focus of these wheeling regulations should be based solely and strictly upon the wheeling law which triggered the need for these rules. SESAPR agrees with this position.

One reason for this is the almost certainty of judicial review. With such strong disagreement to the general approach and framework for these rules voiced by multiple stakeholders, it would appear likely that some are poised to file litigation challenging the rules, if published in a form similar to the draft rules, as lacking statutory authority for substantial components of them. Regardless of stakeholder sentiment at this time, rules promulgated by the Energy Bureau should always assume a heavy level of judicial review will take place after their final publication, and should be very clear in the specific laws which authorize and require all of the various aspects of the rule to exist.

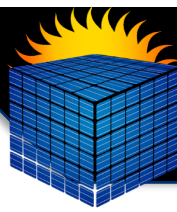
Beyond the principle of crafting rules in a way that they are likely to withstand judicial review, it's worthwhile to look at the broad brushstrokes of what the draft regulation proposes. It appears that the rule proposes two entirely separate concepts: wheeling, which is required by the statute that triggered the creation of these rules, and deregulation of the entire electric market in Puerto Rico, which is not required or even mentioned by the law that triggered the creation of these rules.



Wheeling is a concept that can exist in a regulatory regime of a sole monopoly utility being regulated by a strong regulator. This was the only paradigm that existed when the wheeling law was created, and it's the only paradigm that exists today. Deregulation of the entire electric market isn't required in order for wheeling to be successful, and attempting to do both simultaneously could very well result in neither happening in any meaningful way.

For these reasons, we agree generally with stakeholder comments encouraging this rule on wheeling to focus exclusively on the concept of wheeling. Whether or not a complete transformation of PREPA happens at all is uncertain, and even if it happens, the timeframe is highly unpredictable and not within the control of the Bureau. With these rules comes the opportunity to allow multiple projects which are already in some stage of development to move forward, and to establish a clear framework so that more can be developed. In the hopes of these rules being a functional tool for the development of new solar and storage systems in the short and medium term, we agree with the suggestions of other stakeholders to erase all references to definitions and concepts not strictly required by the wheeling law. Such a focus on the sole topic of wheeling would, in our view, be the most effective way to encourage wheeling to begin happening soon in Puerto Rico.

Whether or not a complete transformation to an open-market, customer-choice model with multiple energy service providers to choose from should occur, and if so how it should occur, are really important questions, and are unrelated to the merits and details of wheeling. As such, they should be addressed in a separate proceeding.



Specific Comments

The following is a summary of a selection of some of the comments made by other stakeholders, and SESAPR's response to each.

Organization: Sunrun

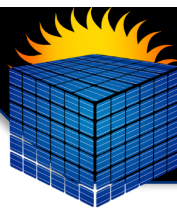
Comment: The concept of aggregation of solar and solar + storage producers that was included in the March 2019 draft of these rules is absent from the July 2019 draft. It is important to include these concepts, for the reasons Sunrun states in their comments.

SESAPR Position: We support Sunrun's request to include the aggregation of solar, and solar + storage producers, in these rules.

Organization: IBD Energy

Comment: Flexibility in operating agreements, and flexibility in metering and billing.

SESAPR Position: We support IBD Energy's comments on these topics, with the caveat that the Bureau should include clear rules for the parameters of which aspects are flexible and which are inflexible; and furthermore, whether flexibility is to manifest as clear rules with an openness to Bureau approval of exceptions on a case-by-case basis, or whether the flexibility is baked into the rules themselves. We would encourage both: for the rules to be as clear as possible about which aspects of these agreements and arrangements are and aren't flexible, while also allowing a clear pre-defined pathway for wheeling providers to request exceptions as needed.



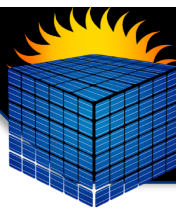
Comment: Monopoly Service Provider Requirements should be removed, as microgrid rules are already sufficient.

SESAPR Position: IBD's stance on this is strong. As the only entity in these proceedings that aspires to become a monopoly service provider, in the Roosevelt Roads development project, their statement that these changes they propose are necessary because without them it hinders their business model "to such an extent that it makes it commercially unviable for IBDE energy to participate in energy wheeling, to the detriment to the electricity marketplace of Puerto Rico" is worth taking seriously. As the only organization developing such a project, IBD Energy represents not only their own interests, but they're also paving the pathway for themselves and other companies to have the ability to utilize wheeling as well. We recommend taking their suggestions to heart, and changing the aspects of the proposed rules that would need to be changed in order for their project to be able to utilize wheeling.

Organization: AES

Comment: Many of their previous recommendations on the March 2019 draft of these rules were not included in the current draft version.

SESAPR Position: In the development of these wheeling rules, it would be constructive to have a detailed response from the Bureau into why all suggestions from stakeholders were either implemented or not implemented. Without insight into the Bureau's rationale on previous comments submitted, it implies that these comments being submitted today could be ignored, disregarded, or at best, it being unclear why certain suggestions are to be incorporated while others are not. In order to avoid this type of stakeholder frustration and confusion, we recommend the Bureau publish a document, possibly in conjunction with the publishing of the next draft of these



wheeling rules, including a response to each of the suggestions put forth by all stakeholders which have submitted comments, noting whether or not each of their specific suggestions were incorporated, and why.

Comment: Lack of consistency and clarity regarding which entities are permitted to be the providers and consumers of PPAs.

SESAP Position: We support clarifying this concept in the sections referenced and for the reasons referenced by AES.

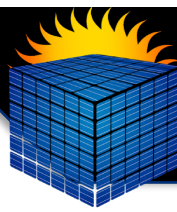
Comment: Article 4, Recommendations A through F regarding additional features that need to be implemented.

SESAP Position: We agree generally with all of AES's recommendations here.

Comment: Section 7.1. PREPA shouldn't always act of the Provider of Last Resort

SESAP Position: Partially agree. Although PREPA should be the default provider in the case of no other private entity being able, willing or chosen (ie PREPA should be the Provider of Last Resort in that case), there should also be flexibility for groups of customers to choose a secondary, tertiary etc private provider if so desired; ie if they are with a private provider, there shouldn't be a prohibition against them choosing a different private provider if one is available and they so choose.

Comment: Section 7.02, the minimum period for a Wheeling Customer to return from the Provider of Last Resort to a Competitive Electric Power Service Company is six (6) months which is too



long. Our recommendation should be just one (1) month subject to the corresponding agreements and procedures in place.

SESAPR Position: We recommend the Bureau re-evaluate the timeframe of 6 months in this draft rule. A shorter or longer period of time may be more ideal, and whatever the period of time stated, it could be beneficial to allow for a clear process for deviation from the norm on a case-by-case basis.

Organization: National Public Finance Guarantee Corporation

Comment: 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.

SESAPR Position: Agree. It's not transparent what the Bureau's primary rationale is overall for the changes between the March and the July 2019 versions of this draft rule, nor the specific changes.

Comment: 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.

SESAPR Position: Partially agree. The Bureau could take the position of waiting for all of the other mentioned proceedings to conclude before finalizing these wheeling rules, or could finish the wheeling rules soon in an attempt to have wheeling occur as soon as possible, and also attempt to have certainty around wheeling aid in the development of the other proceedings. Whatever approach the Bureau chooses, it would benefit stakeholders if the Bureau clarifies their strategy as part of the promulgation of these wheeling rules, juxtaposed with all of the other proceedings happening simultaneously.



Comment: "...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. 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."

SESAPR Position: Agree. The Bureau already has the power and requirement to determine PREPA's unbundling costs; stating that the Bureau may establish a different procedure in these rules is of no effect. It would be helpful if the Bureau clarifies whether the unbundling proceeding will be merged with the wheeling proceeding, or whether in the Bureau's view it will be most beneficial to finalize the wheeling rule before finalizing the unbundling proceeding, or vice versa.

Comment: 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.

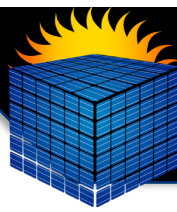
SESAPR Position: Agree. In particular, the following questions should be included:

- Spell out the Mechanics of what actually happens when wheeling occurs. Ie, how each of these things is addressed should be clear in this rule:

- Wheeling Customer still receives only one bill from PREPA, and has only one consumption meter.

- It should be clear that a customer should be able to be both a Net Metering customer of PREPA, and also be able to build excess generation that participates in wheeling as well.

- Wheeling Customer purchases some amount of output from a private generator at some distance away from the consumer.

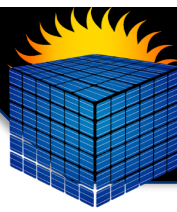


- Wheeling Customer still receives regular power bill for net electricity consumed from the power grid.
- Does Wheeling Customer then pay PREPA for the full amount of their bill, and PREPA pays the Wheeling Producer?
- Or does the Wheeling Customer pay the Wheeling Producer directly?
- If this is this case, does PREPA the Wheeling Customer's bill by the amount of kWh purchased from the Wheeling Producer in a given billing period? Or does PREPA reduce the Wheeling Customer's bill by an amount of kWh less than that purchased from the Wheeling Producer, to account for an amount of losses between the point of production and the point of consumption? If so, how is this amount of lossage calculated, considering it's impossible to track actual electrons once they become part of the power grid?
- Who pays PREPA for the cost of using their Distribution and/or Transmission lines? The Wheeling Producer or the Wheeling Consumer? How and when does this payment occur?

Organizations: Institute for Energy Economics and Financial Analysis (IEEFA), the Public Utility Law Project of New York, CAMBIO P.R. and El Puente Latino Climate Action Network

Comment: Draft regulation goes far outside statutory authority; Act 57 doesn't authorize wholesale electric markets.

SESA Position: Agree. We recommend the Bureau spell out a very clear rationale between each of the concepts included in the final published version of these wheeling rules, and the specific statutory authority that requires each aspect of the rule to exist. The comments of stakeholders are

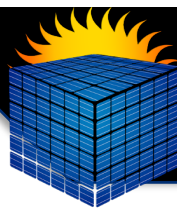


now part of the public record, and can be used as part of judicial review after the Bureau's publication of final rules. If there are stakeholder allegations of certain aspects of this rule having no statutory support, and the Bureau gives no rationale for what specific statutory support is tethered to each aspect of this rule, then the rule itself, in whole or in part, will be vulnerable to being stricken down by the courts. SESAPR's objective with these rules is to see them actually result in new solar and storage projects existing on the island as soon as possible, many of which are poised and simply waiting for these rules (and the accompanying unbundling rules) to be published. If the rules themselves get stricken down or otherwise hung up in the court system, that would present a barrier to the development of solar and storage systems utilizing wheeling on the island.

Comment: Act 17 requires PREB to commission a study, by 2025, to determine the viability of a wholesale electric market.

SESAPR Position: Legislative intent appears to be clear in this regard. Law 17 requires the Bureau to commission a study to determine the viability of a wholesale electric market on the island, which means that the result of said study could be a conclusion that a wholesale electric market is unviable. While it's in the Bureau's purview to commission and complete this study at some point earlier than 2025, it's not in the Bureau's purview to assume the results of a legislatively required study that has not yet occurred.

Comment: "Given this situation, layering on the additional bureaucracy and expense contemplated by this regulation does not achieve the goal of lowering costs, does not make sense at this time (and probably not at any future time), and is demonstrably not in the public interest."



SESAPR Position: When the wheeling law was created, government decided that wheeling is in the public interest, and the law requires the promulgation of this rule. The Bureau does not have the role of deciding whether the promulgation of this rule, or the law itself, is in the public interest.

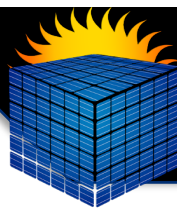
Comment: Nonsubscribers of wheeling services are likely to be harmed by the loss of load from PREPA that wheeling would likely imply, absent significant study and measures designed to avert such harms.

SESAPR Position: The Bureau has a legislative mandate to ensure that the implementation of wheeling doesn't adversely affect non-wheeling customers. This should be taken into consideration when pricing for the use of PREPA's infrastructure to wheel power is determined.

Comment: Wheeling shouldn't be implemented until the conclusion of a variety of studies.

SESAPR Position: Studies are important, but the collection of real-life data is also important. The purpose of the wheeling law is to allow wheeling to happen on the island. It's unknown if even the most ideal wheeling rule imaginable would result in zero, some, or much wheeling to occur. We encourage the Bureau to take whatever measures it deems reasonable before implementing wheeling, and then to move forward confidently with a final rule, while building in the ability to revisit the rule along the way as needed, including a clear process for stakeholders to request revisions to this rule.

Comment: A feed-in tariff should be developed to encourage distributed generation.



SESAPR Position: While we're strongly supportive of whatever mechanisms result in the development of solar and storage of all scales, including distributed generation, this rule pertains only to wheeling.

Organizations: CENTRO UNIDO DE DETALLISTAS (CUD); CAMARA DE MERCADEO, INDUSTRIA Y DISTRIBUCION DE ALIMENTOS (MIDA); PUERTO RICO MANUFACTURES ASSOCIATION (PRMA); UNIDOS POR UTUADO (UPU), Y EL INSTITUTO DE COMPETITIVIDAD Y SOSTENIBILIDAD ECONOMICA DE PUERTO RICO (ICSE-PR).

Comment: "The wheeling scheme looks a little complicated for an island system. Is there really a need to have a system operator? To the extent that PREPA signs a concession agreement and another entity runs the T&D system, PREPA should serve as the system operator and scheduler (wheeler) for those that need to have power delivered from generation to load."

SESAPR Position: Generally agree. The wheeling rules should be limited only to what's necessary for wheeling to be implemented. The promulgation of rules that contemplate the paradigm that could exist after a concession agreement might be signed at some point in the future is outside the scope of these rules.

Comment: "e. Section 1.10.36. It is not clear why the definition of a PPA is limited to that between the Provider of Last Resort and a competitive electric power service company."



SESA Position: The definition of a PPA should be an agreement for a customer to purchase power from a producer, whether that agreement be between a producer and PREPA, or a producer and a customer, or a group of customers.

Organization: PREPA

PREPA expressed in their comment a variety of objections and suggestions. We urge the Bureau to recognize the long history of a largely antagonistic relationship existing between the Bureau and PREPA, and to make every effort at this time to incorporate all of PREPA's concerns and suggestions into the next draft of these wheeling rules. While all stakeholders' viewpoints should be considered, at the end of the day the implementation of even the most perfect wheeling rules would be frustrated if PREPA is in strong opposition to essential aspects of the rule.

We encourage the Bureau to make every effort possible to understand PREPA's concerns and suggestions, and to consider and then implement or otherwise address all of them in the next draft of these wheeling rules.

Thank you for the opportunity to submit these comments.

Respectfully Submitted on September 3, 2019,

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