


## National Comments in Case Number: NEPR-AP-2018-0004

Comentarios ×



**Jordan, John J.**

3:19 PM (5 minutes ago)

to comentarios@energia.pr.gov,

Dear Mr. Avilés-Deliz,

National Public Finance Guarantee Corporation (“National”) hereby submits these comments in response to the Puerto Rico Energy Bureau’s (the “Bureau”) solicitation of stakeholder feedback regarding the Interim Unbundling Proceeding.<sup>1</sup> National is the single largest creditor of the Puerto Rico Electric Power Authority (“PREPA”), and holds or insures a large amount of the outstanding bonds issued by other Commonwealth entities, and therefore has a significant stake in PREPA’s implementation of energy wheeling. National submits these comments in order to address the timing and sequencing of this proceeding, and to answer the question presented by the Bureau in Appendices B and C to the October 14 Order.

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In re: The Unbundling of the Assets of the Puerto Rico Electric Power Authority  
Case Number: NEPR-AP-2018-0004

October 30, 2020

VIA E-MAIL to [comentarios@energia.pr.gov](mailto:comentarios@energia.pr.gov)  
Attention: Edison Avilés-Deliz, Chairman, Puerto Rico Energy Bureau

Dear Mr. Avilés-Deliz,

National Public Finance Guarantee Corporation (“National”) hereby submits these comments in response to the Puerto Rico Energy Bureau’s (the “Bureau”) solicitation of stakeholder feedback regarding the Interim Unbundling Proceeding.<sup>1</sup> National is the single largest creditor of the Puerto Rico Electric Power Authority (“PREPA”), and holds or insures a large amount of the outstanding bonds issued by other Commonwealth entities, and therefore has a significant stake in PREPA’s implementation of energy wheeling. National submits these comments in order to address the timing and sequencing of this proceeding, and to answer the questions presented by the Bureau in Appendices B and C to the October 14 Order.

### Background

Since 2018, the Bureau has taken several steps toward implementing retail energy wheeling in the related proceeding numbered CEPR-MI-2018-0010. Among other things, it solicited two rounds of stakeholder comments on draft wheeling regulations, adopting a final version on December 12, 2019.<sup>2</sup> It instituted the instant proceeding in December 2018, ordering PREPA to file an Unbundling Plan, including several studies, that would facilitate wheeling.<sup>3</sup>

PREPA responded that it had not prepared any studies to support unbundling since the rate review in 2015.<sup>4</sup> The Bureau therefore determined to hire its own consultant to undertake a Cost of Service Study (“COSS”),<sup>5</sup> and on July 3, 2019, the Bureau informed PREPA that it had done so.<sup>6</sup> In September 2020, the Bureau issued an order attaching a COSS prepared by Paul Chernick of Resource Insight, Inc.<sup>7</sup> The Bureau solicited stakeholder feedback on that COSS, and National

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<sup>1</sup> See *Procedures for the Development of an Interim Unbundling Rate and Full Unbundling*, Case No. NEPR-AP-2018-0004 (Oct. 14, 2020) (the “October 14 Order”).

<sup>2</sup> See *Resolution re: Adoption of Regulation on Electric Energy Wheeling*, Case No. CEPR-MI-2018-0010 (Dec. 12, 2019).

<sup>3</sup> *Order re: Unbundling of Assets, Request of Information and Production of Documents*, Case No. NEPR-AP-2018-0004, at p.3 (Dec. 28, 2018).

<sup>4</sup> *PREPA’s Compliance Filing for Information Due January 25, 2019*, Case No. NEPR-AP-2018-0004, at App’x A p.1 (Jan. 25, 2019).

<sup>5</sup> *Resolution and Order re: PREPA’s Compliance Filing of January 25, 2019*, Case No. NEPR-AP-2018-0004, at p.2 (Feb. 8, 2019).

<sup>6</sup> See *Resolution and Order re: Discovery Process*, Case No. NEPR-AP-2018-0004 (July 3, 2019).

<sup>7</sup> See generally *Order re: Report on Cost Allocation Methods and Unbundling; Requirements for Information and Production of Documents*, Case No. NEPR-AP-2018-0004 (Sept. 4, 2020).

submitted its initial comments.<sup>8</sup> Those comments concerned the acknowledged deficiencies in the data on which the COSS is based, which may undermine its reliability and usefulness.<sup>9</sup> National also observed that it would not be appropriate to proceed with unbundling until these deficiencies are addressed.<sup>10</sup> Next, National submitted reply comments regarding the COSS.<sup>11</sup> National noted that, in light of PREPA’s statement that its employees working on this matter are stretched thin, a third-party specialist may be better-equipped to manage the unbundling process, which is complex and requires a high level of expertise and attention.<sup>12</sup>

Several days later, the Bureau issued the October 14 Order. It *sua sponte* decided to bifurcate this case into two parallel tracks—one establishing an “Interim Unbundled Rate,” and the other pursuing a typical, comprehensive unbundling process.<sup>13</sup> The Bureau included a proposed Interim Unbundled Rate, which it described as “the full retail rate minus the fuel and purchased power costs,” and “a credit if [a customer] can demonstrate that [wheeling] will result in PREPA avoiding capacity for a period of not less than five years,” plus a component to cover administrative costs.<sup>14</sup> The Bureau confirmed the “legislative requirement that nonwheeling customers not subsidize wheeling customers.”<sup>15</sup> Appendices B and C to the October 14 Order included a series of questions related to the proposed Interim Unbundled Rate and wheeling implementation, on which the Bureau requested stakeholder feedback.<sup>16</sup>

### Comments

Before addressing the thirty-three individual questions issued by the Bureau, National notes that the sudden rush to implement wheeling appears to be at odds with both the procedural history of this case as well as the status of regulatory proceedings more generally.

As described in the Background section above, this case dates back to 2018 and has been characterized by long periods of apparent inactivity.<sup>17</sup> Yet the last month has seen over a dozen filings, which culminated in the *sua sponte* proposal in the October 14 Order to push through a so-called Interim Unbundled Rate *before* a full, proper unbundling can occur. The Bureau reasoned that this Interim Unbundled Rate is necessary “so that the wheeling process may begin for wheeling customers who are eager to finalize Purchase Power Agreements for the development of

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<sup>8</sup> See *Comments – National Public Finance Guarantee Corporation*, Case No. NEPR-AP-2018-0004 (Sept. 24, 2020).

<sup>9</sup> See *id.* at pp.2-3. National also noted that the COSS incorrectly referred to the “sale” of PREPA’s generation assets and/or sites. See *id.* at p.4.

<sup>10</sup> See *id.* at p.3.

<sup>11</sup> See *National’s Reply Comments*, Case No. NEPR-AP-2018-0004 (Oct. 9, 2020).

<sup>12</sup> See *id.* at pp.1-2.

<sup>13</sup> See October 14 Order at pp.2-3.

<sup>14</sup> *Id.* at p.4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at pp.4-5.

<sup>17</sup> For example, there were no filings on the docket from February to July 2019 (~5 months) and from August 2019 to July 2020 (~11 months); indeed, there were only 6 total filings in the 21 months after the docket was opened.

sources of generation to serve their load.”<sup>18</sup> As far as National knows, no evidence of such “eager” wheeling customers with near-final PPOAs has been developed in this case, nor does the October 14 Order cite any. If this is to be the justification for pushing through an Interim Unbundled Rate—prior to the completion of a full, data-driven unbundling process—then it should find support in the record. Moreover, National notes that the proposal to implement wheeling on an accelerated schedule does not appear to account for the significant changes that will need to occur to billing systems, load management, communication systems, and more. If these changes cannot occur prior to the completion of full unbundling, then any value of an Interim Unbundled Rate is diminished.

National is also concerned about the multitude of regulatory cases that remain pending and, like this case, intermittently move forward (or not) after long periods of inactivity.<sup>19</sup> It suggests these proceedings may not be optimally sequenced for timely and efficient resolution. Many objectives have been set forth for the future electrical system. It will take planning, deliberation, and persistence to achieve those objectives.

National’s answers to the questions in Appendices B and C of the October 14 Order follow.

Submitted by:

/s/ John Jordan

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<sup>18</sup> October 14 Order at p.2.

<sup>19</sup> For example, in addition to this now-bifurcated proceeding, the Bureau is considering: (i) PREPA’s procurement plan for obtaining thousands of megawatts of renewable generation capacity and storage (NEPR-MI-2020-0012, a spinoff of the IRP that has been in process since March 2018); (ii) challenges to the final IRP order from various stakeholders (CEPR-AP-2018-0001); (iii) regulations on energy efficiency and demand response (NEPR-MI-2019-0019 and NEPR-MI-2019-0015, pending since September 2019); (iv) a rate case (CEPR-AP-2018-0002, pending since May 2018, with no filings since December 2018); (v) a regulation on renewable energy credits (NEPR-MI-2019-0010, pending since May 2019); (vi) a regulation on interconnection (NEPR-MI-2019-0009, pending since May 2019); and (vii) a regulation on microgrids (CEPR-MI-2018-0008, pending since May 2018).

## Appendix B Questions

1. Should PREPA develop a uniform service agreement form that will be used with each EPSC that provides wheeling services?
  - a. **Assuming that wheeling services will be provided under uniform procedures, a uniform service agreement seems to be more efficient and transparent.**
2. Who should be responsible for metering and billing, PREPA (or LUMA as operator) or the EPSC?
  - a. Should the EPSC provide separate metering and billing for the generation services they provide?
    - i. **For simplicity, PREPA and EPSCs should separately bill wheeling customers. However, if EPSCs are allowed to rely on PREPA for billing their customers, PREPA should be fully compensated for that service. Otherwise, the nonwheeling customers will be forced to subsidize wheeling customers by virtue of PREPA's provision of free services to EPSCs.**
  - b. If PREPA provides metering and billing services, would PREPA provide consumption use to the EPSC who in turn would provide the generation costs to be included in the bill?
    - i. **See answer to Question #2(a) above—this issue will be avoided if PREPA and EPSCs separately bill customers based on reported consumption.**
  - c. How should partial payments by a wheeling customer be allocated between PREPA and the EPSC if PREPA does the metering and billing?
    - i. **See answer to Question #2(a) above—this issue will be avoided if PREPA and EPSCs separately bill customers based on reported consumption. However, if that model is not chosen, PREPA should receive payment priority. The reason PREPA should not be forced to accept a partial payment from a wheeling customer is that this would amount to a subsidy from PREPA's nonwheeling customers. Such a subsidy would be contrary to the "legislative requirement that nonwheeling customers not subsidize wheeling customers." October 14 Order at p.4.**
  - d. What are the costs associated with PREPA providing these services and how should they be compensated?
    - i. **This appears to be a question for PREPA. Note that PREPA would not need to be compensated for billing if PREPA and EPSCs separately bill wheeling customers, as suggested above.**

- e. Does the cost vary based on whether the wheeling customers are a few large customers or if those customers have a large number of subaccounts?
  - i. **This appears to be a question for PREPA.**
- 3. To address the potential situation in which an EPSC defaults, how should payment guarantees be structured? What instruments of security should be acceptable? Surety bonds, letters of credit, others? Is there a threshold of creditworthiness in which such instruments would not be required? How should the amount of the security be determined?
  - a. **Without a more developed wheeling system, these questions seem premature; they are also difficult to answer in the abstract, without any transaction-specific information. As a general matter, PREPA and its nonwheeling customers should be protected from assuming financial responsibility in such a default scenario. Wheeling customers and EPSCs have chosen to accept the risks associated with opting out of full service from PREPA, and they should not be permitted to shift those risks to PREPA and its nonwheeling customers.**
- 4. For an EPSC who cannot guarantee full service 24/7 to its wheeling customer, what should the standby rate be and what terms and conditions are required?
  - a. **The standby rate should include, but not be limited to, the following components:**
    - i. ***Contract Demand Charge* – a \$/kW or \$/kVA charge that compensates PREPA for maintaining generation capacity to serve wheeling customers;**
    - ii. ***Excess Demand Charge* – a higher \$/kW or \$/kVA charge that applies to demand above the contractual level, to discourage excess demand;**
    - iii. ***Contract Energy Charge* – a \$/kWh charge that compensates PREPA for energy provided during expected standby periods;**
    - iv. ***Excess Energy Charge* – a higher \$/kWh charge that applies to energy above the contractual level, to discourage excess consumption;**
    - v. ***Fixed Charge* – a monthly service charge that compensates PREPA for any services provided (such as billing, metering, etc.); and**
    - vi. ***Power Factor Adjustment* – an adjustment to billing demand based on the power factor.**
- 5. In the event of a complete default by a nonwheeling customer's EPSC, if the nonwheeling customer or the defaulting EPSC cannot find an alternative vendor, should the nonwheeling customer return to PREPA under the same rate scheduled on which it was previously served?

- a. **National assumes that references to a “nonwheeling customer” in this Question actually mean “wheeling customer,” as a nonwheeling customer presumably would be transacting with PREPA rather than an EPSC. With that assumption, such a wheeling customer should be allowed to take service from PREPA at an appropriate, current rate that accounts for their load and service requirements—but PREPA must be compensated for serving as a provider of last resort. To the extent this Question is meant to suggest that a wheeling customer could return to PREPA under a historical, outdated rate “on which it was previously served,” that should not be allowed because it would amount to an improper subsidy.**
6. How will the balancing function operate to either credit or debit the EPSC for providing more or less energy than needed to serve its customers?
    - a. **On the one hand, if an EPSC provides less energy than is needed to serve its customers, it should be charged an appropriate balancing fee. EPSCs should strive to meet the demand of their customers and should be disincentivized from overly relying on PREPA. On the other hand, if an EPSC generates more energy than is needed to serve its customers, PREPA should not be required to buy that energy (beyond a reasonable balancing limit). PREPA has no control over EPSCs’ generation, and therefore having to purchase such surplus electricity may ultimately harm nonwheeling customers and create perverse incentives for EPSCs. EPSCs should be responsible for their customers’ energy needs.**
  7. Are there other issues not on this list that should be included for discussion in the technical conference on operational issues?
    - a. **It is important to clearly define PREPA’s obligations as provider of last resort. While the Bureau’s Regulation on Electric Energy Wheeling discusses the provider of last resort’s obligations at a high level,<sup>20</sup> PREPA will need to know specifically what its roles and duties are with respect to wheeling as the framework is further developed.**

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<sup>20</sup> See *Resolution re: Adoption of Regulation on Electric Energy Wheeling*, CEPR-MI-2018-0010, at App’x A, Art. 2 (Dec. 11, 2019).

## Appendix C Questions

1. [*Question 1 to PREPA omitted*]
2. How should wheeling work for customers without interval meters?
  - a. **This appears to be a question for PREPA.**
3. Please comment on the appropriate supplier credit requirements.
  - a. **Please see answer to Appendix B Question #3 above.**
4. Please comment on the triggering event that constitutes a default. When should the supplier be considered to be in default?
  - a. **Please see answer to Appendix B Question #3 above.**
5. Is the sum of the FCA and PPCA a reasonable approximation of the variable fuel, O&M, and purchased-power cost avoided over the course of the month by a wheeling customer whose supply exactly matches load on an hourly basis?
  - a. **No. A portion of the PPCA represents the cost of purchased-power capacity; PREPA must continue to maintain some level of additional capacity so long as it is expected to function as provider of last resort. Thus, the sum of the FCA and the PPCA is *higher* than PREPA's actual avoided cost, and using that sum to calculate the wheeling energy credit would result in nonwheeling customers subsidizing wheeling customers. Such a subsidy would be contrary to the relevant legislation. See October 14 Order at p.4.**
6. Should the wheeling energy credit instead be computed by scaling up the FCA to represent 100% displacement of fossil fuel in PREPA plants?
  - a. **No. The wheeling energy credit should be based on the fully and carefully analyzed marginal variable cost of energy that would be displaced from the generation queue by wheeling, irrespective of technology. For example, "fossil fuel" aggregates different types of plants (LNG, coal, fuel oil, etc.) with different operational considerations and costs, so they cannot all be treated as one and the same.**
7. Would some other metric, such as the average cost per kWh of heavy fuel oil burned in the steam plants, or the average cost of oil across all PREPA plants, be more appropriate?
  - a. **Please see answer to Appendix C Question #6 above.**
8. Is it possible to confidently estimate any avoidable capacity-related cost, representing the savings from retiring obsolete units early, reducing maintenance and capital expenditures on existing units, or avoiding fossil-fueled replacements for retiring units?



- a. **So long as PREPA is expected to function as provider of last resort, it must maintain some level of additional capacity. Thus, it is not clear whether, or by how much, PREPA could avoid capacity-related costs. Even assuming PREPA was not provider of last resort, it would still prove difficult to estimate these costs without a complete, data-driven COSS. As noted in National's prior comments in the instant proceeding,<sup>21</sup> the current COSS admittedly suffers from various data deficiencies and therefore may not provide an adequate basis to estimate these costs. In short, the answer is "no," at least without developing better data.**
9. If so, what are those costs?
  - a. **Please see answer to Appendix C Question #8 above.**
10. Which hours should be used in determining the reduction in contribution to capacity-related generation costs?
  - a. **The reduction in capacity-related generation costs should be based on the same hours for which generation capacity is designed in PREPA's most current IRP.**
11. How much should PREPA charge for administration of the wheeling rate, per Supplier and per wheeling customer?
  - a. **This appears to be a question for PREPA.**
12. Should the balancing interval be hourly or some other period?
  - a. **This appears to be a question for PREPA.**
13. Should the balancing credit for excess generation be less than the balancing charge?
  - a. **Yes. As discussed in the answer to Appendix B Question #6 above, PREPA should not be required to buy an EPSC's excess electricity generation (beyond a reasonable balancing limit). PREPA has no control over EPSCs' generation, and therefore having to purchase surplus electricity may ultimately harm nonwheeling customers and create perverse incentives for EPSCs. EPSCs should be responsible for their customers' energy needs.**
14. If so, why and by how much?
  - a. **For "why," please see answer to Appendix C Question #13 above. The precise amounts of the balancing credit and balancing charge appear to be a question for PREPA.**

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<sup>21</sup> See *supra* at p.2 & nn.9-12.

15. Which loss factor should be applied to gross up customer load for comparison with generation supply?
- a. **This appears to be a question for PREPA.**
16. Should that be the loss factor applied by voltage level in setting the FCA and PPCA?
- a. **This appears to be a question for PREPA.**
17. Is an imbalance charge appropriate, in addition to the balancing charges, if the Supplier provides much less energy than its customers use over an extended period?
- a. **Yes (National assumes that such an imbalance charge would be imposed on the EPSC). As discussed in the answer to Appendix B Question #6 above, an EPSC should strive to meet the demand of its customers and should be disincentivized from overly relying on PREPA. That is because such over-reliance forces PREPA to maintain additional capacity, increasing its costs. Those costs must be fairly compensated to avoid an improper situation where nonwheeling customers subsidize wheeling customers.**
18. If so, how long a period should be used for this computation (a quarter, a year, or some other period)?
- a. **In general, a shorter period would better protect PREPA and nonwheeling customers. For instance, if a period of a year or longer is used, significant time would elapse before it could be found that an EPSC was subject to the imbalance charge. Meanwhile, PREPA would continue to incur increased costs due to that EPSC's over-reliance on PREPA, which PREPA would pass along to nonwheeling customers.**
19. How large a shortfall should trigger the charge?
- a. **National understands that a typical industry range is 3-10%.<sup>22</sup> The lower the shortfall threshold, the more protection is afforded to PREPA and nonwheeling customers.**
20. How should the charge be computed?
- a. **The imbalance charge should be based on the marginal per-unit cost of energy at the time the shortfall occurred, times the units of shortfall beyond the**

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<sup>22</sup> See, e.g., Arizona Public Service Company Pro Forma Open Access Transmission Tariff, at Schedule 4 (pp.111-12 of PDF), available online at [http://www.oasis.oati.com/AZPS/AZPSdocs/APS\\_OATT\\_Volume\\_2\\_20150615m.pdf](http://www.oasis.oati.com/AZPS/AZPSdocs/APS_OATT_Volume_2_20150615m.pdf) (110% charge for imbalance of +/- 1.5 to 7.5 percent (or 2MW to 10MW); 125% charge for imbalance of +/1 7.5 percent or more (or 10MW or more)); Duke Energy Joint Open Access Transmission Tariff, at Schedule 4 (pp.209-10 of PDF), available online at [http://www.ferc.duke-energy.com/Tariffs/Joint\\_OATT.pdf](http://www.ferc.duke-energy.com/Tariffs/Joint_OATT.pdf) (same).

**balancing limit. The cost of energy could be derived from the variable cost of the most expensive operating power plant supplying PREPA.**

21. Is an imbalance charge appropriate, in addition to the balancing charges, if the Supplier provides much more energy than its customers use over an extended period?
  - a. **Yes. Please see answers to Appendix B Question #6 and Appendix C Question #13 above.**
  
22. Are full-service customers disadvantaged if the Supplier effectively sells energy to PREPA at or near the sum of the FCA and the PPCA?
  - a. **Yes. As discussed in the answer to Appendix C Question #5 above, a portion of the PPCA represents the cost of purchased-power capacity. Thus, if an EPSC could sell energy to PREPA at this rate, nonwheeling customers would—at a minimum—be paying twice for the capacity portion of the PPCA.**
  
23. If an imbalance charge for over-delivery is appropriate, should it be structured in the same manner as the imbalance charge for under-delivery? If not, why?
  - a. **As discussed in the answers to various Questions above, it is important to calibrate the incentives to ensure that EPSCs do not overly rely on PREPA as provider of last resort, on the one hand, and that they do not attempt to offload surplus power onto PREPA, on the other hand. The imbalance charges should be set with this key objective in mind.**
  
24. Is it appropriate for Suppliers to bill customers directly for their service, or should the default be that PREPA does all billing?
  - a. **Please see answer to Appendix B Question #2 above.**
  
25. Should the Energy Bureau set fees for PREPA billing of Supplier charges?
  - a. **Please see answer to Appendix B Question #2 above.**
  
26. In the event of a Supplier's default on outstanding balancing charges, is it appropriate to collect the shortfall from the Supplier's customers?
  - a. **Yes, to the extent PREPA cannot collect the outstanding amount from the EPSC. The alternative is for PREPA—and PREPA's nonwheeling customers, who did not choose to accept the counterparty risk of transacting with an EPSC—to bear the burden. That would not only be contrary to law, but also unfair to PREPA's ratepayers. This is why a default scenario should be avoided in the first instance.**

27. If so, how should the shortfall be allocated among the customers?

- a. **It could be allocated proportionally based on consumption. The Bureau could consider a hardship exemption for customers of the defaulting EPSC that lack the ability to pay their portion of the shortfall (but note that this would shift a greater burden onto other customers of the defaulting EPSC). Again, the better course is to avoid a default scenario in the first instance.**