

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



IN RE: REGULATION FOR PERFORMANCE
INCENTIVE MECHANISMS

CASE NO.: NEPR-MI-2019-0014

SUBJECT: Notice of Proposed Regulation and
Request for Public Comments.

RESOLUTION

I. Introduction.

The new Energy Public Policy of the Government of Puerto Rico, as established by Act 17-2019¹, guarantees, among other things, the universal access to electric service and promotes the necessary changes to transform the electric grid to satisfy the energy needs of its customers. Furthermore, Act 57-2014,² as amended, establishes the provisions for the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") to develop performance-based incentives and penalty mechanisms for electric power service companies.³ Moreover, it is the public policy of the Government of Puerto Rico for the Energy Bureau to establish mechanisms to ensure electric power service companies strictly comply with the Energy Bureau orders.⁴

In light of the above, the Energy Bureau presents its Proposed Regulation on performance incentive mechanisms.

II. Proposed Rules.

The purpose of the Proposed Regulation is to establish the metrics reporting requirements for all eligible Electric Power Service Companies. Furthermore, the Proposed Regulation outlines the process to establish metrics, targets and financial incentives per type of company and/or per company. The Proposed Regulation shall apply to all Electric Power Service Companies, excluding Electric Cooperatives. The Energy Bureau may determine, at its discretion, which entity or entities are exempt from these provisions.

The Energy Bureau delineates the principles that will be applied to Electric Power Service Companies in order to establish performance incentive mechanisms that meet policy

¹ Puerto Rico Energy Public Policy Act.

² Puerto Rico Energy Transformation and RELEIF Act.

³ Act 57-2014, Section 6.3(j).

⁴ Act 17-2019, Section 1.5(3).

goals and desired performance outcomes. Furthermore, the Energy Bureau will establish by Order, the metrics, targets and financial incentives applicable to the Puerto Rico Electric Power Authority ("PREPA") and/or its successor(s), related to the primary areas of responsibility. For other Electric Power Service Companies, the Energy Bureau will determine which incentive mechanisms are needed to induce performance that is consistent with the public interest and the current energy public policy.

III. Comments and Public Participation.

Pursuant to Act 38-2017,⁵ the Energy Bureau will publish a notice on the proposed rulemaking process in a newspaper of general circulation. Pursuant to Section 2.2 of Act 38-2017, the general public may present its comments regarding the proposed regulation until September 25, 2019. The Energy Bureau further invites interested parties to file reply comments to the filed general comments until October 7, 2019.

Comments may be filed as following:

- a. By email to the following address: comentarios@energia.pr.gov;
- b. Online, using the Energy Bureau's Electronic Filing System, at the following address: <https://radicacion.energia.pr.gov>.
- c. By mail addressed to the Puerto Rico Energy Bureau's Clerk's Office, at World Plaza Building, 268 Muñoz Rivera Ave., Suite 202, San Juan, PR 00918; or
- d. In person at the Energy Bureau's Clerk's Office, located at the address set forth above.

In addition, the Energy Bureau will hold a public hearing on **September 25, 2019, at 10:00 a.m.**, at the Energy Bureau Hearing Room located at World Plaza Building, 268 Muñoz Rivera Ave., Eight Floor, San Juan, Puerto Rico. Any person interested in participating in the process may appear at the public hearing.

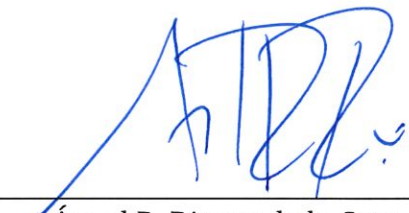
Be it notified and published.



Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ángel R. Rivera de la Cruz
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner

⁵ Known as the *Administrative Procedure Act of the Government of Puerto Rico*, as amended.



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on August 26, 2019. I also certify that on August 26, 2019 a copy of this Resolution was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeep.com and c-aquino@prepa.com. I also certify that today, August 26, 2019, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to the following:

Puerto Rico Electric Power Authority

Attn.: Nitza D. Vázquez Rodríguez

Astrid I. Rodríguez Cruz

Jorge R. Ruiz Pabón

PO Box 363928

San Juan, PR 00936-3928

For the record, I sign this in San Juan, Puerto Rico, today August 26, 2019.

Sonia M. Seda Gaztambide
Interim Clerk



GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board
Puerto Rico Energy Bureau

REGULATION FOR PERFORMANCE INCENTIVE MECHANISMS

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REGULATION FOR PERFORMANCE INCENTIVE MECHANISMS

ARTICLE 1.- GENERAL PROVISIONS

Section 1.1.- Title.

This regulation shall be known as the *Regulation for Performance Incentive Mechanisms* ("Regulation").

Section 1.2.- Legal Basis and Applicability.

The Energy Bureau adopts this Regulation pursuant to the provisions of Section 1.5(3) of Act 17-2019, known as the *Puerto Rico Energy Public Policy Act*; Sections 6.3(j) and 6.25B of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act*; and Act 38-2017, known as the *Uniform Administrative Procedures Act of the Government of Puerto Rico* ("LPAU" for its Spanish acronym).

In this Regulation, the Energy Bureau sets forth the reporting requirements for all eligible Electric Power Service Companies and outlines the process by which Metrics, Targets, and Financial Incentives shall be established. This Regulation shall apply to all Electric Power Service Companies, excluding Electric Cooperatives. The Energy Bureau may determine, at its discretion, which entity or entities are exempt from these provisions.¹

Section 1.3.- Interpretation.

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

Section 1.4.- Provisions of Other Regulations.

The provisions of this Regulation may be supplemented by the provisions of other regulations of the Energy Bureau that are compatible with the provisions of this Regulation.

Section 1.5.- Unforeseen Proceedings.

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

Section 1.6.- Dates and Time Periods.

In computing any time period established in this Regulation, or by Order of the Energy Bureau, the day of the occurrence of the act, event, or noncompliance that triggers the period

¹ Act 57-2014, Article 6.25B.

shall not be counted, and the established period shall begin to elapse on the following calendar day. Whenever a due date falls on a Saturday, Sunday, or legal holiday, said due date shall be extended until the next workday.

Section 1.7.- 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 the purposes of this Regulation, the following terms will have the meaning established below, except when the context of the content of any provision clearly indicates something else:
 - 1) "Demand-Side Management Provider" refers to any Person that is engaged in the provision of Demand-Side Management Services to Customers.
 - 2) "Demand-Side Management Services" refers to the provision of any energy conservation, energy efficiency, demand response, and customer-sited generation and/or storage services provided directly to a Customer that aids in meeting that Customer's electric load.
 - 3) "Electric Cooperative" refers to cooperatives organized under the provisions of Act 239-2004, known as the *General Cooperative Associations Act of 2004*, as amended, for the main purpose of meeting individual and common electric power needs of their cooperative members, affiliated consumers and/or communities through electric power generation, transmission and/or distribution systems.
 - 4) "Electric Power Generation Company" refers to any 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 Energy Bureau. This term shall include generators already established in Puerto Rico that supply energy to PREPA through a Power Purchase Agreement and renewable energy producers. An independent power producer shall be deemed to be an Electric Power Generation Company. All Electric Power Generation Companies shall be deemed to be Electric Power Service Companies.
 - 5) "Electric Power Grid" refers to the electric power transmission and distribution infrastructure owned by PREPA.
 - 6) "Electric Power Service Company" or "Company" refers to any Person, engaged in the rendering of electric power generation, transmission, and distribution services, billing, wheeling, grid services, energy storage, the resale of electric power, as well as any other electric power service as defined by the

Energy Bureau in Regulation 8701.² PREPA and the Transmission Distribution Provider/System Operator shall be deemed to be Electric Power Service Companies. Net metering shall not be deemed to make an end-use customer into an Electric Power Service Company, nor shall Demand-Side Management Providers be deemed to be Electric Power Service Companies.

- 7) "Energy Bureau" refers to the Puerto Rico Energy Bureau, established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, and Act No. 211-2018, formerly the Puerto Rico Energy Commission, created under Act No. 57-2014, as amended, which is a specialized independent entity in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico.
- 8) "Financial Incentive" refers to the financial reward or penalty attached to a Target and which is applied to a given Electric Power Service Company, for meeting or failing to meet such Target. The Financial Incentive shall be expressed as an incentive fee paid in nominal U. S. dollars.
- 9) "Interested Party" refers to any Company, and any other Person interested in providing comments to the Energy Bureau regarding the procedures contemplated in this Regulation.
- 10) "Metric" refers to a quantifiable indicator which can be used and tracked over time to evaluate an entity's performance.
- 11) "OSHA" refers to the Occupational Safety and Health Administration of the federal government of the United States.
- 12) "Performance Incentive Mechanism" or "PIM" refers to any Metric, Target, or Financial Incentive established to induce Companies to improve their performance.
- 13) "Interim Performance Report" refers to the report a Company files with the Energy Bureau at sub-annual intervals pursuant to Article 4.1 of this Regulation.
- 14) "Annual Performance Report" refers to the report a Company files with the Energy Bureau pursuant to Article 4.2 of this Regulation.
- 15) "Person" refers to a natural person; a juridical or legal person created, organized, or existing under the laws of the Government 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 agency,

² Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico, February 5, 2016.

board, bureau, public corporation or other government entity.

- 16) "PREPA" refers to the Puerto Rico Electric Power Authority, a corporate entity created by virtue of Act No. 83 of May 2, 1941, as amended, and any successor entity, including but not limited to a transmission and distribution concessionaire.
- 17) "PR OSHA" refers to the Puerto Rico Occupational Safety and Health Administration.
- 18) "Renewable Portfolio Standard" or "RPS" refers to the Renewable Portfolio Standard established in Act No. 82-2010, as amended, known as the *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*.
- 19) "Reporting Period" refers to the time period for which the Energy Bureau issues an Order establishing Metrics, Targets, and Financial Incentives.
- 20) "System Operator" or "SO" refers to the legal entity assigned responsibility for, among other things, overseeing and facilitating wholesale exchanges of electricity, operating the electric power grid in a reliable and efficient manner, and ensuring open access to the Electric Power Grid, in coordination with the Transmission and Distribution Provider.
- 21) "Target" refers to the goal associated with a Metric and against which a Company's performance shall be evaluated.
- 22) "Transmission and Distribution Provider" or "TDP" refers to the entity that owns or leases the Electric Power Grid and maintains that Electric Power Grid.

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

Section 1.8.- Controlling Version.

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

Section 1.9.- 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 that has been 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, except where it has been specifically and expressly invalidated for all cases.

Section 1.10.- 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 Internet website. The fact 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 not relieve any party of its obligation to comply with the provisions stated herein, provide the information required by this Regulation, or otherwise comply with any applicable Energy Bureau Order.

Section 1.11.- Mode of Submission.

The forms, documents, and appearances required by virtue of 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 virtue of 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 at that time through an Order from time to time.

Section 1.12.- 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 said 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 1.13.- Confidential Information.

If in compliance with the provisions of this Regulation or any of the Energy Bureau's Orders, a Person has the duty to disclose information to the Energy Bureau considered to be confidential, a commercial or industrial secret under Act 80-211, or 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 CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information. Except in the case of 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 1.14.- Validity.

Pursuant to Section 2.8 of LPAU, this Regulation shall enter into effect thirty (30) days after its submission to the Puerto Rico Department of State and the Legislative Library of the Office of Legislative Services.

Section 1.15.- Penalties for Non-Compliance.

Any Person who fails to comply with any of the requirements set forth in this Regulation may be subject to an enforcement action pursuant to the provisions of Act 57-2014, and any other applicable laws or regulations, including but not limited to Regulation 8543³ and may be subject to any other applicable administrative sanction or penalty deemed appropriate by the Energy Bureau.

Section 1.16.- Compliance with Other Applicable Legal Requirements.

Compliance with this Regulation shall not relieve any party affected by this Regulation from fully complying with other applicable legal and regulatory requirements enforced by any other government entity.

ARTICLE 2.- ENERGY BUREAU AUTHORITY

The Energy Bureau has the power and duty to “establish performance-based incentives and penalty mechanisms.”⁴ It is the public policy of the Government of Puerto Rico that the Energy Bureau “establish and use performance-based incentives and penalty mechanisms” for Electric Power Service Companies “as well as mechanisms that ensure strict compliance with the Orders of the Energy Bureau.”⁵ Among the mechanisms available to the Energy Bureau to use is performance-based regulation,⁶ which necessarily includes the use of Performance Incentive Mechanisms.⁷

³ *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, as amended, December 18, 2014.

⁴ Act 57-2014, Section 6.3(j).

⁵ Act 17-2019, Section 1.5(3).

⁶ Act 57-2014, Section 6.25B.

⁷ Act 57-2014, Section 6.3(rr). The Energy Bureau shall have all the implicit and incidental powers necessary to fulfill its duties.

ARTICLE 3.- PROCEEDINGS TO IMPLEMENT PERFORMANCE INCENTIVE MECHANISMS

Section 3.1.- Overview.

The Energy Bureau shall initiate a proceeding per type of Company and/or per Company to establish the Metrics, Targets and Financial Incentives. After the initial proceeding to implement the Performance Incentive Mechanisms, the Energy Bureau shall hold an annual proceeding to evaluate the relevant Companies' Performance Reports, to make any adjustments to the Metrics, Targets, or Financial Incentives, and to determine whether to establish, eliminate, or modify any Metric, Target, or Financial Incentive.

Section 3.2.- Initial Proceeding on Performance Incentive Mechanisms.

- A) For the initial proceeding to establish Performance Incentive Mechanisms, the Energy Bureau shall issue an Order of Intent setting forth the Metrics, Targets, and Financial Incentives mechanism applicable to each Company for the first Reporting Period. The Order of Intent shall also set forth a schedule for public comments and reply comments by Interested Parties and may include specific areas for which the Energy Bureau is seeking comment.
- B) The Energy Bureau shall consider the comments of the parties in issuing an Order setting forth the Performance Incentive Mechanisms for the first Reporting Period and shall address the comments of the Interested Parties.

Section 3.3.- Annual Proceedings.

- A) The purpose of the annual proceeding shall be to set forth the Metrics, Targets, and Financial Incentives that shall apply for the next Reporting Period.
- B) The Energy Bureau shall open the Annual Proceeding at least three (3) months prior to the end of the current Reporting Period.
- C) Each year's annual proceeding shall consider the Annual Performance Report filed by a Company during that year (*i.e.*, pertaining to the previous year), if available, as well as all available Interim Performance Reports from that year.
- D) The Energy Bureau, at its discretion, may suspend the annual proceeding until a later date, in which case the current Metrics and Targets, as well as any applicable Financial Incentives, shall remain in effect until such time as the Energy Bureau resumes the annual proceeding and issues an Order setting forth the new Metrics, Targets, and, if applicable, Financial Incentives.
- E) The Energy Bureau shall issue a Final Order, based on conclusions of law and findings of fact, which shall document its rulings on the Final Annual Report, the Company's

compliance during the Reporting Period, and incorporate findings from any audit, if ordered and available during the Reporting Period. If applicable, the Energy Bureau shall also set forth the new set of Metrics and Targets, as well as any Financial Incentives to be established, for the next Reporting Period.

Section 3.4.- Assessment of Financial Incentives.

Any penalty or reward assessed or imposed as a result of compliance or noncompliance with the applicable Metrics and Targets shall be implemented through an Order issued by the Energy Bureau.

Section 3.5.- Comments by Interested Parties.

In each of the proceedings described in Section 3.1 of this Regulation, the Energy Bureau shall establish a comment period (comments and reply comments) for Interested Parties. The Energy Bureau may decide, at its discretion, to hold public hearings, technical conferences, or workshops for these proceedings or any other proceeding regarding Performance Incentive Mechanisms, as set forth in Sections 3.6, 3.7, and 3.8 of this Regulation.

Section 3.6.- Public Hearings.

The Energy Bureau, at its discretion, may schedule one or more public hearings during which members of the public shall be provided with the opportunity to provide testimony or comments on the Initial Proceeding to establish of new Metrics, Targets, and Financial Incentives and Annual Proceedings.

Section 3.7.- Technical Conferences.

Once an Annual Proceeding is commenced, the Energy Bureau, at its discretion, may issue an Order scheduling a Technical Conference for a Company to present its most recent final Annual Performance Report and any other Performance Reports filed in accordance with Section 4.1 and Section 4.2 of this Regulation, and answer questions from the Energy Bureau Staff, its consultants, and Interested Parties. The technical conference shall be open to the public to attend. The Energy Bureau may schedule as many technical conferences as it deems necessary.

Section 3.8.- Workshops.

The Energy Bureau, at its discretion, may issue an Order establishing one or more workshops on Annual Reporting for Metrics, Targets, and Financial Incentives in which interested parties may participate. Through the same Order, the Energy Bureau shall set forth the scope of the workshop and the subjects to be discussed.

ARTICLE 4.- METRIC REPORTING REQUIREMENTS

Section 4.1.- Interim Performance Reports.

- A) Each Company subject to compliance with any Metric may be required to submit one or more Interim Performance Reports at sub-annual intervals (*e.g.*, monthly, quarterly) which the Energy Bureau will determine in the Annual Proceeding set forth in Section 3.3 of this Regulation.
- B) Interim Performance Reports shall record the values of each Metric(s) for the corresponding sub-annual interval.
- C) The required format for the Interim Performance Reports, and any other information required to be included in such Interim Performance Reports, shall be determined by the Energy Bureau as part of the annual proceeding.
- D) For the first Reporting Period, the required format and information to be contained in the Interim Performance Report shall be defined in the Order of Intent described in Section 3.2 of this Regulation.
- E) The Company shall maintain all workpapers and documentation associated with the values contained in the Interim Performance Reports for a period of at least ten (10) years and shall file such workpapers and documentation promptly upon request by the Energy Bureau.

Section 4.2.- Annual Performance Report.

- A) Within sixty (60) days after the end of each Annual Reporting Period, as established by the Energy Bureau, each Company subject to compliance with a Metric or Metrics shall file before the Energy Bureau an Annual Performance Report corresponding to that Reporting Period.
 - 1) The Annual Performance Report shall include the following for each applicable Metric:
 - a) The achieved level for each sub-annual period (for Metrics with reporting more frequent than annual) and the year as a whole;
 - b) A narrative discussing in detail what progress was achieved;
 - c) Whether the Company met the Targets established by the Energy Bureau for that Reporting Period, including, in the case that the Company did not perform to the level of the Target (or the mid-level if the Target has differentiated levels) the justifications, if any, for failing to achieve that level;
 - d) All workpapers or documents supporting the Company's findings;

- e) The processes put in place by the Company to enable progress as well as any other pertinent information;
 - f) A description of any impediment or barriers that hindered the Company's progress during the Reporting Period;
 - g) An assessment of what the Company believes it could do better to improve performance; and
 - h) Any other information the Energy Bureau requests or that the Company believes is relevant to the Energy Bureau's understanding of the Company's performance with respect to that Metric.
- 2) The Company's Annual Performance Report shall also include, to the extent applicable, a section proposing new metrics for the Energy Bureau's consideration for the next reporting period. Such section shall include:
- a) The proposed Metric to be used to evaluate the entity's performance;
 - b) The current baseline of performance of each proposed Metric;
 - c) The frequency with which the entity should file any Interim Performance Report on the Metric;
 - d) Whether the proposed Metric should have a Target and what that Target should be;
 - e) Any proposed Financial Incentive for compliance or noncompliance with the Target; and
 - f) Any other information the Company would like to supply to the Energy Bureau in support of its proposal.

ARTICLE 5.- COMPLIANCE AUDITS

- A) The Energy Bureau, at its discretion, may require an independent audit of the compliance of each Company at any time following the filing of a Performance Report.
- B) The independent auditor shall be selected through a competitive bid process conducted either by the Energy Bureau or the Company.
- C) If the Company conducts the bidding process, it must comply with the following requirements:
 - 1) The Energy Bureau shall specify the auditor's scope of work which the Company shall include in its Requests for Proposals.
 - 2) The Company may make a recommendation to the Energy Bureau regarding

the selection of the auditor; however, the winning bidder shall be approved by the Energy Bureau.

- D) The auditor shall report to the Energy Bureau and shall prepare a report on its findings and recommendations that will be filed before the Energy Bureau.
- E) The auditor shall be paid for by the Company, with any costs to PREPA recoverable in rates in the manner specified by the applicable Energy Bureau's Order.

ARTICLE 6.- PUBLICATION OF REPORTS, AUDITS AND ENERGY BUREAU'S ORDERS

Any Company that is required to report on Metrics shall publish on its website a true and exact copy of the following documents:

- A) The Order of Intent;
- B) Annual Performance Report;
- C) Any audit report required by the Energy Bureau;
- D) Any Energy Bureau Order on the Annual Performance Report;
- E) Any Order of the Energy Bureau on the imposition of penalties or rewards; and
- F) Any other document required by the Energy Bureau.

The foregoing documents shall be published in PDF format, accessible to the public via download free of charge, from the date upon which each one is filed with the Energy Bureau or notified by the Energy Bureau, as applicable.

ARTICLE 7.- PROCESS FOR ESTABLISHING PERFORMANCE INCENTIVE MECHANISMS

Section 7.1.- Principles for Establishing Performance Incentive Mechanisms.

The Energy Bureau shall apply the following principles in establishing Performance Incentive Mechanisms:

- A) The Energy Bureau's policy goals and desired outcomes, including but not limited to:
 - 1) The volatility and affordability of the electric power service rates;
 - 2) The economic incentives and investment payback;
 - 3) The reliability of the electric power service;
 - 4) Customer service and commitment, including options to manage electric power costs available to customers;

- 5) Customers' access to the Electric Power Service Companies' information systems including, but not limited to, public access to information about the aggregated customer energy consumption and individual consumers' access to the information about their energy consumption;
 - 6) Compliance with Metrics to achieve the energy efficiency standards established in Act 17-2019;
 - 7) Compliance with the Renewable Portfolio Standard and rapid integration of renewable energy sources, including the quality of the interconnection of resources located in consumers' properties;
 - 8) Infrastructure maintenance;
 - 9) Compliance with federal and local environmental policies, as applicable; and
 - 10) Other relevant policy goals established by the Energy Bureau.
- B) Performance Incentive Mechanisms should be used to induce behavior consistent with public policy that would not otherwise occur to a sufficient degree in the absence of the Performance Incentive Mechanism.
 - C) Performance Incentive Mechanisms shall be clearly defined, easily interpreted, and easily verified.
 - D) Performance Incentive Mechanisms shall focus on performance areas that are within reasonable control of affected Companies.
 - E) Performance Incentive Mechanisms shall be designed to maximize net benefits for customers. Where benefits and costs are quantifiable, the net benefits should be greater than the Financial Incentive payments.
 - F) Performance Incentive Mechanisms shall be designed to provide the affected Company with no more total financial incentives than are needed to align their performance with the public interest.
 - G) Performance Incentive Mechanisms should be designed to complement the existing financial incentives for each affected Company, without under- or over-compensating them for achieving the desired outcomes.

Section 7.2.- Establishment of Incentives and Penalties.

- A) With respect to PREPA, the Energy Bureau shall apply Metrics and Targets only, until the point in time when there is a for-profit successor company operating as the

transmission and distribution concessionaire under a contract with PREPA, then the Energy Bureau may apply Financial Incentives to the successor.

B) At the Energy Bureau's discretion, Financial Incentives shall be applied as follows:

- 1) Financial Incentives for for-profit companies subject to rate regulation by the Energy Bureau shall be established on an individual, case-by-case basis for Metrics that the Energy Bureau determines are subject to a Financial Incentive and shall be paid as an incentive fee.
- 2) For all for-profit companies that are regulated by the Energy Bureau, the Bureau may impose penalties for noncompliance in accordance with its authority pursuant to pursuant to Section 5.32 of Act 17-2019 amending Section 6.36 of Act 57-2014.

Section 7.3.- Electric Power Service Companies.

A) PREPA

- 1) The Energy Bureau shall establish by Order the Metrics, Targets, and Financial Incentives to be applied to PREPA and/or its successor(s) related to its primary areas of responsibility. The performance areas that will be subject to Metrics, Targets, and Financial Incentives may include, but are not limited to, the following:
 - a) Customer service;
 - b) Financial performance;
 - c) Generation performance;
 - d) Management and Operations;
 - e) Regulatory;
 - f) Reliability and Resilience;
 - g) System performance; and
 - h) Employee safety.

2) Each Financial Incentive shall be designed according to the principles outlined in Section 7.2, and may include, for example but not limited to, one or more of the following design features:

- a) A reward;
- b) A penalty;
- c) A minimum performance level below which no reward is earned;
- d) A target performance level indicating the desired performance goal;
- e) A maximum performance level above which no reward is earned;
- f) Symmetrical rewards and penalties, whereby performance above a target level is rewarded by an amount that is mirrored by a penalty for performance at a comparable amount below the target level;
- g) Asymmetrical rewards and penalties, whereby performance above a target level is rewarded by an amount that is not mirrored by a penalty for performance at a comparable amount below the target level. Some Financial Incentives might provide penalties with no rewards, and vice versa;
- h) A deadband reflecting the range above and below the target level of performance within which no penalty or reward is earned; and
- i) A sharing of rewards and penalties between customers and the entity subject to the Financial Incentives.

B) Other types of Electric Power Service Companies

- 1) With the exception of Electric Cooperatives, the Energy Bureau may apply Performance Incentive Mechanisms to other types of Electric Power Service Companies, if the Energy Bureau determines that Performance Incentive Mechanisms are needed to induce them to perform in a way that is consistent with the public interest and Puerto Rico energy policies.

ARTICLE 8.- RECONSIDERATION AND JUDICIAL REVIEW

Section 8.1.- Reconsideration

Any Person that 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 8.2.- 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 LPAU and the applicable Rules of the Court of Appeals.