



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

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

CASE NO.: NEPR-AP-2018-0004

SUBJECT: Resolution and Order on PREPA's
Informative Motion; Procedural Calendar

RESOLUTION AND ORDER

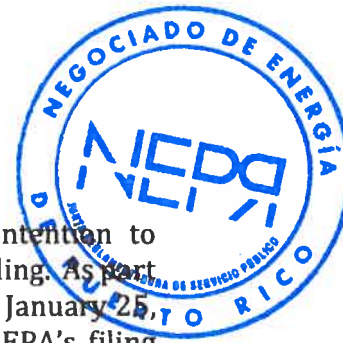
I. INTRODUCTION

On December 11, 2019, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued Regulation 9138 on Electric Energy Wheeling. Regulation 9138 establishes the legal and regulatory framework required to develop a process for electric energy wheeling in Puerto Rico, that will enable eligible entities to exercise choice and control over their electric service, protect non-subscribers from being affected by wheeling, and spur the transformation of the power system in Puerto Rico.

On October 14, 2020, the Energy Bureau issued a Resolution and Order ("October 14 Resolution") in the instant case, (i) setting forth a proposed interim unbundled rate for wheeling for public comments, (ii) providing a list of questions regarding the operational issues that would need to be addressed to enable wheeling; and (iii) requesting data and information from the Puerto Rico Electric Power Authority ("PREPA"). Additionally, the Energy Bureau scheduled two (2) technical conferences for PREPA to discuss its fuel and purchase power costs, potential credits for wheeling customers, and operational and technical issues to be resolved to implement wheeling.

On December 23, 2020, the Energy Bureau issued a Resolution and Order ("December 23 Resolution"), through which it established the procedure for the unbundling of PREPA's rates. The Energy Bureau determined that it is in the public interest to proceed with the unbundling of PREPA's rates expeditiously, so that eligible wheeling customers can purchase their power from a certified Electric Power Service Company ("ESPC") or other eligible independent power producer. The Energy Bureau ordered PREPA to, no later than February 1, 2021, file one or more proposals for an unbundled rate for wheeling, along with a uniform wheeling service agreement between PREPA and the independent power producer and any other pertinent details. The Energy Bureau also ordered PREPA to, if it could not comply with the February 1, 2021 deadline, explain why it was unable to do so, given the ample notice provided by the Energy Bureau on the necessity of providing a fully unbundled cost of service study.¹

¹ If unable to comply with the February 1, 2021 deadline, the Energy Bureau required PREPA to provide a list of the analyses and data collection tasks necessary to complete the unbundled cost of service study, and a proposed schedule for completion of those tasks and the study.



On the December 23 Resolution, the Energy Bureau expressed its intention to determine the appropriate rates for unbundling through an adjudicative proceeding. As part of such proceeding, all interested parties could file a petition to intervene until January 25, 2021. The Energy Bureau also established that the discovery process on PREPA's filing would commence on February 1, 2021. The Energy Bureau scheduled a Technical Conference for February 9, 2021, to discuss PREPA's filing. To date, the Energy Bureau has received petitions to intervene from the Independent Consumer Protection Office, Cooperativa Hidroeléctrica de la Montaña, the Puerto Rico Manufacturer's Association, and EcoEléctrica, L.P.²

On January 29, 2021, PREPA filed before the Energy Bureau a document titled *Informative Motion in Compliance with the December 23, 2020 Resolution and Order* ("Motion"). As part of its Motion, PREPA stated that it would not be able to submit a cost of service study by the February 1, 2021 deadline. PREPA expressed that, on October 1, 2020 it began a Request for Proposals ("RFP") process to execute a contract for professional services in order to retain an advisor that could provide expertise in cases such as the instant case. PREPA states that on November 20, 2020 the notification of selection was awarded to Guidehouse, Inc. and that, due to some procedural steps with the contractor and the Government of Puerto Rico, the contract was executed on January 29, 2021. Through its Motion, PREPA included a detailed document on the estimate of deliverables and timeline to file an unbundled rate proposal before the Energy Bureau.

II. PROCEDURAL CALENDAR

Upon review of PREPA's Motion and timeline, the Energy Bureau **ORDERS** PREPA to file, **on or before May 10, 2021**, the following studies and proposals as required in the December 23 Resolution:

- A. A fully unbundled cost of service study based upon the general techniques used in the Unbundling Report,³ with updated data as feasible and an explanation of any different methodologies used. This study shall allocate revenues among classes, and within each class, allocate revenues among at least the following three categories:
 1. All non-generation costs, not subject to competition from wheeling;
 2. Generation costs avoidable by wheeling-related reductions in PREPA's generation requirements;
 3. All other generation costs stranded by a reduction in sales;

² The Energy Bureau is evaluating the petitions for intervene filed by Cooperativa Hidroeléctrica de la Montaña, the Puerto Rico Manufacturer's Association, and EcoEléctrica, L.P.

³ See Order, Report on Cost Allocation Methods and Unbundling: Requirements for Information and Production of Documents, Case No. NEPR-AP-2018-0004, September 4, 2020.



- B. A proposed unbundled tariff and structure consistent with the default unbundling tariff and structure, as originally set forth in Appendix A of the Energy Bureau's October 14 Resolution, and further modified in the December 23 Resolution, and
- C. Any proposed unbundling tariffs and structures, containing unbundled rates based on the cost of service study.

The Energy Bureau has established a procedural calendar⁴ to be able to monitor closely the work being performed by PREPA and its consultant to file its proposal for an unbundled rate for wheeling. As part of the procedural calendar, the Energy Bureau **will reschedule the February 9, 2021 Technical Conference for March 15, 2021 and April 15, 2021 as described below.**

A. Technical Conferences

Based on the timeline provided by PREPA as part of its Motion, the Energy Bureau determined to reschedule the February 9, 2021 Technical Conference and to hold two (2) Technical Conferences before PREPA's filing of its proposal for an unbundled rate. The first of these Technical Conferences is scheduled for **March 15, 2021, at 10:00 a.m.** In the first Technical Conference PREPA must present its preliminary findings on (i) data collection and review; and (ii) the results of the Marginal Cost of Service study. The second Technical Conference is scheduled for **April 15, 2021, at 10:00 a.m.** In the second Technical Conference PREPA must present its preliminary findings related to (i) the rate design and testing; and (ii) the work performed in the uniform wheeling agreement. At these Technical Conferences, the Energy Bureau may ask questions to PREPA regarding the information presented. Intervenors may also ask clarifying questions to PREPA regarding the information presented during the Technical Conferences. The purpose of the Technical Conferences is for PREPA to present its preliminary findings and to clarify questions regarding such information. As such, discovery-type questions will not be allowed during the Technical Conferences.

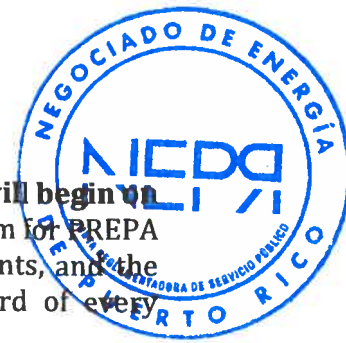
The Energy Bureau will provide more information on these Technical Conferences at a later date.

B. Discovery

Every intervenor will have the right to issue discovery requests regarding PREPA's proposal for an unbundled rate, under Regulation No. 8543.⁵ In addition, in accordance with the provisions of paragraphs (H) and (I) of Section 8.01 of Regulation No. 8543, the Energy Bureau Staff may request documents, records, inventories and any other pertinent

⁴ Attachment A to the instant Resolution and Order includes a summary of the Procedural Calendar set forth herein.

⁵ *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, Regulation No. 8543, December 18, 2014.



information as part of the discovery process. The period to conduct discovery **will begin on May 10, 2021 and will end on June 10, 2021**. There will be a ten (10) day term for PREPA to answer all information requests. Every request of information or documents, and the corresponding answers, shall be notified by email to the address on record of every intervenor and to the Energy Bureau.

Notwithstanding the above, the following shall apply to all discovery requests and corresponding responses:

- 1) Any information requirement, request for production of documents or any other discovery requirement must be sent in a ***searchable*** portable document format (i.e., PDF) via email to the party to whom the request is made. Parties need not file a physical copy of the discovery request with the Energy Bureau's Clerk.
- 2) All discovery requests shall be sent via email by the requesting party's authorized representative to the Energy Bureau and to the email in record of each intervenor. It will not be necessary for a discovery request to include the signature of the requesting party's authorized representative. Parties may use electronic signatures when sending such documents.
- 3) When answering any discovery request, the responding party shall notify its responses to the requesting party, all other intervenors and to the Energy Bureau via email. Responses to any discovery request must be filed in a ***searchable*** PDF unless the filed document native nature does not support a PDF filing (e.g., Excel Files). All answers must be notified by the responding party's authorized representative. All Excel files or files with similar format, shall be submitted in native form with formulae intact.
- 4) If, due to its size, a document cannot be sent via email, the responding party shall deliver it to the requesting party, all other intervenors, and to the Energy Bureau, using a portable drive (e.g., USB memory stick) or a cloud-based storage service (e.g., Dropbox, OneDrive, Google Drive, etc.).
- 5) To ease the discovery process, the Energy Bureau has determined to exempt all parties in the instant proceeding from the requirement that all answers to a discovery request be physically signed and notarized.
- 6) Each discovery response must clearly identify the person providing the answer to each question or requirement and include a certification regarding that, to the best of his/her knowledge, all answers provided are true and correct and none of the information provided is willingly misleading.
- 7) Physical copies of responses to discovery request need not be filed with the Energy Bureau's Clerk.



- 8) Should any party claim confidential treatment of the information provided in response to a discovery request, or a portion thereof, said party shall follow the guidelines set forth by the Energy Bureau in its August 31, 2016 Resolution, Case No. CEPR-MI-2016-0009, as amended.
- 9) All emails sent to the Energy Bureau shall be sent to all three (3) of the following addresses: secretaria@jrsp.pr.gov, legal@jrsp.pr.gov and viacaron@jrsp.pr.gov.

C. Initial Technical Hearing

The Energy Bureau will hold an Initial Technical Hearing on **May 18, 2021 at 10:00 a.m.** PREPA shall be prepared to present the proposed unbundled rate to the Energy Bureau and the Intervenors. Furthermore, PREPA shall be prepared to answer questions from the Energy Bureau, its Staff, consultants and Intervenors regarding its presentation and the contents of the proposed unbundled rate. The Energy Bureau will provide more information regarding the Initial Technical Hearing format, the applicable rules of behavior, and the order of the proceedings at a later date.

D. Intervenor's Written Testimony

Intervenors will be required to file written testimony ("Pre-Filed Testimony") on or before June 24, 2021. Through such testimony, the intervenors, along with their witnesses, shall present their position and arguments regarding PREPA's proposed unbundled rate. Since they are the equivalent of direct testimony, all Pre-Filed Testimony shall use a question-and-answer format. The person appearing as witness must be clearly identified, must provide his/her credentials and must specify the issue or subject on which he/she is testifying. All testimonies must be sworn and verified before notary public.

E. Evidentiary Hearing

The Energy Bureau will hold an Evidentiary Hearing in which parties and the Energy Bureau will have the opportunity to cross-examine the witnesses that provided Pre-Filed Testimonies. All parties will also have the opportunity to present their own evidence, under applicable statutory and regulatory procedures. The Evidentiary Hearing is **scheduled for July 6-9, 2021**. The Energy Bureau may modify the duration of the Evidentiary Hearing at its discretion. The Energy Bureau will provide, at a later date, more information regarding the duration and format of the Evidentiary Hearing, as well as the applicable rules of behavior and the order of the proceedings.

F. Final Substantive and Legal Briefs

After the Evidentiary Hearing, PREPA and Intervenors will have the opportunity to submit Final Substantive and Legal Briefs ("Final Briefs"). The Final Briefs shall be limited to the information presented during discovery and the Evidentiary Hearings. Therefore, the Final Briefs cannot introduce information and/or evidence not previously filed before the

Energy Bureau. Final Briefs shall be filed **on or before July 30, 2021**.



G. Reply to Final Briefs

PREPA and Intervenors will have the opportunity to submit replies to the Final Briefs ("Reply Briefs"). All Reply Briefs shall be limited to the information presented in the Final Briefs. Therefore, the Reply Briefs cannot introduce information and/or evidence not previously filed before the Energy Bureau nor can address any issues not part of the Final Briefs. Reply Briefs shall be filed **on or before August 13, 2021**.

H. Public Hearing

The Energy Bureau will hold a public hearing to provide additional opportunity for citizen participation. The hearing will be held on **August 3, 2021**. During the public hearing, the general public will have the opportunity to present their opinion regarding the proposed unbundled rate. During the course of the proceeding, the Energy Bureau may determine to celebrate additional hearings, including hearings in other places along the Island. The public hearings are designed to obtain comments from the general public. As such, Intervenors, PREPA or its employees, associates, witnesses or legal representation, and any other party to this proceeding will not be allowed to participate in the public hearings. The Energy Bureau will provide the format, the applicable rules of behavior and information as to how to request to participate, at a later date.

I. Written Public Comments

Any person interested in presenting their comments to the Energy Bureau regarding this proceeding may file their written comments **on or before August 13, 2021**. Public comments may be presented using the Energy Bureau's electronic filing tool at: <https://radicacion.energia.pr.gov/>; by sending an email to comentarios@jrsp.pr.gov; by postal mail addressed to the Puerto Rico Energy Bureau's Clerk's Office at World Plaza Building, 268 Muñoz Rivera Ave., Plaza Level Suite 202, San Juan, PR 00918; or in person at the Energy Bureau's Clerk's Office, located at the aforementioned address. All written comments filed according to the instructions herein shall include in its title the following: "Public Comments on PREPA's Unbundled Rate – Case No. NEPR-AP-2018-0004" and shall be addressed to the Energy Bureau's Chairman, Edison Avilés Deliz.

III. CONCLUSION

For all of the above, the Energy Bureau **CANCELS** the February 9, 2021 Technical Hearing.

The Energy Bureau is interested in monitoring closely the work performed by PREPA and its consultant to comply with the filing deadline established herein. Therefore, the Energy Bureau **ORDERS** PREPA to file weekly status reports, starting on Friday, February 12, 2021. In its weekly filings, PREPA must include a description of the work performed the week before, including a detail description of the progress made on each task identified in

the document titled *Estimate of Deliverables and Timing of Meeting Regulatory Commitment for an Unbundled Rate Proposal*, included as part of PREPA's Motion. PREPA must also identify any issues that will prevent it from completing such tasks on time and its plan to overcome these issues. A Gantt Chart could be a useful representation of PREPA's progress.

The Energy Bureau **WARNS** PREPA that no further extensions of the May 10, 2021 deadline will be granted. As such, noncompliance with the May 10, 2021 filing deadline may result in the imposition of fines under Act 57-2014⁶ and the applicable Energy Bureau's regulations and/or any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it notified and published.



Edison Avilés Deltz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



⁶ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on February 5, 2021. Associate Commissioner Ángel R. Rivera de la Cruz concurred in part and dissented in part with a written opinion. I also certify that on this date a copy of this Resolution and Order was notified by electronic mail to: kbolanos@diazvaz.law, jmarrero@diazvaz.law, contratistas@oipc.pr.gov and hrivera@oipc.pr.gov. I also certify that today, February 5, 2021, I have proceeded with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today February 5, 2021.



Sonia Seda Gaztambide
Clerk



ATTACHMENT A
PROCEDURAL CALENDAR

Date	Phase
March 15, 2021	Technical Conference
April 15, 2021	Technical Conference
May 10, 2021	Deadline for PREPA's filing on proposal for unbundled rate
May 10, 2021 – June 30, 2021	Discovery Process
May 18, 2021	Initial Technical Hearing
June 24, 2021	Intervenor's Written Testimony Due
July 6-9, 2021	Evidentiary Hearing
July 30, 2021	Final Briefs Due
August 3, 2021	Public Hearing
August 13, 2021	Replies to Final Briefs Due
August 13, 2021	Public Comments Due



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Associate Commissioner Ángel R. Rivera de la Cruz, concurring in part and dissenting in part

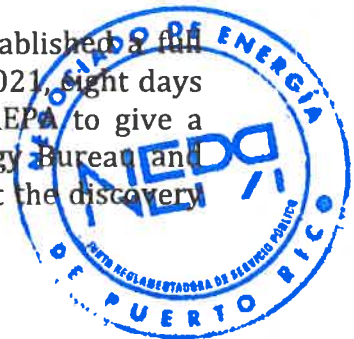
Today, the majority of the Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order through which it cancelled the February 9, 2021 Technical Hearing and established a new procedural calendar in the instant case. For the reasons expressed herein, I concur in part and dissent in part.

* * *

As stated on today's Resolution and Order, on January 29, 2021, the Puerto Rico Electric Power Authority ("PREPA") filed before the Energy Bureau a document titled *Informative Motion in Compliance with the December 23, 2020 Resolution and Order* ("Motion"). As part of its Motion, PREPA stated that it would not be able to submit a cost of service study by the February 1, 2021 deadline. PREPA also informed that it executed a contract with Guidehouse, Inc., which will be its main consultant in the instant case. As Exhibit A to the Motion, PREPA filed a document titled *Estimate of Deliverables and Timing of Meeting Regulatory Commitment for an Unbundled Rate Proposal* ("Estimated Deliverables"). In the Estimated Deliverables, PREPA identified a list of tasks, including an approximate time to complete each one, as well as other deliverables. According to PREPA, it might be in position to file the unbundled rates on or about May 10, 2021.

Based on PREPA's Motion, the majority of the Energy Bureau decided to cancel the February 9, 2021 Technical Hearing and to establish a complete procedural calendar for the resolution of the instant case. Such calendar includes technical hearings to be held on March 15, 2021 and April 15, 2021. It also established May 10, 2021 as the deadline for PREPA's filing. To ensure PREPA's compliance with the established deadline, the Energy Bureau ordered PREPA to file weekly updates of its progress towards completing the necessary studies and actions for PREPA to submit its filing on time. I concur with these determinations, since they are designed to ensure the timely resolution of this case.

Notwithstanding the above, the majority of the Energy Bureau established a full procedural calendar, including a Technical Hearing to be held on May 18, 2021, eight days after PREPA's filing. The purpose of the May 18, 2021 hearing is for PREPA to give a presentation regarding its filing and to answer questions from the Energy Bureau and intervenors. Moreover, the majority of the Energy Bureau determined that the discovery



process will begin on May 10, 2021 (the date of PREPA's filing) and will end on June 10, 2021. Hence, the discovery period was reduced from the sixty (60) days established in Section 8.01(j) of Regulation 8543 to thirty one (31) days.¹

Normally, in an adjudicative proceeding, such as the instant case, the Energy Bureau first evaluates PREPA's filing to determine whether it is complete and meets the requirements established by the Energy Bureau. Once the Energy Bureau determines the filing is complete, then it is in position to establish the remainder of the procedural calendar.

The May 18, 2021 date for the initial Technical Hearing, as well as the reduced term from May 10, 2021 (date of PREPA's scheduled filing) to June 10, 2021, to conduct discovery assumes PREPA will file the unbundled rates on time. It also assumes that such filing will be complete and in compliance with the Energy Bureau's requirement. There is no room for the Energy Bureau to make such determination in the procedural calendar established today.

Therefore, it would be more prudent to maintain the March 15, 2021 and the April 15, 2021 for the pre-filing technical hearings, as well as the May 10, 2021 deadline for PREPA's filing, and establish the remainder of the procedural calendar once the Energy Bureau determines the filing is complete and in compliance with the Energy Bureau's directives. Since the remainder of the calendar will depend on whether or not PREPA submit a timely and complete filing, I disagree with establishing such dates at this time. I would have provided a general description of the procedural calendar, without establishing hard dates for it.


Ángel R. Rivera de la Cruz
Associate Commissioner

In San Juan, Puerto Rico, on February 5, 2021



¹ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, Regulation No. 8543, December 18, 2014. It is important to note that the Energy Bureau has discretion to reduce the sixty-day term, when the Energy Bureau determines it is necessary based on the circumstances and nature of the case.