

The Puerto Rico Energy Commission Adopts Final Microgrid Regulation

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An McV Energy Alert

May 24, 2018

On May 16, 2018, the Puerto Rico Energy Commission adopted the final Regulation on Microgrid Development (“Regulation”), which we discussed on our January 8, 2018 Alert.

A Microgrid is defined as a group of interconnected loads and energy resources within clearly defined electrical boundaries, acting as a single controllable entity that can connect and disconnect from the grid to operate in either grid-connected or islanded mode. Three (3) main types of Microgrids will be recognized under the Regulation:

- Personal Microgrids, which will be owned by not more than two Persons (a natural person, and any legal entity, municipality, or government entity, other than the Puerto Rico Electric Power Authority, or “PREPA”) and for which there are generally no requirements under the Regulation;
- Cooperative Microgrids, which need not be organized pursuant to the Puerto Rico General Cooperative Associations Act and which are to be constituted by Members (the persons sharing ownership interest in the microgrid and receiving its services); and
- Third-Party Microgrids, which are owned or operated by any Person for the primary purpose of selling Energy Services (electricity service) or Grid Services (ancillary services, demand response, etc.) to Customers (Microgrid customers).

The key factor differentiating the type of Microgrid is whether the main purpose of the system is to supply the needs of the system’s Members or Owners (Persons with proprietary interest in the system), or to engage in the sale of services to non-Owners. Personal Microgrids and Cooperative Microgrids may generally sell excess energy to PREPA. Sales to other Persons who are not Owners, Members, or PREPA, would be subject to Energy Commission authorization.

The Regulation introduces the concept of Microgrid Operator, who is the person responsible for overseeing the operation of the Microgrid’s equipment, providing the contracted services to Customers or Members, billing (when

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applicable), and generally serving as primary point of contact. A Microgrid Operator may also be the Microgrid Owner. Moreover, a Microgrid Operator with an aggregate capacity of one megawatt (1 MW) or more will be considered an Electric Service Company to comply with applicable provisions of Regulation No. 8701.

The Regulation clarifies that the proprietary interest over a system is separate and independent from the proprietary interest over the equipment used by a Microgrid to supply Energy Services or Grid Services. As such, Microgrid equipment vendors who lease or offer third-party financing options will not be subject to Regulation, provided such equipment vendors do not offer Energy Services or other Grid Services, or act as Microgrid Operators.

The Regulation provides for the establishment of Microgrids which use renewable, combined heat-and-power (CHP) or hybrid resources. To qualify as a Renewable Microgrid, 75% of the system's total energy output^[1] during a 12-month period must be derived from a renewable resource. The remaining 25% may be derived from fossil-fuel generators, for which the Commission added efficiency requirements. However, an exemption to this 25% limit may be sought by a Microgrid Operator due to electrical equipment damage from force majeure events.

For CHP Microgrids, the Commission maintained the requirements that the useful thermal energy output be no less than 50% of the total energy output, and that fuel inputs minus useful energy output be no greater than 7,000 Btu per kWh of generator output.

Hybrid Microgrids must use energy generated by CHP and renewable resources. The renewable portion of its generation capacity must meet the generation requirements for Renewable Microgrids, while the CHP portion must meet the requirements for CHP Microgrids.

The Regulation further provides that Microgrids may interconnect with PREPA's grid in accordance with applicable PREPA regulations and procedures. On May 16, 2018, the Commission issued Order No. CEPR-MI-2018-0008 directing PREPA to develop and file for the Commission's review its proposed interconnection regulation within a term not to exceed 120 days.

With respect to rates, the Regulation provides for the Commission's approval of a project-specific, cost-based rates^[2], supported by substantial documentation. The purpose is to provide Microgrid Owners with sufficient flexibility to develop

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systems that best address Customer needs and priorities.

As to registration, the process was divided into two (2) steps. The first part is an initial evaluation to grant registration status, for which specific information must be submitted depending on the type of Microgrid. The second step is for filing and review of certifications once the system has been fully built. Certifications must be filed in the second step attesting that (1) the Microgrid complies with all regulations, codes, and standards, (2) it has been built as designed, and (3) it has been inspected. Filing of such certifications is a pre-requisite for authorization to begin operation.

Provisions that would have allowed for the use of PREPA infrastructure were removed, and the Energy Commission will monitor market developments and determine whether further action is needed in this regard in the future.

[1] The Energy Commission determined that focusing on energy output, rather than input, allows for sufficient and achievable reliable operation at reasonable costs.

[2] The Commission removed the \$0.2022 per kWh rate cap that it presented in the proposed regulation.

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