

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

**NEER**

**Received:**

**Nov 13, 2020**

**6:54 PM**

IN RE: THE UNBUNDLING OF THE  
ASSETS OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY

CASE NO.:  
NEPR-AP-2018-0004

SUBJECT:  
Motion in Compliance

**MOTION IN COMPLIANCE WITH THE OCTOBER 14, 2020  
RESOLUTION AND ORDER**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW, the Puerto Rico Electric Power Authority, through its counsel of record and respectfully sets forth and prays:

On October 14, 2020, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) issued a *Resolution and Order*<sup>1</sup> directing the Puerto Rico Power Authority (the “Authority”) to, among other things, provide comments, responses or submit information addressing several requests for production of information detailed in appendixes A, B and C of the Order. The comments to Unbundled Interim Rate are due today, November 13, 2020. The Authority hereby submits its comments on the Unbundled Interim Rate. Exhibit A.

WHEREFORE, the Authority respectfully requests the Energy Bureau note the Authority’s compliance with the October 14, 2020 Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13<sup>th</sup> day of November 2020.

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<sup>1</sup> *Resolution and Order* issued on October 14, 2020 (the “Order”).

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Exhibit A

Comments on Interim Unbundled Rate

The Authority's comments on technical and operational issues including metering and billing in compliance with the October 14, 2020 Resolution and Order<sup>1</sup> for the proposed Interim Unbundled Rate.

### **1. Current PPOAs:**

The Puerto Rico Power Authority (PREPA) is counterparty to several operational and non-operational Power Purchase and Operating Agreements (PPOA). These PPOAs are set to expire in terms of 20 or 25 years, have a specific contracted capacity and provide that they are for the sale of energy to PREPA .

It is a possibility that an Independent Power Producer (IPP) that has a current PPOA could ask to have its capacity under the PPOA increased to sell the surplus through Wheeling. However, in the case of renewables this would bring complications, since this type of project is not always operating at its maximum capacity due to the energy resource. For example, a 20 MW photovoltaic (PV) system reaches that capacity around noon. If the company is interested in adding an extra 10 MW for Wheeling, those 10 MW would contribute to the project reaching the 20 MW contracted capacity during significant portions of its operational hours, which may cause complications in terms of adjudicating how much energy corresponds to the PPOA and how much energy corresponds to Wheeling. It could also cause situations at the time of disconnections, curtailment, etc. As an example of this, we have the case of Windmar's Cantera Martínó PPOA, which insists on forcing PREPA to buy, at an avoided cost, the excess of the 2.1 MW capacity contracted in Cantera Martínó, claiming that they are a Qualifying Facility under PURPA<sup>2</sup>.

### **2. Procurement Plan vs Wheeling:**

The Puerto Rico Energy Bureau (PREB) ordered PREPA to issue a series of requests for proposals (RFPs) for renewable generation and energy storage, as a mechanism to comply with the Renewable Energy Portfolio (RPS) established by Act 82-2010 as amended by Act 17-2019. The goal established by PREB is to contract approximately 3,500 MW of renewable energy capacity over the next three (3) years, in order to reach the goal of producing 40% of the energy using renewable sources by 2025. The contracted capacity should be priced in accordance with the IRP,

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<sup>1</sup> *Resolution and Order* October 14, 2020.

<sup>2</sup> Public Utility Regulatory Policies Act (PURPA).

which is below 10 cents /kWh. In addition, the Financial Oversight and Management Board for Puerto Rico (FOMB) already evaluated and passed judgment on the renegotiated PPOAs and determined that the prices agreed in them are not consistent with what is established in the Fiscal Plan. Therefore FOMB only approved 150 MW of the approximately 600 MW of renegotiated renewable PPOAs that were presented. Consequently, a case could be made that for certain suppliers it may be more economically attractive to participate in Wheeling than in a renewable energy RFP, since they could achieve more economically favorable agreements by contracting with third parties than by competing in an RFP process with PREPA/ LUMA / GENCO / POLR, a scenario like this could limit the PREPA's alternatives.

### **3. Technical Requirements:**

The projects that participate in Wheeling have to meet minimum technical requirements (MTRs) to maintain the stability and safety of PREPA's electrical system. It is necessary to take this into consideration to prepare the conditions that will be required for in the MTRs for the different technologies that could participate in the Wheeling program. Operational procedures for these projects should also be established. PREPA needs the Combined Heat and Power Partnership (CHP) regulation to be approved first.

### **4. Interconnection:**

On the November 4, 2020 Technical Conference, the issue of Wheeling interconnection of IPPs was discussed. During the discussion, PREPA's current interconnection practices were referenced. In terms of, PREPA's interconnection practices can be summarized under two categories: First, those that are established under interconnection regulations and second, those that are not regulated and are established through negotiation and finally through the award of a (PPOA).

PREPA maintains two regulations that establish interconnection requirements. Regulation 8915<sup>3</sup> establishes the requirements and the procedure for the interconnection of generation systems to the distribution network, whether or not they participate in the Net Metering Program. Meanwhile,

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<sup>3</sup> Puerto Rico Power Authority, *Reglamento Para Interconectar Generadores con el Sistema de Distribución Eléctrica de la Autoridad de Energía Eléctrica y Participar en los Programas de la Medición Neta*, No. 8915 (Feb 6, 2017) ("Regulation 8915").

Regulation 8916<sup>4</sup> establishes the interconnection of generation systems to PREPA's transmission and sub-transmission system to participate in the Net Metering Program. IPPs interested in interconnecting at the Distribution level (which would limit the power that they can interconnect to 1 MW), should act in compliance with the process established in the Regulation 8915.

However, IPPs that are interested in interconnecting at the sub-transmission level (38 kV) or transmission (115 kV since this type of systems are not interconnected at 230), the interconnection process, at least initially, would have to be established in the agreements that are signed between POLR / PREPA / LUMA and the IPP. It would not be different from PPOAs cases, for which (with the exception of Windmar Cantera Martínó) the interconnection process is defined in the PPOA and in the interconnection agreements that are subsequently signed as the case may be (not all PPOAs required an interconnection agreement).

#### **5. Act 17-2019- Expense of Improvements to the Electrical System for Interconnection**

Also during the November 4, 2020 Technical Conference one of PREB's Commissioners referenced and established that Act 17-2019<sup>5</sup> provides certain criteria for the interconnection of IPP systems and expresses the party responsible for assuming the cost of any changes or improvements required by the electrical network when interconnecting a project. Upon review of Act 17-2019 most of the references on interconnection specifically address cases of distributed generation and microgrids, however, Act 17-2019 also modified dispositions of Act 57-2014<sup>6</sup> and the issue of Wheeling is specifically mentioned. Included below are relevant sections of Act 17-2019 where the interconnection issue is discussed.

Article 1.8 Section 1.8.- Unbundling and Transformation of the Electric Power System establishes:

- (a) Electric power service companies, distributed generators, and microgrids that so request it shall be entitled to demand interconnection to the transmission and distribution network under nondiscriminatory conditions, when technically possible, and consistent with the Integrated Resource Plan and when the regulations of the Bureau thus allow it.

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<sup>4</sup> Puerto Rico Power Authority, *Reglamento para Interconectar Generadores con el Sistema de Transmisión o Subtransmisión Eléctrica de la Autoridad de Energía Eléctrica y Participar en los Programas de Medición Neta*, No. 8916 (February 6, 2017) (“Regulation 8616”).

<sup>5</sup> *Puerto Rico Energy Public Policy Act, Act No. 17-2017* (April 11, 2019) (“Act 17-2019”).

<sup>6</sup> *Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014* (May 27, 2014) (“Act 57-2014”).

Regarding the interconnection of microgrids, Article 1.12 Interconnection of Microgrids establishes the following:

The microgrid interconnection process shall allow for microgrids with a generation capacity of less than one (1) MW to connect to the power distribution network; provided, that the technical features of the microgrid to be interconnected and the existing conditions of the electric power grid thus allow. Provided, further, that reliability studies, which shall be conducted promptly, may be required as appropriate for the interconnection of microgrids with a generation capacity of more than five hundred megawatts (500MW), but less than one megawatt (1MW). Moreover, the interconnection process shall provide for the interconnection of microgrids with a maximum capacity of five megawatts (5MW) connected to sub transmission or transmission voltages (38kV or 115kV). The interconnection of microgrids in excess of five megawatts (5MW) must be approved by the Bureau in a process that includes citizen participation. The Authority, its successor, or the transmission and distribution network Contractor shall evaluate the interconnection request in accordance with the regulations adopted therefore in accordance with Section 1.13 of this Act. In the event that the microgrid interconnection is denied or it is deemed necessary to implement additional technical requirements and improvements to the electric power distribution system, the petitioner shall be entitled to challenge said determination or finding before the Bureau, within a term of thirty days (30) days after the date of the notice of determination for the interconnection request.

Although this language does not establish it clearly, it implies that the cost improvements to the electrical network are the responsibility of the microgrids' proponent. Regarding the interconnection of distributed generation projects, Article 3.9 of Act 17-2019 amends Article 9 of Act 114-2007<sup>7</sup> (Net Metering) to, among other things, establish that:

The Authority, its successor, or the transmission and distribution network Contractor shall evaluate the application for interconnection as established in the interconnection regulations. Such evaluation, however, shall not exceed ninety (90) days from the filing thereof as established in the regulations approved by the Energy Bureau. In the event of noncompliance with the term provided, the application for interconnection shall be automatically approved until the Authority, its successor, or the transmission and distribution network Contractor, as appropriate, provides the grounds for denying the interconnection or deems necessary to implement additional technical requirements and/or improvements to the electric power distribution system. In these cases, the applicant shall be entitled to challenge such a determination or findings through any of the processes provided through regulations on review resources or procedures relating to the interconnection of a distributed generator approved by the Energy Bureau.

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<sup>7</sup> *Electric Power Authority Net Metering Program*, Act No. 114-2007 (August 16, 2007) ("Act 114-2007").

Again, although it does not establish it clearly, this language suggests that any improvements needed by the electrical system are responsibility of the distributed generation system proponent. However, this is clarified, in relation to projects with a capacity less than 25 kW the when following is established:

(c) The fact that the feeder exceeds its capacity shall not constitute an obstacle for the interconnection of photovoltaic or renewable energy systems with a generation capacity that does not exceed 25 kilowatts. In such cases, the necessary improvements and/or changes to be made to the feeder shall be defrayed by the requesting company.

It is clearly established, that the responsibility for network improvements belong to the requesting company. Considering the above reference is for distributed generators of smaller capacities, which are generally installed by residential or small commercial clients, it is completely reasonable to construe that in the cases for clients with greater generating capacity the cost of improvements or changes to the electrical system will be at the expense of the proponent.

Article 5.2 of Act 17-2019 amends Article 1.3 of Act 57-2014 to, among other things, includes the following terms:

(f) “Interconnection Charge”. - Shall mean the fair and reasonable amount of money that a person shall pay for the right to connect such person’s facility to Puerto Rico’s electric power grid.

cc) “Interconnection” or “Electric Interconnection”. - Shall mean the connection of power plants, electric power generation companies, independent power producers, natural or judicial persons, energy or electric cooperatives, microgrids or community solar into the same transmission and distribution grid in order for them to be electrically connected.

This provides that a person must pay a fair and reasonable amount for the interconnection of their facility to the grid, and that this applies to independent power producers, among others.

Article 5.6 amends Article 6.3 of Act 57-2014 to, among other things, establish that:

In exercising its powers and authorities, the Energy Bureau shall require that the prices included in any power purchase agreement, any wheeling rate, and interconnection charge are just and reasonable, consistent with the public interest, and compliant with the parameters established by the Bureau through regulations



Again, an interconnection charge is mentioned.

Act 17-2019 also establishes that the Energy Bureau has the power to resolve controversies related to, among others, interconnection matters. Regarding Wheeling specifically, Article 5.28 of Act 17-2019 amends Article 6.32 of Act 57-2014 to, among other things and states the following:

(g) The Energy Bureau shall ensure that the rates, fees, rents, or charges paid to independent power producers are just and reasonable and protect the public interest and the treasury. The Energy Bureau shall also oversee that the charge to be paid for interconnecting to the transmission and distribution network, including construction fees and wheeling rates, as well as any other requirement applicable to independent power producers or other electric power service companies that wish to interconnect to the transmission and distribution system is just and reasonable. During this process, the Energy Bureau shall ensure that the charges allow for an interconnection that does not affect the reliability of the electric power service and that promotes the protection of the environment, compliance with the mandates of the Act, and does not adversely affect customers.<sup>8</sup>

The aforementioned suggests that fair and reasonable interconnection charges can be charged.

## **6. Wheeling Rates, Metering and POLR / IPP / Client Relationship**

The Wheeling Regulation<sup>9</sup> approved by PREB establishes two (2) rates that PREPA can charge to wheeling customers:

- Partial Requirements Power Tariff- Rate charged to a customer "in the event that the IPP 's contract is for less than 100% of its power [sic] and the IPP fails to fulfill its obligations"
- Stand-by power Tariff- Rate charged to a customer "in the case where the client and the IPP have contracted 100% of their power [sic] and the IPP fails to fulfill their obligations"

In PREPA's opinion, the aforementioned definitions do not address all the operational possibilities that could occur under these structures. The question of what happens if an IPP uses a renewable source that has hour-to-hour variability and the energy resource is not available for a significant portion of the day arises. For instance, photovoltaic systems do not generate at full capacity during

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<sup>8</sup> Emphasis provided.

<sup>9</sup> Puerto Rico Energy Bureau, *Regulation on Electric Energy Wheeling* No. 9138 (September 16, 2019) ("Regulation 9138").

much of their operational hours and are absent at night. This a situation where the client will continue to depend on PREPA's network like other Wheeling clients, particularly during the hours of the day when the IPP cannot generate (which could be more than 50% of the day). The Partial Requirements Power Tariff definition does not recognize the referenced operation, which would actually be the typical operation of this type of IPP and not a breach of it.

Another consideration to not lose sight of relates to the credits to be granted to a Wheeling customer must be different, in hours where the IPP sells energy and the POLR makes up the difference vs hours where the POLR supplies all the customer's energy by a normal system operation.

On the other hand, PREPA raises a concern about the way in which the client's load imbalances and the generation of the IPP will be computed. The balance (customer consumption vs IPP generation and energy provided by PREPA / POLR) must be established for a specific period, either in intervals of 15 minutes or one hour. Otherwise, the door would be left open for some sort of net metering to be established, be it day by day or month by month where the intention is to "net" the customer's consumption vs. IPP generation to determine how much energy the PREPA /POLR finally provided and apply the corresponding charges. This scenario opposes the intention of the Wheeling Regulation. Also, this could incite other technical issues such as congestion, unit dispatch, etc. which could be avoided if the IPP has a system that follows their customer load. The rate paid to the IPP for energy generated in excess of the consumption of its customers during a determined period (15 minutes or hour by hour as indicated above) should discourage the IPP from also intending to become a POLR.. It should be encouraged that the generation of the PPI does not exceed the customer's consumption. To that effect the PREPA recommends some kind of penalty should be included for the excess of energy as excess imbalance calculation so that third party sales is done in a fair basis.

In regard to metering and billing, its material to establish who holds the customer/ client relationship. PREPA considers that both the Wheeling IPP and PREPA must have metering equipment installed at the client's property. In the case that PREPA is responsible for providing the metering data for billing, the primary meter must be PREPA's. . This way PREPA may provide metering information to the IPP to calculate the IPP's customer charges and the charges to be paid to PREPA . PREPA should only be responsible for billing the customer the charges for the energy

provided by PREPA; while the IPP should be responsible for billing their client, with whom they would have a service agreement signed. Otherwise, PREPA would also be involved in the contractual responsibility between IPP and the client, and would have to assume additional responsibilities, for example when the client does not pay their invoice.

Another option would be for the customer to become exclusively the IPP's client and for PREPA to charge the IPP for the energy and services that it had to provide to the client when the IPP fails to cover the client's consumption. The IPP would be responsible for passing these expenses on to their client as part of the billing process. This option is the one that best suits the intention of Wheeling (there is reason why the client can return to PREPA, which implies that when he has a relationship with the IPP he will no longer be a client of PREPA). Also, PREPA's responsibilities would be structured, in particular, in the event of a contract breach by either the IPP or the client, in identifying which action PREPA has to take against the violation, and how that would affect the party that is in compliance.

It should be noted that in the case of new concessioner for generation, the boundaries and responsibilities for each of them has to be completely clear in the wheeling procedure. Wheeling Regulations must include the responsibilities and scope of the 3 entities that will respond to these clients; IPP (tariff and contract with client), Gridco-Luma (quality and continuity of the electrical signal and service at the connection point) and Genco (Stand-By Generation).

## **7. Stand by- Rates**

The Stand-By Rates must include components of operating, maintenance and fuel costs based on a cost proportional to the capacity contracted under Wheeling. PREPA should identify proportional costs based on capacity contracted for wheeling since PREPA would also be responsible for fuel inventory, to have enough reserve to cover scenarios in which the IPP fails to provide service or lacks capacity.

## **8. Rates for Returning Customers**

PREPA would issue a minimum stay provision of no less than six months and the Customer would go back to rate they had prior to becoming a wheeling customer.

## **9. Payment Guarantees in the event of an EPSC default**

An amount should be deposited for bond or assurance should to be established, since PREPA does not deal with credit ratings as of right now. PREPA procurement department could provide criteria and factors to be considered in establishing credit worthiness.

## **10. Uniform Service Agreements**

PREPA agrees with developing a with a uniform service agreement. The documents needed and viability of connection to the system must be determined and be consistent for each customer. On a conceptual point of view, it should be established that in the first stage Wheeling will only apply to industrial customers.