

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

IN RE: REGULATION FOR ENERGY
EFFICIENCY AND DEMAND
RESPONSE

CASE NO.: NEPR-MI-2019-0015

SUBJECT: Notice of Proposed
Regulation and Request for Public
Comments

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DE PUERTO RICO

INITIAL COMMENTS OF THE PUERTO RICO ELECTRIC POWER AUTHORITY

On September 4, 2019, the Puerto Rico Energy Bureau ("Bureau") set out a new proposal for regulations regarding Energy Efficiency ("EE") and Demand Response ("DR") to reach thirty-percent (30%) energy efficiency by 2040. In its initial comments, the Puerto Rico Electric Power Authority ("PREPA") recommends that the Bureau revise its proposed rules to recognize that (1) EE and DR have materially different technical implementation issues; (2) the TPA selection process and mandatory coordination with PREPA must be strengthened; (3) opportunities for corruption in the TPA vendor selection process must be eliminated; and (4) other technical changes are required regarding implementation, revenue collection, rates and other issues. PREPA understands that the Bureau is working with a tight deadline to achieve the 30% goal and looks forward to working with the Bureau and other stakeholders to develop viable and effective EE and DR rules for the benefit of the people of Puerto Rico.¹

¹ It is a complex task to develop energy industry regulations, including for EE and DR rules, for Puerto Rico. The Bureau must adopt an orderly process for developing such rules to arrive at appropriate and technically viable rules based on reasoned decision-making. Please see for details PREPA's September 3, 2019 Reply Comments in *Regulation on Wheeling*, Case No. NEPR-MI-2018-0010. PREPA does not repeat but incorporates by reference those comments here.

POLICY COMMENTS

The Draft Rules Ignore the Differences between EE and DR Implementation

Under Act 17-2019, Section 1.5(5)(f), it is the policy of Puerto Rico to “establish demand response, demand-side management, and energy efficiency programs and strategies that take into account short-, medium-, and long-term goals and incentivize customers to become more energy efficient, with a focus that results in a reduction in costs and energy consumption, as well as greater stability and reliability.”² Under Act 17-2019, Section 6.29B, to achieve 30% energy efficiency goals by 2040, the Bureau must adopt *regulations* to establish the EE mechanism, and may use a third-party to manage programs and oversee annual goals. However, Section 6.29A establishes a different path for DR, where the Bureau must first develop “guidelines for electric power service companies to develop programs” and “[o]nce PREB establishes the guidelines, electric power service companies shall submit a proposal for the plan on demand response.” Instead, the proposed rules simply roll DR into the legislative EE rulemaking mandate, and go straight to rulemaking for DR along with EE.

EE and DR are distinct, especially regarding whether a consumer actively or passively manages its energy consumption during the day. EE essentially involves consumers substituting more efficient appliances, equipment and materials that uses less energy when the equipment is in use. DR is more involved because it contemplates that a consumer will actively manage its energy consumption in response to dispatch, a designed rate or other price signal. PREPA does not dispute that the Bureau has the

² See also Act 17-2019, Section 1.6(1) and (11).

authority to establish DR programs, and PREPA currently does not have the resources to develop DR programs on its own. However, PREPA urges the Bureau to acknowledge the technical differences between EE and DR, and include PREPA in the analyses and determination of rates necessary before any DR program comes into effect.

This distinction has practical, real world implications. PREPA does not have sufficient resources to implement both EE and DR programs simultaneously. PREPA suggests that the Bureau focus on EE rules first and then issue guidelines on DR, as the law requires. However, if the Bureau must push DR rules, PREPA respectfully requests that it acknowledge the material differences between EE and DR, and focus only on DR programs that are viable, widely accepted, clearly cost-beneficial for consumers and that can be technically and timely implemented by PREPA from a personnel and resource perspective simultaneously with EE program implementation.

For example, PREPA currently has Time-of-Use ("TOU") rates for "primary distribution and transmission voltage level" customers, which were initially designed to incentivize those customers to reduce electricity usage actively during peak periods and other periods when beneficial to the system to help reduce system and customer costs. These rates were designed many years ago, the grid has changed, and these rates longer provide an adequate price signal for electrical consumers to reduce consumption. In the absence of published hourly energy prices, the Tariff TOU rate could be a viable starting point for a price signal to reduce usage. The Bureau should explore with PREPA the revision and expansion of TOU rates to other customers as an implementable DR program to help achieve energy usage reductions during peak periods. PREPA would first need to re-run its marginal costs studies and better identify peak and off-peak periods

for the system, which have shifted over the last several years for different customer groups.

The Role of the Third-Party Administrator Lacks Important Checks and Balances

Under proposed Section 2.1(A) of the draft rules, the Bureau shall issue a competitive RFP for the Third-Party Administrator (“TPA”) to administer EE and DR programs. The TPA will be responsible for a broad array of fundamental activities impacting consumers and how PREPA manages its system including the oversight of the operation of each program, vendor selection, reporting requirements, and budget oversight and allocation. Although Act 17-2019, Section 6.29B, contemplates that the Bureau *may* use a third-party to manage programs, it is not required to do so. PREPA's preference is that PREPA secures directly a consultant to manage and oversee EE and DR programs, such that the TPA has a direct contractual relationship with and legal obligation to PREPA.

PREPA lacks sufficient resources to try to force this result or otherwise implement, manage and oversee the scale of EE and DR programs envisioned in the draft rules. Despite this lack of resources, PREPA has critical technical information and know-how that must be brought to the EE and DR programs, or else the Bureau and TPA will risk deploying a muddled set of ineffective programs. Generally, stakeholders of demand response programs (whether as providers/aggregators or program administrators) have concrete contractual and corporate relationships between themselves and the local utility and system operator.

Therefore, PREPA respectfully requests that the Bureau: (1) consult with PREPA on the design and review of the TPA RFP, responsive proposals, eventual

contract and performance and compensation metrics; (2) strengthen and expand provisions in the draft rules that require the TPA to cooperate or consult with PREPA regarding all material aspects of the DR and EE program, including study, planning, design, vendor solicitation and selection, program implementation, monitoring and evaluation and customer outreach; and (3) make the TPA's obligations to PREPA legally binding by making them part of the TPA's contract with the Bureau under proposed Section 2.1(D). PREPA reflects this need for closer and more defined mandatory coordination between the TPA and PREPA throughout its comments below.

The Potential for Corruption in TPA Contracted-For Vendor Selection

The proposed rules, Section 7.2(A), discuss in some detail how the TPA will select its vendors through a competitive process to implement EE and DR programs, although there are exceptions to this general process.

The TPA also must "avoid anti-competitive or monopoly power concerns" in its vendor selection process. Does this mean that the TPA can limit the amount of market share – the number of programs – that any one vendor can service; is this public and who reviews and judges this determination? Moreover, under Section 7.2(B) if the competitive vendor procurement process fails or if it obtains permission from the Bureau, then the TPA can use its own people to implement DR and EE programs. Again, is this a public determination judged by an independent party? Under proposed Section 7.2(I), the TPA has a great deal of authority to reject bids if it determines they will not be in the public interest. What "public interest" criteria will the TPA use, and will this be publicly judged by an independent entity? Moreover, under proposed Section 7.2(J), the TPA can bar bidders from participating in any contract award for three-years if the TPA determines that

an entity has submitted false or misleading material information as part of a bid. Could this be used by the TPA to bar or otherwise punish competitors? In the end, proposed Section 7.3 allows the TPA to skip the open selection process altogether and select a service provider *without a competitive bidding process* if the TPA finds that this will promote the efficient and effective delivery of programs.

These proposed provisions described above place a great deal of authority in the hands of the TPA to reject bids for monopoly concerns, if the competitive process fails, simple efficiency, or if in the public interest, with no real criteria stated or public judgement process described. This provides the TPA with significant tools to avoid open and competitive solicitations and otherwise guide work to preferred vendors or to itself, or bar competitors, which creates a real opportunity for future corruption of this vendor process. Potential DR and EE vendors and investors in Puerto Rico will be discouraged by the seemingly “wild west” ungoverned vendor solicitation process. The proposed rules should be significantly improved in this area to ensure a transparent and open vendor solicitation process that will be carefully and publicly monitored and reviewed, to avoid even the potential appearance of corruption.

SPECIFIC COMMENTS

To assist the Bureau, these specific comments generally follow the order of sections found in the proposed EE and DR rules and highlight both PREPA’s policy comments and specific technical comments regarding the proposed rules.

Overall Implementation and Role of the TPA

- In Section 1.3 and throughout the proposed regulation, the Bureau notes Act 17-2019's requirement that Puerto Rico achieve "the goal of thirty percent (30%) of energy efficiency by 2040." In section 3.3(A)(1), the Bureau instead refers to this goal as "thirty percent (30%) savings by 2040." The Bureau should clarify what baseline value and what metric should be used for the calculation determining whether this goal has been met. Furthermore, the Bureau should clarify whether its interpretation of the mandate of Act 17-2019 requires a reduction in electricity cost due to energy efficiency or an actual reduction in electric consumption.
- Proposed Section 1.3 establishes, among others, that "demand response programs can help reduce the reliance of the Puerto Rican people on expensive peaking capacity that drives up costs for all customers" and "Customers participating in demand response programs will benefit through having opportunities to reduce their energy costs by better managing their usage". Since currently no data is available to support these claimed benefits, they should be removed. PREPA suggests that such statement might create misleading expectations for customers.
- Proposed Section 2.1 states that the Bureau "seek bids from *qualified* firms." The Bureau should clarify whether this means that it will implement a Request for Qualification ("RFQ") process to qualify potential participants in the TPA RFP. PREPA respectfully requests that the Bureau implement such an RFQ process in order to ensure qualified participants in the overall RFP.
- Proposed Section 2.2(D) states that "One goal of program implementation during the First Contract Year will be to learn about the potential for energy efficiency in different markets in Puerto Rico and inform the first Three-Year Plan." PREPA agrees that studies should be undertaken to demonstrate whether an EE and DR plan will achieve the goals of reducing demand and improving system conditions. PREPA's system is complex and it is unclear what impacts EE and DR programs will have on usage, costs and system conditions.
 - PREPA further agrees with overall approach in the proposed rules to calibrate each year through quarterly, annual and three-year plans and reports EE and DR programs and project based on their studied effectiveness to achieve specific goals. However, although the proposed rules call for a large-scale EE and DR deployment, a demonstration that the overall DR and EE program will reduce usage and costs and prove system conditions has not yet been made.
- Section 2.1(B) states that the Bureau "shall provide a preference to those bidders that demonstrate an intention to utilize Puerto Rican businesses and individuals for program implementation to the maximum degree possible" While this is a critical and laudable goal that should be given due weight in judging EE and DR plans, under Act 57-2014, Section 6.3(c), the Bureau has a broader purpose to

make rules for complex programs that “guarantee the capacity, reliability, safety, efficiency, and reasonability of the rates of Puerto Rico’s electrical system.”

- Proposed Section 2.3(2)(b) states that “The Energy Bureau shall inform the TPA at least sixty (60) days prior to the commencement of the Planning Year if it intends to extend the TPA's contract or to issue a new RFP.” The proposed rules do not state what criteria, including performance measures, will be used to judge such an extension decision. PREPA is directly impacted and will have direct technical experience with the plan’s implementation and impacts and thus must be consulted as part of this determination.
- Proposed Section 2.4 states that the TPA is eligible to receive performance-based compensation based on achieved goals and negotiated performance metrics. PREPA is directly impacted and will have direct technical experience with the plan implementation and impacts and thus must have a role in the development of compensation and performance metrics, as well as the monitoring and evaluation of whether such metrics were achieved by the TPA and its vendors.
- Proposed Section 2.4 also mentions that the TPA’s contract shall establish minimum requirements to serve potentially underserved markets, such as low income, small businesses, residential and government. PREPA agrees with focusing on these groups of customers because it is the socially responsible policy. Moreover, low income customers under a fixed rate have on average higher monthly consumption than other residential customers, which accounts for higher subsidy cost that are paid by non-subsidized customers through the Subsidies, Municipal Public Lighting, and Help to Humans riders. Similarly, helping government agencies manage and lower their consumption, will improve PREPA’s account receivables and overall finances, which could help delay increases in customers’ rates.
- Proposed Section 3.2 provides a list of what the TPA should do regarding cost-effective EE and DR programs.
 - Item (6) in that list is “Pursue market transformation strategies.” It is not clear what this means and PREPA opposes this language if it is meant to suggest that the TPA can go beyond its EE and DR plan implementation to include even broader energy market transformation initiatives. There are several entities designing market transformations, and adding the TPA will only confuse matters.
 - Item (10) is “Encourage compliance with Puerto Rico's building energy code, and contribute to increasing the stringency of that code” It is not clear what this means and PREPA opposes this language if it is meant to suggest that the TPA will propose new codes with a full vetting with the Bureau, PREPA and other stakeholders.
 - Item (12) is “Provide information and education that will empower consumers to manage their energy use and energy bills.” PREPA is opposed to this

language if it means that the TPA will communicate directly with electricity consumers without PREPA having a right to reject the TPA's proposed messaging. If the TPA acts without consultation and approval of PREPA to communicate with customers, this could lead to a mess of inconsistent messaging regarding the TPA plans and PREPA's rates, terms and conditions, capabilities and responsibilities regarding the EE and DR plan.

- The Bureau should clarify the nature of the relationship the TPA will have with the Bureau, PREPA and the government of Puerto Rico. Specifically, it should clarify whether the TPA's noncompliance with its contract will subject the TPA to the Bureau's enforcement authority, and what other governmental authorities will have a role in the TPA's compliance with the proposed regulation and Puerto Rican law.

TPA's Three-Year Plan and Annual Plan

- Under proposed Section 3.3(B), the draft rules list what must be included in the Three-Year Plan. PREPA suggest that this list should include analysis of the impact of the plan on PREPA as the TDP/SO, system reliability and PREPA's ability to manage its system and recover system costs. Furthermore, PREPA should have input on the full list in proposed Section 3.3(B). For example, item (4) "avoided costs" puts the TPA in a difficult position to determine the avoided costs for a particular EE or DR program, which at the very least would require PREPA's input and technical experience.
- Proposed Section 3.3(C) sets out the Three-Year Plan procedural schedule. PREPA, as the TDP/SO, should be included in the plan preparation prior to its public discussion. Although there is an open stakeholder meeting and a written feedback process, including a summary of feedback in proposed Section 3.3(C) 1)(c), there is not a clearly defined process allowing stakeholders including PREPA to have an interactive exchange of ideas and improvements with the TPA.
- Regarding proposed Section 3.3(C)(2)(c), PREPA appreciates that the Bureau has set up a process for stakeholder comments on the Three-Year Plan once it is filed with the Bureau. However, the process should include formal testimony and an adjudicatory process unless the plan is unopposed. The Bureau assumes it has or can contract for the expertise and resources to analyze the Three-Year Plan to make sure it captures all EE and DR resources that are "cost effective or less expensive than supply resources." It is not clear what "less expensive than supply resources" means in terms of a cost-benefit analysis and under what criteria will this be compared. Even if a EE or DR resource is somehow "less expensive than supply" it still must be cost-effective and needed to achieve the goal of reduced usage, reduced cost and improved system conditions.

- Proposed Section 3.4 contemplates an “Annual Plan” that can make changes to the Three-Year Plan, and solicits stakeholder feedback both before and after the Annual Plan is filed with the Bureau. Again, under proposed Section 3.4 E)(2), the Bureau should assume it will open an adjudicatory proceeding to review the Annual Plan, including expert testimony, unless there is cause to waive a public process.
- Under proposed Section 3.4(F) the Bureau and TPA may amend the TPA's contract or otherwise make necessary changes to implement an approved Annual Plan. This seems ripe for potential abuse. The Annual Plan and TPA contract should be publicly filed and vetted. At all times, transparency should be the fundamental guiding principle of the planning and contracting process.

Budgeting, Funding and SBC

- Proposed Article 4 establishes a System Benefits Charge (“SBC”) to cover the annual budgets of EE and DR programs established under the proposed rules, and is defined as a “Non-Bypassable Charge imposed on Customers to support Demand Side-Management Services” offered by the TPA. PREPA offers the following comments on the SBC generally:
 - Currently, the EE Charge approved by the Bureau only contemplates costs regarding EE programs. On September 27, 2019 the Bureau issued an Order that approved an EE factor of \$0.001121/kWh effective from October 1, 2019 to June 30, 2020. PREPA responded with a Motion indicating that although that rider had been configured in the billing system, other matters need to be considered before its implementation. The Bureau issued an Order on September 30, 2019, establishing that the EE Rider must be implemented as of November 1, 2019. However, aside from the strategic planning, employees training and public notices necessary for this rider to come into effect, the EE rider is inconsistent with the SBC established within this draft rulemaking. PREPA's Rate Book indicates that the EE Rider is a mechanism to recover all costs for EE implementation on behalf of PREPA. However, the proposed SBC will recover EE and DR program costs, and if the EE Rider is implemented and proposed SBC approved in the next few months, the two charges may be inconsistent causing unnecessary implementation confusion among PREPA's employees and customers.
 - Moreover, if the SBC is approved in the next few months, but the TPA is not in place for several more months, it would not be just and reasonable to charge customers the SBC without review of the TPA's EE and DR plan.
 - With this in mind, PREPA urges the Bureau to: (1) delay implementation of the EE Rider until the SBC can be established to avoid confusion; and (2)

delay the SBC implementation until the TPA's EE and DR plan can be reviewed and approved.

- Under proposed Section 4.1, the Bureau establishes the EE and DR budget, and will evaluate the SBC to collect sufficient revenues. The Bureau should include in its evaluation criteria the impact of the budget and SBC on PREPA's operations and its ability to collect charges and maintain reliable service for all customers.
- Under proposed Section 4.1(B), if other funds are available to the TPA from other sources other than ratepayers, the SBC should be reduced. This reduction should be mandatory and not permissive. Moreover, the availability of EE and DR funds from other sources should be understood as part of the initial budgeting process to avoid over-collecting for costs through the SBC.
- Under proposed Section 4.1(D), before adjusting the SBC upward in case of exceeding budgets or over-spending, and downward if the SBC has over-collected funds, the Bureau should include in the draft rules an opportunity for stakeholders to be heard and an adjudicatory proceeding. Large increases especially in the SBC should not be automatically implemented. PREPA suggests that such a proceeding be triggered in the event of a 10% or higher SBC overcollection or budget exceedance.
- Proposed Section 4.2(A) indicates that TDP/SO shall collect the funds resulting from the SBC through its billing and payment processing system. Under subsection (B), the SBC money is collected and transferred to a SBC Account, which apparently earmarks the funds solely for approved EE and DR programs and for nothing else. The SBC Account cannot be used for any other purpose. It is not clear who "owns" the SBC Account and the Bureau should clarify this ownership issue.
- Proposed Section 4.2 also states that if a customer pays only a portion of the bill, the TDP/SO shall transfer funds as payment to the SBC Account in proportion to what was paid for the billed amount. These statements are not consistent with PREPA's current billing system and procedures:
 - (1) PREPA is the utility currently is responsible for billing all customers and providing service, not the proposed TDP/SO. In the eventuality that the unbundling of services occurs, it is not clear that a TDP will acquire tasks related to billing and administering customer accounts.
 - (2) PREPA manage revenues from rates, based on the billed amount rather than on a cash basis. PREPA therefore does not segregate partial payment by Clauses and Riders.

For these reasons, PREPA requests modifying Section 4.2(B)(1) to be consistent with PREPA's processes. Furthermore, the initial budget determined for the EE and DR program may currently be paid in the same manner as PREPA pays for the Bureau's budget (i.e., Puerto Rico Energy Bureau Assessment), whose cost is

being recovered through the Subsidies, Municipal Public Lighting and Help to Humans rider from all of PREPA's customers.

- Proposed Section 4.2(D) states that if there is a shortfall in the SBC Account, then the Bureau can make an "adjustment in rates at any time necessary." In this instance, the Bureau should consult with PREPA to analyze and understand the impact of a change in the SBC level on customers and PREPA's operations and ability to collect revenues. Moreover, if a circumstance arises where there is a SBC Account shortfall, then this should be audited and analyzed through a public proceeding to understand why the shortfall occurred before simply changing PREPA's rates and charges.
- Proposed Section 4.3 should explain if any portion of these costs will be covered by the Bureau's budget, to prevent an unnecessary increase in customers' billing.

Cost-Benefit Test / the PR Test / Avoided Cost

- Proposed Section 5.1(A) indicates that Bureau shall approve a PR Test that accurately reflects the policy objectives of Puerto Rico, accounts for stakeholder input, and reflects the directives in these regulations. The development and implementation of the PR Test should be subject to PREPA's input at the outset and a formal proceeding to provide all stakeholders and opportunity to be heard and understand the Bureau's reasoning in adopting a one test over another. Moreover, one of the PR Test principles must be to understand and minimize any negative impacts on consumers and on PREPA's reliability and resiliency posed by EE and DR programs. The PR Test also should be applied on at least the project and program level and not potentially left to the Bureau to determine on a portfolio or sector level. Requiring a review at the project or project level will help ensure that EE and DR measures make sense for consumers and their costs or any diminished benefits are not obscured by a higher level portfolio review.
- Regarding proposed Section 5.1(C)(3), PREPA questions whether there should be a requirement that low-income programs that do not pass the cost effectiveness screen but are included in the TPA portfolio be offset by another project or program that significantly exceeds the PR Test. In this way, the TPA is motivated to ensure several high-quality EE and DR programs that exceed cost-benefit levels.
- Regarding proposed Section 5.1 overall: (1) it may not be correct to assume that EE and DR are low-risk resources in terms of capital, project and portfolio risk, and thus the discount rate may not be appropriate; (2) the Analysis Period should be spelled out in the TPA plan and must be subject to public vetting by the Bureau and TDP/SO; and (3) it is not clear how specifically the Free Ridership and Spillover will be accounted for in the PR Test, or what principles will guide this determination and who will propose it.

- Proposed Section 5.2 discusses calculation of avoided cost. Avoided cost is extremely difficult to quantify in this context, as many states have realized when trying to introduce Qualifying Facilities under the Public Utility Regulatory Policies Act into their regulatory systems. The avoided costs calculation should be public and subject to review, stakeholder involvement and an opportunity to be heard. Moreover, under proposed Section 5.2(C) “societal costs of pollutant emissions” will be included in avoided costs, but it is not clear if other environmental externalities will be included and what principles will guide the inclusion of such costs and benefits.
 - Proposed Section 5.2 establishes that the Bureau shall conduct a study or other analysis to develop avoided cost estimates for cost-effectiveness estimates. PREPA should be involved in these analyses and not just as the entity providing data.
- Under proposed Section 5.2(B), avoided costs should be updated annually (and not left to a longer period) because there likely will be near-term and profound changes in the resource mix that will directly impact the avoided cost calculation.
- Regarding proposed Section 5.2(C), PREPA requests that the Bureau provide examples of “avoided costs that cannot be monetized” that, according to the proposed rule, “shall be considered on a qualitative basis.” This provision is not clear and there is no explanation how this “qualitative” consideration will be conducted.

Reporting, Measurement, Evaluations and Verification

- Proposed Section 6.1(B)(4) indicates that where the actual value differs from the planned value by more than fifteen percent (15%), the Annual Report shall include an explanation of the variance. Such a large variance should signal a formal, public review by the Bureau and a presumption that the TPA proposed costs above the planned value should be disallowed. This will promote budgetary responsibility on the part of the TPA.
- Regarding proposed 6.1(C), it seems prudent that there should be a public proceeding informing the Bureau’s determination on the Annual Report leading to the Final Report, including the verification of performance claims under Section 6.2. The draft rules contemplate a public comment process after the Final Report is issued that could result in an investigation to address any concerns, but it does not ensure that there will be any meaningful review.

TPA Responsibilities

- Article 7.1 establishes that the TPA will be an Electric Power Service Company. As mentioned in PREPA's comments regarding the Wheeling Resolution, the proposed definition of EPSC includes generators and marketers selling competitively at retail, which seems to be a premature reference especially regarding the regulatory status of the TPA.
- All information including the written questions and answers, FAQs and bid submissions reflected in proposed Sections 7.2(G) and (H) must be posted and made available to the public, so that no one bidder has an advantage over another, and that all bidders can benefit from transparent information.
- Under proposed Section 7.2(J), PREPA as the TDP/SO should be included on the proposal review team. At a minimum, PREPA should be included and consulted in the review process.
- Proposed Section 7.4 mentions a TPA standard agreement form and other agreements but there is no indication that this form will be reviewed and approved publicly or what the review process might be for completed agreements.
- Although there is some commenting process anticipated, proposed Section 7.5 should state that the TPA shall provide drafts of its proposed Three-Year Plan and Annual Plans to stakeholders, and will collaborate with stakeholders to modify those proposed plans prior to finalization and submission to the Bureau.

Demand Response Services

- Overall, there should be a more formal proceeding where potential DR programs involve rate designs such as time varying rates, curtailment tariffs or peak-time rebates. As proposed, the TPA, TDP/SO and Provider of Last Resort only are required to work together to submit plans to the Energy Bureau for approval. After such a submission, there also should be a formal, adjudicated proceeding to allow all stakeholders and opportunity to be heard and help improve the end result. Furthermore, proposed Section 8.2(B)(4) seems to contemplate that DR Service Provider's plans must provide "justification for the program and/or **rate designs** based on cost-effectiveness." It is not clear whether the proposed rules require DR Providers to propose rate designs.
- Proposed Section 8.1 establishes that both the TPA and Competitive Electric Power Service Companies ("CEPSC") may offer DR service to their customers as "Demand Response Service Providers." According to the proposed Wheeling Rules, a CEPSC is an EPSC other than the Provider of Last Resort that provides

or seeks to provide Generation Service to Wheeling Customers. CEPSC should not be included as Demand Response Service Providers, since the Wheeling program to be implemented results in a financial transaction between the provider and the end user, and not the physical distribution of energy to that customer.

- Proposed Section 8.1(C) appears to limit electric generation that consumes fossil fuels, such as backup generators, to emergency situations and thus excludes such on-site generators from DR program participation. The Bureau should confirm if this is its intention and, if so, why. Such backup generation is allowed as a DR resource by certain ISO and RTO programs.
- Regarding proposed Section 8.3(A)(1), the Bureau should be mindful of “slamming” or “cramming” (signing up or charging a customer for a program without its consent) and that the customer’s account usage information and account number should be treated as confidential and not released to a third-party without the customer’s written, verified consent. The Bureau should conduct auditing to make sure, for example, that customer signatures indicating consent are not being faked. PREPA acknowledges that Section 9 addresses some of these customer privacy concerns.
- Proposed Section 8.3(G) says that DR Service Providers shall not create “unlawful barriers” to prevent customers from leaving their services. The Bureau should provide some additional description of what these “unlawful” barriers might be. Indeed, there can be many types of barriers, like waiting periods, paperwork requirements, and exit fees, that could prevent customers from switching providers but may or may not be *per se* unlawful.
- Proposed Section 8.3(J) and 8.4(A) indicate that DR Service Providers intending to enroll residential and small commercial customers in DR services are required to meet additional requirements. The Bureau should be very careful opening the DR market and marketing practices to residential and small commercial customers without having a clearly thought out series of consumer protection and messaging requirements established beforehand. Moreover, if this program is not TOU rates-based, then how are these customer DR measures going to be dispatched – by phone or electronic signal? How will the customers’ performance be monitored and confirmed and how will they be compensated?
- Proposed Section 8.4(B) indicates that the TDP/SO shall dispatch DR resources in a manner that supports the least cost operation of the Puerto Rico electric system, when viewed from a total system perspective. All DR programs to be implemented should be discussed and approved by PREPA, which at the end of the day will be the SO, which must prioritize system safety and reliability above all. This change should be implemented throughout the proposed rules.
- Proposed Section 8.5 states that the TDP/SO is required to measure and verify performance and, under subsection (B), establishes a baseline for usage against which load reductions will be measured and compensated. As certain ISO/RTOs have experienced, establishing a baseline for load reflecting typical usage without

the DR measure is difficult and sometimes subject to gaming (e.g., artificially increasing the electrical usage against which usage reductions would be measured) to increase the opportunity for compensation resulting from load reductions. Moreover, testing of DR deployment also is potentially subject to gaming (e.g., increasing or decreasing electrical usage artificially prior to a testing period to impact the baseline against which usage reductions are measured). The Bureau should be prepared to address such concerns to ensure that DR and EE provide the actual system benefits and that compensation for these benefits is not inflated.

Privacy and Customer Data

- Overall, proposed Article 9 addresses privacy and customer data, and seeks to establish a secure method for the transmission of customer energy usage information, with the TDP/SO and TPA working collaboratively to establish such mechanisms. PREPA applauds the Bureau for recognizing this critical concern and proposing such provisions. PREPA looks forward to bringing its expertise regarding customer data and its transmission to this collaborative process. Proposed Section 9.2(C) also suggest that the TDP/SO must respond to requests for certain data within 24 hours (usage data, and other data to evaluate DR performance) and subsection (F) requires the provision of fifteen (15) minutes interval data when available. PREPA looks forward to addressing with other stakeholders the complexities of providing such usage data in a timely and secure manner.
- Proposed Section 9.2(D) says that the TDP/SO shall ensure that customers wishing to participate in DR services have the appropriate metering devices and telemetry solutions (e.g. a pulse device), if the TDP/SO consents to the new devices and that the customer or its DR provider pays for new equipment and services. PREPA must be fully compensated for changes in meters and service to avoid passing on the cost of DR program participation to those customers who do not participate or participate in a different manner.

Rate Design, Planning and Geographically Targeted Programs

- Regarding proposed Section 10.1(A), Rate Design, PREPA notes that developing rates and rate design is a difficult and technical process and, as PREPA's rates must be cost-based, they shall reflect all costs for EE and DR program implementation, including those costs posed to the system. Without appropriate rates, certain customers might be forced to subsidize other customers, including

those participating in DR programs. Rates and rate design, of course, must be fair and ensure service reliability.

- Proposed Section 10.1 states that the TDP/SO may develop and implement time-varying rates and/or demand charges that are informed by the costs of distribution and transmission infrastructure, and the POLR may develop said rate informed by the costs of energy supply, and any such rate structure must be cost-based. As mentioned in the PREPA's initial and reply comments regarding the proposed Wheeling Regulations, *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.
 - It is critical for these rates that the proposed EE and DR Regulation affirmatively recognize that all 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.
- PREPA agrees with proposed Section 10.1(A)(3) to the extent it requires the refreshing and restudy of peak and off-peak periods and usage curves, since usage periods have changed over the last several years due to changes in population, businesses and other fundamentals that impact electricity usage.
- PREPA also agrees with proposed Section 11.1(C) to the extent the TDP/SO shall include in all planning processes the changes in energy consumption and peak load that result from the activities of the TPA and any other EE or DR providers. PREPA notes that these changes can be "caused" by many factors separate from DR and EE program deployment, such as changes in population and businesses as well as free ridership. Moreover, this proposed section indicates that the TPA and TDP/SO shall collaborate to ensure that the load forecasts used by the TDP/SO in the IRP reflect the best combined estimate of future electric load, as well as appropriate uncertainty. PREPA looks forward to such a collaborative effort, but the proposed rules should make clear that entity ultimately responsible for the load forecast is the TDP/SO.
- Proposed Sections 12.1(A)(1) and (B) indicate that the TDP/SO shall develop and submit to the Energy Bureau for approval a non-wires alternative screening framework for proposed transmission or distribution investments to evaluate whether EE, DR, or other distributed energy resources should be investigated as part of a least-cost approach addressing insufficient transmission or distribution infrastructure as well as a geographically targeted EE and DR program proposal, budgeted separately and under a separate TPA contract from other programs. PREPA is not necessarily opposed to these concepts. However, these proposed sections suggest yet more filings on top of but separate from existing planning and

IRP proceedings, which seems to decentralize planning while adding redundant and burdensome administrative layers. These concepts should be made part of an existing process.

Timeline and Implementation Issues

- Proposed Section 2.1(A)(1) states that the Bureau will issue an RFP for the TPA “with sufficient time to allow for TPA selection, contracting, and planning.” This period is vague and potentially limits or will discourage stakeholder involvement in the development of the RFP process.
- Proposed Section 1.2 says that regulation itself must be established in 180 days. These proposed regulations become effective 30 days following their submission to the Department of State and the Legislative Library. Under Section 2.2, the Bureau will then issue an RFP for the TPA within 60 days of the regulation being “final.” It is unclear whether the regulation becomes “final” following an order from the Bureau, on its effective date following its submission as described in Section 1.16, or on some other date. This should be clarified. Furthermore, PREPA questions whether the 60-day period for the issuance of the RFP is sufficient time to address the substance of the regulation, especially if the regulation becomes “final” despite potential challenges in the courts. As stated through these initial comments, PREPA respectfully submits that stakeholder involvement in the development of RFP criteria is essential to the long-term viability of the EE and DR programs.
- Contrary to proposed Section 2.1(A)(2), it may be a more efficient and definite process if the Bureau established the final funding method under Section 3.1 prior to the issuance of the RFP. A lack of definite funding may chill participation in the RFP process by qualified participants.
- According to the proposed rules, it appears that the TPA must develop a Three-Year Plan and present a draft of it 210 days before the beginning of the Program Implementation Period for those three years. It therefore appears that the TPA has less than six months to familiarize itself with the idiosyncrasies of Puerto Rico and the Puerto Rican electrical system and develop a comprehensive DR and EE regime that must then be fully up and running the following year. Certainly, PREPA will collaborate and assist the TPA, and the TPA can adjust through its Annual plan. Nonetheless, PREPA is concerned that this timeline is compressed and could result in a rushed implementation of suboptimal programs, especially the development of a viable DR program, as discussed herein.

CONCLUSION

For the benefit of the people of Puerto Rico, PREPA urges the Bureau to consider the comments and adopt the recommendations made by PREPA herein. PREPA looks forward to working with the Bureau to implement appropriate EE and DR regulations.

Respectfully submitted,

In San Juan, Puerto Rico, this 7th day of October 2019.

/s Katuska Bolaños

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CERTIFICATE OF SERVICE

We hereby certify that on this same date we have filed the above document at in person at the office of the Clerk of the Puerto Rico Energy Bureau, via email to the following address: comentarios@energia.pr.gov, and sent a courtesy copy of this filing via e-mail to nicolas@dexgrid.io.

In San Juan, Puerto Rico, this 7th day of October 2019.

/s Katuska Bolaños

Katuska Bolaños