



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

IN RE: REGULATION ON WHEELING

CASE NO.: CEPR-MI-2018-0010

SUBJECT: Adoption of Regulation on  
Electric Energy Wheeling.

**RESOLUTION**

**I. Introduction and Background.**

Through this Resolution, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") adopts and publishes an amended final *Regulation on Electric Energy Wheeling* ("Amended Final Regulation"). The Energy Bureau adopts and publishes this Amended Final Regulation under its regulatory powers established on Act 57-2014,<sup>1</sup> Act 17-2019<sup>2</sup> and Act 38-2017.<sup>3</sup>

The Amended Final Regulation establishes a clear, flexible framework for wheeling services. The goal is to clearly identify the categories of participants and the relationships between those participants. Further details will be established by the Energy Bureau in this docket or in other proceedings, including Case No. NEPR-AP-2018-0004 regarding the Unbundling of the Assets of the Puerto Rico Electric Power Authority ("Unbundling Docket"). The intent is that the Amended Final Regulation is consistent with the full scope of the Energy Bureau's statutory authority, but subsequent orders may establish prudential limitations on wheeling. As such, specific wheeling policies should be able to evolve over time within the overall framework established by this Amended Final Regulation.

On December 11, 2019, the Energy Bureau adopted the *Regulation on Electric Energy Wheeling* ("Regulation 9138"). On April 23, 2021, the Energy Bureau issued a Resolution under Case No. CEPR-MI-2018-0010 announcing that the Energy Bureau would consider amending Regulation 9138, along with a Proposed Amendment to the Regulation on Electric Energy Wheeling ("Proposed Amendment"). As part of that resolution, the Energy Bureau requested comments from stakeholders.

Afterwards, on May 5, 2021, the Energy Bureau published a public notice in the *Primera Hora* newspaper related to the Proposed Amendment. In accordance with Section 2.2 of Act 38-2017, the notice stated that the general public had the right to present its comments regarding the Proposed Amendment until June 4, 2021. The Energy Bureau also stated that a copy of the Proposed Amendment was available for public scrutiny at the Energy Bureau's Clerk Office and at the Energy Bureau's website, [www.energia.pr.gov](http://www.energia.pr.gov).

The Energy Bureau received two sets of written comments on the Proposed Amendment on June 4, 2021. One set of comments was submitted jointly by the Puerto Rico Electric Power

<sup>1</sup> *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>2</sup> *Puerto Rico Energy Public Policy Act*.

<sup>3</sup> *Administrative Procedure Act of the Government of Puerto Rico*, as amended.

Authority ("PREPA") and LUMA<sup>4</sup> ("Joint Comments")<sup>5</sup> along with a second set of additional comments submitted solely by LUMA ("LUMA's Additional Comments")<sup>6</sup>.

After reviewing the comments submitted as well as the proceedings in the Unbundling Docket and the overall statutory scheme, the Energy Bureau has incorporated additional changes into the Amended Final Regulation. Part II of this Resolution describes the overall framework for the Amended Final Regulation and Part III provides additional explanation of more detailed changes the Energy Bureau made to the Proposed Amendment.

## II. Overall Framework for the Amended Final Regulation.

This Part II presents a discussion of the overall framework for the Amended Final Regulation. Regulation 9138 described three primary categories of parties participating in the execution of wheeling: (1) independent power producers, (2) the provider of last resort, and (3) wheeling customers. While two of these terms are derived from relevant statutory provisions, the term "independent power producer" only has a very general statutory definitions and the phrase "provider of last resort" has no statutory definition. Furthermore, the definition provided for "independent power producer" in Act 17-2019 has limited specific relevance to wheeling: "any natural or juridical person engaged in the production or generation of electric power in Puerto Rico to be sold through Power Purchase Agreements or any other legal transaction authorized by the Bureau."

For these reasons, the Proposed Amendment introduced a new definition for "retail energy suppliers" to allow for a clear distinction between a broad category of generators and entities more specifically providing generation services to end-use wheeling customers. This term, and its definition, is consistent with technical definitions in jurisdictions in the United States that have retail electricity supply choice and would more clearly label the entities that are selling generation services. In addition, LUMA's Additional Comments<sup>7</sup> raised the issue of "green" power and environmental requirements, a topic has been raised in the Unbundling Docket as well. Upon review of the relevant statutes for the renewable portfolio standard ("RPS") as created by Act 82-2010<sup>8</sup> and subsequently amended several times, notably by Act 17-2019, a different statutory term became apparent. The relevant statutory provisions for the RPS impose a compliance requirement on "retail electricity suppliers," which is defined to include PREPA as well as "any other retail electricity supplier that sold more than [50,000 MWh] of electric power to electric power consumers in Puerto Rico during the preceding calendar year."<sup>9</sup> This usage of "retail electricity supplier" is consistent with renewable portfolio standard policies in several jurisdictions and is also consistent with technical usages in retail energy supply choice programs. As a result, the Energy Bureau believes it is better to adopt the term "retail electricity supplier" for the Amended Final Regulation. Such usage may be broader for the purposes of the wheeling regulation, as it does not exempt retail electricity suppliers under the 50,000 MWh threshold from wheeling requirements, even if those retail electricity suppliers are exempt from the renewable portfolio standard requirements.

<sup>4</sup> LUMA Energy, LLC (Management Co.) and LUMA Energy Servco, LLC. (collectively, "LUMA").

<sup>5</sup> See Joint Motion Submitting Comments to Proposed Amendment to Regulation on Electric Energy Wheeling, *In Re. Regulation on Wheeling*, Case No. NEPR-MI-2018-0010, June 4, 2021. Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2021/06/20210604-Joint-Motion-Submitting-Comments-to-Proposed-Amendment-to-Regulations-on-Electric-Energy-Wheeling.pdf>. Visited December 6, 2021.

<sup>6</sup> See Motion Submitting Comments to Proposed Amendment to Regulation on Electric Energy Wheeling, *In Re. Regulation on Wheeling*, Case No. NEPR-MI-2018-0010, June 4, 2021. Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2021/06/20210604-Motion-Submitting-Comments-to-Proposed-Amendment-to-Regulation-on-Electric-Energy-Wheeling.pdf>. Visited December 6, 2021.

<sup>7</sup> LUMA's Additional Comments, p. 3.

<sup>8</sup> *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*, as amended ("Act 82-2010").

<sup>9</sup> Section 1,4 of Act 82-2010.



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In addition, the Joint Comments contain a discussion of grid planning and system operation issues and propose the addition of a definition for “GridCo” to encapsulate the responsibilities of managing supply and demand as well as the dispatch of available resources. This proposal emphasizes the fact that Regulation 9138 and the Proposed Amendment place a wide variety of different roles and responsibilities under the definition of “provider of last resort.” This term is used in Act 17-2019, albeit in a manner that is not specifically regarding wheeling. The more common technical usage of “provider of last resort” is more typically for generation services or retail supply.<sup>10</sup> The Energy Bureau agrees that a further distinction is warranted for this broad range of roles and responsibilities. As a result, the Amended Final Regulation now applies the term “GridCo” to encompass the system balancing and grid management roles, which in turn allows the term “provider of last resort” to take on its more typical technical meaning related to generation services.

Adding two additional categories of entity into the wheeling process, namely “retail electricity supplier” and “GridCo”, now creates a total of five categories of entities. These five categories better reflect technical usages of the relevant terms and harmonize ambiguous and partially conflicting statutory usages. Thus, the Amended Final Regulation should provide a clearer platform for wheeling. Given these five categories, it also allows for clearer terminology for the relationships between the entities, which will be discussed in Part III with other more specific changes. Every effort has been made to use this updated terminology appropriately throughout the Amended Final Regulation.

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Lastly, in the Joint Comments and LUMA’s Additional Comments LUMA and PREPA raised the issue of the relevant level of detail to specify in the wheeling regulation. In some cases, LUMA and PREPA argued for additional detail. In other cases, LUMA and PREPA argued for less detail, stating that the correct policies could be determined with further process in the Unbundling Docket or another proceeding. In general, the Energy Bureau has been persuaded that less detail than previously provided is appropriate for the Amended Final Regulation. This allows for adjustments over time by Energy Bureau order without continuously revisiting and potentially amending the underlying regulation. The Energy Bureau believes such an approach is consistent with the recommendation for a “phased approach” made by the Joint Comments.<sup>11</sup> This recommendation, as well as a wide range of other related issues, reflects a general concern from PREPA and LUMA that wheeling processes will disrupt other important processes and plans. The Energy Bureau notes these concerns and is prepared to take appropriate steps to ensure that all key initiatives unfold smoothly. The Energy Bureau will determine the appropriate phasing for wheeling and related processes in subsequent orders.

### III. Detailed Revisions Incorporated into the Amended Final Regulation for Electric Energy Wheeling

This Part III presents a discussion of the changes made from Regulation 9138 to the Amended Final Regulation as well as comments received. Attachment A to this Resolution contains a redline version of the Amended Final Regulation. The numbering in the headings reflects the numbering of the Amended Final Regulation.

#### 1. Sections 1.02 through 1.08 and Section 1.10 through 1.18

Minor revisions to the language of this introductory material were made for clarity and conciseness.

#### 2. Section 1.09: Definitions

##### a. New Additions and Substantive Revisions

<sup>10</sup> See, e.g., in Texas available at <https://www.puc.texas.gov/consumer/electricity/polr.aspx>. Visited November 30, 2021.

<sup>11</sup> See Joint Comments, p. 3.





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The definition for “GridCo” mirrors the previous definition for “provider of last resort” in many respects, encompassing the transmission, distribution and operating functions of the electrical system. There has been a clarification that the generation responsibilities are primarily related to system balancing and resource dispatch. The energy supply functions for customers who do not participate in wheeling have been placed with the “provider of last resort.”

The definition for “large industrial or commercial consumer” has been deleted as unnecessary. Any appropriate distinctions by customer class will be defined by subsequent Energy Bureau orders.

The definition of “provider of last resort” has been changed significantly to account for the shift in meaning discussed previously to refer more specifically to generation services to customers who do not participate in wheeling.

The definition in the Proposed Amendment for “Retail Energy Supplier” has been changed to “Retail Electricity Supplier.” The definition has been minorly amended to reflect the correct categories of entity that may participate in this role and its relationship with Independent Power Producers and Wheeling Customers. Additionally, retail electricity suppliers may be qualified as an exempt business described in Section 2(d)(l)(H) of Article 1 of Act No. 73-2008<sup>12</sup>.

The definition for “Retail Supply Agreement” has been added to clearly identify the contract between a retail electricity supplier and a wheeling customer. This serves to distinguish this particular relationship and contract from other forms of contracts.

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The definition for “Wheeling” has been amended to reflect the updated terminology for the different categories of wheeling participants. An additional sentence has been added to stipulate that in any given wheeling arrangement the independent power producer and retail electricity supplier may or may not be the same entity. LUMA’s Additional Comments reflect a concern about potential confusion between wheeling arrangements and net metering arrangements.<sup>13</sup> The language in the wheeling definition clearly excludes net metering arrangements from the definition of wheeling, and any other potential overlap between compensation mechanisms can be addressed in subsequent proceedings.

The definition for “Wheeling Charge” has been deleted as unnecessary. Different elements of a bill may be defined and stipulated in the relevant tariffs and agreements, which in turn will be defined by subsequent Energy Bureau orders.

The definition of “Wheeling Customer” has been amended because under the overall framework a wheeling customer means the ultimate consumer of the electricity and not the other intermediate entities that can participate in wheeling as a retail electricity supplier. Wheeling customers themselves may be aggregated by various other entities, but that is not relevant to this particular definition.

The definition of a “Wheeling Rate” has been clarified to potentially apply to independent power producers, retail electricity suppliers, or to a wheeling customer. Such rates, and any associated credits, will be reviewed by the Energy Bureau under Article 9 of the Amended Final Regulation.

#### *b. Minor Changes for Clarity*

The definition of “wheeling application” has been substituted in place of the previous definition of “application” and thus moved into the appropriate new alphabetical location.

The term “customer” has been clarified to exclude facilities primarily engaging in generation of electricity.

The term “distribution” has been added as a synonym for “distribution system.”

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<sup>12</sup> *Economic incentives for the Development of Puerto Rico Act*, as amended (“Act 73-2008”).

<sup>13</sup> See Joint Comments, p. 3.



The definition of "Independent power producer" has been clarified because the relevant distinction is whether the generation facility is owned or operated by PREPA, not whether the generator has an obligation as a provider of last resort.

The definition of "meter" has been revised so that it may apply to generation facilities as well as customers.

The definition of "partial requirements power tariff" has been amended to reflect the right terminology and has been simplified.

The definition of "power purchase agreement" has been amended to exclude a retail supply agreement, since that term is now defined separately. For the purposes of this regulation, a power purchase agreement would primarily refer to any contracts between a retail electricity supplier and an independent power producer.

The definition of stand-by power tariff has been updated to reflect the updated terminology.

The definition of "Wheeling Service Agreement" has been amended to update the terminology for the relevant entities.

### 3. Article 2: Responsibilities of the GridCo

Article 2 has been amended throughout to account for the fact that it discusses primarily the roles and responsibilities of the "GridCo", instead of the previous usage of the term "provider of last resort." Section 2.01 provides flexibility for the Energy Bureau to designate by order the entity or entities that fulfill the responsibilities of the GridCo under this regulation. Most of the responsibilities previously included in this article for the provider of last resort are instead directly applicable to the GridCo. Duplicative references to interconnection responsibilities were deleted and discussion of billing and metering services was simplified.

The entirety of the previous Section 2.03 has been removed. This material was overly prescriptive and can be handled under the more general provisions of Articles 6 and 8 with respect to wheeling services agreements and Article 9 with respect to wheeling tariffs.

### 4. Article 3: Responsibilities of the Provider of Last Resort

Article 3 is a new addition to address the responsibilities for the updated definition of the "provider of last resort." Section 3.01 provides flexibility for the Energy Bureau to designate by order the entity or entities that fulfill the responsibilities of the provider of last resort under this regulation. The primary responsibility of the provider of last resort is to ensure energy supply to all customers, particularly those who do not participate in wheeling and any customers returning from wheeling to the provider of last resort.

### 5. Article 4: Responsibilities of Retail Electricity Suppliers

Article 4 was previously numbered as Article 3. Revisions to this article are clarifications with respect to terminology, an explicit recognition that retail electricity suppliers must comply with the relevant statutes and regulations for the renewable portfolio standard, and a simplified section 4.05 regarding the default of a retail electricity supplier. LUMA's additional comments raised a concern with respect to "green" power, and the changes with respect to the renewable portfolio standard should address this concern.

### 6. Article 5: Responsibilities of Independent Power Producers

Article 5 is a new addition to address the responsibilities for the current definition of "independent power producers" who participate in wheeling. The primary responsibility of these entities is to appropriately apply for interconnection and to be certified appropriately by the Energy Bureau.



*7. Article 6: Wheeling Services Agreement*

Article 6 was previously numbered as Article 4. Several amendments to this article reflect terminology updates. Section 6.02 regarding a stakeholder input process has been simplified. A number of minor amendments for clarity were made to Section 6.03, as well as additions to require consideration of ensuring that a retail electricity supplier has sufficient generation as well as arrangements and charges for metering, billing and data exchange. Amendments to Section 6.04 and 6.05 are for clarity and terminology updates. The consideration of generation sufficiency reflects a comment made by the Joint Comments.<sup>14</sup>

*8. Article 7: Retail Supply Agreements*

Article 7 was previously numbered Article 5, and several amendments were made to reflect the appropriate terminology updates. A new sentence was added to clarify that the standard retail supply agreement may vary by type of customer. In addition, Section 7.02 was added to allow the Energy Bureau to establish by order the eligibility of customers to enter into a Retail Supply Agreement.

*9. Article 8: Wheeling Services Agreement Application Process*

Article 8 was previously numbered Article 6, and several amendments were made to reflect the appropriate terminology updates.

*10. Article 9: Wheeling Tariffs*

Article 9 was previously numbered Article 7. This article stipulates that the Energy Bureau will review tariffs, including relevant rates and credits, for the various entities participating in wheeling, and set the procedure for determining those tariffs. The sentence stating that the unbundling of relevant costs is required has been deleted, because a complete unbundling may not be necessary. PREPA and LUMA raise numerous issues that pertain to potential cost shifting from wheeling customers to other customers in both their Joint Comments and LUMA's Additional Comments. These concerns will be considered in subsequent orders by the Energy Bureau. As reflected in statute, Section 9.02 reiterates that the relevant tariffs, rates and credits shall be set in a manner such that nonsubscribers of wheeling services shall not be affected.

*11. Article 10: Reconsideration and Judicial Review*

Article 10 was previously numbered as Article 8. No substantive amendments have been made.

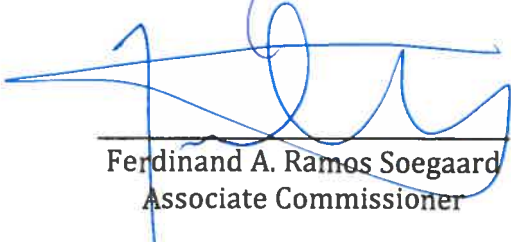
**IV. Conclusion.**

For all of the above, the Energy Bureau **APPROVES** the Amended Final Regulation for Electric Energy Wheeling.

Be it notified and published.

  
Edison Avilés Deliz  
Chairman

  
Lillian Mateo Santos  
Associate Commissioner

  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
Sylvia B. Ugarte Araujo  
Associate Commissioner

<sup>14</sup> See Joint Comments, p. 5.






## CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 7, 2021. President Edison Avilés Deliz President concurred with a written opinion and Associate Commissioner Ángel R. Rivera de la Cruz concurred in part and dissented in part with a written opinion. I also certify that on December 21, 2021, a copy of this Resolution was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, margarita.mercado@us.dlapiper.com, laura.rozas@us.dlapiper.com, kbolanos@diazvaz.law, jmarrero@diazvaz.law, carlos.reyes@ecoelectrica.com, Legal@lumamc.com, wayne.stensby@lumamc.com, mario.hurtado@lumamc.com, Ashley.engbloom@lumamc.com, legal@lumapr.com, Elias.sostre@aes.com; jesus.bolinaga@aes.com; cfl@mcvpr.com; ivc@mcvpr.com; notices@sonnedix.com; leslie@sonnedix.com; victorluisgonzalez@yahoo.com; tax@sunnova.com; jcmendez@reichardescalera.com; r.martinez@fonroche.fr; gonzalo.rodriguez@gestampren.com; kevin.devlin@patternenergy.com; fortiz@reichardescalera.com; jeff.lewis@terraform.com; mperez@prrenewables.com; coter@landfillpr.com; geoff.biddick@radiangen.com; hjcruz@urielrenewables.com; carlos.reyes@ecoelectrica.com; megan.semiao@longroadenergy.com; tracy.deguise@everstreamcapital.com; agraitfe@agraitlawpr.com; h.bobea@fonrochepr.com; ramonluisnieves@rlnlegal.com; hriviera@jrsp.pr.gov; info@sesapr.org; yan.oquendo@ddec.pr.gov; acarbo@edf.org; pjcleanenergy@gmail.com; nicolas@dexgrid.io; javrua@gmail.com; JavRua@sesapr.org; lmartinez@nrdc.org; thomas.quasius@aptim.com; rtorbert@rmi.org; lionel.orama@upr.edu; noloseus@gmail.com; aconer.pr@gmail.com; dortiz@elpuente.us; wilma.lopez@ddec.pr.gov; gary.holtzer@weil.com; ingridmvila@gmail.com; rstgo2@gmail.com; agc@agcpr.com; presidente@ciapr.org; cpsmith@unidosporutudo.org; jmenen6666@gmail.com; CESA@cleanegroup.org; acasepr@gmail.com; secretario@ddec.pr.gov; julia.mignuccisanchez@gmail.com; professoraviles@gmail.com; gmch24@gmail.com; ausubopr88@gmail.com; carlos.rodriguez@valairlines.com; amaneser2020@gmail.com; acasellas@amgprlaw.com; presidente@camarapr.net; jmarvel@marvelarchitects.com; amassol@gmail.com; jmartin@arcainc.com; eduardo.rivera@afi.pr.gov; leonardo.torres@afi.pr.gov; carsantini@gmail.com; directoralcaldes@gmail.com; imolina@fedalcaldes.com; LCSchwartz@lbl.gov; thomas@fundacionborincana.org; cathykunkel@gmail.com; joseph.paladino@hq.doe.gov; adam.hasz@ee.doe.gov; Sergio.Gonsales@patternenergy.com; Eric.Britton@hq.doe.gov; energiaverdepr@gmail.com; Arnaldo.serrano@aes.com; gustavo.giraldo@aes.com; accounting@everstreamcapital.com; mgrpcorp@gmail.com; jczayas@landfillpr.com; Jeanna.steele@sunrun.com; mildred@liga.coop; rodrigomasses@gmail.com; presidencia-secretarias@seguros multiples.com; cpsmith@cooperativahidroelectrica.coop; maribel@cooperativahidroelectrica.coop; apoyo@cooperativahidroelectrica.coop; larroyo@earthjustice.org; flcaseupdates@earthjustice.org; gguevara@prsciencetrust.org; hriviera@jrsp.pr.gov; contratistas@jrsp.pr.gov; agraitfe@agraitlawpr.com; rstgo2@gmail.com; pedrosaade5@gmail.com; rolando@bufete-emmanueli.com; notificaciones@bufete-emmanueli.com; rhoncat@netscape.net; Marisol.Bonnet@hq.doe.gov; ernesto.rivera-umpierre@hq.doe.gov; elizabeth.arnold@hq.doe.gov; info@icsepr.org; john.jordan@nationalpfg.com; info@marinsacaribbean.com; aconer.pr@gmail.com; pathart@ge.com; contratistas@jrsp.pr.gov; Laura.rozas@us.dlapiper.com; msulejmanagic@ieefa.org; renewableenergy@me.com; rcorrea@prfaa.pr.gov; JGOB@prepa.com; israel.martinezsantiago@fema.dhs.gov; jcintron@cor3.pr.gov; gsalgado@cor3.pr.gov; energia@ddec.pr.gov; Francisco.Berrios@ddec.pr.gov; Laura.Diaz@ddec.pr.gov; isabel.medina@ddec.pr.gov; ialicea@sanjuanciadadpatria.com; alescudero@sanjuanciadadpatria.com; oabayamon@yahoo.com. I also certify that today, December 21, 2021, I have filed the Resolution issued by the Puerto Rico Energy Bureau.



I sign this in San Juan, Puerto Rico, today December 21, 2021.

  
Wanda I. Cordero Morales  
Interim Clerk





Attachment A



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

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## ARTICLE 1. GENERAL PROVISIONS

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This Regulation shall apply to all companies offering electric services operating in Puerto Rico when this Regulation enters into effect, as well as to all companies that intend to operate or offer electric services in Puerto Rico now or in the future.

#### Section 1.05 Interpretation.

This Regulation shall be interpreted so it promotes the highest public good and the protection of the interests of all electric service customers of Puerto Rico, and in such a way that proceedings are carried out rapidly, justly, and economically.

#### Section 1.06 Provisions of Other Regulations.

This Regulation may be supplemented by other regulations of the Energy Bureau compatible with this Regulation.

#### Section 1.07 Unforeseen Proceedings.

When a specific proceeding has not been planned for in this Regulation, the Energy Bureau may attend to it in any way that is consistent with Act 57-2014 and other applicable laws.

#### Section 1.08 Dates and Time Periods.

In computing any time period established in this Regulation, or by order of the Energy Bureau, the day of the act, event, or noncompliance that triggers the period shall not be counted, and the established period shall begin to elapse on the following day. Whenever a due date falls on a Saturday, Sunday, or legal holiday, said due date shall be extended until the next workday.

#### Section 1.09 Definitions.

- A) These definitions are to be used for this Regulation and are not intended to modify the definitions used in any other Energy Bureau regulation or order.
- B) For this Regulation, the following terms will have the meaning established below, unless the context of the content of any provision indicates something else:
- 1) "Certification" means the process by which an Electric Power Service Company seeks approval by the Energy Bureau to operate or offer services in Puerto Rico pursuant to Regulation 8701<sup>3</sup> or any subsequent regulation to those effects.
  - 2) "Community Solar" means a program whereby local solar facilities are shared by multiple customers who receive credit on their electricity bills for

<sup>3</sup> Amendment to Regulation No. 8618, on Certifications, Annual Charges and Operational Plans of Puerto Rico Electric Service, February 17, 2016 ("Regulation 8701").

their share of the power produced,

- 3) "Customer" means any Person who receives Electric Service, other than at facilities primarily engaged in the generation of electricity.
- 4) "Distributed Generation" means an electric power generation facility in Puerto Rico connected to the Distribution System and producing power for self-supply or other purposes.
- 5) "Distribution" or "Distribution System" means the physical equipment used to distribute electric power at voltages of less than 38,000 volts, including but not limited to poles, primary lines, secondary lines, service drops, transformers, and Meters.
- 6) "Electric Power Grid" means the electric power Transmission System and Distribution System of Puerto Rico.
- 7) "Electric Service" means the provision of generation, distribution and/or transmission service to a customer; it may include ancillary services.
- 8) "Electric Power Generation Company" or "EPGC" means any natural or juridical person engaged in the production or generation of electric power in Puerto Rico. This term shall include cogenerators already established in Puerto Rico that supply energy to PREPA through a Power Purchase Agreement, and renewable energy producers. All Electric Power Generation Companies shall be deemed to be Electric Power Service Companies.
- 9) "Electric Power Service Company" or "EPSC" means any natural or juridical person or entity including Energy Cooperatives, engaged in the rendering of energy generation, transmission and distribution services, billing, wheeling, grid services, energy storage, and/or the resale of electric power.
- 10) "Energy Bureau" means the Energy Bureau of the Puerto Rico Public Service Regulatory Board, established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, and Act 211-2018, formerly the Puerto Rico Energy Commission, created under Act 57-2014, which is a specialized independent entity in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico.
- 11) "Energy Cooperative" means a cooperative organized under Act 239-2004, known as the General Cooperative Associations Act of 2004, as amended, mainly to meet individual and common electric power needs of their cooperative members, affiliated consumers and/or communities through electric power generation, transmission and/or distribution systems. "Cooperative Microgrids" as defined in Regulation 9028, shall not be considered Energy Cooperatives, as defined in this Regulation.





PREPA,

- 21) "Power Purchase Agreement" or "PPA" means any agreement or contract, other than a Retail Supply Agreement, approved by the Energy Bureau, whereby an Electric Power Generation Company is bound to sell electric power, at a just and reasonable rate, to another natural or juridical person, and such other person is, in turn, bound to acquire said electric power.
- 22) "PREPA" means the Puerto Rico Electric Power Authority, a corporate entity created by Act No. 83 of May 2, 1941, as amended, and any successor entity.
- 23) "Provider of Last Resort" or "POLR" means the entity responsible for procuring or otherwise arranging electricity supply for customers who do not participate in wheeling. The Provider of Last Resort shall be PREPA or its agent or successor, as designated by the Energy Bureau for the purposes of this Regulation.
- 24) "Retail Electricity Supplier" or "RES" means a certified Electric Power Service Company, Microgrid, Energy Cooperative, Municipal Venture, or Community Solar enterprise or other demand aggregator that produces or acquires generation services from one or more Independent Power Producers to be supplied to one or more wheeling customers. A Retail Electricity Supplier may, but is not required to, be qualified as an exempt business described in Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended, known as the Economic Incentives Act for the Development of Puerto Rico.
- 25) "Retail Supply Agreement" means an agreement between a Retail Electricity Supplier and a Wheeling Customer to arrange for procurement of generation services.
- 26) "Stand-by Power Tariff" means an optional rate authorized by the Energy Bureau for providing power in the event that a Retail Electricity Supplier that has contracted through a Retail Supply Agreement to provide one or more Wheeling Customers with power, fails to meet the terms and conditions of that Retail Supply Agreement and the Wheeling Customer is desirous of having continual service. The standby compensation may be paid by the Retail Electricity Supplier or the Wheeling Customer.
- 27) "Transmission" or "Transmission System" means the physical equipment used to transmit electric power at voltages of at least 38,000 volts, including but not limited to towers, poles, lines, and transformers.
- 28) "Wheeling" means the delivery by a Retail Electricity Supplier of electricity from one or more Independent Power Producers to a Wheeling Customer through the Electric Power Grid. An Independent Power Producer and

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comply with any Energy Bureau order.

#### Section 1.13 Mode of Submission.

The forms, documents, and appearances required by this Regulation or any order of the Energy Bureau must be submitted before the Energy Bureau in electronic format according to the instructions which, from time to time, the Energy Bureau establishes through an order in relation to the electronic filing system.

If the electronic filing system is temporarily not operating or functioning, the forms, documents, and appearances required by this Regulation or by any order of the Energy Bureau shall be submitted before the Energy Bureau in accordance with any instructions that the Energy Bureau shall provide through an order.

#### Section 1.14 Effect of Submission.

In filing any document before the Energy Bureau, the party undersigning such document shall be deemed to have certified that the content of the document is true and that, according to the signer's best knowledge, information, and belief, formed after reasonable inquiry, the document is based on reliable and trustworthy facts, arguments, judicial sources, and information.

#### Section 1.15 Confidential Information.

If in compliance with this Regulation or any of the Energy Bureau's orders, a Person must disclose information to the Energy Bureau considered privileged, pursuant to applicable evidentiary privileges, said Person shall identify the alleged privileged information and request in writing for the Energy Bureau to treat such information as confidential, pursuant to Article 6.15 of Act 57-2014. In identifying privileged information and requesting confidential treatment by the Energy Bureau, the requesting party shall follow the rules and procedures established by the Energy Bureau in Resolution issued in case number CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information. Except with information protected under the attorney-client privilege, the claim of confidential treatment shall, under no circumstances, be grounds for denying such information from being filed with the Energy Bureau.

#### Section 1.16 Validity.

Pursuant to Section 2.8 of the LPAU, this Regulation shall enter into effect thirty (30) days after its submission to the Department of State and the Legislative Library of the Office of Legislative Services. Regulation No. 9138, Regulation on Electric Energy Wheeling, is repealed.

#### Section 1.17 Penalties for Non-Compliance.

Any Person who fails to comply with the requirements in this Regulation may be subject to

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The GridCo shall be responsible for complying with interconnection regulations and protocols subject to approval by the Energy Bureau, for the interconnection of generating facilities, Microgrids and Distributed Generation as applicable to the Transmission and Distribution System.

### Section 3.01 Applicability.

**Section 3.02 Continuing Obligation to Supply All Customers.**

**Section 3.03 Return of Wheeling Customers to the Provider of Last Resort.**

## ARTICLE 4 RESPONSIBILITIES OF THE RETAIL ELECTRICITY SUPPLIERS

## Section 4.01. Wheeling Services Agreement Requirement.

## Section 4.02 Renewable Portfolio Standard Compliance



A Retail Electricity Supplier shall comply with Section 2.3 of Act 82-2010, as amended, known as *The Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act* and any Energy Bureau regulations with respect to the renewable portfolio standard.

#### **Section 4.03 Certification.**

Any Retail Electricity Supplier that intends to sell power through a Power Purchase Agreement to a Wheeling Customer shall file a certification application that must be approved by the Energy Bureau, pursuant to the provisions of Regulation 8701, or any subsequent regulation to those effects, prior to providing any such services. Any entity that qualifies as both a Retail Electricity Supplier and an Independent Power Producer need only apply for and receive a single certification.

#### **Section 4.04 Default.**

The Energy Bureau may establish by order the responsibilities of the Retail Electricity Supplier, the Provider of Last Resort, the Wheeling Customer and other parties in the event that the Retail Electricity Supplier defaults by failing to provide power consistent with the terms and conditions of the Retail Supply Agreement and/or the Wheeling Service Agreement for any given period.

### **ARTICLE 5 INDEPENDENT POWER PRODUCERS**

#### **Section 5.01 Interconnection**

An Independent Power Producer shall apply for interconnection for its Electric Power Generation Facilities pursuant to applicable regulations.

#### **Section 5.02 Certification.**

Any Independent Power Producer that intends to participate in Wheeling shall file a certification application that must be approved by the Energy Bureau, pursuant to the provisions of Regulation 8701, or any subsequent regulation to those effects, prior to providing any such services. Any entity that qualifies as both a Retail Electricity Supplier and an Independent Power Producer need only apply for and receive a single certification.

### **ARTICLE 6 WHEELING SERVICES AGREEMENT.**

#### **Section 6.01 Applicability.**

The GridCo shall enter into a Wheeling Service Agreement with any Retail Electricity Supplier that files a Wheeling Services Agreement Application. The Retail Electricity Supplier must sign the Wheeling Service Agreement prior to commencing wheeling services.

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## Section 6.02 Stakeholders Input Process

The Energy Bureau shall conduct a stakeholder technical workshop or solicit comments from stakeholders, as needed, to ensure that a standard Wheeling Services Agreement is developed between the GridCo and the Retail Electricity Supplier.

## Section 6.03 Wheeling Services Agreement Draft

A) GridCo shall propose, for Energy Bureau review and approval, a standard Wheeling Services Agreement, addressing the requirements and parameters established by order issued by the Energy Bureau. The Standard Wheeling Services Agreement shall cover standard electric industry wheeling terms and conditions and shall explicitly address at least the following:

- 1) Terms, conditions, and charges for wheeling service;
- 2) A description of the pricing and settlement process for under- and over-deliveries;
- 3) Conditions for ensuring that a Retail Electricity Supplier has sufficient generation, either through direct ownership and control or power purchase agreements, prior to transitioning a wheeling customer from the Provider of Last Resort or other retail electricity supplier and onto wheeling service with the new retail electricity supplier;
- 4) The arrangements for metering, data exchange and billing, and charges, thereof;
- 5) The process for addressing any default in the provision of energy to a Wheeling Customer; and
- 6) Any other parameter established by the Energy Bureau through order.

B) The GridCo shall provide entities applying to be Retail Electricity Suppliers with the standard Wheeling Services Agreement and shall inform the Retail Electricity Supplier that it may negotiate different terms if the standard Wheeling Services Agreement is not suitable to its needs. Notwithstanding, Wheeling Rates are established by the Energy Bureau, therefore they are not subject to negotiation.

## Section 6.04 Wheeling Services Agreement Application Form

A) In accordance with an Order by the Energy Bureau, the GridCo shall submit, for Energy Bureau approval, a draft of the proposed standard Wheeling Service Agreement application form. Such draft shall contain, but not be limited to, the

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The Energy Bureau may establish by order the eligibility of customers to enter into a Retail Supply Agreement. Such order may limit eligibility by customer class or by other reasonable distinctions between customers or provide for appropriate protections for certain categories of customer to be eligible.

**All Retail Supply Agreements** must contain, at a minimum, the clauses and provisions, as well as comply with the parameters and instructions, established by the Energy Bureau through order.

### Section 8.01 Applicability.

Any certified Retail Electricity Supplier intending to wheel power to a Wheeling Customer pursuant to a Retail Supply Agreement, must submit a Wheeling Service Agreement application to the GridCo, using the application form approved by the Energy Bureau. Such wheeling application must be approved by the GridCo prior to commencing the supply of power to a Wheeling Customer.

A) Within thirty (30) calendar days of the filing of the Wheeling Services Agreement Application by the Retail Electricity Supplier, the GridCo shall determine whether it is complete. If the GridCo does not respond to the Application within thirty (30) calendar days of the filing, the Wheeling Services Agreement Application shall be deemed complete. In these instances, a Wheeling Services Agreement Application shall be deemed complete by the GridCo if it includes all the information required in the corresponding application form.

B) If the GridCo deems a Wheeling Services Agreement Application incomplete, the GridCo shall notify the Retail Electricity Supplier in writing of the specific





#### Section 10.01, Reconsideration,

Any person who is not satisfied with a decision made by the Energy Bureau under this Regulation may file, within the term of twenty (20) days from the date copy of the notice of such decision is filed by the Energy Bureau's Clerk, a request for reconsideration before the Energy Bureau wherein the petitioner sets forth in detail the grounds that support the request and the decisions that, in the opinion of the petitioner, the Energy Bureau should reconsider.

#### Section 10.02, Judicial Review,

Any person dissatisfied with a final decision of the Energy Bureau under this Regulation may, within thirty (30) days from the date copy of notice of a final decision addressing a request for reconsideration is filed by the Energy Bureau's Clerk, or within thirty (30) days from the date copy of the notice of an Energy Bureau final decision is filed by the Energy Bureau's Clerk, if a request for reconsideration has not been filed, appear before the Puerto Rico Court of Appeals by way of writ of judicial review, pursuant to Section 4.2 of the LPAU and the applicable Rules of the Court of Appeals.

Agreed upon by the Energy Bureau, in San Juan, Puerto Rico, on December 1, 2021.

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



IN RE: REGULATION ON WHEELING

CASE NO.: CEPR-MI-2018-0010

SUBJECT: Adoption of Regulation on  
Electric Energy Wheeling.

**Chairman Edison Avilés Deliz Concurring Opinion**

On December 7, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"), issued a Resolution ("December 7 Resolution") in which the Energy Bureau adopted the Regulation on Electric Energy Wheeling in which the initial categories of eligible customers were defined pursuant to the amended final *Regulation on Energy Wheeling* ("Amended Final Wheeling Regulation").

Section 7.02 of the Amended Final Wheeling Regulation declares that the "Energy Bureau may establish by order the eligibility of customers to enter into a Retail Supply Agreement. Such order may limit eligibility by customer class or by other reasonable distinctions between customers or provide for appropriate protections for certain categories of customer to be eligible." The authority and process set forth by Section 7.02, was applied in the Resolution and Order issued December 7, 2021 ("December 7 Eligibility Resolution") by limiting the definition of customer eligibility for participation in wheeling to "large commercial and industrial customers" and expressly excluding, based on policy considerations for consumer protection, small commercial and residential customers. The December 7 Eligibility Resolution, nevertheless, acknowledges that, once programs are put in place that confer small commercial and residential customers the substantial benefits and consumer protections that the Energy Bureau expects to guarantee, they may be established as eligible customers for participation in wheeling by order of the Energy Bureau.

Act No. 17-2019<sup>1</sup> establishes a comprehensive energy policy which is intended to change the Island's electric sector. At Section 1.8, Act No. 17-2019 provides for the unbundling and transformation of Puerto Rico's electric power system and commands the unbundling of the electric system via sales of the Puerto Rico Electric Power Authority ("PREPA") generation and transfer of control of Transmission and Distribution by concession or Operation and Maintenance agreements. The statutory demands on PREPA to unbundle its rates and separate generation, transmission and distribution charges were intended to introduce and facilitate the implementation of wheeling, inasmuch as an integral part of wheeling is the concept of unbundling prices for electric services.

Act 57-2014<sup>2</sup> assigned the Energy Bureau certain primary responsibilities, which include the power and duty to "[r]egulate the wheeling mechanism in the Commonwealth of Puerto Rico in accordance with the applicable laws," as per Section 6.3(g) of Act 57-2014.<sup>3</sup> Furthermore, Section 6.4(a)(5) of Act 57-2014 allocated to the Energy Bureau primary and exclusive jurisdiction over "[c]ases and disputes regarding wheeling or electric power interconnection with the transmission and distribution network, and any person that is connected, or wishes to connect to the electric power grid in Puerto Rico or any person with a direct or indirect interest in these electric power services."

In pursuit of its ministerial duties and the protection of the interests of customers and consumers, the Energy Bureau adopted and enacted regulation 9138 on Electric Energy

<sup>1</sup> The Puerto Rico Energy Public Policy Act.

<sup>2</sup> The Puerto Rico Energy Transformation and RELIEF Act, as amended.

<sup>3</sup> Section 1.7 of Act 17-2019 reaffirms the Energy Bureau's authority to prescribe the rules that that apply to the wheeling of power in Puerto Rico and set the rates applicable to customers for such services.



Wheeling<sup>4</sup> to implement the energy wheeling mechanism in Puerto Rico, in accordance with applicable legislative mandates and to implement a system that allows, among others, Electric Power Service Companies, Micro grids, Energy Cooperatives, Municipal Ventures, Large Industrial and Commercial consumers, and Community Solar and other demand aggregators, to participate in the energy wheeling mechanism in Puerto Rico. The December 7, 2021 Amended Final Wheeling Regulation furthers the implementation of the energy wheeling mechanism in Puerto Rico by providing for the establishment by the Energy Bureau the eligibility of customers to enter into Retail Supply Agreements. In the exercise of its statutory and regulatory powers and duties, the Energy Bureau established the eligibility of large commercial and industrial customers and precluded, until otherwise ordered, small commercial and residential customers from being eligible to participate in wheeling.

The primary responsibilities and jurisdictions assigned to the Energy Bureau by Act 57-2014 and Act 17-2019, on electric energy wheeling and the legal precedent denies the need to amend the Regulation on Energy Wheeling for any and each instance in which the Energy Bureau determines that additional customer class or classes shall be included in the definition of eligibility to participate in wheeling. The Regulation itself informs the Energy Bureau's actions by affirming that the Energy Bureau "may establish **by order** the eligibility of customers to enter into a Retail Supply Agreement," thus establishing the lines of demarcation of the Energy Bureau's authority and discretion.

Binding precedent also refutes any requirement or obligation that any expansion or modification to customer eligibility for wheeling be carried out through the rulemaking process given that there has been a clear, specific, and express delegation of powers to the Energy Bureau by Puerto Rico's Legislative Assembly.<sup>5</sup> More recently, in Domínguez Castro v. ELA, 178 DPR 1 (2010), the Puerto Rico Supreme Court reviewed the doctrine of the delegation of powers to administrative agencies and boards within the framework of the constitutional separation of powers amongst the branches of government. The Court clarified the instances in which the delegation of powers from one branch to another is permissible. The powers delegated to the Energy Bureau by the Puerto Rico Legislative Assembly and the express criteria established to regulate wheeling in Puerto Rico is supported by the "adequate norms, guidelines, standards, criteria, or intelligible principles or those procedural and substantive guarantees or safeguards that serve as a guide to the delegation and that delimit its powers, to avoid that the actions of the administrative entities turn out to be arbitrary or capricious."<sup>6</sup>

In Perez v. Mortgage Bankers Association, 135 S.Ct. 1199 (2015), the United States Supreme Court reversed the D.C. Circuit's *Paralyzed Veterans doctrine*, which requires agencies to use the notice-and-comment process before it can significantly revise an interpretive rule, is contrary to the clear text of the Administrative Procedure Act's rulemaking provisions and improperly imposes on agencies an obligation beyond the Act's maximum procedural requirements. Justice Sotomayor, writing the opinion of the Court, held that the *Paralyzed Veterans* doctrine "is contrary to the clear text of the APA's rulemaking provisions, and it improperly imposes on agencies an obligation beyond the 'maximum procedural requirements' specified in the APA."<sup>7</sup> Specifically, Justice Sotomayor highlighted that the D.C. Circuit had improperly focused exclusively on Section 1 of the APA, which defines what a rulemaking is, rather than Section 4(b)(A), which sets forth the procedures an agency must

<sup>4</sup> Regulation on Electric Energy Wheeling, No. 9138, September 16, 2019.

<sup>5</sup> See, Luce & Co. v. Minimum Wage Board, 62 DPR 452 (1944) and Hilton Hotels v. Minimum Wage Board, 74 DPR 670 (1953).

<sup>6</sup> Domínguez Castro v. ELA, 178 DPR 1 (2010).


<sup>7</sup> Perez, 135 S.Ct. at 1206.



use when engaging in rulemaking and which specifies that interpretive rules need not meet the notice-and-comment requirement of legislative rules.<sup>8</sup>

Taking into account and consideration the relevance and applicability of the language used by the United States Supreme Court in *Perez* and how it clearly contradicts the proposition that the Energy Bureau needs to activate the rulemaking process before further expanding customer eligibility for wheeling as well as the Puerto Rico Supreme Court's forceful assertion that "nothing prevents the Legislature from establishing general norms that are broad and that leave the administrator an adequate margin of freedom to complement the legislative norms through the use of a specialized judgment, which can be developed according to an analysis, appreciation and administrative discretion that has a reasonable basis."<sup>9</sup> In view of the analysis above, the legal clarity and sufficiency of the legislative delegation of powers upon the Energy Bureau on the subject of wheeling, the Energy Bureau acted within its delegated powers and duties in the establishment, in the December 7 Resolution and the December 7, 2021 Resolution and Order, of customer eligibility for wheeling.

Therefore, I concur.

  
\_\_\_\_\_  
Edison Avilés Deliz  
Chairman

In San Juan, Puerto Rico, on December 9, 2021.

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<sup>8</sup> *Id.* at 1207.

<sup>9</sup> *Domínguez Castro v. ELA*, 178 DPR 1 (2010).



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



IN RE: REGULATION ON WHEELING

CASE NO.: CEPR-MI-2018-0010

SUBJECT: Adoption of Regulation on  
Electric Energy Wheeling.

**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 through which, it adopted an amendment to the Regulation on Electric Energy Wheeling. For the reasons expressed herein, I concur in part and dissent in part.

\* \* \*

I concur with most of the changes introduced in the amendment approved today. However, I cannot agree with the definition of "Wheeling Customer" and with the provisions of Section 7.02 of the new regulation.

The current regulation on wheeling, Regulation 9138<sup>1</sup>, limits wheeling eligibility to, among others, industrial and large commercial customers.<sup>2</sup> This is due, in part, on the need to establish several safeguards and restrictions in order to ensure residential and small commercial customers are protected against predatory and unfair practices or collusion among wheeling power producers. At a minimum, such safeguards should include codes of conduct for retail companies, which are typical of competitive markets.

These codes of conduct establish the minimum standards of performance which the retail company must adhere when conducting retail activities. They are needed since residential and small commercial customers lack the resources or sophistication to negotiate with wheeling power producers, which puts them in a disadvantage with respect to these companies.

The new wheeling regulation removes the aforementioned restriction and leaves the door open for residential and small commercial customers being eligible to receive wheeling services, even in the absence of the referenced safeguards.<sup>3</sup> In addition, not only will the new regulation deprive residential and small commercial customers of minimum safeguards, it might have the unintended consequence of creating an open electricity market for which our electric system is not ready.

Moreover, the new wheeling regulation doesn't clearly define who will be eligible to receive wheeling services. Section 7.02 of the new wheeling regulation provides that:

The Energy Bureau may establish by order the eligibility of customers to enter into a Retail Supply Agreement. Such order may limit eligibility by customer class or by other reasonable distinctions between customers or provide for appropriate protections for certain categories of customer to be eligible.

<sup>1</sup> Regulation on Electric Energy Wheeling, September 16, 2019 ("Regulation 9138").

<sup>2</sup> Section 1.09(B)(30), Regulation 9138.

<sup>3</sup> See new wheeling regulation, Section 1.09(B)(30). The new regulation defines the term "Wheeling Customer" as a Customer that enters into a Retail Supply Agreement with a Retail Electricity Supplier. Regulation 9138 defines the term "Wheeling Customer" as Electric Power Service Companies, Microgrids, Energy Cooperatives, Municipal Ventures, large scale industrial and commercial consumers and community solar and other demand aggregators that enters into a Power Purchase Agreement with Independent Power Producers.



Therefore, wheeling eligibility will be determined by the Energy Bureau through an Order and not through the actual regulation that governs wheeling. This is problematic in two ways: (1) since the Energy Bureau can issue such order at any time without restrictions, the Energy Bureau will determine customer eligibility without the inputs of the customers that will be affected by the regulation, and (2) the new regulation is not specific regarding who is eligible for wheeling, thus it will be vague regarding to whom it applies; as such, there is no way to forewarn the general public as to how they will be affected by the provisions of the new regulation.

To that effect, the Supreme Court of Puerto Rico has established that "... agencies have the duty to specify, through regulations, the criteria outlined in a very general way in the delegating legislation, in order to avoid an arbitrary and unfair application, and to provide adequate guidelines so that the parties affected by the administrative actions are duly informed of the state of current law."<sup>4</sup> Moreover, "... agencies, regardless of the powers that have been delegated to them, cannot act arbitrarily, neither by changing their regulations, nor by establishing new rules."<sup>5</sup> Nothing is more arbitrary than to establish who is eligible for wheeling, and thus, who will be affected by the new wheeling regulation, without a formal rulemaking process.<sup>6</sup>

Furthermore, the Supreme Court of Puerto Rico has determined that, with respect to legislative rules<sup>7</sup>, "... agencies must adopt them in strict observance of the requirements of the L.P.A.U., giving citizens the opportunity to know them and express any objection before their final approval."<sup>8</sup> In my opinion, establishing wheeling eligibility is a legislative rule. As such, it must be subject to the formal rulemaking proceeding. This is not the case with the new wheeling regulation. As a consequence, this will deprive customers of the opportunity to express any objection as to who is eligible to receive wheeling services.

Act 38-2017<sup>9</sup> establishes a well-defined rulemaking procedure to ensure administrative agencies provide due process to the people affected by proposed regulations. Section 7.02 of the new wheeling regulation does not. As such, I cannot support its inclusion in the new regulation. Instead, I would have modified the definition of the term "Wheeling Customer" to specifically establish that, for now, residential and small commercial customers are not eligible to receive wheeling services. Therefore, I would have clearly established that wheeling services will be available to industrial and large commercial clients. Finally, I would have maintained such restriction until the electric system is ready for an open electric market and safeguards are in place to protect residential and small commercial customers.

For all of the above, I concur in part and dissent in part.



Ángel R. Rivera de la Cruz  
Associate Commissioner

In San Juan, Puerto Rico, on December 7, 2021.

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<sup>4</sup> Asoc. Farmacias de la Comunidad v. Departamento de Salud, 156 D.P.R. 105, 117 (1999). Translation provided.

<sup>5</sup> Benítez Nieves v. E.L.A., 202 D.P.R. 818, 828 (2019). Translation provided.

<sup>6</sup> This is different than, say, establishing the wheeling rate through an order, since such determination will be made as a result of formal adjudicative proceeding, as it is with the case In Re: The Unbundling of the Assets of the Puerto Rico Electric Power Authority, Case No. NEPR-AP-2018-0004.

<sup>7</sup> A "legislative rule" is a rule that creates rights, imposes obligations and establishes a pattern of conduct that has the force of law. Asoc. de Maestros v. Comisión, 159 D.P.R. 81, 93 (2003), citing Municipio de San Juan v. J.C.A., 152 D.P.R. 673 (2000).

<sup>8</sup> Ramírez v. Junta de Planificación, 185 D.P.R. 748, 758 (2012). Translation provided.

<sup>9</sup> *The Uniform Administrative Procedure Act of the Government of Puerto Rico*, as amended.





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

## **REGULATION ON ELECTRIC ENERGY WHEELING**

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## **REGULATION ON ELECTRIC ENERGY WHEELING**

### **ARTICLE 1 GENERAL PROVISIONS**

#### **Section 1.01 Title.**

This Regulation shall be known as the *Regulation on Electric Energy Wheeling*.

#### **Section 1.02 Legal Basis and Authority.**

This Regulation is adopted pursuant to Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014"); Act 17-2019, known as the *Puerto Rico Energy Public Policy Act* ("Act 17-2019"); and Act 38-2017, as amended, known as the *Uniform Administrative Procedure Act of the Government of Puerto Rico* ("LPAU" for its Spanish acronym). The Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") has the authority to implement wheeling. Act 57-2014, as recently affirmed by Act 17-2019, states that the Energy Bureau has the power and duty to "regulate the wheeling mechanism in Puerto Rico in accordance with applicable laws."<sup>1</sup> Moreover, the Energy Bureau has the power and duty to "oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico." The Energy Bureau also has "all those additional, implicit, and incidental powers that are pertinent and necessary to enforce and carry out, perform, and exercise the powers granted by law and to achieve the energy public policy."<sup>2</sup>

#### **Section 1.03 Purpose and Executive Summary.**

The Energy Bureau adopts and enacts this Regulation to implement the energy wheeling mechanism in Puerto Rico, in accordance with applicable legislative mandates. The Energy Bureau proclaims this Regulation to implement a system that allows an exempt business, dedicated to the production of energy, as described in Section 2(d)(1)(H) of Article 1 of Act No. 73-2008, as amended, known as the *Economic Incentives Act for the Development of Puerto Rico*, or similar provisions in other incentive laws, as well as Electric Power Service Companies, Microgrids, Energy Cooperatives, Municipal Ventures, Large Industrial and Commercial consumers, and Community Solar and other demand aggregators, to participate in the energy wheeling mechanism in Puerto Rico. This Regulation also repeals Regulation No. 9138, Regulation on Electric Energy Wheeling.

#### **Section 1.04 Applicability.**

This Regulation shall apply to all companies offering electric services operating in Puerto Rico when this Regulation enters into effect, as well as to all companies that intend to operate or offer electric services in Puerto Rico now or in the future.

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<sup>1</sup> Section 6.3(g) of Act 57-2014, as amended by Section 5.10 of Act 17-2019.

<sup>2</sup> *Id.*

### **Section 1.05 Interpretation.**

This Regulation shall be interpreted so it promotes the highest public good and the protection of the interests of all electric service customers of Puerto Rico, and in such a way that proceedings are carried out rapidly, justly, and economically.

### **Section 1.06 Provisions of Other Regulations.**

This Regulation may be supplemented by other regulations of the Energy Bureau compatible with this Regulation.

### **Section 1.07 Unforeseen Proceedings.**

When a specific proceeding has not been planned for in this Regulation, the Energy Bureau may attend to it in any way that is consistent with Act 57-2014 and other applicable laws.

### **Section 1.08 Dates and Time Periods.**

In computing any time period established in this Regulation, or by order of the Energy Bureau, the day of the act, event, or noncompliance that triggers the period shall not be counted, and the established period shall begin to elapse on the following day. Whenever a due date falls on a Saturday, Sunday, or legal holiday, said due date shall be extended until the next workday.

### **Section 1.09 Definitions.**

- A) These definitions are to be used for this Regulation and are not intended to modify the definitions used in any other Energy Bureau regulation or order.
- B) For this Regulation, the following terms will have the meaning established below, unless the context of the content of any provision indicates something else:
  - 1) "Certification" means the process by which an Electric Power Service Company seeks approval by the Energy Bureau to operate or offer services in Puerto Rico pursuant to Regulation 8701<sup>3</sup> or any subsequent regulation to those effects.
  - 2) "Community Solar" means a program whereby local solar facilities are shared by multiple customers who receive credit on their electricity bills for their share of the power produced.
  - 3) "Customer" means any Person who receives Electric Service, other than at

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<sup>3</sup> *Amendment to Regulation No. 8618, on Certifications, Annual Charges and Operational Plans of Puerto Rico Electric Service*, February 17, 2016 ("Regulation 8701").



facilities primarily engaged in the generation of electricity.

- 4) "Distributed Generation" means an electric power generation facility in Puerto Rico connected to the Distribution System and producing power for self-supply or other purposes.
- 5) "Distribution" or "Distribution System" means the physical equipment used to distribute electric power at voltages of less than 38,000 volts, including but not limited to poles, primary lines, secondary lines, service drops, transformers, and Meters.
- 6) "Electric Power Grid" means the electric power Transmission System and Distribution System of Puerto Rico.
- 7) "Electric Service" means the provision of generation, distribution and/or transmission service to a customer; it may include ancillary services.
- 8) "Electric Power Generation Company" or "EPGC" means any natural or juridical person engaged in the production or generation of electric power in Puerto Rico. This term shall include cogenerators already established in Puerto Rico that supply energy to PREPA through a Power Purchase Agreement, and renewable energy producers. All Electric Power Generation Companies shall be deemed to be Electric Power Service Companies.
- 9) "Electric Power Service Company" or "EPSC" means any natural or juridical person or entity including Energy Cooperatives, engaged in the rendering of energy generation, transmission and distribution services, billing, wheeling, grid services, energy storage, and/or the resale of electric power.
- 10) "Energy Bureau" means the Energy Bureau of the Puerto Rico Public Service Regulatory Board, established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, and Act 211-2018, formerly the Puerto Rico Energy Commission, created under Act 57-2014, which is a specialized independent entity in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico.
- 11) "Energy Cooperative" means a cooperative organized under Act 239 -2004, known as the *General Cooperative Associations Act of 2004*, as amended, mainly to meet individual and common electric power needs of their cooperative members, affiliated consumers and/or communities through electric power generation, transmission and/or distribution systems. "Cooperative Microgrids" as defined in Regulation 9028, shall not be considered Energy Cooperatives, as defined in this Regulation.

- 12) "GridCo" means the entity with the primary responsibility for providing for any of the transmission, distribution, and operating functions of the Electric Power Grid, as well as system balancing and the dispatch of generation resources. The GridCo shall be PREPA or its agent or successor, as designated by the Energy Bureau for the purposes of this Regulation.
- 13) "Independent Power Producer" means an Electric Power Generation Company that is not owned or operated by PREPA. An Independent Power Producer may, but is not required to, be qualified as an exempt business described in Section 2(d)(l)(H) of Article 1 of Act No. 73-2008, as amended, known as the *Economic Incentives Act for the Development of Puerto Rico*.
- 14) "Interconnection" means the connection of an electric power generation facility to Puerto Rico's Electric Power Grid.
- 15) "Meter" means the equipment used to measure consumption and/or generation of energy at the point of connection between any entity and the Electric Power Grid as well as associated communications and control capabilities.
- 16) "Microgrid" means a group of interconnected loads and distributed generation within clearly defined electrical boundaries that acts as a single controllable entity that can connect and disconnect from the Electric Power Grid to enable it to operate in either grid-connected or off-the-grid (islanded) mode.
- 17) "Municipality" means the local government legal entity organized and existing pursuant to Article VI, §1 of the Puerto Rico Constitution and Act No. 81-1991, as amended, known as the *Autonomous Municipality Act of the Commonwealth of Puerto Rico*.
- 18) "Municipal Venture" means an enterprise undertaken by a municipality to provide electric services to its citizens in accordance with applicable laws.
- 19) "Partial Requirements Power Tariff" means a rate authorized by the Energy Bureau to be paid by a Wheeling Customer for generation services that are not provided by the Retail Electricity Supplier that provides the Wheeling Customer with less than 100% of generation services.
- 20) "Person" means a natural person, or a legal entity created, organized, or existing under the laws of Puerto Rico, the United States of America, any state of the union, or any foreign state or country; a Municipality or a consortium of Municipalities; or any other government entity, including PREPA.
- 21) "Power Purchase Agreement" or "PPA" means any agreement or contract,

other than a Retail Supply Agreement, approved by the Energy Bureau, whereby an Electric Power Generation Company is bound to sell electric power, at a just and reasonable rate, to another natural or juridical person, and such other person is, in turn, bound to acquire said electric power.

- 22) "PREPA" means the Puerto Rico Electric Power Authority, a corporate entity created by Act No. 83 of May 2, 1941, as amended, and any successor entity.
- 23) "Provider of Last Resort" or "POLR" means the entity responsible for procuring or otherwise arranging electricity supply for customers who do not participate in wheeling. The Provider of Last Resort shall be PREPA or its agent or successor, as designated by the Energy Bureau for the purposes of this Regulation.
- 24) "Retail Electricity Supplier" or "RES" means a certified Electric Power Service Company, Microgrid, Energy Cooperative, Municipal Venture, or Community Solar enterprise or other demand aggregator that produces or acquires generation services from one or more Independent Power Producers to be supplied to one or more wheeling customers. A Retail Electricity Supplier may, but is not required to, be qualified as an exempt business described in Section 2(d)(l)(H) of Article 1 of Act No. 73-2008, as amended, known as the Economic Incentives Act for the Development of Puerto Rico.
- 25) "Retail Supply Agreement" means an agreement between a Retail Electricity Supplier and a Wheeling Customer to arrange for procurement of generation services.
- 26) "Stand-by Power Tariff" means an optional rate authorized by the Energy Bureau for providing power in the event that a Retail Electricity Supplier that has contracted through a Retail Supply Agreement to provide one or more Wheeling Customers with power, fails to meet the terms and conditions of that Retail Supply Agreement and the Wheeling Customer is desirous of having continual service. The standby compensation may be paid by the Retail Electricity Supplier or the Wheeling Customer.
- 27) "Transmission" or "Transmission System" means the physical equipment used to transmit electric power at voltages of at least 38,000 volts, including but not limited to towers, poles, lines, and transformers.
- 28) "Wheeling" means the delivery by a Retail Electricity Supplier of electricity from one or more Independent Power Producers to a Wheeling Customer through the Electric Power Grid. An Independent Power Producer and Retail Electricity Supplier may be the same entity or may have a separate contractual arrangement. Wheeling does not include any form of Distributed Generation to which net-metering is applied.



- 29) "Wheeling Application" means the document submitted by a Retail Electricity Supplier to the GridCo requesting to execute a Wheeling Services Agreement.
- 30) "Wheeling Customer" means a Customer that enters into a Retail Supply Agreement with a Retail Electricity Supplier.
- 31) "Wheeling Rate" means a set of just and reasonable charges, as approved by the Energy Bureau, that shall be billed to an Independent Power Producer, Retail Electricity Supplier, or to a Wheeling customer, for the use of the Electric Power Grid for the delivery of energy to a Wheeling Customer.
- 32) "Wheeling Service Agreement" means the contract executed between a Retail Electricity Supplier and the GridCo to establish the functions and obligations of these two parties, prior to commencing the supply of power by a Retail Electricity Supplier to a Wheeling Customer.

C) Every word used in the singular in this Regulation shall be understood to also include the plural unless the context indicates otherwise.

#### **Section 1.10 Controlling Version.**

Should any discrepancy between the Spanish version and the English version of this Regulation arise, the English version shall prevail.

#### **Section 1.11 Severability.**

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed, for any reason, before a court and declared unconstitutional or null and void, such ruling shall not affect, damage, or invalidate the remaining provisions of this Regulation, rather the effect shall be limited to the article, provision, word, sentence, paragraph, subsection, or section declared unconstitutional or null and void. The nullity or invalidity of any article, word, sentence, paragraph, subsection, or section, in any specific case, shall not affect or jeopardize in any way its application or validity in any other case, unless it has been specifically and expressly invalidated for all cases.

#### **Section 1.12 Forms.**

The Energy Bureau shall establish the forms it deems necessary to conduct the proceedings pursuant to this Regulation and shall inform the public via its website. That the Energy Bureau has not adopted one or more forms, is in the process of reviewing them, or the Internet website is out of service, shall relieve no party of its obligation to comply with the provisions stated herein, provide the information required by this Regulation, or otherwise comply with any Energy Bureau order.

### **Section 1.13 Mode of Submission.**

The forms, documents, and appearances required by this Regulation, or any order of the Energy Bureau must be submitted before the Energy Bureau in electronic format according to the instructions which, from time to time, the Energy Bureau establishes through an order in relation to the electronic filing system.

If the electronic filing system is temporarily not operating or functioning, the forms, documents, and appearances required by this Regulation or by any order of the Energy Bureau shall be submitted before the Energy Bureau in accordance with any instructions that the Energy Bureau shall provide through an order.

### **Section 1.14 Effect of Submission.**

In filing any document before the Energy Bureau, the party undersigning such document shall be deemed to have certified that the content of the document is true and that, according to the signer's best knowledge, information, and belief, formed after reasonable inquiry, the document is based on reliable and trustworthy facts, arguments, judicial sources, and information.

### **Section 1.15 Confidential Information.**

If in compliance with this Regulation or any of the Energy Bureau's orders, a Person must disclose information to the Energy Bureau considered privileged, pursuant to applicable evidentiary privileges, said Person shall identify the alleged privileged information and request in writing for the Energy Bureau to treat such information as confidential, pursuant to Article 6.15 of Act 57-2014. In identifying privileged information and requesting confidential treatment by the Energy Bureau, the requesting party shall follow the rules and procedures established by the Energy Bureau in Resolution issued in case number CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information. Except with information protected under the attorney-client privilege, the claim of confidential treatment shall, under no circumstances, be grounds for denying such information from being filed with the Energy Bureau.

### **Section 1.16 Validity.**

Pursuant to Section 2.8 of the LPAU, this Regulation shall enter into effect thirty (30) days after its submission to the Department of State and the Legislative Library of the Office of Legislative Services. Regulation No. 9138, Regulation on Electric Energy Wheeling, is repealed.

### **Section 1.17 Penalties for Non-Compliance.**

Any Person who fails to comply with the requirements in this Regulation may be subject to the imposition of penalties under Act 57-2014, Section 3.05 and 3.06 of Regulation 8701, and

pursuant to the procedures established in Regulation 8543<sup>4</sup>.

### **Section 1.18 Compliance with Other Applicable Legal Requirements.**

Compliance with this Regulation shall relieve no party affected by this Regulation from fully complying with other applicable legal and regulatory requirements enforced by any other government entity.

## **ARTICLE 2 RESPONSIBILITIES OF THE GRIDCO**

### **Section 2.01 Applicability.**

The Energy Bureau shall designate by order the entity or entities responsible for the functions of the GridCo.

### **Section 2.02 General Responsibilities of the GridCo**

The GridCo shall ensure transparent, open access on non-discriminatory terms to the Electric Power Grid for Independent Power Producers and Retail Electricity Suppliers serving or intending to serve Wheeling Customers; ensure the reliability and adequacy of the Electric Power Grid; ensure adequate power for all customers; ensure efficient economic dispatch and scheduling of resources to serve loads; and ensure that electricity delivery is accurately accounted for to Wheeling Customers from the Retail Electricity Suppliers and Independent Power Producers. The GridCo shall:

- A) Maintain the reliability and security of the Electric Power Grid, including the instantaneous balancing of generation and load, and assuring the adequacy of resources to meet demand.
- B) Provide for transparent, non-discriminatory, and open access to the Electric Power Grid, consistent with this Regulation, other applicable regulations, relevant Energy Bureau orders, PPAs and approved Wheeling Services Agreements.
- C) Process all Wheeling Service Applications from Retail Electricity Suppliers seeking to serve Wheeling Customers in accordance with the procedures established by the Energy Bureau to those effects.
- D) Provide billing and metering services to Customers not engaged in wheeling, as well as Wheeling Customers unless any billing and metering services are otherwise provided by a Retail Electricity Supplier pursuant the terms of a Wheeling Services Agreement as well as other applicable rules and orders.
- E) Administer settlement and billing for services provided under the Wheeling Services

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<sup>4</sup> Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, December 18, 2014.



Agreement to the Retail Electricity Suppliers; and

- F) Perform any additional duties required under this Regulation, Energy Bureau orders, and Wheeling Services Agreements.

### **Section 2.03 Interconnection.**

The GridCo shall be responsible for complying with interconnection regulations and protocols subject to approval by the Energy Bureau, for the interconnection of generating facilities, Microgrids and Distributed Generation as applicable to the Transmission and Distribution System.

## **ARTICLE 3 RESPONSIBILITIES OF THE PROVIDER OF LAST RESORT.**

### **Section 3.01 Applicability.**

The Energy Bureau shall designate by order the entity or entities responsible for the functions of the Provider of Last Resort.

### **Section 3.02 Continuing Obligation to Supply All Customers.**

The Provider of Last Resort shall have a continuing obligation to ensure power supply to all customers.

### **Section 3.03 Return of Wheeling Customers to the Provider of Last Resort.**

The terms and conditions of the Retail Supply Agreement shall specify when the Wheeling Customer may opt to return to the then-existing applicable tariff available to customers served directly by the Provider of Last Resort. Any Wheeling Customer that returns to the Provider of Last Resort shall be prohibited from entering into a new agreement with a new Retail Electricity Supplier for a period of time that shall be determined by Order, which may vary by customer class or other reasonable distinction between customers and the reason that the Wheeling Customer returned to the Provider of Last Resort.

## **ARTICLE 4 RESPONSIBILITIES OF THE RETAIL ELECTRICITY SUPPLIERS**

### **Section 4.01 Wheeling Services Agreement Requirement.**

A Retail Electricity Supplier must have an executed Wheeling Services Agreement with the GridCo prior to delivering power to a Wheeling Customer pursuant to a Retail Supply Agreement.

### **Section 4.02 Renewable Portfolio Standard Compliance**

A Retail Electricity Supplier shall comply with Section 2.3 of Act 82-2010, as amended, known

as *The Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act* and any Energy Bureau regulations with respect to the renewable portfolio standard.

#### **Section 4.03 Certification.**

Any Retail Electricity Supplier that intends to sell power through a Power Purchase Agreement to a Wheeling Customer shall file a certification application that must be approved by the Energy Bureau, pursuant to the provisions of Regulation 8701, or any subsequent regulation to those effects, prior to providing any such services. Any entity that qualifies as both a Retail Electricity Supplier and an Independent Power Producer need only apply for and receive a single certification.

#### **Section 4.04 Default.**

The Energy Bureau may establish by order the responsibilities of the Retail Electricity Supplier, the Provider of Last Resort, the Wheeling Customer and other parties in the event that the Retail Electricity Supplier defaults by failing to provide power consistent with the terms and conditions of the Retail Supply Agreement and/or the Wheeling Service Agreement for any given period.

### **ARTICLE 5 INDEPENDENT POWER PRODUCERS**

#### **Section 5.01 Interconnection**

An Independent Power Producer shall apply for interconnection for its Electric Power Generation Facilities pursuant to applicable regulations.

#### **Section 5.02 Certification.**

Any Independent Power Producer that intends to participate in Wheeling shall file a certification application that must be approved by the Energy Bureau, pursuant to the provisions of Regulation 8701, or any subsequent regulation to those effects, prior to providing any such services. Any entity that qualifies as both a Retail Electricity Supplier and an Independent Power Producer need only apply for and receive a single certification.

### **ARTICLE 6 WHEELING SERVICES AGREEMENT**

#### **Section 6.01 Applicability.**

The GridCo shall enter into a Wheeling Service Agreement with any Retail Electricity Supplier that files a Wheeling Services Agreement Application. The Retail Electricity Supplier must sign the Wheeling Service Agreement prior to commencing wheeling services.

### **Section 6.02 Stakeholders Input Process.**

The Energy Bureau shall conduct a stakeholder technical workshop or solicit comments from stakeholders, as needed, to ensure that a standard Wheeling Services Agreement is developed between the GridCo and the Retail Electricity Supplier.

### **Section 6.03 Wheeling Services Agreement Draft.**

- A) GridCo shall propose, for Energy Bureau review and approval, a standard Wheeling Services Agreement, addressing the requirements and parameters established by order issued by the Energy Bureau. The Standard Wheeling Services Agreement shall cover standard electric industry wheeling terms and conditions and shall explicitly address at least the following:
  - 1) Terms, conditions, and charges for wheeling service.
  - 2) A description of the pricing and settlement process for under- and over-deliveries.
  - 3) Conditions for ensuring that a Retail Electricity Supplier has sufficient generation, either through direct ownership and control or power purchase agreements, prior to transitioning a wheeling customer from the Provider of Last Resort or other retail electricity supplier and onto wheeling service with the new retail electricity supplier.
  - 4) The arrangements for metering, data exchange and billing, and charges, thereof.
  - 5) The process for addressing any default in the provision of energy to a Wheeling Customer; and
  - 6) Any other parameter established by the Energy Bureau through order.
- B) The GridCo shall provide entities applying to be Retail Electricity Suppliers with the standard Wheeling Services Agreement and shall inform the Retail Electricity Supplier that it may negotiate different terms if the standard Wheeling Services Agreement is not suitable to its needs. Notwithstanding, Wheeling Rates are established by the Energy Bureau, therefore they are not subject to negotiation.

### **Section 6.04 Wheeling Services Agreement Application Form.**

- A) In accordance with an Order by the Energy Bureau, the GridCo shall submit, for Energy Bureau approval, a draft of the proposed standard Wheeling Service Agreement application form. Such draft shall contain, but not be limited to, the following requirements:



- 1) Geographic location and interconnection point of the Independent Power Producer electric power generation facilities expected to serve the Retail Electricity Supplier;
  - 2) Estimated quantity of power to be wheeled;
  - 3) Anticipated Wheeling Customer locations to be served under a Retail Supply Agreement, to the extent available;
  - 4) Proposed commencement date and anticipated duration of the wheeling arrangement;
  - 5) Any other information necessary for the implementation of this Wheeling Regulation; and
  - 6) Any other information required by the Energy Bureau through an order.
- B) The proposed form shall specify that, upon request from Retail Electricity Supplier, the GridCo will designate, handle and treat as confidential any information included in the application that was specifically identified as such by the Retail Electricity Supplier.

#### **Section 6.05 Nonrefundable Fee.**

Upon submission of the standard Wheeling Services Agreement, the GridCo shall propose, for the Energy Bureau's approval, a nonrefundable fee to be paid by the applying Retail Electricity Supplier upon submission of a Wheeling Services Agreement application. Such fee shall be set by the Energy Bureau for no more than is necessary to ensure that costs associated with processing the application do not affect in any way whatsoever nonsubscribers of wheeling services.

#### **Section 6.06 Energy Bureau Review.**

The Energy Bureau shall approve, disapprove, or modify the proposed standard Wheeling Services Agreement, the proposed Wheeling Services Agreement Application and the proposed Nonrefundable Fee. In its evaluation process, the Energy Bureau will consider any comments provided by the public. In considering any term or condition, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.

### **ARTICLE 7 RETAIL SUPPLY AGREEMENTS**

#### **Section 7.01 Development of a Standard Retail Supply Agreement.**

At an appropriate time, the Energy Bureau shall convene a stakeholder technical workshop

or solicit public comment for purposes of requesting input on the development of a standard Retail Supply Agreement. Upon completing the stakeholder input process, the Energy Bureau will issue an order establishing the parameters the Retail Electricity Suppliers will use for the drafting of a standard Retail Supply Agreement. The Energy Bureau will consider any comments provided by the public regarding the standard Retail Supply Agreement. In considering any term or condition, the Energy Bureau will ensure that costs associated with wheeling do not affect in any way whatsoever nonsubscribers of wheeling services. The standard Retail Supply Agreement may vary by customer class or other reasonable distinction between customers.

#### **Section 7.02 Customer Eligibility.**

The Energy Bureau may establish by order the eligibility of customers to enter into a Retail Supply Agreement. Such order may limit eligibility by customer class or by other reasonable distinctions between customers or provide for appropriate protections for certain categories of customer to be eligible.

#### **Section 7.03 Standard Retail Supply Agreement.**

All Retail Supply Agreements must contain, at a minimum, the clauses, and provisions, as well as comply with the parameters and instructions, established by the Energy Bureau through order.

### **ARTICLE 8 WHEELING SERVICES AGREEMENT APPLICATION PROCESS**

#### **Section 8.01 Applicability.**

Any certified Retail Electricity Supplier intending to wheel power to a Wheeling Customer pursuant to a Retail Supply Agreement, must submit a Wheeling Service Agreement application to the GridCo, using the application form approved by the Energy Bureau. Such wheeling application must be approved by the GridCo prior to commencing the supply of power to a Wheeling Customer.

#### **Section 8.02 Wheeling Services Agreement Application Review Process.**

- A) Within thirty (30) calendar days of the filing of the Wheeling Services Agreement Application by the Retail Electricity Supplier, the GridCo shall determine whether it is complete. If the GridCo does not respond to the Application within thirty (30) calendar days of the filing, the Wheeling Services Agreement Application shall be deemed complete. In these instances, a Wheeling Services Agreement Application shall be deemed complete by the GridCo if it includes all the information required in the corresponding application form.
- B) If the GridCo deems a Wheeling Services Agreement Application incomplete, the GridCo shall notify the Retail Electricity Supplier in writing of the specific areas in which the filing is deficient, and the information required to correct

such deficiencies.

- C) Within thirty (30) days of the filing of the corrected documents, the GridCo shall evaluate them for completeness. The GridCo shall notify its determination in writing to the Retail Electricity Supplier within the same 30-day period
- D) The GridCo shall evaluate the Wheeling Services Agreement application within a term of thirty (30) days from the date the Wheeling Services Agreement application is deemed complete. The GridCo shall notify the Retail Electricity Supplier of its final determination in writing to the Retail Electricity Supplier within the same 30-day period. If the Application is not approved, the GridCo shall provide a detailed explanation of the basis for rejecting the application. If the GridCo does not complete the evaluation and respond to the Retail Electricity Supplier within the term of thirty (30), the Wheeling Services Agreement Application shall be deemed approved.

### **Section 8.03 Appeal to the Energy Bureau.**

If a Retail Electricity Supplier is not satisfied with the GridCo's determination with respect to its Wheeling Services Agreement application, the Retail Electricity Supplier may appeal such determination before the Energy Bureau within thirty (30) days of the date the determination was notified to the Retail Electricity Supplier.

## **ARTICLE 9 WHEELING TARIFFS**

### **Section 9.01 Wheeling Tariffs.**

The Energy Bureau shall review and approve the tariffs for Wheeling, including the rates that the GridCo may charge Retail Electricity Suppliers or Wheeling Customers for the use of the transmission and/or distribution system, as well as any credits received by Wheeling Customers. Options for such rates may include, but are not limited to, continuation on existing tariffs with an appropriate supply credit, a partial requirements power tariff, or a stand-by power tariff, among others. If any rates are charged to Retail Electricity Suppliers for the use of the transmission and/or distribution system, the Energy Bureau may determine by Order whether they must be included as a pass-through on the bill of the applicable Wheeling Customer.

### **Section 9.02 Wheeling Tariffs Procedure.**

The Energy Bureau will establish through Order the procedure to determine the Wheeling Rates and Credits, in accordance with applicable Regulations. In establishing the Wheeling Rates and Credits procedure, the Energy Bureau shall ensure that costs associated with Wheeling do not affect in any way whatsoever nonsubscribers of wheeling services.



## ARTICLE 10 RECONSIDERATION AND JUDICIAL REVIEW

### Section 10.01 Reconsideration.

Any person who is not satisfied with a decision made by the Energy Bureau under this Regulation may file, within the term of twenty (20) days from the date copy of the notice of such decision is filed by the Energy Bureau's Clerk, a request for reconsideration before the Energy Bureau wherein the petitioner sets forth in detail the grounds that support the request and the decisions that, in the opinion of the petitioner, the Energy Bureau should reconsider.

### Section 10.02 Judicial Review.

Any person dissatisfied with a final decision of the Energy Bureau under this Regulation may, within thirty (30) days from the date copy of notice of a final decision addressing a request for reconsideration is filed by the Energy Bureau's Clerk, or within thirty (30) days from the date copy of the notice of an Energy Bureau final decision is filed by the Energy Bureau's Clerk, if a request for reconsideration has not been filed, appear before the Puerto Rico Court of Appeals by way of writ of judicial review, pursuant to Section 4.2 of the LPAU and the applicable Rules of the Court of Appeals.

Agreed upon by the Energy Bureau, in San Juan, Puerto Rico, on December 7, 2021.



Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner