

**GOVERNMENT DE PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
ENERGY BUREAU**

SECRETARIA
NEGOCIADO DE ENERGIA
DE PUERTO RICO

2020 NOV 17 PM 2: 12

IN RE:

**REGULATION FOR THE EVALUATION
AND APPROVAL OF AGREEMENTS
BETWEEN ELECTRIC SERVICES
COMPANIES**

Case: NEPR-MI-2020-0014

In Re:

**Notice of Proposed Regulation
and Request for Comments**

COMMENTS FROM THE WINDMAR GROUP

TO THE BUREAU:

INTRODUCTION

Puerto Rico has an energy public policy framework that is a model of the United States, and the combined structure of Act 57 of 2014 and Act 17 of 2019 is unique and advanced, as such, and even more so when compared to any other jurisdiction.

The commitments to transparency and openness, as well as the commitment to renewable energy, the opening to competitive energy efficiency markets of interconnected energy at non-discriminatory regulated costs with an aggressive timetable that leads us to 100% renewable energy by 2050, are pillars of this legal framework and are the basis for the power exercised by the Bureau.

The weight and responsibility of interpreting, watching over and promoting public policy belongs to the Energy Board (PREB) in order to overcome and break down the old model.

If the Bureau does not exercise its responsibilities in a vigorous, responsible, professional, careful and non-political manner, the efforts of so many groups in Puerto Rico and the titanic efforts of the legislature in approving Acts 57-2014 and 17-2019 will remain as mere talk, without substance. It is that effort of all sectors including consumers, investors and other stakeholders - now intervening according to their rights and obligations under Acts 57 and 17 in adjudicative processes as the NEPR itself recognizes in its recent determination of the Modified IRP - that drives these comments and support for processes of **clear evaluation parameters** for new projects and renegotiated contracts that benefit PREPA, the electric grid and the consumer with an adjudicative process that takes advantage of the intervention.

LEGAL AND CONCEPTUAL FRAMEWORK FOR THE REGULATION

The Puerto Rico Energy Transformation and Relief Act, Act 57-2014 and the Energy Public Policy Act, Act 17-2019, emphasize "transparency and citizen participation in all processes related to energy service in Puerto Rico." 22 L.P.R.A. 8 1051(0); 29 L.P.R.A. 8 1141d(10)(c).

Art. 1.11b) of Act 17-2019, provides the following on power purchase contracts:

Any power purchase contract or any amendment or extension to a power purchase contract executed prior to the approval of Act 57-2014, between the Authority, or the Contracting Party of the transmission and distribution network, and any independent power producer shall be executed in accordance with the provisions of Article 6.32 of Act 57-2014 and the regulations adopted by the Bureau under said Article. However, when a power purchase contract is part of a PREPA Transaction, the Power Compliance Certificate shall be sufficient pursuant to the provisions of Act 120-2018.

The Bureau shall establish clear parameters on prices, adjustments, escalators and profit margin for power purchase contracts. Said parameters shall be pursuant to the price escalators or adjustments normally used by the industry for these purposes, as well as any other parameters or

methodology to regulate the profit attributable to the power purchase contract to ensure that said contract is for an **adequate and reasonable price**. No Power Company will realize any gain attributable to fuel. **The profit margin of the independent generators in the power purchase agreements will meet the parameters established by the Bureau.**

No contract for the establishment of new generation plants shall be an obstacle to compliance with the renewable energy portfolio and the integration of distributed generation, micro-grids or energy cooperatives.

The power purchase contracts will be executed considering the goals and mandates established in the Renewable Energy Portfolio, which require a transition from fossil fuel-based power generation to the aggressive integration of renewable energy, as provided by Act 82-2010. [Emphasis added].

Act 57-2014, as amended by Act 17-2019, further clarifies in Article 6.32 on contracts between electricity companies that:

(a) **The Energy Bureau shall evaluate** and approve **all** contracts between electric service companies, including independent energy producers, prior to the execution of said contracts. This shall include, but not be limited to, the evaluation and approval of power purchase contracts whereby an independent power producer arranges to provide power to the electric service company responsible for operating the Electric System. However, when a power purchase contract is part of a PREPA Transaction, the Certificate of Energy Compliance pursuant to what is provided in Act 120-2018, as amended, shall be sufficient.

(b) The provisions of this Article shall not apply to power purchase contracts executed by the Authority prior to the approval of this Act. However, **any extension or amendment to a power purchase contract executed prior to the approval of Act 57-2014, shall comply with the Puerto Rico Energy Public Policy Act and shall be subject to the approval of the Energy Bureau.** [Emphasis added].

Public Act 11-187, that is, the federal 'PROMESA' Act, 48, USC ¶ 2101, *et seq.*, states in section 2213(a)(1)F) that components of said federal law should support the Bureau in its role of ensuring affordable energy prices:

(vi) support the Energy Commission of Puerto Rico in achievement of its goal of reducing energy costs and ensuring affordable energy rates for consumers and business; [...]

Contract approvals within the proposed regulatory framework should occur in open and transparent proceedings. Any person or entity with a "legitimate interest in an award proceeding before an agency" may request to intervene in any proceeding by filing a "written request duly stating its reasoning" with that agency. [3 L.P.R.A. 8 9645].

The contracts of electric service companies and renewable energy companies must be evaluated in a manner that reflects the development of renewable energy in an economically and technically correct manner with the truths that the Bureau strongly reiterated through the IRP-M; that Puerto Rico's mountainous geography and extreme climate make traditional electricity supply, through centralized fossil generation and extensive power lines, vulnerable to damage and very costly to build and constantly repair; that the deployment of solar energy is an economic and sustainable development imperative; that the cost of fuel acquisition is zero; that local and clean electricity is consumed without losses, and also environmental regulatory costs (e. g. MATS, among others) and fines for violation of the Renewable Energy Portfolio are avoided.

The central approach is **that the determination of rates and approval of power contracts is the exclusive jurisdiction of the Bureau**. Neither PREPA, the Fiscal Board, P3, AAFAF, nor any other entity may break the structure of the Bureau's powers, and the processes of participation of intervenors with "standing." All this is set forth in the proposed Regulations.

The central element is the careful and responsible assessment by the Bureau of "fair and reasonable cost" in which it is not only a matter of cents per kWh but also requires

the analysis of how the contracts comply with the country's public policy, promote that policy and avoid the social, environmental and health costs involved in continuing with dirty and cheap energy sources such as coal, oil or natural gas.

GENERAL COMENTS

1. PREC should opt for the least regulatory intervention possible, limited to guaranteeing fair access to the grid and facilitating interconnection

2. There should not be a single model for contracts. Neither should the contract models limit the individual capacity of Municipalities, Coops, solar communities, NGO's, private industrial, residential, commercial entities or individuals, to build and operate under their own contractual models.

3. The regulations should not establish cap for prices, rather it should consider other means for price regulation, limited to **when the contract is the sole option for the ratepayer or the group of ratepayers for energy security, quality and reliability.**

4. The development of energy services contracts, presume an open system and a diversified market that serve varying customer needs and choices, the opposite of the centralized monopolistic energy provider model, governed by party politics resistant to strong independent regulation. As such "fixing" prices or particular models will limit the capacity of potential energy producers' developers- public, private, for profit, not for profit, that offer services and costs tailored to private customer needs.

6. The PREC most probably does not have the information of which contractual models will be established, what would be the operational costs, the financing costs, nor what would be the specific or additional services to be provided under different contracts.

Why shouldn't a consumer, commercial, industrial, or residential, pay a higher price if it receives additional services? For example, Hospitals, Industry and Commerce, and even residential users might prefer to pay higher prices if there is guaranty of services, resiliency and stability. This would not be possible on a predetermined cap or a forced uniform contract.

Premium services and quality have a cost and affects the price.

Also, most probably the PREC does not have information today of the potential developer's costs and risks. How can it predetermine a cap price or a fixed contractual model?

7. The regulation should be very specific in terms of PREPA's technical requirements to connect to the Grid, when the producer will need such connection, because it will sell to PREPA. PREPA's past and ongoing practices demonstrate that it can raise roadblocks to inter connection. It can, as it has done, failed to comply with specific legislation and regulation mandates, such as renewable generation, and ongoing non-compliance with net-meter renewable generation contracts residential, commercial and industrial.

8. The regulation should not limit the number or forms of private and governmental organizational structure that the contracts can create. Corporations, Coops, Associations of residents, business groups, for profit, not for profit, LLC's, Municipalities and "Barrios" can all organize to establish contracts with a private energy producer.

The key is open market, consumer choice, transparency in the billing process and the elimination of monopolies and monopolistic practices.

The PREC should guarantee "universal access" and nondiscrimination.

CONCEPTUAL COMMENTS

1. The Proposed Regulation for the Evaluation and approval of Agreements between Electric Services Companies appears to be designed and conceptualized for PPOA'S between private producers and the Puerto Rico Electric Power Authority.

When the Regulation is applied to private party contracts, not contracts with PREPA, it becomes cumbersome, inefficient, too costly and as such is a hindrance and not a promoter of private sector energy producers, in particular renewable energy.

2. This issue has two components. First, is a cost component. It is not feasible to develop private renewable energy production carrying the costs imposed by the Regulation when the Electric Services Company has less than a 5 megawatt production. Second, there is a policy consideration. The private production of energy, in particular renewable energy, when the buyer will be another private party-not PREPA- should not be subject to the detailed process and control that the Regulation establishes.

The "mantra" should be the "slightest touch" possible.

3. Because a huge market has been created for privately produced and sold renewable energy at private- sites for the private site owner benefit, the regulation should be much more open to permit such private market, both at site and through wheeling to develop its own practices, procedures, prices and financing mechanisms.

4. The PREB should not imposed a single model

There is a big difference in Private Producer-PREPA's PPOA's, and Private to Private PPOA's.

5. It should also be clear that concerning PREPA's PPOA's, the reach of the PREB regulations must clearly specify that it covers new contracts, amendments to contracts, rejection or modifications of contracts. Each action related to the contracts impacts Puerto Rico's Public Policy, and any action which impacts the Public Policy must be covered by the regulation.

SPECIFIC COMMENTS

1. Section 104 and 104 A:

"Renewable energy PPOA's are for energy but here the regulation requires "capacity". No specific mention of energy which could be a problem for renewables. There is a need to include energy specifically.

2. Section 104 and 104 A:

"In addition, extension of or amendment to" should also include "rejection" or "cancellation" of contracts. If not this could allow for a rejection of an existing PPOA to bypass the NEPR"

3. Section 104 and 104 A:

Section 104 B- "should apply to industrial or commercial" this puts onerous and non-market conditions for the PPOAs between two willing parties.

Section 104 C- The requirements are for projects of 1MW or more. Today a 1MW is an investment of no more than \$1 million. Having to go through this process for such a small investment doesn't make sense. If PREB wants to include such projects it should apply requirements for projects over 5MW."

4. Sec. 109 (33):

"sell electric power". PREPA sells electric power but a renewable energy PPOA only sells electric energy. Electric power is more than electric energy. The Regulation needs to be more clear on the terms."

5. Sec. 2.01 (4):

"This requirement should not be for 1MW projects. It should not be for commercial or industrial, but if they must it should be for projects larger than 5MW. Even worse the fact that the negotiated price between a willing and knowledgeable buyer and seller should be subject to a back seat driver is counterproductive. Also, having to explain why the price was what it was makes seller and buyers show their cards. This is not reasonable."

6. Sec 2.14- It is too onerous for commercial and industrial contracts.

7. Sec. 2.06 (c)(3)- The issue of "appropriate reserve margin" is not possible for renewable PPOA's.

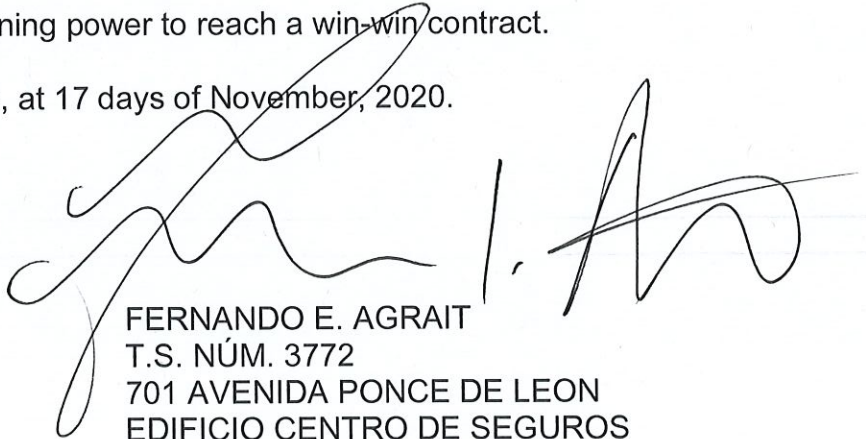
8. Sec. 302 A(3):

Insurance "as PREPA in its judgement" is a non-starter in a private to private PPOA. Again they are trying to force PPOA to act contrary to best industries practices, based on PREPA's judgment..

9. Sec. 3.03 Concerning rates, the PREB should leave the market in private- to private contracts, determine the market price.

The PREB should take notice of the hundreds of private-private PPOA contracts in commercial and industrial sites when both parties have ample capacity, knowledge and bargaining power to reach a win-win contract.

In San Juan, Puerto Rico, at 17 days of November, 2020.



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