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

IN RE: REGULATION ON PERFORMANCE INCENTIVE MECHANISMS	**CASE NO.**: NEPR-MI-2019-0014 **SUBJECT**: Public Comment Request

To the Honorable Energy Bureau:

Comes now Sunrun, to submit comments as per the *Request for Public Comments* notified on August 26th, 2019 regarding the above captioned matter.

Introduction

As expressed by this Honorable Energy Bureau (hereinafter "PREB"), Act 17-2019, establishes the provisions for the PREB to develop performance-based incentives and penalty mechanisms for Electric Power Service Companies ("EPSCs"). As such the Proposed Regulation aims to establish the metrics reporting requirements for all *eligible* EPSCs via the proposed Regulation on Performance Incentives Mechanisms (hereinafter "Draft Regulation" or "Proposed Regulation"). PREB is focusing, correctly, on "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" which shall be established via PREB Resolution and Order. Also, in the case of EPSCs not exempted from the Proposed Regulation, PREB aims to establish the "incentive mechanisms... needed to induce performance that is consistent with the public interest and the current energy public policy."

Sunrun congratulates the PREB on its initiative to carry out the mandate that has been established by the Legislature as per Act 17-2019. Sunrun's systems are characterized by their accessibility as we believe there is a better, less expensive, and cleaner way for families to power their homes via rooftop solar, storage and energy services. These tenets are our DNA, they are what moves us, they are what ultimately incentivizes us. And they are not only aligned with Act 17; they are, in our view, at the heart of Act 17. Sunrun is committed to ensuring that all customers have a viable choice in how they procure and consume electricity, with the best photovoltaic and storage technology. As such, regulation must therefore fall only on the utility, and if extended beyond that natural

scope, only those EPSCs that are unaligned with Act 17's renewable energy goals, as mandated by said Act.

Specific Comments:

Act 17-2019, Section 5.21, amends Act No. 57-2014, to read as follows:

> "Section 6.25B.- Performance-Based Incentives and Penalty Mechanisms. It is necessary to encourage energy companies to invest, in a cost effective manner, in infrastructure, technology, the incorporation of distributed generation, renewable energy sources, and services that inure to the benefit of the electrical system and consumers. Thus, the Energy Bureau shall prescribe by regulations, on or before December 31, 2019, such incentive and penalty mechanisms that take into account electric power companies' performance and compliance with the performance metrics set forth in the energy public policy. In developing such performance-based incentives and penalties, the Energy Bureau shall take into account the following criteria, among others:
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> (a) the volatility and affordability of the electric power service rates;
> (b) the economic incentives and investment payback;
> (c) the reliability of the electric power service; customer service and commitment, including options to manage electric power costs available to customers;
> (d) customers' access to the electric power companies' information systems including, but not limited to, public access to information about the aggregated customer energy and individual consumers' access to the information about their electric power consumption;
> (e) 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;
> (f) compliance with metrics to achieve the energy efficiency standards established in this Act;
> (g) infrastructure maintenance. Among the mechanisms to be used, the Bureau may consider using, but not limited to, the following: i. Decoupling mechanisms: ii. Performance-Based Regulation or PBR; iii. Time of Use

> Rates; iv. Prepaid Rates. v. Unbundled Rates; vi. Formula Ratemaking and rate review mechanism; vii. Reconciliation Mechanisms.
> Electric power service companies, as determined by the Bureau through regulations, including those organized as energy cooperatives or those other entities determined by the Bureau shall be exempt from this provision."

Also, Act 17-2019, Section 1.5(3) (Energy Regulatory Entity and Performance-based Regulations) adds:

> [...] (b) The Bureau shall thoroughly scrutinize the electric power grid maintenance as well as require periodic reports on the maintenance status of the electric power grid as well as the plans developed to satisfy such needs; (c) The Bureau shall use mechanisms other than cost-based regulation when deemed necessary in order to comply with and implement the metrics and goals set forth in this Act; (d) When deemed appropriate, **during ratemaking processes,** the Bureau shall establish performance-based incentives and penalty mechanisms for electric power service companies as well as mechanisms that ensure strict compliance with the orders of the Bureau [...]. [Emphasis provided.]

The aforementioned sections correctly focus on ways to move traditional rate-regulated utilities, like PREPA, in the correct direction, and towards excellence. In this connection, note that the cited statutory obligations are simply inapplicable outside of that utility context (and even more so in the case of distributed solar and storage) such as "encourage energy companies to invest in distributed renewable resources", "volatility of rates", "reliability of electric power service", "compliance with the RPS", "decoupling mechanisms", "unbundled rates", and many others. These are all utility obligations.

For example, the goal of "reliability" requires examination through the lens of utility privilege; when outages occur and for which customers, and determining the relative importance of the frequency and duration of outages past a certain base level of performance. A 3 pm, hour-long outage for a business can be a problem, unless that customer has 1 hour of back-up energy storage. Conversely, a 3 am, hour-long outage for the same customer is much less likely a problem than a 3 pm outage, generally speaking (and would be no problem with that hour-long battery backup.

Reducing the frequency or duration of outages, and the relative costs to consumers for achieving marginal improvements in reliable electric service, must be evaluated in relation to the main desired outcome, which should include development DERs that, if appropriately integrated into utility operations, could deliver services to reduce the costs of outage and other reliability related utility investments.

PREB's rulemaking discretion, as specifically bound by this section, will be fundamental to help drive rate-regulated non-renewable energy companies, today PREPA and/or its successor(s), to perform in some of the specific aspects that will allow compliance with Act 17's renewable energy goals and mandates, particularly the 100% renewables RPS. In this sense, performance objectives not linked to these pro-renewable goals might be a non-optimal use of limited PREB and also PREPA's resources.

Via Act 17's Statement of Motives, the Legislature also expresses in a clear and detailed way what must change in Puerto Rico; in a way, the Legislature points out what must be incentivized via the proverbial "carrots and sticks", so that the pertinent rate-regulated utility,actually performs, and thus Puerto Rico's electricity ecosystem starts moving in the right, Act 17 compliant, direction.

The Legislature pinpointed these problems:

> "[...][L]ack of infrastructure maintenance, the inadequate distribution of generation vis-àvis demand, the absence of the necessary modernization of the electrical system to adjust it to new technologies, energy theft [...] poor energy diversification, the hindering of the integration of distributed generation and renewable energy sources, and high fossil fuel dependency.
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> [...][P]ower plants of the Electric Power Authority have become the main polluters of our environment given their high greenhouse gas emissions. The pollution generated by the Authority worsens the effects of climate change. [...]
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> For such reason[s], the enacted legislation recognized the need to approve a new regulatory framework and a cutting-edge public policy on energy that encourages the use of new technology, alternative energy methods, distributed generation and renewable energy sources, the integration of microgrids, and the flexibility of a competitive market. [...]

> The performance metrics of Puerto Rico's electric power system show that we are far below the United States in the System Average Interruption Duration Index (SAIDI), the System Average Interruption Frequency Index (SAIFI), and the Customer Average Interruption Duration Index (CAIDI). These indexes are used as reliability indicators by electric power utilities to show the average outage duration for each customer served; the average number of interruptions that a customer experiences; and the average outage duration time that any given customer experiences with the average restoration time, respectively. [...]
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> To attain these objectives, this Act [...] imposes, among other measures, responsibility for lack of diligence in or noncompliance with the implementation of the energy public policy of Puerto Rico, and it adopts incentive mechanisms that make the enforcement thereof feasible."

Realizing the vision of transforming the regulatory compact and achieving fundamental changes to the utility business model in service of the public interest is an extremely challenging undertaking. To successfully achieve the goals and deliver the outcomes desired from this proceeding, every aspect of the existing utility business model should be held up to careful evaluation to determine what changes need to be made to ensure they comport with the statutory requirements for implementing PBR, and also support realization of a transformative vision for how electricity service is provided in Puerto Rico.

Integrating PIMs into the regulatory paradigm is a critical element of aligning the PREPA's business model with Puerto Rico energy public policy, as mandated by Act 17. These are parts of the toolset when the utility lacks an incentive (or has a disincentive) to align its performance with a public interest (such as Act 17's RPS & other pro renewables statutory policies) and/or there is evidence of underperformance, or evidence that improved performance will deliver incremental benefits.

Traditional regulatory paradigms encourage rate-regulated utilities to make substantial investments in new power plants and the grid in order to earn a profit, but the performance-based approach allows utilities to earn profits for exemplary performance as an operation. PIMs are a regulatory tool commissions utilize to integrate elements of performance-based regulation ("PBR") into traditional cost-of-service regulation

("COSR") when COSR fails to advance desired legislated public policy goals. PIMs should be grounded on a functional analysis, structured to reward specific desired actions, with incentives much more narrowly tailored than has been the practice in the industry to date.

And this must be so since the current regulatory compact embodied in COSR regulation provides utilities a high degree of competitive advantage that must be recognized and critically evaluated. The current utility business model is more than 100 years old and the relative allocations of market power are deeply embedded in the existing structure. In order to achieve truly transformational change through a new structure of incentives and profit motives, existing assumptions must be identified and addressed. In short, the incumbent utility enjoys what could be called "utility privilege." Utility privilege is the ability of utilities to maintain their market power status in a regulatory environment that masks market inequality.

Note that in some instances, it may be appropriate to design a PIM that allocates a as an upside only (reward), while in other instances it may be appropriate to allocate a downside only (penalty). The variations in PIM design provide additional means to allocate risk under different reward / penalty structures to incentive performance and disincentivize non-performance by the rate-regulated utility.

Leading states are exploring PIMs to more closely align utility incentives with public policy goals. In 2018, Hawai'i enacted legislation requiring the Hawai'i Public Utilities Commission ("Hawai'i PUC") to "establish performance incentives and penalty mechanisms that directly tie an electric utility's revenues to that utility's achievement on performance metrics and break the direct link between allowed revenues and investment levels." H.R.S. § 269-16.1(a).

On May 23, 2019, the Hawai'i PUC issued an order concluding the first phase of the PUC's PBR proceeding. The PUC's order establishes a series of performance-based regulation (PBR) tools intended to update traditional cost of service regulation with a new framework that will reward the Hawaiian Electric Companies (HECO) for performance in achieving specific outcomes, such as increased renewable energy integration (in 2015, Hawaii adopted the first 100 percent renewable energy target by 2045). As mentioned, these rate-regulated utilities will be able to earn additional revenue if they achieve performance targets, including accelerating the installation of new clean energy technologies, the faster connection of rooftop solar and battery storage systems.

See, https://puc.hawaii.gov/energy/PBR/. See also the PUC's Document Management System, under Docket No. 2018-0088, at http://dms.puc.hawaii.gov/dms/. **Sunrun opines that these pro-renewables metrics would also be the most relevant in Puerto Rico.**

The Proposed Regulation must be understood as a tool to align the non-renewables world of the past with the pro-renewables world of now, and the future; another tool to course-correct the problematique explained by the Legislature in Act 17's Statement of Motives. In this connection, a specific clarification that the Proposed Regulation excludes non rate-regulated, non-utility EPSCs (and perhaps more critically, renewable energy EPSCs) would be a welcome addition, if not a critical correction, particularly in light of the Act's fundamental goals, as established therein and in its Statement of Motives.

We reiterate that DER development be adopted as a foundational element of the overall utility transformation agenda. Implementing a regulatory and utility business model that fosters DER growth will bring innovation, investment, choice, and market discipline to the electricity services industry in Puerto Rico, which means that the catalog of goals and outcomes that will mark PBR as a success must incorporate elements focused on the development of markets for DER and enhanced DER-related services. **In short, a robust, growing DER market is the public interest.**

As discussed above, many market advantages for utilities are hard-wired into the existing regulatory structure. A threshold question to explore as it relates to each discrete market function is the relative risk borne by the utility, the customer, and the non-utility market participant. Those involved in utility regulation have long been inculcated with the concept that utility financial integrity has cost of service implications, but the issue is less-well understood and internalized as it relates to relatively younger DER technology and service providers.

Utilities often have the reputation of not being particularly innovative in their approach to the evaluation of resource alternatives. But measuring innovation by the number of services, the level of the utility R&D budget, or the number of R&D partnerships will tell us little about the culture and practice of innovation within the utility. With these considerations in mind, Sunrun recommends the following outcomes in any metric associated with utility performance:

· Enhance system resilience. The utilities' ability to withstand unforeseen shocks—including climate, physical, cyber- or economic/market related.

· Minimize market power abuse.

· Compliance with IRP. Robust, comprehensive, objective, well-enforced planning processes to reveal and prioritize resource options, including that the full characterization of resources that are not utility owned or controlled should be prioritized.

· Support for deployment of DERs/DER penetration/ interconnection levels.

· "Non-wires" or "non-transmission" alternatives. Evaluation of demand response, storage, behind-the-meter solar PV, and other smart grid resources should be actively pursued to determine whether lower cost means are available to deliver the services that would otherwise be provided by additional transmission and distribution system investments.

· Consideration of non-energy benefits. Positive externalities that result from decreased reliance on fossil fuels results in, for instance, improvements in public health through reduced air pollution, lower water usage for thermal generation, and reduced risk of fuel price volatility should be realized.

· Fair and open competition. Designing "level playing field" incentives and access policies for non-utility market participants promote fair and open competition and advances the public interest.

· Minimization of barriers to entry. Reducing the data, physical, financial, and regulatory barriers to market participation will foster sustainable DER market development.

· Flexibility, diversity of choice, and innovation. Diverse product and program options in a competitive market including financing mechanisms to increase the value and lower the cost of those options should be promoted.

· Economic and system efficiency. Investments and market activity that provide the greatest value to society, with consideration of identified externalities should be promoted, with a DER focus.

· Coordination with transmission level operations. Aligning distribution-level market operations and products with transmission level operations and products better reflects the full value of the services that distribution level assets can provide.

- Avoidance or mitigation of emissions. Emission regulations, greenhouse gas reduction mandates and goals, renewable energy goals, and other Puerto Rico (Environmental Quality Board, etc.) policy emission-related objectives should be incorporated.
- Consistency with regulatory objectives and requirements. Avoiding inconsistent and overlapping regulatory regimes and providing products consistent with any applicable regulatory requirements should be pursued by functioning within regulatory jurisdiction.

PREB is carrying out its statutory duties in a correct, responsible and forward-looking way by initiating this regulatory process. The Proposed Regulation is one of the critical initiatives, alongside the IRP, the Energy Efficiency and Demand Response Regulation, pro-renewables Interconnection Regulations and others, to walk the path laid out by Act 17 and also reach its goals.

Again, Sunrun congratulates PREB for its continued leadership in Puerto Rico's energy pro-renewables paradigm shift and also thanks this Honorable Bureau for this valuable opportunity to comment.
In San Juan, Puerto Rico, on 25 September 2019.

Respectfully submitted,
[*signed/ Javier Rúa-Jovet*]

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