

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

NEPR

Received:

Aug 10, 2021

10:48 PM

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

CASE NO.: NEPR-AP-2018-0004

SUBJECT: INDEPENDENT  
CONSUMER PROTECTION  
OFFICE'S LEGAL BRIEF

INDEPENDENT CONSUMER  
PROTECTION OFFICE'S LEGAL BRIEF

COMES NOW, THE INDEPENDENT CONSUMER PROTECTION OFFICE  
(ICPO), through the undersigned attorneys, and very respectfully states and prays:

I. INTRODUCTION

1. On August 7, 2018, pursuant to the provisions of Act 57-2014<sup>1</sup>, the Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order, in case CEPR-MI-2018-0010, commencing a rulemaking proceeding for the adoption of the regulation that will govern the wheeling mechanism in Puerto Rico.

2. As defined by Act 57-2014, "Wheeling" is "the transmission of electricity from one system to another through Puerto Rico's electric power grid, according to the wheeling provisions of Act No. 73-2008, as amended, known as the 'Economic Incentives Act for the Development of Puerto Rico.'"

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<sup>1</sup> Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended. See Act 57-2014, Article 6.30.

3. To comply with the mandate specified in Act 57-2014, reaffirmed in Act 17-2019<sup>2</sup>, which requires from the Energy Bureau the implementation of wheeling and, pursuant the power and duty given thereof to develop and regulate wheeling mechanism, on December 28, 2018, the Energy Bureau issued an Order commencing the instant case.

4. The Energy Bureau required the Puerto Rico Power Authority (“PREPA”), as one of the components for the implementation of the wheeling mechanism, to “unbundle its rates and separate out the charges for generation, transmission and distribution, along with any non-bypassable charges such as those associated with stranded costs charges as well as avoided generation charge”<sup>3</sup>. The Energy Bureau stated the need to implement wheeling as quickly as possible.

5. On December 11, 2019, the Energy Bureau issued Regulation 9138 on Electric Energy Wheeling<sup>4</sup>.

6. Dated October 14, 2020, the Energy Bureau issued an Order and Resolution where it bifurcates the instant case in two proceeding. The first was the establishment of an interim wheeling rate to commence the wheeling process for wheeling customers. The second, which is the instant process, a more comprehensive proceeding that will address the full unbundling of PREPA’s rates by function and customer class as well as stranded costs and transition charges.

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

<sup>3</sup> See December 28, 2018 Order.

<sup>4</sup> Case number CEPR-MI-2018-0010

7. On December 23, 2020, the Energy Bureau issued a Resolution and Order establishing the procedures for the unbundling of PREPA's rates. In said Resolution and Order, the 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.

8. The ICPO filed a motion to intervene in the instant case, on January 13, 2021, which was granted on January 21, 2021.

9. The Energy Bureau issued, on February 5, 2021, a Resolution and Order that sets the procedural calendar for the captioned case. Said Resolution and Order required PREPA to file by May 10, 2021, a fully unbundled cost of service study, 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<sup>th</sup> Resolution, and further modified in the December 23<sup>rd</sup> Resolution and any proposed unbundling tariff and structures, containing unbundled rate base on the cost of service study.

10. The procedural calendar on the abovementioned resolution calendarized technical conferences to be held, the discovery period, an initial technical hearing, deadline for Intervenor's written testimony, an evidentiary hearing, final substantive, and legal briefs deadline, with its replies, a public hearing, and a deadline for written public comments.

11. In accordance with the established procedural calendar, on June 10, 2021, the ICPO served a request of information to LUMA/PREPA which was answered on June 21, 2021.

12. Also, in preparation for the evidentiary hearing held on July 19-20, 2021, the ICPO filed on July 9, 2021, the written testimony of ICPO's expert witness Gerardo Cosme Nuñez, CPI.

13. Considering the information obtained through the discovery and provided at the evidentiary hearing, the ICPO hereby submits its Final Substantive and Legal Brief.

## **II. STANDING OF THE INDEPENDENT CONSUMER PROTECTION OFFICE ("ICPO")**

14. The Independent Consumer Protection Office, was created by Act 57-2014, *supra*, to educate, advise, assist, and represent customers of the services under the jurisdiction of the Puerto Rico Public Service Regulatory Board, such as power service customers in the Commonwealth of Puerto Rico.

15. Within the powers and duties enumerated in Section 6.42 of Act 57-2014, *supra*, the ICPO shall have the followings:

- (a) Educate, inform, and provide orientation and assistance to customers on their rights and responsibilities with regard to the electric power service and the public policy on savings, conservation, and efficiency, telecommunication services, and those under the jurisdiction of the Transport and other Public Services Bureau;
- (b) Evaluate the impact that the rates, public policy, and any other issue may have on electric power, telecommunications, and transport services customers in Puerto Rico;
- (c) Defend and advocate for the interests of customers in all matters brought before the Energy Bureau, the Telecommunications

Bureau, the Transport and other Public Services Bureau or being addressed by the Energy Public Policy Program of the Department of Economic Development with regard to electric power rates and charges, the quality of the electric power service, services provided by electric power service companies to their customers, resource planning, public policy, and any other matter of interest for customers;

...

- (e) Participate in the rate adoption or modification process for issues affecting electric power, telecommunications, and transport services' customers;
- (f) Make independent recommendations to the Bureaus regarding rates, bills, public policy, and any other issue that may affect services' customers in Puerto Rico;
- (g) Request and advocate for just and reasonable rates for the consumers represented by the Office;
- (h) Participate or appear as intervenor in any action brought before a government agency of the Government of Puerto Rico or the Federal Government with jurisdiction, in connection with rates, bills, public policy, and any other issue that may affect electric power, telecommunications, and transport services' consumers and/or customers;

...

16. Fulfilling its duties with Act 57-2014, *supra*, the ICPO has been actively participating in the captioned case and through the instant brief states its position and recommendations regarding the unbundling of rates for the implementation of the Wheeling mechanism.

### III. DISCUSSION AND RECOMMENDATIONS

#### A. Marginal Cost Study

17. The unbundling of rates and the separation of the charges for generation, transmission, and distribution, along with any non-bypassable charges, such as those associated with stranded costs charges, as well as avoided generation charge through a

marginal cost study, and the development of a Uniform Services Agreement are important steps toward the implementation of wheeling in a timely manner.

18. To ensure the success of this goal, the developed marginal cost study should be tested or validated against different feasible future scenarios in which the capacity service cost is included, despite the forecasted decline in load, by any available cost of service methodology, if the marginal cost of service approach does not allow it.

19. A load increase may be possible for many reasons such as, for example, the growth of the electric car's market, or the establishment of new emerging industries, as part of the US critical products supply chain security movements originated by the COVID-19 pandemic.

20. Also, marginal capacity costs may increase under certain circumstances, such as the undergoing transition of our electrical system from fossil fuel generation to renewable generation sources. This was addressed by LUMA's expert witness Margot Everett of Guidehouse in her response to question #1 of the Energy Bureau's request of information, where she stated the following:

"Policy Transition: In this case, there are marginal costs to transitioning from one state to another. The best example of this is transitioning a portfolio from high carbon to low carbon. Specifically, and as planned in Puerto Rico, if a jurisdiction is targeting a percent of load to transition from carbon to non-carbon resources (e.g., Renewable Portfolio Standard (RPS) target of 40% by 2025), then any decline in jurisdictional load reduces the need to develop renewable resources. In this case, the marginal costs must also incorporate this policy percentage, the incremental cost of the investment less the retirement of the existing contract. For example, assume it costs \$100/MWh to create a renewable kWh, the RPS is 50% and the plant being retired results in a

write off plus decommission costs of \$40/MWh. In this case, the marginal cost is \$100-\$40, or \$60/MWh, and then the application of the RPS to the kWh saved results in a marginal cost of \$30/MWh (\$60/MWh times 50%), not the full \$100/MWh. Most critical to the computation of a marginal renewable cost are assumptions regarding whether the utility can truly avoid the kWh RPS requirement. That is, the responsibility of meeting the jurisdiction's RPS requirement follows load such that if load departs to another supplier, the supplier is responsible for meeting all of that customer's RPS requirements. Further, the customer cannot return, transferring the RPS requirement"

### **B. Returning Customers**

21. Concern has been raised on how to handle the issue of a returning customer to the Provider of Last Resort ("POLR"). In said instances the approach of energy credit base incentive is more favorable than combining capacity credit on wheeling rates.

22. Nevertheless, the Energy Bureau should develop strict requirements, through regulation and follow-up mechanisms, to ensure that Retail Energy Suppliers can provide and sustain reliable and long-lasting service in a fair and incentivized operational and business environment from either LUMA or PREPA.

23. It is noteworthy that there will be no additional increase of cost to the POLR, if the capacity to be supplied by the POLR is from a renewable source rather than from a fossil fuel source. This will become more evident, along with POLR's compliance with the Renewable Portfolio Standard, ("RPS") since cost of renewable energy and energy storage is lower than the cost of our current fossil fuel sources.

### **C. Uniform Services Agreement**

24. The importance of the Uniform Services Agreement is that any marginal energy cost gap, or any unforeseeable cost, will be considered to ensure a fair unbundled

rates to all customers, including generation, transmission, or distribution, or a combination of these services.

25. Parallel to this Uniform Service Agreement, we recommend supplementing the cost of service study with studies, previously done for other procedures, such as past rate cases, that may apply to transmission and distribution assets, in order to validate the marginal cost study. This combined approach will benefit all consumers, as it may allow further unbundling of their cost of service in the foreseeable future, to include separated transmission and distribution costs, just as fuel cost and energy cost riders among others presented in their bills today.

#### **D. Recommendation of Assessment Study**

26. To allow for a reliable Retail Energy Supplier operation, LUMA should perform an assessment study of the actual conditions of the electrical and communication infrastructure.

27. In order to correct any reasonable gap or barriers that may hold back the implementation of unbundled tariff in an open retail energy market, the results of the assessment study should be overseen by the Energy Bureau along with the participation of stakeholders.

#### **E. CONCLUSION**

28. In order to comply with the mandate of the public policy on electric power service in Puerto Rico, our actual electric system needs to be transformed to an intelligent

system-one capable of managing complex transactions-before Retail Energy Providers may start servicing customers.

29. Although there will be challenges to overcome, the Retail Energy Providers will help improve current generation deficiency in our grid.

30. It is the ICPO position that the unbundling of rates and the separation of the charges for generation, transmission, and distribution, along with any non-bypassable charges through a marginal cost study, and the development of a Uniform Services Agreement is the right step toward the implementation of wheeling in a timely manner. Any delay in the establishment of unbundled tariffs and therefore, in the implementation of the wheeling mechanism will have a negative impact to all customers of the electric service, wheeling or non-wheeling participants.

WHEREFORE, it is respectfully requested from the Puerto Rico Energy Bureau to take notice of the above stated as the position of the ICPO in the instant case.

Respectfully submitted.

In San Juan P.R. this 10<sup>th</sup> day of August 2021.

#### **CERTIFICATE OF ELECTRONIC FILING AND SERVICE**

I HEREBY CERTIFY that on this date copy of this motion has been electronically filed with the Clerk of the Puerto Rico Energy Bureau and also certify that I have emailed copy of this motion with the written testimony to the following addresses: [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law), [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com), [manuelgabrielfernandez@gmail.com](mailto:manuelgabrielfernandez@gmail.com), [ramonluisnieves@rlnlegal.com](mailto:ramonluisnieves@rlnlegal.com), [ccf@tcm.law](mailto:ccf@tcm.law).

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