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COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY BUREAU

PREB Proposed Rule
Performance Incentive Mechanisms
Per Law 17 (2019) **PREB DOCKET: NEPR-MI-2019-0014**

COMMENTS OF THE SOLAR AND ENERGY STORAGE ASSOCIATION OF PEURTO RICO (SESA-PR)

SESA-PR thanks the Puerto Rico Energy Bureau (PREB) for publishing this draft rule on Performance Incentive Mechanisms (PIM), as required by Law 17. SESA-PR offers these comments as suggestions to consider from the perspective of the solar and storage industries.

The main focus of our suggestions is that PREB take this opportunity to actually prescribe the incentive and policy mechanisms, as explicitly required by Law 17 to occur before the end of 2019, as opposed to the rule stating that these incentive and policy mechanisms will be defined at some undefined point in the future via PREB order, after the end of 2019. It's also crucial that PREB make clear that this PIM rule, as a policy mechanism that exists only to affect the behavior of large utility companies, apply exclusively to PREPA, its successor, or any other similar traditional utility.

About SESA-PR

SESA-PR is the Puerto Rico trade association representing companies who develop solar and energy storage systems at all scales on the island. Our member companies focus on marketing, design, manufacturing, financing, procurement, installation and maintenance of solar and/or energy storage systems. Founded in February 2018, SESA-PR is the local affiliate of the national Solar Energy Industries Association (SEIA).

Comments on this Docket

I. Explicit requirement to prescribe incentive and policy mechanisms

Law 17's primary, relevant requirement is that:

> "…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."[1]

Rather than actually prescribing incentive and penalty mechanisms, these Draft Rules state on its first page, Section II:

> *"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 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)…"*

We respectfully note that the legislative requirement is not that PREB "delineate…principles…in order to establish performance incentive mechanisms…". Rather than "delineate principles", the

[1] Law 17 (2019), Section 5.21

clear legislative requirement is that PREB "prescribe by regulations…such incentive and penalty mechanisms". If the PIM rule does nothing more than authorize PREB to perhaps issue an order at some point after 2019 which then later prescribes incentive and policy mechanisms, then PREB would be clearly incompliant with the PIM requirements of Law 17.

II. Apply PIM only to utilities

Performance Based Ratemaking is a concept which exists only to affect the behavior of traditional utility companies. Trying to apply PIMs to entities other than traditional utility companies would go against the letter and spirit of Law 17,

This Draft Rule appears to contemplate PREB creating PIMs to apply to private for-profit solar companies. If this is the case, it would be not only directly in conflict with the letter and spirit of Law 17, but also unprecedented in the nation or in the world. PIMs are only a tool to change the behavior of large regulated utility companies, period.

Draft Rule Resolution Section 2 states:

> "For <u>other Electric Power Service Companies</u>, the Energy Bureau <u>will determine which incentive mechanisms are needed</u> to induce performance that is consistent with the public interest and the current energy public policy."

Please note that publishing a rule which formally enshrines into rule that it's unclear which company and types of companies that the rule itself applies to would definitely create confusion and uncertainty for those companies, and would definitely threaten he intent and chances of

compliance for Law 17 itself. Coupled with other sources of uncertainty in the current environment, this could actually dissuade other distributed solar energy companies from entering the market. The current regulatory environment needs clarity, not additional sources of uncertainty.

Language of Section 5.21 of Act 17-2019 – which contains the mandate to adopt PIMs by the end of 2019 – suggests that the focus of PIMs should be on PREPA:

"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:
(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."

We recommend that this rule be very clear about which company and types of companies would be subject to the provisions of the rule itself, and which wouldn't.

One existing legislative precedent to consider would be to consider PIMs to be applicable only to the retail electric suppliers which are subject to the Renewable Portfolio Standard. Since the driving force behind Law 17 is to covert Puerto Rico to 100% renewable energy for electric generation, by regulating the utilities that provide electricity to consumers, it would follow that

the appropriate entity or entities to apply PIMs to are those same utilities which are required to ratchet up to providing 100% renewable energy to their customers.

Of particular urgency is the requirement that PREPA or any successor utility increase from 4% to 20% renewable energy by 2022, and to 40% by 2025. As these requirements are the most aggressive in the nation, we encourage PREB to consider implementing PIMs now, with the main focus of encouraging compliance with the main thrust of Law 17's requirement to phase out fossil fuels and quickly ramp up renewable energy.

III. Include mandatory incentive and penalty mechanisms, and apply them to PREPA

Law 17 gives no authority to delay the existence of PMs until only after PREPA's successful transition to a Concession. Given the reality that the envisioned Concession might never happen, or could be delayed by months or years, we encourage PREB to move forward with this important PIM rule now, while disregarding whether a multi-billion dollar concession for the T&D of PREPA might happen in a matter of months or years, or never.

PREB is already applying financial penalties to PREPA to affect their behavior (ie the $5,000 and $25,000/day fines being imposed in the IRP proceedings). PIMs just take this same concept and broaden it, per the terms outlined in Law 17.

- Law 17 itself isn't contingent upon a Concessionaire model ever existing in Puerto Rico. Puerto Rico has to transition to 20% renewable energy by 2022, and 40% by 2025, regardless of what utility model exists.
- Given the very real possibility that the utility model that exists in 2022 and 2025 could be the same one that exists today, and also given the complete failure of PREPA to take any

action to demonstrate compliance with the previous RPS, we urge PREB to view these PIM rules an opportunity to create a tool that can be used and useful now, with PREPA, and in so doing increase the likelihood of Law 17 compliance, regardless of which utility model exists on the island.

- Since PREPA is the only utility on the island, please don't hastate now to move forward with these rules. Please 1) move forward now, and apply them only to PREPA for now. 2) be clear that they do not apply to any other entity; and 3) make the entire rule very rigid, clear and self-sufficient, knowing that PREB has the eternal authority to revisit any of its own rules at any point in time by issuing a rulemaking revision.

IV. Move forward with clear metrics already established, and apply them only to PREPA

- Some of the metrics required to be monitored and impacted by PIMs are already completely clear, such as:
    - 20% by 2022, 40% by 2025 renewable energy
    - Utility purchase of SRECs from customers' solar production
    - Net metering to be applied to customers' bills in 30 days or less for systems 25kW or less, and in 90 days or less for customers between 25kW and 5MW
- While other aspects of the PIM legislation could be more complex and take more time to develop, we urge PREB to move forward with PIMs before the end of 2019, as required by Law 17, applying the PIMs to metrics already clearly established by law.

Conclusion

Given that these draft rules as published don't actually "prescribe incentive and penalty mechanisms" as required by Law 17, we recommend consideration of these comments and those of other stakeholders, and that PREB issue a new draft rule that does actually prescribe incentive and penalty mechanisms, also holding stakeholder workshops to gather additional input if PREB deems appropriate.

The threshold required by Law 17 is that PREB "…prescribe by regulations, on or before December 31, 2019…". Although the most strict interpretation of this would be that the "prescription" of regulations could mean the culmination of a regulatory promulgation process culminating after the publication of draft rule, comment period, publication of final, passage of request and potential rejection of reconsideration, and the filing and culmination and challenge of regulatory review before the court system, it is possible that this threshold could be attained by PREB issuing its final draft rule for comment by that date.

While we urge the careful consideration of the crafting of details of this important rule, we also highlight the legal requirement of the prescription by regulation before the end of this year, and of moving forward with impactful actions that actually manifests measurable amounts of new solar and storage existing, installed and in use on the island as a result of Law 17 and of this required rule.

Please move forward swiftly with this rulemaking, and at least reach the absolute minimum required by law of having the final draft rule publicly published by the end of 2019.

Thank you for the opportunity to submit these comments.

Respectfully Submitted,

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