

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



IN RE: REGULATION ON WHEELING

CASE NO.: CEPR-MI-2018-0010

SUBJECT: Adoption of Regulation on Electric  
Energy Wheeling.

**RESOLUTION**

**I. Introduction**

Through this Resolution, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") adopts and publishes the *Regulation on Electric Energy Wheeling* ("Final Regulation"). The Final Regulation establishes the different actors that shall participate in the implementation of the energy wheeling mechanism in Puerto Rico. Additionally, through the Final Regulation, the Energy Bureau establishes the responsibilities of the Provider of Last Resort, and the Independent Power Producers that shall offer services to the Wheeling Customers in Puerto Rico. The purpose of the Final Regulation is to implement the energy wheeling mechanism in Puerto Rico. The Energy Bureau adopts and publishes this Final Regulation pursuant to its regulatory power as established on Act 57-2014,<sup>1</sup> Act 17-2019,<sup>2</sup> and Act 38-2017.<sup>3</sup>

**II. Procedural Background**

On March 1, 2019, the Energy Bureau issued a proposal for the Regulation on Wheeling ("March proposed Regulation"), pursuant to Act 57-2014 and Act 38-2017. On the same date, the Energy Bureau issued a public notice<sup>4</sup> regarding the March proposed Regulation and provided a term of thirty (30) days for the general public to submit comments in writing. Furthermore, the Energy Bureau granted ten (10) days following the general commenting period to submit replies to the comments filed before the Energy Bureau.

On April 15, 2019, the Energy Bureau held a Public Hearing with the purpose of gathering more information from the general public related to the March proposed Regulation. After the Public Hearing, the Energy Bureau determined to provide twenty (20)

<sup>1</sup> Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>2</sup> Known as *Puerto Rico Energy Public Policy Act*.

<sup>3</sup> Known as *Uniform Administrative Procedures Act of the Government of Puerto Rico*, as amended.

<sup>4</sup> See Notice about Proposed Regulation Adoption, *Primera Hora* Newspaper, March 1, 2019.

additional days for any interested party to reply to the comments filed in response to the March proposed Regulation.<sup>5</sup>

Act 17-2019, was enacted on April 11, 2019. Act 17-2019 establishes the provisions for governing the electric industry, including specific provisions regarding the structure of the industry and the establishment of wheeling. Based on the fact that Act 17-2019 was enacted after the Energy Bureau issued its March proposed Regulation, the Energy Bureau determined necessary to adapt the proposed Regulation to the new Puerto Rico energy public policy, as established in Act 17-2019.

On July 23, 2019, the Energy Bureau issued a new proposal for the Regulation on Energy Wheeling ("July proposed Regulation"). Pursuant to Act 38-2017, the Energy Bureau provided until August 24, 2019,<sup>6</sup> for the general public to file written comments regarding the July proposed Regulation. The Energy Bureau also provided until September 3, 2019,<sup>7</sup> for the submittal of replies to comments filed within the general commenting period. The Energy Bureau held a public hearing on August 22, 2019 at the Energy Bureau's Hearing Room.

Based on the comments received on the July proposed Regulation, on October 18, 2019, the Energy Bureau issued a revised proposed Regulation on Electric Energy Wheeling ("October proposed Regulation"). The Energy Bureau provided the general public until November 18, 2019, to present its comments regarding the October proposed Regulation.<sup>8</sup>

### III. Main Revisions from the July proposed Regulation to the October proposed Regulation

As part of the public comments and replies period provided after the publication of the July proposed Regulation, the Energy Bureau received written comments from the following entities:

1. Centro Unido de Detallistas ("CUD"); Cámara de Mercadeo, Industria y Distribución de Alimentos ("MIDA"); Puerto Rico Manufacturers Association ("PRMA"); Unidos por Utuado ("UPU"); Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico ("ICSE-PR"), jointly "Not Profit Intervenors";<sup>9</sup>

<sup>5</sup> See Notice about Extension of Reply Comment Period, Primera Hora Newspaper, April 18, 2019.

<sup>6</sup> See Notice about Proposed Regulation Adoption, Primera Hora Newspaper, July 25, 2019.

<sup>7</sup> Id.

<sup>8</sup> See Notice about Proposed Regulation Adoption, El Nuevo Día Newspaper, October 19, 2019.

<sup>9</sup> It is important to note that although these entities denominate themselves as "Not Profit Intervenors", there are no intervenors in the instant case.





2. Fundación Borincana;
3. Puerto Rico Electric Power Authority ("PREPA");
4. IBD Energy, LLC ("IBDE");
5. Solar and Energy Storage Association of Puerto Rico ("SESA-PR");
6. AES, Puerto Rico, LP ("AES-PR");
7. Institute for Energy Economics and Financial Analysis ("IEEFA");
8. National Public Finance Guarantee ("National");
9. Sunrun, Inc.;
10. DexGrid; and
11. Blue Planet Energy ("BPE").

Additionally, as part of the August 22, 2019 Public Hearing, the Energy Bureau received oral testimony from the following persons:

1. Javier Rúa Jovet, Esq., in representation of Sunrun, Inc.;
2. Carlos Parés, Esq., in representation of Máximo Solar;
3. PJ Wilson, in representation of the Solar Energy Storage Association of Puerto Rico ("SESA"); and
4. Nestor Hernández, advisor to New Era Eolic.

After reviewing the comments submitted as part of this public comment period and the testimonies provided at the August 22, 2019 Public Hearing, the Energy Bureau amended the July proposed Regulation in order to incorporate several suggestions made by the participants. Below is a detailed explanation of the main modifications the Energy Bureau made to the July proposed Regulation, which resulted in the October proposed Regulation.

#### *1. Section 1.03.- Purpose*

The Energy Bureau revised the language of this Section in order to provide more clarity on the purpose of the Regulation. Specifically, the purpose was modified to focus in the implementation of a system that would allow an exempt business, described in Section 2(d)(1)(H) of Article 1 of Act 73-2008,<sup>10</sup> as well as Electric Power Service Companies, Microgrids, Energy Cooperatives, Municipal Ventures and Large Industrial and Commercial consumers, and Community Solar and other demand aggregators to purchase electric power from other entities through wheeling services. The Energy Bureau eliminated references to wheeling's potential benefits, such as providing open-access and non-discrimination in the power sector, since the intention of the Energy Bureau is not to grant such open access at this time.

As part of its comments, PREPA argued that the July proposed Regulation was beyond the statutorily-allowed wheeling of power, pursuant to Act 57-2014 and Act 17-2019, to

<sup>10</sup> *Economic Incentives Act for the Development of Puerto Rico*, as amended.



Large Commercial and Industrial Customers.<sup>11</sup> IEEFA also argued that the July proposed Regulation exceeded the scope of Act 57-2014 in creating the structures for a wholesale electricity market in Puerto Rico.<sup>12</sup>

## 2. Section 1.04.- Executive Summary

The Energy Bureau eliminated Section 1.04 of the July proposed Regulation in order to simplify the content of the Regulation. The remaining sections of Article 1 were renumbered to account for the elimination of the aforementioned Section.

## 3. Section 1.09.- Definitions

Former Section 1.10 was renumbered as Section 1.09. The Energy Bureau revised the definitions included in the July proposed Regulation in order to simplify its content and to provide more clarity.

The Energy Bureau removed several terms from the July proposed Regulation, such as, *Affiliated Energy Service Provider, Balancing Price, Bill, Competitive Electric Power Service Company, Customer Class, Customer Energy Usage Data, Demand-Side Management Provider, Demand-Side Management Services, Deposit, Distributed Energy Resource, Distribution Service, Energy Storage, FERC, Generation Service, Independent Monitor, Monopoly Service, Monopoly Service Provider, Non-Bypassable Charge, Operating Agreement, Renewable Resource, Ring-Fencing, Security, Stranded Costs, System Benefits Charge, System Operator, Transition Charges, Transmission and Distribution Provider, Transmission Service and Transmission Service Customer.*

The term *Application* was added to refer to the document to be submitted by an Independent Power Producer to the Provider of Last Resort to request to execute a *Wheeling Services Agreement*. Similarly, the term *Wheeling Services Agreement* was also added to refer to the contract executed between an Independent Power Producer and the Provider of Last Resort.

The term *Certification* was modified to establish that an Electric Power Service Company shall seek approval from the Energy Bureau to operate or offer services pursuant to Regulation 8701,<sup>13</sup> or any subsequent regulation to such effects.

The term *Community Solar* was added to refer to the programs whereby local solar facilities are shared by multiple customers and receive credit on their electricity bills for their share of the power produced.

<sup>11</sup> PREPA comments, p. 4, August 26, 2019.

<sup>12</sup> IEEFA comments, p. 1. August 23, 2019.

<sup>13</sup> Amendment to Regulation No. 8618, on Certifications, Annual Charges and Operational Plans of Puerto Rico Electric Service, February 17, 2016.





The term *Customer* and *Wheeling Customer* were modified from the July proposed Regulation to separate both terms and make a distinction between customers that participate in wheeling, and any other person that receives electric services.

The term *Electric Power Service Company* was modified to include Energy Cooperatives as part of the entities that can provide electric services. Furthermore, references to the Transmission and Distribution Provider and System Operator were removed from the definition. On the other hand, the term *Energy Cooperative* was added as part of the definitions.

The term *Independent Power Producer* was added to refer to an Electric Power Generation Company that does not have a Provider of Last Resort obligation.

The terms Large Commercial Consumer and Large Industrial Consumer were modified to establish that said customers shall receive electric service from the Provider of Last Resort under a commercial or industrial rate, respectively.

The terms *Partial Requirements Tariff* and *Standby Power Tariff* were added to refer to rates authorized by the Energy Bureau to be paid by a Wheeling Customer to the Provider of Last Resort to "stand-by" to provide power in case that the Independent Power Producer fails to meet the terms and conditions of the Power Purchase Agreement. In the case of the *Partial Requirements Tariff*, the Power Purchase Agreement between the Independent Power Producer and the Wheeling Customer is for less than 100% of the Wheeling Customer's load. On the contrary, for the *Standby Power Tariff*, the Power Purchase Agreement between the Independent Power Producer and the Wheeling Customer is for 100% of the Wheeling Customer's load.

The term *Power Purchase Agreement* was modified to clarify that the agreement or contract is to be approved by the Energy Bureau, and the parties to the agreement are an Electric Power Generation Company and another natural or juridical person.

The term *Provider of Last Resort* was modified to clarify that the entity maintains primary responsibility for providing generation, transmission, distribution, commercialization and operating functions of the electrical system.

The term *Wheeling* was modified to clarify that it refers to the transmission of electricity from an Independent Power Producer to a Wheeling Customer through the Electric Power Grid. The Energy Bureau also added the term *Wheeling Rate* to refer to the just and reasonable rate, approved by the Energy Bureau, to be charged to the Independent Power Producer for the use of the Electric Power Grid to supply energy to a Wheeling Customer.



#### 4. Article 2 through Article 6

Based on the comments received during the public comment period, the Energy Bureau determined necessary to reformulate Articles 2 through 6 of the July proposed Regulation. The October proposed Regulation is focused on the responsibilities of the different actors involved with the wheeling mechanism, namely the Provider of Last Resort, the Independent Power Producers and their interactions with the Wheeling Customer. Furthermore, the Energy Bureau clarified the different agreements that need to be in place between the aforementioned actors in order to implement wheeling.

#### 5. Article 2 (Section 2.01, Section 2.02, Section 2.03)

A new Article 2 was added to the October proposed Regulation to provide for the responsibilities of the Provider of Last Resort. Section 2.01 establishes that the Provider of Last Resort, among other responsibilities, shall ensure transparent, open-access on non-discriminatory terms to the Electric Power Grid for Independent Power Producers that intend to serve wheeling customers. Section 2.02 provides that the Provider of Last Resort shall comply with any interconnection regulations and protocols for the interconnection of generating facilities. Section 2.03 directs the Provider of Last Resort to develop and offer, subject to the Energy Bureau's review and approval, a Standby Power Tariff and a Partial Requirements Tariff for Wheeling Customers opting to enter into a Power Purchase Agreement with Independent Power Producers.

#### 6. Article 3 (Section 3.02, Section 3.03, Section 3.04)

A new Article 3 was added to the October proposed Regulation to provide for the responsibilities of the Independent Power Producers that seek to supply power to Wheeling Customers through a Power Purchase Agreement. Section 3.02 details that prior to delivering power to a Wheeling Customer through a Power Purchase Agreement, the Independent Power Producer must have an approved Wheeling Services Agreement in place. Section 3.03 establishes that an Independent Power Producer shall be certified by the Energy Bureau pursuant to Regulation 8701, or any subsequent regulation to such effects. Section 3.04 leaves discretion for the Independent Power Producer to offer metering and billing services to the Wheeling Customer, consistent with the terms and conditions of a Power Purchase Agreement.

AES recommended that the off-taker of the Power Purchase Agreement be mentioned as part of the Regulation.<sup>14</sup> The Energy Bureau provided more clarity through the October proposed Regulation, that the parties to a Power Purchase Agreement are an Independent Power Producer and a Wheeling Customer.

Regarding metering and billing, PREPA recommended that the Electric Power Service Company shall be responsible for their customer's metering and billing and corresponding

<sup>14</sup> AES-PR comments, p. 3, August 26, 2019.





services. Further, PREPA argued that this issue arises questions regarding confidentiality, charge collection and payment allocations, invoice settlements, among others.<sup>15</sup> The language developed by the Energy Bureau in the October proposed Regulation provides that the Independent Power Producer may offer metering and billing services to its Wheeling Customers. However, the details of said services shall be specified through the Power Purchase Agreement between the parties.

*7. Article 4 (Section 4.02, Section 4.04, Section 4.05)*

A new Article 4 was added to the October proposed Regulation to establish the provisions regarding Wheeling Services Agreements, between the Provider of Last Resort and an Independent Power Producer. Section 4.02 establishes that the Energy Bureau shall use input from stakeholders on the development of a standard Wheeling Services Agreement. The Energy Bureau will, through an order, establish the parameters to be used by the Provider of Last Resort in the development of a draft standard Wheeling Services Agreement, which shall be approved by the Energy Bureau.

Section 4.04 establishes the process for the Provider of Last Resort to submit, for Energy Bureau approval, a draft of the proposed Wheeling Services Agreement application form. Section 4.05 provides for the proposal, by the Provider of Last Resort, of a nonrefundable fee to be paid by an Independent Power Producer who submits a Wheeling Services Agreement application form. Section 4.06 of the October proposed Regulation establishes that the Energy Bureau shall approve, disapprove or modify the proposed standard Wheeling Services Agreement, the proposed Wheeling Services Agreement application form and the proposed nonrefundable fee.

Several of the comments received by the Energy Bureau recommended the engagement of stakeholders through technical conferences or workshops to facilitate the rulemaking efforts.<sup>16</sup> The Energy Bureau has determined that the engagement of stakeholders in the implementation of the wheeling Regulation is of great importance. Therefore, as mentioned above, the Energy Bureau has provided for the participation of stakeholders in the development of the Wheeling Services Agreement, as well as in the development of the Power Purchase Agreements, as detailed below.

*8. Article 5 (Section 5.01, Section 5.02)*

A new Article 5 was added to establish the provisions regarding the development of a standard Power Purchase Agreement. Section 5.01 provides for the use of input from stakeholders in order for the Energy Bureau to develop the parameters to be used in the development of Power Purchase Agreements by Independent Power Producers. Section 5.02

<sup>15</sup> PREPA comments, p. 15, August 26, 2019.

<sup>16</sup> See, in general, PREPA comments, p. 19, August 26, 2019; SESA-PR comments, p. 10, August 26, 2019; DexGrid comments, September 2, 2019; BPE comments, pp. 13-14, September 3, 2019.



establishes that all Power Purchase Agreements must contain, at a minimum, the clauses and provisions required by the Energy Bureau.

*9. Article 6 (Section 6.02, Section 6.03)*

A new Article 6 was added to establish the process for the application of a Wheeling Services Agreement by an Independent Power Producer with the Provider of Last Resort. Section 6.02 establishes the review process for a Wheeling Services Agreement Application. Additionally, the referred Section establishes a timeframe for the Provider of Last Resort to complete the evaluation of a Wheeling Services Agreement. Section 6.03 provides that an Independent Power Producer not satisfied with the determination of the Provider of Last Resort regarding a Wheeling Services Agreement application, may appeal such determination before the Energy Bureau within thirty (30) days of the notification of said determination to the Independent Power Producer.

*10. Article 7 (Section 7.01, Section 7.02)*

Former Article 11 was renumbered as Article 7. The previous content in Article 7 related to the Provider of Last Resort is covered under Article 2 of the October proposed Regulation. Section 7.01 was modified to clarify that the Energy Bureau shall review and approve the rates that the Provider of Last Resort may charge an Independent Power Producer for the use of the electric grid to deliver power pursuant to a Power Purchase Agreement. Section 7.02 was modified to provide that the Energy Bureau shall ensure that costs associated with wheeling do not affect in any way nonsubscribers of wheeling services.

PREPA argued that prior to implementing wheeling, (1) regular rates should be adjusted to reflect actual costs for providing service, and (2) charges should be unbundled according to the services provided.<sup>17</sup> Then, wheeling rates should be proposed and approved in a process before the Energy Bureau and must include non-bypassable charges to recover costs associated with wheeling implementation and reduced recovery of system costs.<sup>18</sup> BPE states that the wheeling rate proceeding should ensure that the wheeling rates that are established do not entail cross subsidization between wheeling and non-wheeling customers and that PREPA's ability to service the debt is not compromised.<sup>19</sup> SESA-PR states that the Energy Bureau should clarify whether the unbundling proceeding will be merged with the wheeling proceeding, or whether it would be most beneficial to finalize the wheeling rule before finalizing the unbundling proceeding, or vice versa.<sup>20</sup>

<sup>17</sup> PREPA comments, p. 12, August 26, 2019.

<sup>18</sup> *Id.*

<sup>19</sup> BPE comments, p. 11, September 3, 2019.

<sup>20</sup> *See*, in general, SESA-PR comments, p. 11, August 26, 2019.





The Energy Bureau has undertaken the preparation of several unbundling studies under Case No. NEPR-AP-2018-0004,<sup>21</sup> in anticipation of a wheeling rates procedure. It is important to note that the Energy Bureau has expressed that “[h]aving the correct information to allocate costs properly across customer classes is essential to ensure that wheeling does not result in technical problems, rate increases, or any other unfair cross-subsidization between or among customer classes.”<sup>22</sup> Therefore, as provided for in Section 7.02, the Energy Bureau has determined more convenient to use a separate proceeding to review, approve and establish wheeling rates.

#### 11. Article 8

Former Article 12 was renumbered as Article 8. The previous content of Article 8 related to operating agreements was eliminated since the October proposed Regulation provides more clarity as to the Agreements that need to be put in place to implement wheeling (*i.e.* Wheeling Services Agreement, Power Purchase Agreement).

The Energy Bureau removed the content of the former Article 9. The intention of the Energy Bureau with the revisions made in the October proposed Regulation is for issues such as those addressed through former Article 9 to be addressed through stakeholder participation and engagement. Additionally, the content of former Article 10 was removed since the October proposed Regulation requires any Independent Power Producer to be certified by the Energy Bureau, pursuant to Regulation 8701, or any subsequent regulation to such effects.

#### IV. Main Revisions and Amendments Incorporated into the Final Regulation on Electric Energy Wheeling

This part identifies and addresses the main revisions and amendments incorporated into the Final Regulation. Besides these amendments, the Energy Bureau made additional changes to clarify certain language and to provide uniformity throughout the Final Regulation. Attachment A to this Resolution contains a redline version of the Final Regulation.

As part of the public comments period provided after the publication of the October proposed Regulation, the Energy Bureau received written comments from the following entities:

1. PREPA;
2. Oficina Independiente de Protección al Consumidor (“OIPC”);
3. SESA-PR; and
4. Sunrun.

<sup>21</sup> In Re: The Unbundling of the Assets of the Puerto Rico Electric Power Authority.

<sup>22</sup> See Resolution and Order, PREPA’s Compliance Filing of January 25, 2019, Case No. NEPR-AP-2018-0004, February 8, 2019.



After reviewing the comments submitted as part of this public comment period, the Energy Bureau amended the October proposed Regulation in order to incorporate several suggestions made by the participants. Below is a detailed explanation of the main modifications the Energy Bureau made to the October proposed Regulation, which resulted in the Final Regulation on Electric Energy Wheeling.

### 1. Section 1.09.- Definitions

The term *Independent Power Producer* was modified to clarify that an Independent Power Producer may, but is not required to, be qualified as an exempt business described in Section 2(d)(1)(H) of Article 1 of Act 73-2008. PREPA argued that an Independent Power Producer must be qualified as an exempt business pursuant to Act 73-2008.<sup>23</sup> However, it is the Energy Bureau's interpretation of the wheeling provisions of Act 57-2014 that other Electric Power Generation Companies that are not qualified as an exempt business pursuant to Act 73-2008 may participate in wheeling.

The term *Industrial Customer* was modified to allow all industrial customers under an industrial rate with the Provider of Last Resort to participate in wheeling.

The term *Partial Requirements Tariff* was modified to be read as *Partial Requirements Power Tariff* for consistency through the Final Regulation. Additionally, the Energy Bureau replaced the term Eligible Buyer by *Wheeling Customer*, which was a typographical error. This correction was also made to the definition of the term *Stand-by Power Tariff*.

The term *Power Purchase Agreement* was modified for clarity purposes based on SESA-PR's recommendation,<sup>24</sup> to establish that an Electric Power Generation Company is bound to sell electric power, at a just and reasonable rate.

The term *Wheeling Charge* was added to specify that it will be the charge billed by the Provider of Last Resort to the Independent Power Producer as a result of applying the Wheeling Rate to the wheeling services provided, pursuant to a Wheeling Service Agreement.

The term *Wheeling Customer* was modified to remove the reference to exempt businesses described in Act 73-2008. As established on Act 73-2008, an exempt business is devoted to the production of energy. Therefore, and based in the structure of the Final Regulation, the exempt business described in Act 73-2008 was included under the term *Independent Power Producer*. This modification was based on SESA-PR's recommendations.<sup>25</sup>

<sup>23</sup> PREPA comments, p. 7, November 18, 2019.

<sup>24</sup> SESA-PR comments, November 18, 2019.

<sup>25</sup> *Id.*





## *2. Section 2.01.- Applicability*

The Energy Bureau modified Section 2.01(D) of the Final Regulation to establish that the Provider of Last Resort shall provide billing and metering services to Customers that are not engaged in wheeling services. Furthermore, it is established that in the case of Wheeling Customers, the Provider of Last Resort shall bill the Independent Power Producer for the wheeling services provided in accordance with the Wheeling Rate and the terms and conditions of their Wheeling Service Agreement.

The aforementioned modification was based on PREPA's comments, in which it argued that an Independent Power Producer should meter and bill the services provided to the Wheeling Customer.<sup>26</sup> Furthermore, PREPA stated that the Provider of Last Resort will be in charge of billing the Independent Power Producer for wheeling services and any related charges.<sup>27</sup>

## *3. Section 2.03.- Providing Adequate Power*

The Energy Bureau modified the language of the provisions related to the Stand-by Power Tariff in order to clarify the difference between the aforementioned tariff and the Partial Requirements Power Tariff.

Additionally, pertaining Section 2.03(B), PREPA suggested that a minimum stay period of one (1) year should be established for Wheeling Customers returning to the Provider of Last Resort Service. PREPA argued that said modification would make the Regulation consistent with PREPA's existing Terms and Conditions.<sup>28</sup> Upon review of the comments received, the Energy Bureau determine to add language to Section 2.03(B) of the Final Regulation to establish that any Wheeling Customer that chooses to return to the Provider of Last Resort shall be required to stay with the Provider of Last Resort for a minimum period of one (1) year.

## *4. Section 3.04.- Metering and Billing*

The Energy Bureau modified the language of this section to specify that an Independent Power Producer shall have the responsibility to provide metering and billing services to Wheeling Customers, in accordance with the terms and conditions of the Power Purchase Agreement. Furthermore, the Energy Bureau clarified that the Independent Power Producer shall include the Wheeling Charge as a pass-through charge in the Wheeling Customer's bill.

<sup>26</sup> PREPA comments, p. 9, November 18, 2019.

<sup>27</sup> *Id.*

<sup>28</sup> PREPA comments, p. 7, November 18, 2019.



The Energy Bureau determined to provide the aforementioned clarification based on PREPA's recommendations regarding the billing and payment relationships between the Independent Power Producer and the Wheeling Customers.<sup>29</sup>

#### 5. *Section 4.03.- Wheeling Services Agreement Draft*

The Energy Bureau modified the language of this section to clarify that through the Order issued by the Energy Bureau pursuant to Section 4.02 of the Final Regulation, the parameters to be used by the Provider of Last Resort in the development of the draft standard Wheeling Services Agreement will be established. However, and additionally, the Wheeling Services Agreement shall cover standard electric industry wheeling terms and conditions such as the ones described in Section 4.03 of the Final Regulation.

This clarification was based on SESA-PR comments and recommendations.<sup>30</sup>

#### 6. *Section 5.02.- Standard Power Purchase Agreement*

Section 5.02 of the October proposed Regulation establishes that the Power Purchase Agreements between the Independent Power Producer and the Wheeling Customer must contain, at a minimum, any clauses and provisions established by the Energy Bureau. PREPA argued that the Provider of Last Resort must be allowed to evaluate fully and carefully each Power Purchase Agreement as a form agreement and prior to the execution of any final agreements.<sup>31</sup> The Energy Bureau determined not to modify the language of Section 5.02. The contractual relationship that any Independent Power Producer may have with a Wheeling Customer is independent and separate from the relationship with the Provider of Last Resort.

#### 7. *Section 6.02.- Wheeling Services Agreement Application Review Process*

Section 6.02(A) establishes that the Provider of Last Resort shall determine if a Wheeling Services Agreement Application is complete within thirty (30) days of its filing by the Independent Power Producer. PREPA argued that a term of sixty (60) or ninety (90) days is more reasonable for said evaluation for completeness.<sup>32</sup> The Energy Bureau determined to maintain the terms as presented in the October proposed Regulation.

<sup>29</sup> PREPA comments, p. 9, November 18, 2019.

<sup>30</sup> SESA-PR comments, November 18, 2019.

<sup>31</sup> PREPA comments, p. 11, November 18, 2019.

<sup>32</sup> PREPA comments, p. 8, November 18, 2019.



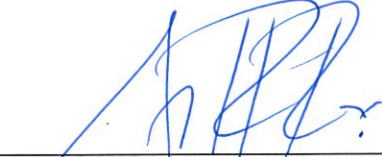


## V. Conclusion

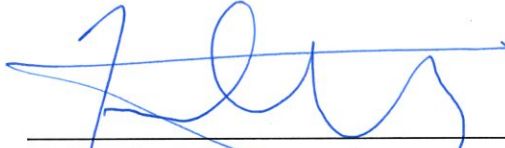
For all of the above, the Energy Bureau **ADOPTS** the Regulation on Electric Energy Wheeling.

Be it notified and published.

  
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Edison Avilés Deliz  
Chairman

  
\_\_\_\_\_  
Ángel R. Rivera de la Cruz  
Associate Commissioner


  
\_\_\_\_\_  
Lillian Mateo Santos  
Associate Commissioner


  
\_\_\_\_\_  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 11, 2019. I also certify that on this date a copy of this Resolution, with its Attachments, was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@prepa.com, kbolanos@diazvaz.law, javier.ruajovet@sunrun.com, pjcleanenergy@gmail.com, john.jordan@nationalpfg.com, thomas@fundacionborincana.org, nicolas@dexgrid.io, tsanzillo@ieefa.org, cambiopuertorico@gmail.com, rberkley@utilityproject.org, flucerna@elpuente.us, axel.colon@aes.com, agraitfe@agraitlawpr.com, hrivera@oipc.pr.gov, ernie.jacob@ibd-energy.com, gabriel@blueplanetenergy.com. I also certify that today, December 12, 2019, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today December 12, 2019.

  
\_\_\_\_\_  
Wanda I. Cordero Morales  
Clerk





GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board  
Puerto Rico Energy Bureau



## REGULATION ON ELECTRIC ENERGY WHEELING





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## REGULATION ON ELECTRIC ENERGY WHEELING

### ARTICLE 1.- GENERAL PROVISIONS

#### Section 1.01.- Title.

This Regulation shall be known as the *Regulation on Electric Energy Wheeling*.

#### Section 1.02.- Legal Basis and Authority.

This Regulation is adopted pursuant to the provisions of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014"); Act 17-2019, known as the *Puerto Rico Energy Public Policy Act* ("Act 17-2019"); and Act 38-2017, as amended, known as the *Uniform Administrative Procedure Act of the Government of Puerto Rico* ("LPAU" for its Spanish acronym). Specifically, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") has the authority to implement wheeling. Act 57-2014, as recently affirmed by Act 17-2019, states that the Energy Bureau has the power and duty to "regulate the wheeling mechanism in Puerto Rico in accordance with the applicable laws."<sup>1</sup> Moreover, the Energy Bureau has the power and duty to "oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico." The Energy Bureau also has "all those additional, implicit, and incidental powers that are pertinent and necessary to enforce and carry out, perform, and exercise the powers granted by law and to achieve the energy public policy."<sup>2</sup>

#### Section 1.03.- Purpose.

The Energy Bureau adopts and enacts this Regulation to implement the energy wheeling mechanism in Puerto Rico, in accordance with applicable legislative mandates. More specifically, to implement a system that allows an exempt business, dedicated to the production of energy, as described in Section 2(d)(1)(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, as well as Electric Power Service Companies, Microgrids, Energy Cooperatives, Municipal Ventures, Large Industrial and Commercial consumers, and Community Solar and other demand aggregators, to participate in the energy wheeling mechanism in Puerto Rico.

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#### Section 1.04.- Applicability.

This Regulation shall apply to all companies offering electric service that are operating in Puerto Rico at the time that this Regulation enters into effect, as well as to all companies that intend to operate or offer electric services in Puerto Rico now or in the future.

<sup>1</sup> Section 6.3(g) of Act 57-2014, as amended by Section 5.10 of Act 17-2019.

<sup>2</sup> Section 6.3 of Act 57-2014, as amended by Section 5.10 of Act 17-2019.



#### **Section 1.05.- Interpretation.**

This Regulation shall be interpreted in a way that promotes the highest public good and the protection of the interests of all electric service customers of Puerto Rico, and in such a way that proceedings are carried out rapidly, justly, and economically.

#### **Section 1.06.- Provisions of Other Regulations.**

The provisions of this Regulation may be supplemented by the provisions of other regulations of the Puerto Rico Energy Bureau that are compatible with the provisions of this Regulation.

#### **Section 1.07.- Unforeseen Proceedings.**

When a specific proceeding has not been planned for in this Regulation, the Energy Bureau may attend to it in any way that is consistent with Act 57-2014 and other applicable laws.

#### **Section 1.08.- Dates and Time Periods.**

In computing any time period established in this Regulation, or by order of the Energy Bureau, the day of the occurrence of the act, event, or noncompliance that triggers the period shall not be counted, and the established period shall begin to elapse on the following day. Whenever a due date falls on a Saturday, Sunday, or legal holiday, said due date shall be extended until the next workday.

#### **Section 1.09.- Definitions.**

- A) These definitions are to be used for this Regulation and are not intended to modify the definitions used in any other Energy Bureau regulation or order.
- B) For the purposes of this Regulation, the following terms will have the meaning established below, except when the context of the content of any provision clearly indicates something else:
  - 1) "Application" means the document submitted by an Independent Power Producer to the Provider of Last Resort requesting to execute a Wheeling Services Agreement.
  - 2) "Certification" means the process by which an Electric Power Service Company seeks approval by the Energy Bureau to operate or offer services in Puerto Rico pursuant to Regulation 8701<sup>3</sup> or any subsequent regulation to those effects.

<sup>3</sup> Amendment to Regulation No. 8618, on Certifications, Annual Charges and Operational Plans of Puerto Rico Electric Service, February 17, 2016.



- 3) "Community Solar" means a program whereby local solar facilities are shared by multiple customers who receive credit on their electricity bills for their share of the power produced.
- 4) "Customer" means any Person who receives Electric Services.
- 5) "Distributed Generation" means an electric power generation facility in Puerto Rico connected to the Distribution System and producing power for self-supply or sale.
- 6) "Distribution System" means the physical equipment used to distribute electric power at voltages of less than 38,000 volts, including but not limited to poles, primary lines, secondary lines, service drops, transformers, and Meters.
- 7) "Electric Power Grid" means the electric power Transmission System and Distribution System of Puerto Rico.
- 8) "Electric Service" means the provision of generation, distribution and/or transmission service to a customer; it may include ancillary services.
- 9) "Electric Power Generation Company" or "EPGC" means any natural or juridical person engaged in the production or generation of electric power in Puerto Rico. This term shall include cogenerators already established in Puerto Rico that supply energy to PREPA through a Power Purchase Agreement, and renewable energy producers. All Electric Power Generation Companies shall be deemed to be Electric Power Service Companies.
- 10) "Electric Power Service Company" or "EPSC" means any natural or juridical person or entity including Energy Cooperatives, engaged in the rendering of energy generation, transmission and distribution services, billing, wheeling, grid services, energy storage, and/or the resale of electric power.
- 11) "Energy Bureau" means the Energy Bureau of the Puerto Rico Public Service Regulatory Board, established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, and Act 211-2018, formerly the Puerto Rico Energy Commission, created under Act 57-2014, which is a specialized independent entity in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico.
- 12) "Energy Cooperative" means a cooperative organized under the provisions of Act 239-2004, known as the *General Cooperative Associations Act of 2004*, as amended, for the main purpose of meeting individual and common electric power needs of their cooperative members, affiliated consumers and/or



communities through electric power generation, transmission and/or distribution systems. "Cooperative Microgrids" as defined in Regulation 9028,<sup>4</sup> shall not be considered Energy Cooperatives, as defined in this Regulation.

13) "Independent Power Producer" means an Electric Power Generation Company that does not have a Provider of Last Resort obligation. An Independent Power Producer may, but is not required to, be qualified as an exempt business described in Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended, known as the Economic Incentives Act for the Development of Puerto Rico.

14) "Industrial Consumer" means any customer receiving Electric Service from the Provider of Last Resort under an industrial rate schedule.

15) "Interconnection" means the connection of an electric power generation facility to Puerto Rico's Electric Power Grid.

16) "Large Commercial Consumer" means any customer receiving Electric Service from the Provider of Last Resort under a commercial rate, whose maximum monthly demand is at least 250 kVA.

17) "Meter" means the equipment used to measure consumption and/or generation of energy at the point of connection between an individual Customer and the Electric Power Grid as well as associated communications and control capabilities.

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18) "Microgrid" means a group of interconnected loads and Distributed Energy Resources within clearly defined electrical boundaries that acts as a single controllable entity that can connect and disconnect from the Electric Power Grid to enable it to operate in either grid-connected or off-the-grid (islanded) mode.

19) "Municipality" means the local government legal entity organized and existing pursuant to Article VI, §1 of the Puerto Rico Constitution and Act No. 81 of August 30, 1991, as amended, known as *the Autonomous Municipality Act of the Commonwealth of Puerto Rico*.

20) "Municipal Venture" means an enterprise undertaken by a municipality to provide electric services to its citizens in accordance with applicable laws.

21) "Partial Requirements Power Tariff" means the rate authorized by the Energy Bureau to be paid by a Wheeling Customer to the Provider of Last Resort for "standing by" to provide power in the event that an Independent Power

<sup>4</sup> Regulation on Microgrid Development, May 18, 2018.





Producer that has contracted through a Power Purchase Agreement to provide the Wheeling Customer with less than 100% of their power fails to meet the terms and conditions of the then current Power Purchase Agreement.

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22) "Person" means a natural person, or a legal entity created, organized, or existing under the laws of Puerto Rico, the United States of America, any state of the union, or any foreign state or country; a Municipality or a consortium of Municipalities; or any other government entity, including PREPA.

23) "Power Purchase Agreement" or "PPA" means any agreement or contract approved by the Energy Bureau, whereby an Electric Power Generation Company is bound to sell electric power, at a just and reasonable rate, to another natural or juridical person, and such other person is, in turn, bound to acquire said electric power.

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24) "PREPA" means the Puerto Rico Electric Power Authority, a corporate entity created by virtue of Act No. 83 of May 2, 1941, as amended, and any successor entity.

25) "Provider of Last Resort" or "POLR" means the entity maintaining the primary responsibility for providing for any of the generation, transmission, distribution, commercialization, and operating functions of the Electrical System. The Provider of Last Resort shall be PREPA or its agent or successor.

26) "Stand-by Power Tariff" means the rate authorized by the Energy Bureau to be paid by an Wheeling Customer to the Provider of Last Resort for "standing by" to provide power in the event that an Independent Power Producer that has contracted through a Power Purchase Agreement to provide the Wheeling Customer with 100% of their power fails to meet the terms and conditions of the then current Power Purchase Agreement.

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27) "Transmission" or "Transmission System" means the physical equipment used to transmit electric power at voltages of at least 38,000 volts, including but not limited to towers, poles, lines, and transformers.

28) "Wheeling" means the transmission of electricity from an Independent Power Producer to a Wheeling Customer through the Electric Power Grid and which does not constitute Distributed Generation through any net metering mechanism.

29) "Wheeling Charge" means the charge the POLR will bill the Independent Power Producer as a result of applying the Wheeling Rate to the wheeling services provided.

Deleted: "Wheeling Customer" means an exempt business described in Section 2(d)(1)(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, as well as...



30) "Wheeling Customer" means Electric Power Service Companies, Microgrids, Energy Cooperatives, Municipal Ventures, large scale industrial and commercial consumers and community solar and other demand aggregators that enters into a Power Purchase Agreement with an Independent Power Producer.

31) "Wheeling Rate" means a just and reasonable amount of money, as approved by the Energy Bureau, that shall be charged to an Independent Power Producer for the use of the Electric Power Grid for the supply of energy to a Wheeling Customer.

32) "Wheeling Service Agreement" means the contract executed between an Independent Power Producer and the Provider of Last Resort to establish the functions and obligations that these two parties have, prior to commencing the supply of power to a Wheeling Customer pursuant to a Power Purchase Agreement.

C) Every word used in the singular in this Regulation shall be understood to also include the plural unless the context indicates otherwise.

#### **Section 1.10.- Controlling Version.**

Should any discrepancy between the Spanish version and the English version of this Regulation arise, the provisions of the English version shall prevail.

#### **Section 1.11.- Severability.**

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed, for any reason, before a court and declared unconstitutional or null and void, such ruling shall not affect, damage, or invalidate the remaining provisions of this Regulation, rather the effect shall be limited to the article, provision, word, sentence, paragraph, subsection, or section that has been declared unconstitutional or null and void. The nullity or invalidity of any article, word, sentence, paragraph, subsection, or section, in any specific case, shall not affect or jeopardize in any way its application or validity in any other case, except where it has been specifically and expressly invalidated for all cases.

#### **Section 1.12.- Forms.**

The Energy Bureau shall establish the forms it deems necessary to conduct the proceedings pursuant to this Regulation and shall inform the public via its website. The fact that the Energy Bureau has not adopted one or more forms, is in the process of reviewing them, or the Internet website is out of service, shall not relieve any party of its obligation to comply with the provisions stated herein, provide the information required by this Regulation, or otherwise comply with any applicable Energy Bureau order.





#### **Section 1.13.- Mode of Submission.**

The forms, documents, and appearances required by virtue of this Regulation or any order of the Energy Bureau must be submitted before the Energy Bureau in electronic format according to the instructions which, from time to time, the Energy Bureau establishes through an order in relation to the electronic filing system.

If the electronic filing system is temporarily not operating or functioning, the forms, documents, and appearances required by virtue of this Regulation or by any order of the Energy Bureau shall be submitted before the Energy Bureau in accordance with any instructions that the Energy Bureau shall provide at that time through an order.

#### **Section 1.14.- Effect of Submission.**

In filing any document before the Energy Bureau, the party undersigning such document shall be deemed to have certified that the content of said document is true and that, according to the signer's best knowledge, information, and belief, formed after reasonable inquiry, the document is based on reliable and trustworthy facts, arguments, judicial sources, and information.

#### **Section 1.15.- Confidential Information.**

If in compliance with the provisions of this Regulation or any of the Energy Bureau's orders, a Person has the duty to disclose information to the Energy Bureau considered to be privileged, pursuant to applicable evidentiary privileges, said Person shall identify the alleged privileged information and request in writing for the Energy Bureau to treat such information as confidential, pursuant to Article 6.15 of Act 57-2014. In identifying privileged information and requesting confidential treatment by the Energy Bureau, the requesting party shall follow the rules and procedures established by the Energy Bureau in Resolution CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information. Except in the case of information protected under the attorney-client privilege, the claim of confidential treatment shall, under no circumstances, be grounds for denying such information from being filed with the Energy Bureau.

#### **Section 1.16.- Validity.**

Pursuant to Section 2.8 of the LPAU, this Regulation shall enter into effect thirty (30) days after its submission to the Department of State and the Legislative Library of the Office of Legislative Services.

#### **Section 1.17.- Penalties for Non-Compliance.**

Any Person who fails to comply with any of the requirements set forth in this Regulation may be subject to the impositions of penalties under Act 57-2014, Section 3.05 and 3.06 of



Regulation 8701, and pursuant to the procedures established in Regulation 8543<sup>5</sup>.

#### Section 1.18.- Compliance with Other Applicable Legal Requirements.

Compliance with this Regulation shall not relieve any party affected by this Regulation from fully complying with other applicable legal and regulatory requirements enforced by any other government entity.

### ARTICLE 2.- RESPONSIBILITIES OF THE PROVIDER OF LAST RESORT

#### Section 2.01.- Applicability.

This section establishes the responsibilities of the Provider of Last Resort regarding the implementation of Wheeling. The Provider of Last Resort shall ensure transparent, open access on non-discriminatory terms to the Electric Power Grid for Independent Power Producers serving or intending to serve Wheeling Customers; ensure the reliability and adequacy of the Electric Power Grid; ensure adequate power for all customers; ensure efficient economic dispatch and scheduling of resources to serve loads; and ensure that electricity delivery is accurately accounted for to the Independent Power Producers in Puerto Rico. The Provider of Last Resort shall:

- A) Maintain the reliability and security of the Electric Power Grid, including the instantaneous balancing of generation and load, and assuring the adequacy of resources to meet demand;
- B) Provide for transparent, non-discriminatory and open access to the Electric Power Grid, consistent with this Regulation, Energy Bureau orders, PPAs and approved Wheeling Services Agreements;
- C) Process all requests for wheeling services from Independent Power Producers seeking to serve Wheeling Customers in accordance with the procedures established by the Energy Bureau to those effects;
- D) Provide billing and metering services to ~~Customers not~~ engaged in wheeling, In the case of Wheeling Customers, the POLR shall bill the Independent Power Producer for wheeling services, in accordance with the Wheeling Rate and the terms and conditions of their Wheeling Service Agreement.
- E) Have a continuing obligation to provide adequate power to any Customer;

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<sup>5</sup> Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, December 18, 2014.





F) Administer settlement and billing for wheeling services, provided by the POLR to the Independent Power Producer; and

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G) Perform any additional duties required under this Regulation, Energy Bureau orders, and wheeling services agreements.

#### Section 2.02.- Interconnection.

The Provider of Last Resort shall be responsible for complying with interconnection regulations and protocols subject to approval by the Energy Bureau, for the interconnection of generating facilities, Microgrids and Distributed Generators as applicable, that use the Transmission and Distribution System.

#### Section 2.03.- Providing Adequate Power.

A) The Provider of Last Resort is directed to develop and offer, subject to Energy Bureau review and approval, the following tariffs for Wheeling Customer opting to enter into Power Purchase Agreements with Independent Power Producers.

(1) Stand-by Power Tariff. A Stand-by Power Tariff shall be available to any Wheeling Customer purchasing their full electric power from an Independent Power Producer when (a) the Independent Power Producer fails to meet the Wheeling Customer's load for any given period; or (b) the Wheeling Customer draws power from the Electric Power System in excess of the established quantity in the Power Purchase Agreement. The Stand-by Power Tariff shall include the formula by which stand-by charges are calculated among other relevant terms that the Energy Bureau may specify in an order.

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(2) Partial Requirements Power Tariff. The Partial Requirements Power Tariff shall be available to any Wheeling Customer purchasing less than their full electric power requirements from an Independent Power Producer. Tariffs shall specify proposed rates including any minimum or maximum purchase requirements among other relevant terms that the Energy Bureau may specify in an order.

B) The terms and conditions of the Stand-By Power and Partial Requirements Power Tariffs shall specify when the Wheeling Customer may opt to return to the then existing applicable tariff available to customers served directly by the Provider of Last Resort. Any Wheeling Customer that has chosen to return to the Provider of Last Resort shall be required to stay with the Provider of Last Resort for a minimum period of one (1) year.



- C) The Provider of Last Resort shall file the Stand-by and Partial Requirements Power Tariffs setting forth the terms and conditions for service for the Energy Bureau's approval. In establishing the tariffs, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

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### ARTICLE 3.- RESPONSIBILITIES OF INDEPENDENT POWER PRODUCERS

#### Section 3.01.- Applicability.

This section establishes the responsibilities of any Independent Power Producer seeking to supply power to a Wheeling Customer through a Power Purchase Agreement.

#### Section 3.02.- Wheeling Services Agreement Requirement.

An Independent Power Producer must have an approved Wheeling Services Agreement with the Provider of Last Resort prior to delivering power to a Wheeling Customer pursuant to a Power Purchase Agreement.

#### Section 3.03.- Certification.

Any Independent Power Producer who intends to sell power through a Power Purchase Agreement to a Wheeling Customer shall file a certification application that must be approved by the Energy Bureau, pursuant to the provisions of Regulation 8701, or any subsequent regulation to those effects, prior to providing any such services.

#### Section 3.04. Metering and Billing.

The Independent Power Producer shall offer metering and billing services for the power usage of a Wheeling Customer with which they have a Power Purchase Agreement, consistent with the terms and conditions of such Power Purchase Agreement. The Wheeling Charge will appear in the Wheeling Customer's bill as a pass-through charge.

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#### Section 3.05. Default.

In the event that the Independent Power Producer defaults on the delivery of power committed in a Power Purchase Agreement by failing to provide power consistent with the terms and conditions of the Power Purchase Agreement for any given period, the Independent Power Producer shall be responsible for compensating the Wheeling Customer to account for any shortfall in the difference between the rates and terms of the Power Purchase Agreement and the tariff rate paid for the replacement power by the Wheeling Customer to the Provider of Last Resort.





## ARTICLE 4.- WHEELING SERVICES AGREEMENT

### Section 4.01.- Applicability.

The Provider of Last Resort and the Independent Power Producer with an approved Wheeling Services Agreement Application shall enter a Wheeling Service Agreement prior to commencing wheeling services.

### Section 4.02.- Stakeholders Input Process.

Within forty five (45) days of the adoption of this Regulation, the Energy Bureau shall convene a stakeholder technical workshop or series of workshops for purposes of requesting input on the development of the standard Wheeling Services Agreement. Upon completing the stakeholder input process, the Energy Bureau will issue an Order establishing the parameters the Provider of Last Resort will use in the development of a draft standard Wheeling Services Agreement, in accordance with Section 4.03 of this Regulation.

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### Section 4.03.- Wheeling Services Agreement Draft.

Within sixty (60) days of issuance of the Energy Bureau Order described in Section 4.02 of this Regulation, the Provider of Last Resort shall propose, for Energy Bureau approval, a standard Wheeling Services Agreement. Besides the parameters established in the Order described in Section 4.02 of this Regulation, the Wheeling Services Agreement shall cover standard electric industry wheeling terms and conditions and shall explicitly address at least the following:

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- A) Terms, conditions, and charges for wheeling service;
- B) Authorized form of wheeling instruction;
- C) A description of the settlement process for under- and over-deliveries on either a daily or monthly basis or based the wheeling instruction;
- D) The process for addressing any default in the provision of energy to an end-use customer; and
- E) Any other parameter established by the Energy Bureau through order.

### Section 4.04.- Wheeling Services Agreement Application Form.

- A) Within sixty (60) days of issuance of the Energy Bureau Order described in Section 4.02 of this Regulation, the Provider of Last Resort shall submit, for Energy Bureau approval, a draft of the proposed Wheeling Service Agreement application form. Such draft shall contain, but not be limited to, the following requirements:

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- 1) Geographic location of the Independent Power Producer's generation facility;
- 2) Quantity of power to be wheeled;
- 3) Requested injection and export points for the power on the Electric Power System;
- 4) Anticipated Wheeling Customer to be served under a Power Purchase Agreement, if available;
- 5) Proposed interconnection point;
- 6) Proposed commencement date and anticipated duration of the wheeling;
- 7) Any other information necessary for the implementation of this Wheeling Regulation; and
- 8) Any other information required by the Energy Bureau through order.

B) The proposed form draft shall specify that, upon request from the Independent Power Producer, the Provider of Last Resort will designate, handle and treat as confidential the information included in the application which was specifically identified by the Independent Power Producer to that effect.

#### **Section 4.05.- Nonrefundable Fee.**

Within sixty (60) days of issuance of the Energy Bureau Order described in Section 4.02 of this Regulation, the Provider of Last Resort shall propose, for Energy Bureau approval, a nonrefundable fee to be paid by the applying Independent Power Producer upon submission of a Wheeling Services Agreement application form. Such fee shall be set by the Energy Bureau for no more than is necessary to ensure that costs associated with processing the application do not affect in any way whatsoever nonsubscribers of wheeling services.

#### **Section 4.06.- Energy Bureau Review.**

The Energy Bureau shall approve, disapprove, or modify the proposed standard Wheeling Services Agreement, the proposed Wheeling Agreement Application Form and the proposed Nonrefundable Fee. In its evaluation process, the Energy Bureau will consider any comments provided by the public. In considering any term or condition, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

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## ARTICLE 5.- POWER PURCHASE AGREEMENTS

### Section 5.01.- Development of a Standard Power Purchase Agreement.

Within forty five (45) days of the adoption of this Regulation, the Energy Bureau shall convene a stakeholder technical workshop or series of workshops for purposes of requesting input on the development of a standard Power Purchase Agreement. Upon completing the stakeholder input process, the Energy Bureau will issue an order establishing the parameters the Independent Power Producers will use for the drafting of Power Purchase Agreements. The Energy Bureau will consider any comments provided by the public regarding the standard Power Purchase Agreement. In considering any term or condition, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

### Section 5.02.- Standard Power Purchase Agreement.

All Power Purchase Agreements must contain, at a minimum, the clauses and provisions, as well as comply with the parameters and instructions, established by the Energy Bureau through order.

## ARTICLE 6.- WHEELING SERVICES AGREEMENT APPLICATION PROCESS

### Section 6.01.- Applicability.

Any certified Independent Power Producer connected, or intending to interconnect, to the Electric Power Grid to wheel power to a Wheeling Customer pursuant to a Purchase Power Agreement, must submit a Wheeling Service Agreement application before the Provider of Last Resort, using the application form approved by the Energy Bureau. Such application must be approved by the Provider of Last Resort prior to commencing the supply of power to a Wheeling Customer pursuant to a Power Purchase Agreement.

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### Section 6.02.- Wheeling Services Agreement Application Review Process.

- A) Within thirty (30) days of the filing of the Wheeling Services Agreement Application by the Independent Power Producer, the Provider of Last Resort shall determine if it is complete. A Wheeling Services Agreement Application shall be deemed complete by the Provider of Last Resort if it includes all the information required in the corresponding application form.
- B) If the Provider of Last Resort deems a Wheeling Services Agreement Application incomplete, the Provider of Last Resort shall notify the Independent Power Producer in writing (i) the specific areas in which the filing is deficient and the information required to correct such deficiencies; and (ii) state that the Independent Power Producer has up to sixty (60) days from the date of the notification to correct the identified deficiencies.

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C) Within thirty (30) days of the filing of the corrected documents, the Provider of Last Resort shall evaluate them for completeness. The Provider of Last Resort shall notify its determination in writing to the Independent Power Producer within the same 30-day period.

D) The Provider of Last Resort shall evaluate the Wheeling Services Agreement application within a term of sixty (60) days from the date it **determined** the Wheeling Services Agreement application was complete. The Provider of Last Resort shall notify its final determination in writing to the Independent Power Producer within the same 60-day period.

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### **Section 6.03.- Appeal to the Energy Bureau.**

If an Independent Power Producer is not satisfied with the Provider of Last Resort's determination with respect to its Wheeling Services Agreement application, the Independent Power Producer may appeal such determination before the Energy Bureau within thirty (30) days of the date the determination was notified to the Independent Power Producer.

## **ARTICLE 7.- WHEELING RATES**

### **Section 7.01.- Wheeling Rates.**

The Energy Bureau shall review and approve the rates that the Provider of Last Resort may charge Independent Power Producers for the use of the transmission and/or distribution system to deliver power pursuant to a Purchase Power Agreement to a Wheeling Customer.

### **Section 7.02.- Wheeling Rates Procedure.**

The Energy Bureau will establish through Order the procedure to determine the Wheeling Rates, in accordance with applicable Regulations. Such procedure will require the unbundling of the costs associated with the generation, transmission, and distribution functions of the PREPA system. In establishing the Wheeling Rates procedure, the Energy Bureau shall ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

## **ARTICLE 8.- RECONSIDERATION AND JUDICIAL REVIEW**

### **Section 8.01.- Reconsideration.**

Any person who is not satisfied with a decision made by the Energy Bureau under this Regulation may file, within the term of twenty (20) days from the date copy of the notice of such decision is filed by the Energy Bureau's Clerk, a request for reconsideration before the Energy Bureau wherein the petitioner sets forth in detail the grounds that support the





request and the decisions that, in the opinion of the petitioner, the Energy Bureau should reconsider.

**Section 8.02.- Judicial Review.**

Any person dissatisfied with a final decision of the Energy Bureau under this Regulation may, within thirty (30) days from the date copy of notice of a final decision addressing a request for reconsideration is filed by the Energy Bureau's Clerk, or within thirty (30) days from the date copy of the notice of an Energy Bureau final decision is filed by the Energy Bureau's Clerk, if a request for reconsideration has not been filed, appear before the Puerto Rico Court of Appeals by way of writ of judicial review, pursuant to Section 4.2 of the LPAU and the applicable Rules of the Court of Appeals.

Agreed upon by the Puerto Rico Energy Bureau, in San Juan, Puerto Rico, on December \_\_\_\_, 2019.

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Edison Avilés Deliz  
Chairman

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Ángel R. Rivera de la Cruz  
Associate Commissioner

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Lillian Mateo Santos  
Associate Commissioner

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Ferdinand A. Ramos Soegaard  
Associate Commissioner



## GOVERNMENT OF PUERTO RICO

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Public Service Regulatory Board  
Puerto Rico Energy Bureau

### **REGULATION ON ELECTRIC ENERGY WHEELING**



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## **REGULATION ON ELECTRIC ENERGY WHEELING**

### **ARTICLE 1.- GENERAL PROVISIONS**

#### **Section 1.01.- Title.**

This Regulation shall be known as the *Regulation on Electric Energy Wheeling*.

#### **Section 1.02.- Legal Basis and Authority.**

This Regulation is adopted pursuant to the provisions of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014"); Act 17-2019, known as the *Puerto Rico Energy Public Policy Act* ("Act 17-2019"); and Act 38-2017, as amended, known as the *Uniform Administrative Procedure Act of the Government of Puerto Rico* ("LPAU" for its Spanish acronym). Specifically, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") has the authority to implement wheeling. Act 57-2014, as recently affirmed by Act 17-2019, states that the Energy Bureau has the power and duty to "regulate the wheeling mechanism in Puerto Rico in accordance with the applicable laws."<sup>1</sup> Moreover, the Energy Bureau has the power and duty to "oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico." The Energy Bureau also has "all those additional, implicit, and incidental powers that are pertinent and necessary to enforce and carry out, perform, and exercise the powers granted by law and to achieve the energy public policy."<sup>2</sup>

#### **Section 1.03.- Purpose.**

The Energy Bureau adopts and enacts this Regulation to implement the energy wheeling mechanism in Puerto Rico, in accordance with applicable legislative mandates. More specifically, to implement a system that allows an exempt business, dedicated to the production of energy, as described in Section 2(d)(1)(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, as well as Electric Power Service Companies, Microgrids, Energy Cooperatives, Municipal Ventures, Large Industrial and Commercial consumers, and Community Solar and other demand aggregators, to participate in the energy wheeling mechanism in Puerto Rico.

#### **Section 1.04.- Applicability.**

This Regulation shall apply to all companies offering electric service that are operating in Puerto Rico at the time that this Regulation enters into effect, as well as to all companies that intend to operate or offer electric services in Puerto Rico now or in the future.

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<sup>1</sup> Section 6.3(g) of Act 57-2014, as amended by Section 5.10 of Act 17-2019.

<sup>2</sup> Section 6.3 of Act 57-2014, as amended by Section 5.10 of Act 17-2019.

### **Section 1.05.- Interpretation.**

This Regulation shall be interpreted in a way that promotes the highest public good and the protection of the interests of all electric service customers of Puerto Rico, and in such a way that proceedings are carried out rapidly, justly, and economically.

### **Section 1.06.- Provisions of Other Regulations.**

The provisions of this Regulation may be supplemented by the provisions of other regulations of the Puerto Rico Energy Bureau that are compatible with the provisions of this Regulation.

### **Section 1.07.- Unforeseen Proceedings.**

When a specific proceeding has not been planned for in this Regulation, the Energy Bureau may attend to it in any way that is consistent with Act 57-2014 and other applicable laws.

### **Section 1.08.- Dates and Time Periods.**

In computing any time period established in this Regulation, or by order of the Energy Bureau, the day of the occurrence of the act, event, or noncompliance that triggers the period shall not be counted, and the established period shall begin to elapse on the following day. Whenever a due date falls on a Saturday, Sunday, or legal holiday, said due date shall be extended until the next workday.

### **Section 1.09.- Definitions.**

- A) These definitions are to be used for this Regulation and are not intended to modify the definitions used in any other Energy Bureau regulation or order.
- B) For the purposes of this Regulation, the following terms will have the meaning established below, except when the context of the content of any provision clearly indicates something else:
  - 1) "Application" means the document submitted by an Independent Power Producer to the Provider of Last Resort requesting to execute a Wheeling Services Agreement.
  - 2) "Certification" means the process by which an Electric Power Service Company seeks approval by the Energy Bureau to operate or offer services in Puerto Rico pursuant to Regulation 8701<sup>3</sup> or any subsequent regulation to those effects.

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<sup>3</sup> Amendment to Regulation No. 8618, on Certifications, Annual Charges and Operational Plans of Puerto Rico Electric Service, February 17, 2016.



- 3) "Community Solar" means a program whereby local solar facilities are shared by multiple customers who receive credit on their electricity bills for their share of the power produced.
- 4) "Customer" means any Person who receives Electric Services.
- 5) "Distributed Generation" means an electric power generation facility in Puerto Rico connected to the Distribution System and producing power for self-supply or sale.
- 6) "Distribution System" means the physical equipment used to distribute electric power at voltages of less than 38,000 volts, including but not limited to poles, primary lines, secondary lines, service drops, transformers, and Meters.
- 7) "Electric Power Grid" means the electric power Transmission System and Distribution System of Puerto Rico.
- 8) "Electric Service" means the provision of generation, distribution and/or transmission service to a customer; it may include ancillary services.
- 9) "Electric Power Generation Company" or "EPGC" means any natural or juridical person engaged in the production or generation of electric power in Puerto Rico. This term shall include cogenerators already established in Puerto Rico that supply energy to PREPA through a Power Purchase Agreement, and renewable energy producers. All Electric Power Generation Companies shall be deemed to be Electric Power Service Companies.
- 10) "Electric Power Service Company" or "EPSC" means any natural or juridical person or entity including Energy Cooperatives, engaged in the rendering of energy generation, transmission and distribution services, billing, wheeling, grid services, energy storage, and/or the resale of electric power.
- 11) "Energy Bureau" means the Energy Bureau of the Puerto Rico Public Service Regulatory Board, established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, and Act 211-2018, formerly the Puerto Rico Energy Commission, created under Act 57-2014, which is a specialized independent entity in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico.
- 12) "Energy Cooperative" means a cooperative organized under the provisions of Act 239-2004, known as the *General Cooperative Associations Act of 2004*, as amended, for the main purpose of meeting individual and common electric power needs of their cooperative members, affiliated consumers and/or

communities through electric power generation, transmission and/or distribution systems. "Cooperative Microgrids" as defined in Regulation 9028,<sup>4</sup> shall not be considered Energy Cooperatives, as defined in this Regulation.

- 13) "Independent Power Producer" means an Electric Power Generation Company that does not have a Provider of Last Resort obligation. An Independent Power Producer may, but is not required to, be qualified as an exempt business described in Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended, known as the *Economic Incentives Act for the Development of Puerto Rico*.
- 14) "Industrial Consumer" means any customer receiving Electric Service from the Provider of Last Resort under an industrial rate schedule.
- 15) "Interconnection" means the connection of an electric power generation facility to Puerto Rico's Electric Power Grid.
- 16) "Large Commercial Consumer" means any customer receiving Electric Service from the Provider of Last Resort under a commercial rate, whose maximum monthly demand is at least 250 kVA.
- 17) "Meter" means the equipment used to measure consumption and/or generation of energy at the point of connection between an individual Customer and the Electric Power Grid as well as associated communications and control capabilities.
- 18) "Microgrid" means a group of interconnected loads and Distributed Energy Resources within clearly defined electrical boundaries that acts as a single controllable entity that can connect and disconnect from the Electric Power Grid to enable it to operate in either grid-connected or off-the-grid (islanded) mode.
- 19) "Municipality" means the local government legal entity organized and existing pursuant to Article VI, §1 of the Puerto Rico Constitution and Act No. 81 of August 30, 1991, as amended, known as the *Autonomous Municipality Act of the Commonwealth of Puerto Rico*.
- 20) "Municipal Venture" means an enterprise undertaken by a municipality to provide electric services to its citizens in accordance with applicable laws.
- 21) "Partial Requirements Power Tariff" means the rate authorized by the Energy Bureau to be paid by a Wheeling Customer to the Provider of Last Resort for "standing by" to provide power in the event that an Independent Power

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<sup>4</sup> Regulation on Microgrid Development, May 18, 2018.



Producer that has contracted through a Power Purchase Agreement to provide the Wheeling Customer with less than 100% of their power fails to meet the terms and conditions of the then current Power Purchase Agreement.

- 22) "Person" means a natural person, or a legal entity created, organized, or existing under the laws of Puerto Rico, the United States of America, any state of the union, or any foreign state or country; a Municipality or a consortium of Municipalities; or any other government entity, including PREPA.
- 23) "Power Purchase Agreement" or "PPA" means any agreement or contract approved by the Energy Bureau, whereby an Electric Power Generation Company is bound to sell electric power, at a just and reasonable rate, to another natural or juridical person, and such other person is, in turn, bound to acquire said electric power.
- 24) "PREPA" means the Puerto Rico Electric Power Authority, a corporate entity created by virtue of Act No. 83 of May 2, 1941, as amended, and any successor entity.
- 25) "Provider of Last Resort" or "POLR" means the entity maintaining the primary responsibility for providing for any of the generation, transmission, distribution, commercialization, and operating functions of the Electrical System. The Provider of Last Resort shall be PREPA or its agent or successor.
- 26) "Stand-by Power Tariff" means the rate authorized by the Energy Bureau to be paid by an Wheeling Customer to the Provider of Last Resort for "standing by" to provide power in the event that an Independent Power Producer that has contracted through a Power Purchase Agreement to provide the Wheeling Customer with 100% of their power fails to meet the terms and conditions of the then current Power Purchase Agreement.
- 27) "Transmission" or "Transmission System" means the physical equipment used to transmit electric power at voltages of at least 38,000 volts, including but not limited to towers, poles, lines, and transformers.
- 28) "Wheeling" means the transmission of electricity from an Independent Power Producer to a Wheeling Customer through the Electric Power Grid and which does not constitute Distributed Generation through any net metering mechanism.
- 29) "Wheeling Charge" means the charge the POLR will bill the Independent Power Producer as a result of applying the Wheeling Rate to the wheeling services provided.

30)“Wheeling Customer” means Electric Power Service Companies, Microgrids, Energy Cooperatives, Municipal Ventures, large scale industrial and commercial consumers and community solar and other demand aggregators that enters into a Power Purchase Agreement with an Independent Power Producer.

31)“Wheeling Rate” means a just and reasonable amount of money, as approved by the Energy Bureau, that shall be charged to an Independent Power Producer for the use of the Electric Power Grid for the supply of energy to a Wheeling Customer.

32)“Wheeling Service Agreement” means the contract executed between an Independent Power Producer and the Provider of Last Resort to establish the functions and obligations that these two parties have, prior to commencing the supply of power to a Wheeling Customer pursuant to a Power Purchase Agreement.

C) Every word used in the singular in this Regulation shall be understood to also include the plural unless the context indicates otherwise.

#### **Section 1.10.- Controlling Version.**

Should any discrepancy between the Spanish version and the English version of this Regulation arise, the provisions of the English version shall prevail.

#### **Section 1.11.- Severability.**

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed, for any reason, before a court and declared unconstitutional or null and void, such ruling shall not affect, damage, or invalidate the remaining provisions of this Regulation, rather the effect shall be limited to the article, provision, word, sentence, paragraph, subsection, or section that has been declared unconstitutional or null and void. The nullity or invalidity of any article, word, sentence, paragraph, subsection, or section, in any specific case, shall not affect or jeopardize in any way its application or validity in any other case, except where it has been specifically and expressly invalidated for all cases.

#### **Section 1.12.- Forms.**

The Energy Bureau shall establish the forms it deems necessary to conduct the proceedings pursuant to this Regulation and shall inform the public via its website. The fact that the Energy Bureau has not adopted one or more forms, is in the process of reviewing them, or the Internet website is out of service, shall not relieve any party of its obligation to comply with the provisions stated herein, provide the information required by this Regulation, or otherwise comply with any applicable Energy Bureau order.



### **Section 1.13.- Mode of Submission.**

The forms, documents, and appearances required by virtue of this Regulation or any order of the Energy Bureau must be submitted before the Energy Bureau in electronic format according to the instructions which, from time to time, the Energy Bureau establishes through an order in relation to the electronic filing system.

If the electronic filing system is temporarily not operating or functioning, the forms, documents, and appearances required by virtue of this Regulation or by any order of the Energy Bureau shall be submitted before the Energy Bureau in accordance with any instructions that the Energy Bureau shall provide at that time through an order.

### **Section 1.14.- Effect of Submission.**

In filing any document before the Energy Bureau, the party undersigning such document shall be deemed to have certified that the content of said document is true and that, according to the signer's best knowledge, information, and belief, formed after reasonable inquiry, the document is based on reliable and trustworthy facts, arguments, judicial sources, and information.

### **Section 1.15.- Confidential Information.**

If in compliance with the provisions of this Regulation or any of the Energy Bureau's orders, a Person has the duty to disclose information to the Energy Bureau considered to be privileged, pursuant to applicable evidentiary privileges, said Person shall identify the alleged privileged information and request in writing for the Energy Bureau to treat such information as confidential, pursuant to Article 6.15 of Act 57-2014. In identifying privileged information and requesting confidential treatment by the Energy Bureau, the requesting party shall follow the rules and procedures established by the Energy Bureau in Resolution CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information. Except in the case of information protected under the attorney-client privilege, the claim of confidential treatment shall, under no circumstances, be grounds for denying such information from being filed with the Energy Bureau.

### **Section 1.16.- Validity.**

Pursuant to Section 2.8 of the LPAU, this Regulation shall enter into effect thirty (30) days after its submission to the Department of State and the Legislative Library of the Office of Legislative Services.

### **Section 1.17.- Penalties for Non-Compliance.**

Any Person who fails to comply with any of the requirements set forth in this Regulation may be subject to the impositions of penalties under Act 57-2014, Section 3.05 and 3.06 of

Regulation 8701, and pursuant to the procedures established in Regulation 8543<sup>5</sup>.

**Section 1.18.- Compliance with Other Applicable Legal Requirements.**

Compliance with this Regulation shall not relieve any party affected by this Regulation from fully complying with other applicable legal and regulatory requirements enforced by any other government entity.

**ARTICLE 2.- RESPONSIBILITIES OF THE PROVIDER OF LAST RESORT**

**Section 2.01.- Applicability.**

This section establishes the responsibilities of the Provider of Last Resort regarding the implementation of Wheeling. The Provider of Last Resort shall ensure transparent, open access on non-discriminatory terms to the Electric Power Grid for Independent Power Producers serving or intending to serve Wheeling Customers; ensure the reliability and adequacy of the Electric Power Grid; ensure adequate power for all customers; ensure efficient economic dispatch and scheduling of resources to serve loads; and ensure that electricity delivery is accurately accounted for to the Independent Power Producers in Puerto Rico. The Provider of Last Resort shall:

- A) Maintain the reliability and security of the Electric Power Grid, including the instantaneous balancing of generation and load, and assuring the adequacy of resources to meet demand;
- B) Provide for transparent, non-discriminatory and open access to the Electric Power Grid, consistent with this Regulation, Energy Bureau orders, PPAs and approved Wheeling Services Agreements;
- C) Process all requests for wheeling services from Independent Power Producers seeking to serve Wheeling Customers in accordance with the procedures established by the Energy Bureau to those effects;
- D) Provide billing and metering services to Customers not engaged in wheeling. In the case of Wheeling Customers, the POLR shall bill the Independent Power Producer for wheeling services, in accordance with the Wheeling Rate and the terms and conditions of their Wheeling Service Agreement.
- E) Have a continuing obligation to provide adequate power to any Customer;

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<sup>5</sup> *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, December 18, 2014.



- F) Administer settlement and billing for wheeling services provided by the POLR to the Independent Power Producer; and
- G) Perform any additional duties required under this Regulation, Energy Bureau orders, and wheeling services agreements.

#### **Section 2.02.- Interconnection.**

The Provider of Last Resort shall be responsible for complying with interconnection regulations and protocols subject to approval by the Energy Bureau, for the interconnection of generating facilities, Microgrids and Distributed Generators as applicable, that use the Transmission and Distribution System.

#### **Section 2.03.- Providing Adequate Power.**

- A) The Provider of Last Resort is directed to develop and offer, subject to Energy Bureau review and approval, the following tariffs for Wheeling Customer opting to enter into Power Purchase Agreements with Independent Power Producers.
  - (1) Stand-by Power Tariff. A Stand-by Power Tariff shall be available to any Wheeling Customer purchasing their full electric power from an Independent Power Producer when (a) the Independent Power Producer fails to meet the Wheeling Customer's load for any given period; or (b) the Wheeling Customer draws power from the Electric Power System in excess of the established quantity in the Power Purchase Agreement. The Stand-by Power Tariff shall include the formula by which stand-by charges are calculated among other relevant terms that the Energy Bureau may specify in an order.
  - (2) Partial Requirements Power Tariff. The Partial Requirements Power Tariff shall be available to any Wheeling Customer purchasing less than their full electric power requirements from an Independent Power Producer. Tariffs shall specify proposed rates including any minimum or maximum purchase requirements among other relevant terms that the Energy Bureau may specify in an order.
- B) The terms and conditions of the Stand-By Power and Partial Requirements Power Tariffs shall specify when the Wheeling Customer may opt to return to the then existing applicable tariff available to customers served directly by the Provider of Last Resort. Any Wheeling Customer that has chosen to return to the Provider of Last Resort shall be required to stay with the Provider of Last Resort for a minimum period of one (1) year.

- C) The Provider of Last Resort shall file the Stand-by and Partial Requirements Power Tariffs setting forth the terms and conditions for service for the Energy Bureau's approval. In establishing the tariffs, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

## **ARTICLE 3.- RESPONSIBILITIES OF INDEPENDENT POWER PRODUCERS**

### **Section 3.01.- Applicability.**

This section establishes the responsibilities of any Independent Power Producer seeking to supply power to a Wheeling Customer through a Power Purchase Agreement.

### **Section 3.02.- Wheeling Services Agreement Requirement.**

An Independent Power Producer must have an approved Wheeling Services Agreement with the Provider of Last Resort prior to delivering power to a Wheeling Customer pursuant to a Power Purchase Agreement.

### **Section 3.03.- Certification.**

Any Independent Power Producer who intends to sell power through a Power Purchase Agreement to a Wheeling Customer shall file a certification application that must be approved by the Energy Bureau, pursuant to the provisions of Regulation 8701, or any subsequent regulation to those effects, prior to providing any such services.

### **Section 3.04. Metering and Billing.**

The Independent Power Producer shall offer metering and billing services for the power usage of a Wheeling Customer with which they have a Power Purchase Agreement, consistent with the terms and conditions of such Power Purchase Agreement. The Wheeling Charge will appear in the Wheeling Customer's bill as a pass-through charge.

### **Section 3.05. Default.**

In the event that the Independent Power Producer defaults on the delivery of power committed in a Power Purchase Agreement by failing to provide power consistent with the terms and conditions of the Power Purchase Agreement for any given period, the Independent Power Producer shall be responsible for compensating the Wheeling Customer to account for any shortfall in the difference between the rates and terms of the Power Purchase Agreement and the tariff rate paid for the replacement power by the Wheeling Customer to the Provider of Last Resort.



## **ARTICLE 4.- WHEELING SERVICES AGREEMENT**

### **Section 4.01.- Applicability.**

The Provider of Last Resort and the Independent Power Producer with an approved Wheeling Services Agreement Application shall enter a Wheeling Service Agreement prior to commencing wheeling services.

### **Section 4.02.- Stakeholders Input Process.**

Within forty five (45) days of the adoption of this Regulation, the Energy Bureau shall convene a stakeholder technical workshop or series of workshops for purposes of requesting input on the development of the standard Wheeling Services Agreement. Upon completing the stakeholder input process, the Energy Bureau will issue an Order establishing the parameters the Provider of Last Resort will use in the development of a draft standard Wheeling Services Agreement, in accordance with Section 4.03 of this Regulation.

### **Section 4.03.- Wheeling Services Agreement Draft.**

Within sixty (60) days of issuance of the Energy Bureau Order described in Section 4.02 of this Regulation, the Provider of Last Resort shall propose, for Energy Bureau approval, a standard Wheeling Services Agreement. Besides the parameters established in the Order described in Section 4.02 of this Regulation, the Wheeling Services Agreement shall cover standard electric industry wheeling terms and conditions and shall explicitly address at least the following:

- A) Terms, conditions, and charges for wheeling service;
- B) Authorized form of wheeling instruction;
- C) A description of the settlement process for under- and over-deliveries on either a daily or monthly basis or based the wheeling instruction;
- D) The process for addressing any default in the provision of energy to an end-use customer; and
- E) Any other parameter established by the Energy Bureau through order.

### **Section 4.04.- Wheeling Services Agreement Application Form.**

- A) Within sixty (60) days of issuance of the Energy Bureau Order described in Section 4.02 of this Regulation, the Provider of Last Resort shall submit, for Energy Bureau approval, a draft of the proposed Wheeling Service Agreement application form. Such draft shall contain, but not be limited to, the following requirements:

- 1) Geographic location of the Independent Power Producer's generation facility;
- 2) Quantity of power to be wheeled;
- 3) Requested injection and export points for the power on the Electric Power System;
- 4) Anticipated Wheeling Customer to be served under a Power Purchase Agreement, if available;
- 5) Proposed interconnection point;
- 6) Proposed commencement date and anticipated duration of the wheeling;
- 7) Any other information necessary for the implementation of this Wheeling Regulation; and
- 8) Any other information required by the Energy Bureau through order.

B) The proposed form draft shall specify that, upon request from the Independent Power Producer, the Provider of Last Resort will designate, handle and treat as confidential the information included in the application which was specifically identified by the Independent Power Producer to that effect.

#### **Section 4.05.- Nonrefundable Fee.**

Within sixty (60) days of issuance of the Energy Bureau Order described in Section 4.02 of this Regulation, the Provider of Last Resort shall propose, for Energy Bureau approval, a nonrefundable fee to be paid by the applying Independent Power Producer upon submission of a Wheeling Services Agreement application form. Such fee shall be set by the Energy Bureau for no more than is necessary to ensure that costs associated with processing the application do not affect in any way whatsoever nonsubscribers of wheeling services.

#### **Section 4.06.- Energy Bureau Review.**

The Energy Bureau shall approve, disapprove, or modify the proposed standard Wheeling Services Agreement, the proposed Wheeling Agreement Application Form and the proposed Nonrefundable Fee. In its evaluation process, the Energy Bureau will consider any comments provided by the public. In considering any term or condition, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.



## **ARTICLE 5.- POWER PURCHASE AGREEMENTS**

### **Section 5.01.- Development of a Standard Power Purchase Agreement.**

Within forty five (45) days of the adoption of this Regulation, the Energy Bureau shall convene a stakeholder technical workshop or series of workshops for purposes of requesting input on the development of a standard Power Purchase Agreement. Upon completing the stakeholder input process, the Energy Bureau will issue an order establishing the parameters the Independent Power Producers will use for the drafting of Power Purchase Agreements. The Energy Bureau will consider any comments provided by the public regarding the standard Power Purchase Agreement. In considering any term or condition, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

### **Section 5.02.- Standard Power Purchase Agreement.**

All Power Purchase Agreements must contain, at a minimum, the clauses and provisions, as well as comply with the parameters and instructions, established by the Energy Bureau through order.

## **ARTICLE 6.- WHEELING SERVICES AGREEMENT APPLICATION PROCESS**

### **Section 6.01.- Applicability.**

Any certified Independent Power Producer connected, or intending to interconnect, to the Electric Power Grid to wheel power to a Wheeling Customer pursuant to a Purchase Power Agreement, must submit a Wheeling Service Agreement application before the Provider of Last Resort, using the application form approved by the Energy Bureau. Such application must be approved by the Provider of Last Resort prior to commencing the supply of power to a Wheeling Customer pursuant to a Power Purchase Agreement.

### **Section 6.02.- Wheeling Services Agreement Application Review Process.**

- A) Within thirty (30) days of the filing of the Wheeling Services Agreement Application by the Independent Power Producer, the Provider of Last Resort shall determine if it is complete. A Wheeling Services Agreement Application shall be deemed complete by the Provider of Last Resort if it includes all the information required in the corresponding application form.
- B) If the Provider of Last Resort deems a Wheeling Services Agreement Application incomplete, the Provider of Last Resort shall notify the Independent Power Producer in writing (i) the specific areas in which the filing is deficient and the information required to correct such deficiencies; and (ii) state that the Independent Power Producer has up to sixty (60) days from the date of the notification to correct the identified deficiencies.

- C) Within thirty (30) days of the filing of the corrected documents, the Provider of Last Resort shall evaluate them for completeness. The Provider of Last Resort shall notify its determination in writing to the Independent Power Producer within the same 30-day period.
- D) The Provider of Last Resort shall evaluate the Wheeling Services Agreement application within a term of sixty (60) days from the date it determined the Wheeling Services Agreement application was complete. The Provider of Last Resort shall notify its final determination in writing to the Independent Power Producer within the same 60-day period.

### **Section 6.03.- Appeal to the Energy Bureau.**

If an Independent Power Producer is not satisfied with the Provider of Last Resort's determination with respect to its Wheeling Services Agreement application, the Independent Power Producer may appeal such determination before the Energy Bureau within thirty (30) days of the date the determination was notified to the Independent Power Producer.

## **ARTICLE 7.- WHEELING RATES**

### **Section 7.01.- Wheeling Rates.**

The Energy Bureau shall review and approve the rates that the Provider of Last Resort may charge Independent Power Producers for the use of the transmission and/or distribution system to deliver power pursuant to a Purchase Power Agreement to a Wheeling Customer.

### **Section 7.02.- Wheeling Rates Procedure.**

The Energy Bureau will establish through Order the procedure to determine the Wheeling Rates, in accordance with applicable Regulations. Such procedure will require the unbundling of the costs associated with the generation, transmission, and distribution functions of the PREPA system. In establishing the Wheeling Rates procedure, the Energy Bureau shall ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

## **ARTICLE 8.- RECONSIDERATION AND JUDICIAL REVIEW**

### **Section 8.01.- Reconsideration.**

Any person who is not satisfied with a decision made by the Energy Bureau under this Regulation may file, within the term of twenty (20) days from the date copy of the notice of such decision is filed by the Energy Bureau's Clerk, a request for reconsideration before the Energy Bureau wherein the petitioner sets forth in detail the grounds that support the



request and the decisions that, in the opinion of the petitioner, the Energy Bureau should reconsider.

### **Section 8.02.- Judicial Review.**

Any person dissatisfied with a final decision of the Energy Bureau under this Regulation may, within thirty (30) days from the date copy of notice of a final decision addressing a request for reconsideration is filed by the Energy Bureau's Clerk, or within thirty (30) days from the date copy of the notice of an Energy Bureau final decision is filed by the Energy Bureau's Clerk, if a request for reconsideration has not been filed, appear before the Puerto Rico Court of Appeals by way of writ of judicial review, pursuant to Section 4.2 of the LPAU and the applicable Rules of the Court of Appeals.

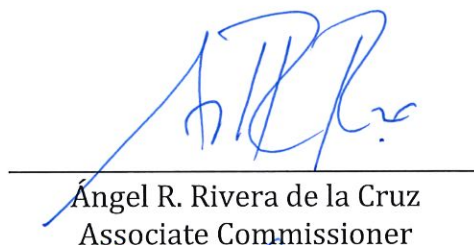
Agreed upon by the Puerto Rico Energy Bureau, in San Juan, Puerto Rico, on December 11, 2019.



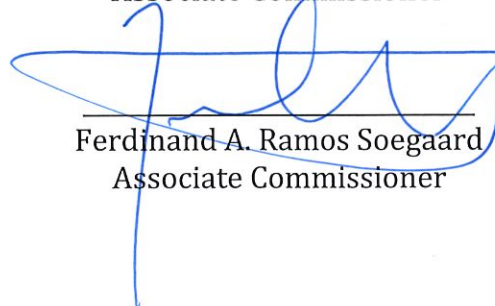
Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
Associate Commissioner



Ángel R. Rivera de la Cruz  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner