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Puerto Rico Energy Commission  
World Plaza Building,  
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**RE:** Public Comments Submitted by Nextility, Inc. Regarding “Regulation on Certifications, Annual Fees and Operational Reports of Electric Power Companies in Puerto Rico” Published on July 13, 2015

Mr. President, on behalf of the company Nextility, Inc. and its direct subsidiary Nextility Puerto Rico Leasing, LLC (hereby collectively referred to as “Nextility”), I submit these comments and questions regarding “Regulation on Certifications, Annual Fees and Operational Reports of Electric Power Companies in Puerto Rico” (hereby referred to as “Regulation 8618” or “Regulation”) in accordance with the public notice posted on the website of the Puerto Rico Energy Commission (hereby referred to as “Commission”) on July 16, 2015<sup>1</sup>. These comments are based on unofficial English translations of the aforementioned regulation because no official English version was available for most of the comment period.

Nextility was founded in 2009 and it is an energy services company based in Washington, DC with the goal of offering its customers the ability to lower their energy bills at no up-front cost. In Puerto Rico, Nextility offers the ability to finance, install, and operate solar photovoltaic systems for its business customers. Nextility owns the system, and sell the electricity to its customers through a power purchase agreement (PPA) at rates below what the utility sets. As with Nextility’s customers in US states, the company’s Puerto Rican customers do not pay anything up-front.

Nextility’s primary business service, developing solar energy systems, aligns with the stated policy interests of Puerto Rico’s governing body. Act 57 and Act 82 are meant to create greater energy choice, a more transparent energy market, lower energy costs for Puerto Ricans, and greater renewable energy development in Puerto Rico. Nextility saves its customers money on energy bills, primarily through the deployment of solar energy systems. This is also true for other solar companies in the industry.

For Regulation 8618 to positively impact the Puerto Rican energy economy, it should add market transparency and consumer protections, while also allowing businesses to offer energy services to local consumers that lower their energy costs and increase their energy choices. However, as currently written, Regulation 8618 restricts energy companies by raising barriers to entry through high compliance costs and report submissions on subject areas beyond the scope of distributed renewable generation companies’ business practices and responsibilities. This Regulation will stop small businesses from offering distributed generation services, including renewable energy

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<sup>1</sup> Website link: <http://energia.pr.gov/aviso-sobre-publicacion-de-reglamento-07162015-english/>

sales. This will lead to Regulation 8618 acting against the public interest by restricting energy choices and consumers' ability to lower their energy costs.

First, these comments will ask for clarification on which types of Electric Service Companies are required to comply with Regulation 8618, provide an example of how US states regulate distributed renewable energy companies, and describe how multiple requirements in Regulation 8618 go beyond both this paradigm and the services distributed generation companies provide.

### Clarification of the Definition of Electric Service Company

The definition of Electric Service Company in Section 1.07 of the Regulation is very broad, and would apply to the owner of a large central generation facility, a solar company that develops small commercial systems, and even a construction company that is subcontracted to install the system. The definition includes the phrases:

- “any natural or legal person or entity that offers services of generation, storage, invoicing or resale of electric power”
- “any natural or legal person or entity having an electric power generation facility for the purpose of selling energy, including distributed generators with an aggregated capacity greater than 1 MW...” and
- “any person dedicated to the installation and maintenance of distributed generators with an aggregated capacity greater than 1 MW”

These phrases create an overly broad definition of Electric Service Company, and leads to undue financial and compliance burdens for distributed generation companies and other small businesses operating across Puerto Rico. Companies that only provide the labor for installing these systems, and who work across multiple construction sectors, would be subject to these regulations as well. This level of compliance would dissuade these installation firms from working on renewable energy projects. Without local labor, solar developers such as Nextility would either need to bring in its own labor force from outside Puerto Rico or be unable to develop solar systems on the island.

Additionally, the Electric Service Company definition includes the repeated phrase “distributed generators with aggregated capacity greater than 1 MW” to set which distributed generation owners must comply with these regulations. The specific phrase “aggregated capacity” creates ambiguity. It could be interpreted in at least three different ways:

- It could refer to the total panel capacity of one solar system. For example, as long as Nextility developed solar systems with a capacity below 1 MW, it would not be subject to Regulation 8618.
- It could refer to the total capacity of all the systems one company owns or has installed in Puerto Rico. For example, Nextility typically installs solar systems under 1 MW, but would be required to comply with Regulation 8618 once the capacity of all of its systems is greater than 1 MW. Or,
- It could refer to the capacity of the average system installed or owned by a company. For example, if Nextility typically installed and owned solar systems with a capacity greater

than 1 MW, it would be required to comply with Regulation 8618. If, however, Nextility typically installed and owned solar systems of 500 kW, it would not be required to comply with this Regulation.

Nextility respectfully recommends that the Commission amend Section 01.07 to clarify the definition of Electric Service Company in order to conform to the first bulleted point. In Washington, DC, for example, Nextility has installed solar systems with a total capacity well over 1 MW, but those individual systems are typically in the 50-200 kW size. State governments, in general, define companies through the individual projects that they develop, own, and operate. Nextility anticipates that it will develop individual projects under 1 MW, however a clear threshold must be defined to provide Nextility and other companies with exact compliance requirements. With the current wording of Section 1.07, there is no clear guidance.

Nextility also recommends that the threshold for compliance be raised to 2 MW. States such as Maryland allow systems as large as 2 MW to be part of their net energy metering program<sup>2</sup>. Solar systems with less than 2 MW of total capacity are considered commercial-scale systems and can be installed on large rooftops. Small businesses developing these projects would still realize disproportionately high compliance costs relative to their available resources and scope of their business services.

Due to this ambiguity, Nextility's comments assume that it will be required to comply with Regulation 8618 when it has been fully implemented.

### Renewable Distributed Generation Regulation in the United States

Nextility believes it is important for the Commission's regulations to differentiate between owners and operators of central generating facilities and distributed generation companies that work with individual customers. Even more important, in the states, many distributed generation companies are developing renewable energy systems. These types of companies have vastly different business models, with different relationships to the regulated utility.

State governments' regulations generally reflect the difference between a central generating facility owner, a regulated utility, and a distributed generation system owner. State governments, such as Maryland, regulate on a per-system basis. A company must make sure each system complies with the regulations set by the responsible local jurisdiction(s). Often, the regulations are set through a state's Renewable Portfolio Standard which define renewable distributed generation facilities in a different category as large generation facilities. In general, renewable portfolio standards set the regulatory compliance regime for renewable generation facilities to meet certain qualifications<sup>3</sup>. The Renewable Portfolio Standard for the State of Maryland is one

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<sup>2</sup> Maryland net energy metering statute:

<http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=gpu&section=7-306&ext=html&session=2016RS&tab=subject5>

<sup>3</sup> [http://www.nrel.gov/tech\\_deployment/state\\_local\\_governments/basics\\_portfolio\\_standards.html](http://www.nrel.gov/tech_deployment/state_local_governments/basics_portfolio_standards.html)

example of this<sup>4</sup>. It requires renewable facilities to qualify based on renewable energy source, and a set of criteria set by the Maryland Public Service Commission<sup>5</sup>. This is in addition to a set of interconnection guidelines and approval mechanisms from the regulated utility, and approved by the Public Service Commission.

Distributed renewable generation companies, such as Nextility, gradually grow their customer base and total installed capacity, while maintaining individual relationships with each customer. In fact, each customer is billed for the energy generated on their property. Nextility primarily interacts with regulated utilities during the interconnection process and through net energy metering programs. Nextility is subject to consumer protections as any entity with business licenses, and energy customers can submit complaints to the Public Service Commission. Regulatory compliance occurs as part of each project's development process.

### Deviation from National Best Practices in Regulation 8618

As shown in the previous section, using the State of Maryland as an example, distributed renewable generation companies are subject to a much different set of rules and regulations than has been set forth in Regulation 8618. With respect, this Regulation serves as a major obstacle for a distributed renewable generation company to offer its services, and as a result greater energy choice, to the residents and businesses in Puerto Rico.

Regulation 8618 requires numerous requirements before a distributed generation company can operate and offer its services to Puerto Rican residents and business owners. Many of them, including a list of generation facilities and the amount of space impacted by that generation, assume that the generation asset figures are a static number. As previously stated, distributed generation companies enter into contracts with individual customers and gradually grow their generation assets. The data required for the Commission Certification, as listed in Section 3.03 would be out of date in a matter of months for any successful company signing up customers and deploying new systems.

To a private company, Section 2.02 is very troubling. It requires an Operational Report to be submitted as well, and most of the questions assume a financial predictability (ie. budget predictions) that suggests the stability of a regulated utility or a private entity managing large capital projects. The operational plan assumes that a distributed generation company is a major player in the Puerto Rican energy system by requiring a report that requires societal benefit projections and an analysis of the Puerto Rican energy future, among other requirements. A distributed generation company offers distinct services to its customers, and is only one part of the island's energy system. Section 2.02 essentially requires a distributed generation company to submit an Integrated Resource Plan.

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<sup>4</sup> See Maryland COMAR 20.61 for specific regulations and how distributed renewable generation facilities must qualify for compliance in the Renewable Portfolio Standard.

[http://www.dsd.state.md.us/comar/subtitle\\_chapters/20\\_Chapters.aspx#Subtitle61](http://www.dsd.state.md.us/comar/subtitle_chapters/20_Chapters.aspx#Subtitle61)

<sup>5</sup> [http://webapp.psc.state.md.us/intranet/electricinfo/home\\_new.cfm](http://webapp.psc.state.md.us/intranet/electricinfo/home_new.cfm)

Section 2.02 also requires that a company's proprietary information be submitted to multiple government agencies. If that entity were a regulated utility, that information would not be proprietary. However, for a private distributed generation company to reveal costs of service, financial statements, and its current and projected operating budgets, it would be revealing its business model and long-term strategies. If that information were to be public record, it would hurt its competitiveness in Puerto Rico, and potentially in all of its other markets. The Operational Report requirement could easily be grounds for a distributed generation company to avoid the Puerto Rican energy market.

Section 4.03 requires an annual fee for each distributed generation company that is equal to .25 percent of its gross Puerto Rican income. There is no analogous policy in other US jurisdictions of which Nextility is aware. Generally, if states set up any fees, they are collected on a per project basis as part of a necessary permit or certification process.

In state markets, public service commissions do not require these plans from companies such as Nextility. Instead, these types of operational plans and reports are written by the commissions themselves, and regulated utilities are required to submit integrated resource plans. Regulations, such as a renewable portfolio standard, provides long-term guidance for how renewable energy generation will be integrated into the entire energy system. The energy policy governance structure is set up to monitor and shape the energy grid, directing the regulated utility and opening the door for distributed generation companies to offer their services under a set of regulations.

Nextility recognizes the intent of Regulation 8618: to create a stable and transparent energy market. However, compared to national best practices for regulating distributed renewable energy companies, the Regulation will instead obstruct renewable energy development in Puerto Rico. The high compliance costs will prevent small businesses from expanding their services to Puerto Rico. These costs will also prevent these companies from bringing in financial capital to Puerto Rico, as Nextility is trying to do. Regulation 8618, in its current form, will obstruct the public good it intends to promote.

### Recommendations

Nextility would like to respectfully offer alternatives to compliance requirements defined in the Regulation. The compliance regime should shift its basic unit of compliance, from the distributed generation company to the generation system itself. By doing this, the Commission would ensure that generation assets meet minimum standards to interact with the electric grid, such as through interconnection standards, and that the generation asset will serve its host customer as contracted. Redefining Section 1.07 to set the definition of Electric Service Company based on the size of individual distributed generation systems is consistent with how state governments and public service commissions regulate distributed renewable generation systems.

Nextility does not have an objection to a distributed generation company obtaining certification from the Commission as part of a requirement to operate in Puerto Rico. Any application for certification could include basic company information that meets the public interest, such as

verification that the company can provide the services it is offering to the customer. If that distributed generation company is offering financing services, such as a lease or PPA, it would not be an undue burden for that company to have a Certified Public Accountant sign a statement that he/she has reviewed the company's financial statement and certify that the company can support the financial services it offers. Nextility recommends that Section 3.03 be reformed to reflect this principle.

Nextility respectfully recommends that Section 2.02 be eliminated for the reasons previously stated. Its requirements for documents and reports ask for information about the energy system. Distributed generation companies that install systems "behind the meter" focus on the relationship with and impacts to the host customer. Section 2.02 requires a comprehensive energy plan that is better suited for a regulated utility or governing body to undertake; not a small business whose resources are devoted to the deployment of distributed generation systems.

Nextility recommends that distributed generation companies submit an application for certification for each completed generation system. This application would include nameplate capacity, generation source, basic system diagrams, and other relevant system information. This would allow the Commission, or another energy office in Puerto Rico, to better track the development of distributed generation systems. This would also create data of renewable energy development in Puerto Rico, which would better allow the Commission and other energy offices to oversee renewable energy integration into the electric grid.

Nextility also believes that a gross income fee, defined in Section 4.03 only adds to the compliance costs that Regulation 8618 is creating for distributed generation companies. This is in addition to fees associated with Commission certification and Operational Report submission. If a fee structure is necessary, Nextility recommends that it be a nominal fee levied on each project, based on the capacity of the system. Those fees would go towards programs and government services that facilitate renewable energy development in Puerto Rico.

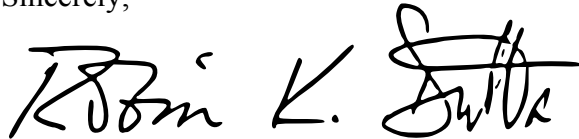
Nextility recommends a longer transition period for any first fiscal year of compliance. The 30-day deadline for the first submission of personal and corporate information, at the same time as Regulation 8618 is open for public comment, is insufficient for small businesses already operating in Puerto Rico, such as Nextility, to devote its limited resources towards compliance. An initial compliance period of 90-120 days, coupled with the other recommendations, would alleviate some of those concerns. The delay in posting an official English translation on the Commission's website, in order to compare the rules to states' best practices, has been a significant hindrance in compliance, as a clear set of rules in English had only been approved by the Department of State on August 3, 2015 and then posted online.

## Conclusion

Nextility appreciates the opportunity to offer comments on Regulation 8618 to the Commission. We believe that the recommendations and US state government examples would improve the Regulation. In this way, the regulation would improve market transparency, where Puerto Rican residents and business owners would know that certified distributed generation companies have

the resources to offer the services they advertise while not requiring those companies to submit proprietary information to the government. It would also empower the newly created agencies overseeing the Puerto Rican energy sector to conduct studies and plan for the future through a streamlined flow of data. The regulatory balance that Nextility suggests would allow small businesses like Nextility to expand operations into Puerto Rico, continue to hire local employees and local businesses, and offer services that lower energy bills across the island.

Sincerely,



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