

**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

**COMMENTS OF THE PUERTO RICO ELECTRIC POWER AUTHORITY ON
PROPOSED REVISED ELECTRIC ENERGY WHEELING RULES**

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 and reply comments recommending that the Bureau not adopt the proposed rules in their current form because they are non-compliant with the law, overbroad and premature. On October 21, 2019, the Bureau issued revised proposed regulations on electric energy wheeling (proposed “Revised Rules”), seeking one round of comments. PREPA provides its comments regarding the proposed Revised Rules.¹

POLICY COMMENTS

PREPA appreciates that the Bureau has appropriately scaled back the proposed revised wheeling rules to better reflect system realities and eliminate premature efforts to unbundle, deregulate fully and provide competitive open market access. Indeed, the

¹ PREPA, as stated in its reply comments, calls for a more deliberate rulemaking and comment process. Given the comments received and wheeling rule revisions, the Bureau should provide a redline comparison showing changes to arrive at the Revised Rules, including a description of what comments were accepted or rejected and why to support reasoned decision-making.

Bureau has moved toward a more traditional, step-by-step wheeling approach and removed references to: (1) the System Operator and Transmission and Distribution Provider roles; (2) a balancing market and price; and (3) smaller consumers eligible for wheeling. Instead, in line with the legislative and system reality mandates, the proposed Revised Rules focus on: (1) PREPA and its responsibilities as the Provider of Last Resort (“POLR”); (2) a more narrow definition of Wheeling Customers to include Large C&I Consumers, EPSCs, Microgrids, Energy Cooperatives, and municipal ventures; and (3) certified Independent Power Producers (“IPP”) and their ability to enter into Wheeling Service Agreements (“WSA”) to provide electricity through Power Purchase Agreements (“PPA”) to Wheeling Customers.

The Bureau, however, still has not provided support for the claimed benefits of wheeling—reduced cost, efficiency and renewable power promotion—or how introducing the proposed revised wheeling rules achieves these benefits. Moreover, although providing mechanisms to review and approve wheeling-related agreements and rates, the draft revised rules also do not fully account for: (1) PREPA’s current system costs and technical challenges, or interaction with other rulemaking efforts; and (2) the possibility that the implementation of wheeling will hurt non-wheeling customers through loss of load and reduced system cost recovery opportunities. PREPA also is concerned that the proposed Revised Rules are too restrictive and may put PREPA in a position where it cannot comply with a specific requirement or timeline in the first instance simply because

of system conditions or internal resource constraints. Notwithstanding, PREPA offers the following technical comments on the improved, proposed revised wheeling rules.²

TECHNICAL COMMENTS

Revised Wheeling Regime Structure

Overall, the proposed Revised Rules anticipate that PREPA, as the POLR, will enter into standard form WSAs with IPPs who will pay PREPA for the use of its transmission and distribution system to provide power to Wheeling Customers. The IPPs will provide power to these Wheeling Customers pursuant to standard form PPAs. Both the standard form WSA and PPA will be subject to a stakeholder process that will result in standard agreements approved by the Bureau. The POLR will be responsible for the interconnection of IPP generation facilities and remains responsible for standby and last resort electric service. PREPA also will have additional standby and partial requirement tariff rates as part of this new wheeling regime.

The Bureau's new simplified draft wheeling regime now focuses on the following entities: POLR, IPPs and Wheeling Customers. PREPA addresses its technical comments on the proposed Revised Rules through these three roles.

The Provider of Last Resort

Under the proposed Revised Rules, PREPA, as the POLR, will continue to be responsible for maintaining the reliability of electric service and serving as a standby

² PREPA reserves the right to provide additional comments including in response to other parties commenting on the Revised Rules.

provider of electricity to Wheeling Customers. PREPA also will develop new standby and partial requirement rates that the Bureau will approve. See proposed Section 2.03. The POLR is responsible for interconnecting generating facilities, microgrids, and distributed generation pursuant to interconnection regulations to be approved by the Bureau.³ See proposed Section 2.02. The POLR also will propose and execute a form WSAs with IPPs and propose a Bureau-approved rate for wheeling services, which requires cost unbundling. See Articles 4 and 7. The POLR is responsible for approving these agreements and providing wheeling services according to a timeline. See Article 6.

The proposed Revised Rules also indicate that: (1) the Stand-By Power and Partial Requirements Power Tariffs, proposed by the POLR and approved by the Bureau, must specify when the Wheeling Customer may opt to return to the POLR service; and (2) these Tariffs and the Wheeling Rates must ensure that “costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.” See Section 2.03. PREPA appreciates inclusion of these provisions.

Regular Rates: As stated in our initial and reply comments, regular rates should be adjusted prior to the implementation of wheeling and avoid cross-subsidization, and wheeling rates should be handled like Regular Rates. The proposed wheeling rules should be revised to emphasize these important principles. 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

³ PREPA must be allowed to evaluate fully and carefully each Interconnection Agreement as a form agreement and prior to the execution of any agreement. This will allow PREPA to ensure that the interconnection does not harm reliable service and that costs caused by the interconnection request are borne by the requesting IPP and not non-wheeling customers.

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.

As also previously stated, it is critical that the proposed Revised Rules 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 Revised Rules 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/Timing: As the wheeling rules are developed and implemented, costs for non-wheeling customers served by PREPA in its role as 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 a new wheeling structure, the POLR will need to invest in and implement new information systems to assist in tracking switching customers, billing settlements between IPPs and customers, overall billing and collection as well as maintaining reserve generation.

Wheeling rates must include non-bypassable charges to recover these costs associated with wheeling implementation and reduced recovery of system costs, as well as provisions to periodically update the necessary charges. The proposed Revised Rules

also delete references to a “Non-Bypassable Charge.” As PREPA stated in its previous 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.⁴

Moreover, and importantly, the proposed wheeling implementation timeline does not account for the considerable time required for PREPA to: (1) implement a functional billing system to accommodate wheeling; and (2) update existing rates for unbundling services to be consistent with the new wheeling rates. The proposed Revised Rules should build in sufficient time to allow for these critical revisions to be made to the system.

Standby Power Tariff. Proposed Revised Rule Section 2.03(A)(1) states that the standby tariff shall include a formula by which charges are calculated. PREPA suggests that, instead of a formula, this proposed section should be modified to state that the standby tariff should include all charges, clauses and riders pertaining to PREPA’s cost for providing this service.

Returning Wheeling Customers. Wheeling Customer should be required 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. This will assist PREPA’s management of its system and its ability to receive the Wheeling Customer back on POLR service.

⁴ PREPA Comments at p. 13.

Moreover, as a modification to proposed Section 2.03(B), PREPA suggests a minimum “stay” period for Wheeling Customers returning to POLR service of one year, which will make the proposed rule consistent with PREPA’s existing Terms and Conditions (the minimum term of the relevant electric service contract is one year).

Independent Power Producers

Under the proposed Revised Rules, to wheel power to Wheeling Customers, IPPs must be certified as EPGCs by the Bureau. See proposed Sections 3.02 and 3.03. IPPs must for applying for and execute WSAs, to be reviewed and proposed by the POLR and approved by the Bureau, and pay the POLR rates for wheeling services, proposed by the POLR and established in a separate proceeding. See proposed Article 7.

PREPA appreciates that the proposed Revised Rules now contemplate a process, including the stakeholder technical workshops, to develop a standard WSA and application process, and that PREPA will propose the WSA and the application form for IPPs for approval by the Bureau. PREPA has important insight to provide to the WSA process. The Bureau should facilitate stakeholder and PREPA input into these critical agreements, applications and certification requirements for IPPs to wheel power.

IPP Definition: As stated in our initial and reply comments, to wheel power the proposed rules should make clear that an IPP must be qualified as an **Eligible Business** as per Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended.⁵

⁵ See also PREPA’s April 1, 2019 comments on this topic in this docket. The IPP definition should be amended to include: ““Eligible Business” means an exempt business described in Section 2(d)(l)(H) of Article 1 of Act No. 73-2008, as amended, known as the *Economic Incentives Act for the Development of Puerto Rico*, or similar provisions in other incentive laws.”

IPPs, WSA and Application Review: The Bureau should mandate an open season process, in the first instance, that allows the POLR to receive applications from such IPP Eligible Businesses interested in providing Wheeling Services to allow for an organized process. With such an open season both PREPA and the Bureau will be able to gauge the level of interest in providing Wheeling Services and any potential problems early in the process. This will help avoid any implementation issues down the line.

PREPA agrees that the POLR should have the role of reviewing the IPP WSA application for completeness and approving the WSA application for Bureau review. See Section 6.02. The Bureau should, however, adopt a longer period than 30 days for POLR review of WSA application “completeness” – 60 or 90 days may be more reasonable.⁶ The draft Revised Rules also appear to indicate that the Bureau can modify the WSA once filed for approval. See Section 6.03. However, no process or standard of review is outlined for such variation from an already accepted form of WSA. The Bureau should propose a process for such variation, including describing its proposed standard of review to allow for such variations.

IPP Metering and Billing: The proposed Revised Rules state that IPPs may meter and bill customers directly pursuant to a PPA.” See proposed Section 3.04. PREPA, as the POLR, does not oppose that the IPP should meter and bill directly the Wheeling Customer for electricity usage and other charges pursuant to a PPA. Proposed Section 2.01(D) indicates that the POLR must “provide metering and billing services to customer engage in wheeling or not, as requested.” PREPA disagrees as it pertains to Wheeling

⁶ See *also* comment herein regarding adopting an open season period for IPP interest in Wheeling Services, which should help the POLR to deploy necessary resources to review WSA applications and continue with wheeling service implementation.

Customers. The proposed rules should state that the IPP meters and bills the Wheeling Customer and that the POLR will bill the IPP (*not* the Wheeling Customer) for all POLR and wheeling services and related charges, whether provided to the IPP or the Wheeling Customer, related to the wheeling regime including for wheeling, standby, partial requirements, and ancillary services. In turn, the IPP will be required to timely pay PREPA in full for these services and charges. The IPP therefore will take the risk of slow-pay or no-pay situations regarding payments from its Wheeling Customers.

Proposed Section 2.01(E) says that the POLR has a “continuing obligation to provide adequate power to any Customer.” PREPA disagrees as it pertains to Wheeling Customers. The IPP under its PPA (not the POLR) takes on the responsibility to “provide adequate power” to its Wheeling Customers – the POLR delivers the IPP’s power to the Wheeling Customer. Proposed subsection (E) should be clarified to reflect this reality.

IPP Meter and Billing – Need for Stakeholder Workshops: There are legal repercussions of having two meter/billing service providers, namely, the IPP and POLR. PREPA may still face claims and liability unrelated to its activities if something goes wrong in terms of the accuracy of an IPP bill or meter read, IPP billing, collection or metering habits, or new metering devices and physical access to those meters. Other jurisdictions have conducted separate proceedings to determine whether, how and when to introduce third-party supplier billing directly to customers to work out the myriad of technical, data and consumer-protection issues. Moreover, sometimes third-party billing has been introduced on a different timeline than metering access. As in other jurisdictions, the issue of IPP metering and/or billing deserves study, review and stakeholder input to address such issues prior to implementation.

If the Bureau proceeds down its proposed path, it is critical that the PPA and the new rules spell out specific rights and obligations of the IPP, POLR and Wheeling Customers if the IPP takes over the metering and billing responsibility to avoid unnecessary customer confusion and to otherwise protect consumers.

For example, the operational and technical aspects of metering and billing must be examined with wheeling in mind, including whether a separate system for 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, 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. The proposed wheeling workshops should be required to address the best policy to govern metering and billing under an emerging wheeling regime.

IPP Defaults and Protections: The proposed Revised Rules state that IPPs are “responsible for defaults in the event the IPP fails to deliver power to the wheeling customer.” See proposed Section 3.04. Regarding IPP defaults, the proposed Revised Rules indicate that if a IPP defaults on the delivery of power committed to in a PPA with a Wheeling Customers, the IPP must compensate that customer to account for any difference in rates between the PPA and the replacement power rate. See Section 3.05. This raises a critical issue. The IPP should be required to post some form of “ready and available” financial security deposit to cover potential harm cause by a default not only resulting from a PPA default but also from a WSA default. If an IPP has defaulted, it may

be because it is experiencing negative financial or operational conditions, which could prevent payments to Wheeling Customers or the POLR related to its defaults. Therefore, the IPP should be required to post some form of financial security with the Bureau or POLR (in the case of PPA default) or with the POLR (in the case of WSA default).

PPA Development and Evaluation: The proposed Revised Rules establish a process including stakeholder technical workshops to develop standard PPA parameters that will govern the IPP's drafting of PPAs, and that the Bureau will determine if the PPA rates are "just and reasonable" and will ensure that wheeling costs do not affect non-wheeling customers. PREPA appreciates the inclusion of a stakeholder process leading to the development of a standard PPA, and protections for non-wheeling customers.

Importantly, the proposed Revised Rules (e.g., proposed Section 5.02) must make clear that PREPA, as the POLR, must be allowed to evaluate fully and carefully each PPA as a form agreement and prior to the execution of any final agreements. This will allow PREPA to ensure that the PPA does not harm reliable service and that any costs caused by the PPA are borne by the requesting IPP and Wheeling Customer, and not non-wheeling customers. Moreover, the Bureau should also state under what circumstances it would allow a negotiated PPA to vary from the standard PPA and, further, what it will use as a standard of review to determine if the PPA rates are just and reasonable.

Wheeling Customers

It appears that the proposed Revised Rules limit potential Wheeling Customers to Large C&I Customers, other EPSCs, Microgrids, Energy Cooperatives, and municipal

ventures. See proposed Section 1.09, Definitions. Wheeling Customers will purchase electricity from an IPP pursuant to a Standard PPA. See proposed Article 5.

In terms of the “Large C&I Customer” definition, Large Commercial Consumer is defined as commercial consumers with at least 250 kVA. The Bureau should consider changing the Large C&I Customer definition to be consumers that receive service under a transmission voltage rate.⁷ Moreover, under the proposed definition of “Wheeling Customer” it is not clear what is meant by a “Municipal Venture” (an “enterprise . . . to provide electric service”), or “community solar and other demand aggregators.” In addition to better identifying and describing these terms, the Bureau also should spell out in the Revised Rules all specific consumer service classifications it proposes to be eligible to be a Wheeling Customer.

CONCLUSION

PREPA applauds the Bureau for scaling back the wheeling rules to better comport with the legislative mandate in Act 57-2014, as amended, and current system realities. PREPA appreciates that the proposed Revised Rules have moved toward a more traditional, step-by-step large C&I wheeling approach focusing on the POLR, IPPs and Wheeling Customer relationships, rather than a broad, premature open market restructuring. The proposed rules also appropriately seek stakeholder input through workshops and comment opportunities to develop the critical components of wheeling

⁷ *I.e.*, a Wheeling Customer should be defined as a customer connected at the 38 kV or 115 kV Transmission Voltage level.

such as the necessary agreements, certifications, and rates while also acknowledging the POLR's role to propose, review and recommend to the Bureau these critical components.

PREPA continues to look forward to working with the Bureau and other stakeholders to implement appropriate Wheeling Regulations.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 18TH DAY OF NOVEMBER 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 18th day of November 2019.

/s Katuska Bolaños
Katuska Bolaños