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COMMONWEALTH OF PUERTO RICO
PUBLID SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU

IN RE: PROPOSED RULE ON ENERGY EFFICIENCY AND DEMAND RESPONSE

CASE NO. **NEPR-MI-2019-0015**
SUBJECT: Notice of Proposed Rulemaking and Request for Public Comments

October 21, 2019

REPLY COMMENTS OF THE SOLAR + STORAGE ASSOCIATION OF PUERTO RICO

I. INTRODUCTION

The Solar + Energy Storage Association of Puerto Rico (SESA) represents companies responsible for the financing, manufacturing, sales, installation, operation and maintenance of solar and energy storage technologies in Puerto Rico. Formed in February 2018, SESA is committed to the expansion of the solar + storage industries in Puerto Rico, though advocacy in policymaking, regulatory implementation, stakeholder dialogue with the utility and other key stakeholders, and advocacy for new incentive and financing. SESA is the local affiliate of the national Solar Energy Industries Association (SEIA).

II. GENERAL COMMENTS

SESA's interest is in the growth of the solar & storage industry on the island, thus our comments focus largely on aspects of this rule which would help grow those markets. We also recognize that successful energy efficiency & demand response programs can and should have a synergetic effect on customer adoption of new solar & storage systems, thus our member companies have a strong vested interest in these rules being successfully created and implemented.

Given the potential positive impacts on the growth of solar & storage on the island, our member companies also have a vested interest in program offerings beginning as soon as practicable. Although many aspects of this rule, and perhaps the rule overall, will take years to develop and begin implementation, we urge the Puerto Rico Energy Bureau (PREB) to consider actions that could begin to put the funds already being collected by the System Benefits Charge (SBC) to good use, in ways that don't interrupt the planning and preparation of the remainder of the results from this rule.

III. OUR RECOMMENDATIONS

1. Include Solar & Storage when Promoting EE/DR Programs

Traditional energy efficiency programs are only helpful to the expansion of solar and storage when there are co-marketing efforts to customers. Thus we recommend including solar & storage in all relevant programs. Some opportunities for inclusion include:

- During Energy Audits. The EE/DR program should result in a wide array of energy audits being performed (for free, as a rule) across all categories of customers. Whenever energy audits are performed, an initial solar & storage assessment should be made by the same energy auditor who prepares energy efficiency and demand response options for the customer. The initial solar & storage assessment should use a set of basic criteria developed by the applicable Stakeholder Group formed as part of this rule's implementation.

- Whenever promoting programs developed by this rule. Given the resiliency importance of solar & storage systems existing for homes and businesses, solar & storage should be promoted by EE/DR program promotion personnel whenever possible. Materials used for this promotion should be developed with stakeholders including solar and storage companies.

2. Integrate Energy Efficiency & Demand Response with the TPA

There's a sharp disparity of recommendations between PREPA's strong recommendation that only Energy Efficiency programs be outsourced to a TPA, while the responsibility of administration of Demand Response program remain with PREPA. All of the arguments PREPA presents are valid; PREPA contain the biggest knowledge base about the efficiency patterns, behavior and needs of the customers they've been serving for decades is an understandable rationale for PREPA to then be the administrator of Demand Response programs to those customers.

All other stakeholders agreed though that the concepts of Energy Efficiency and Demand Response are best developed when an integrated approach is taken, with one entity overseeing the planning, administration, and communication with customers about EE & DR programs concurrently.

The other way to achieve program synergies would be to house both EE and DR programs within PREPA itself. However PREPA itself isn't advocating for their self-administration of EE programs, and other stakeholders seem to be rallying around the concept of one TPA administering most or all of the elements of this draft rule in an integrated way.

We agree with most of the stakeholders who recommended that the TPA be charged with the responsibility of planning, developing and administering both the EE & DR aspects discussed

We would like to encourage that PREB consider also the integration of this rule with other pending policy developments, including wheeling, microgrid, interconnection, the payment to customers of Renewable Energy Credits, and the Value of Storage Study.

3. Stakeholder Advisory Group(s)

Many stakeholders' comments expressed support for the formation of a Stakeholder Advisory Group focused on advising PREB on key elements of the creation, promotion, administration and evaluation of programs resulting from this rule. We're strongly supportive of this concept as well, and of making this

stakeholder group as broad as practicable, as suggested by ESPUR. It may be helpful also to develop a sub-group composed of a very diverse set of interests representing various sectors of society, to advise on the most effective ways to gain the trust of their various constituencies in the promotion and adoptions of EE/DR programs developed. An initial and ongoing education campaign that takes into consideration the needs of diverse groups could help greatly with the rate of ramping up customers signing up to participate in new programs.

We also recommend PREB develop another subgroup focused on the resonance between the new EE/DR programs as they're developed with the long list of other emerging potentially overlapping policy proceedings. To what degree communities are developing Microgrids, for example, could impact EE/DR planning.

4. Clarify Overall Efficiency & Demand Response Requirements

Many stakeholders pointed out that there's no direction given in the relevant legislation nor these draft rules regarding what basic quantifiable requirements should be developed, and by whom. The draft rules indicate that bidders presenting proposals will play a key role in proposing some of these requirements. We recommend that PREB instead take responsibility for creating clear overall and specific requirements before the RFP process for the TPA.

Overall goals that we recommend this rule state and be guided by:

1. Utilize all cost-effective energy efficiency
2. Maximize all cost-effective demand response
3. Integrate Distributed Generation to Maximize Resiliency Impacts

5. Initial Potential Study

We encourage PREB to draft, with robust input from stakeholders, an RFP for an energy efficiency & demand response potential study. We support

VIEC's strong recommendation that the potential study happen *before* an RFP for the TPA is issued.

An accurate potential study will be very important to get in place as soon as possible, as it will guide all of the assumptions made in development of EE/DR programs. These studies typically take a year to happen, in markets with financially healthy utilities with a long history of regulation. In Puerto Rico, working together with PREPA to establish the initial data to be used in the first potential study could easily result in it taking 2 years or more for a solid potential study to be in place.

We recommend that PREB not include the administration of a potential study in the responsibilities of the TPA, but rather handle directly the oversight of issuing an RFP for, creating a Stakeholder Advisory Group for, and overseeing the successful creation of Puerto Rico's first EE/DR potential study. This process can and should commence right away after the finalization of these rules.

6. Stretch out the Timeline

We support VIEC's comments about practically all timelines in the draft rule being too short. A more realistic overall timeline could be:

- March 2020: Publishing of final EE/DR Rules
- April 2020: PREB formation of formal Stakeholder Advisory Group
- June 2020: PREB publishing of draft RFP for EE/DR Potential Study
- July 2020: PREB issuance of Potential Study RFP
- September 2020: Potential Study company chosen
- Summer 2022: Potential Study Complete
- Fall 2022: RFP process begins for TPA
- Spring 2023: TPA Chosen
- Spring 2023 – Spring 2025: Program Design & Pilot Programs
- 2024: Plan Proposal & Approval of First 3-year Implementation Period
- Summer 2025: First Implementation Period (3 years)
- Summer 2028: Second Implementation Period (5 years)

- Summer 2033: Third Implementation Period (5 years)
- Summer 2038: Fourth Implementation Period (5 years)

7. How to Measure Savings

Multiple stakeholders pointed out that the law and the proposed rule don't provide guidelines of how to measure the required 30% energy savings, and what to use as a reference to measure the savings.

We suggest picking a relevant initial year of 2018, 2019 or 2020 to use as a baseline year, and then require the amount of MWh of electricity consumed by the island in 2040 to be 30% lower than it is today, normalized for relevant considerations such as.

The minimum requirement should be that the TPA administer programs which result in an increasing amount of energy efficiency and demand response adoption such that the fastest ramp-up possible unfolds over the years, there is increasing progress toward the 30% efficiency requirement, ultimately that by 2040, normalized to the base year and accounting for externalities, 30% less electricity is consumed in Puerto Rico than is consumed during the base test year. Some factors that should be normalized include:

- **Population decline or growth.** The current IRP references multiple population projections for Puerto Rico, all of which predict a dramatic population decline over the coming 20 years. These projections indicate that the population of the island could decline by more than 30% between now and 2040. Obviously the amount of electricity consumed on the island due to out-migration shouldn't be called "efficiency", nor should increasing demand due to population growth count against the efficiency savings targets.
- **The opening or closing of industries.** Whether new energy-intensive industries are established, or existing ones are closed, shouldn't affect EE/DR metrics
- **The shift to Electric Vehicles.** Many studies suggest varying levels of consumers switching to Electric Vehicles over the years. The degree to

which this adoption occurs shouldn't impact program metrics, except to the extent that this transition is actually encouraged by these rules. Vehicle storage can serve as Demand Response, so incentives to accelerate customers' switch to EVs would be entirely appropriate as a Demand Response program.

- **Microgrids & Energy Cooperatives.** It's unpredictable to what degree communities may adopt microgrids and create energy cooperatives. These adoptions that are out of the TPA's sphere of influence shouldn't affect the compliance or EM&V metrics.

It was also suggested by multiple stakeholders that PREB clarify whether energy savings requirements are to be measured as Gross or Net. We recommend measuring savings in a way that the MWh savings that occur in 2040 are equal or greater than 30% of the energy consumption during the baseline year, normalized to account for factors outside the control of the TPA. This would match the recommendation of NRDC that savings goals be

> *"cumulative "net savings" to ensure consistent interpretation, meaning those savings attributable to the program that would not have otherwise occurred"*

And as ACEEE further elaborates:

> *"A cumulative persistent savings goal for 2040 would take into account the energy savings achieved by measures installed in 2040 plus the measures installed in previous years that are still providing savings."*

We recommend PREB establish, after the conclusion of the EE/DR Potential Study, targets for both Energy Efficiency and Demand Response. For Energy Efficiency, two annual targets could be created:

1. The annual savings amount needed to reach the projection of 30% savings by 2040.
2. The annual savings amount needed to capture all cost-effective energy efficiency possible in that year.

We note that some stakeholders have suggested as a metric against which to measure savings "current baseline forecast of load in 2040". We recommend strongly against this, as the accuracy would be highly questionable of any forecasting made today of what the load will be in Puerto Rico in 2040. The energy, economic and political landscape in Puerto Rico are changing rapidly, and a myriad of unpredictable factors could make load forecasts made today significantly incorrect.

8. Incentive Structure

These draft rules envision the TPA bidders to propose their own incentive structures and amounts. We recommend instead that PREB clarify before issuance of the RFP:

a. Minimum and Aspirational EE Savings Goals, as informed by the Potential Study.
b. Aspirational Demand Response Program Goals, as informed by the Potential Study.
c. The Performance Payment Incentive Structure to be paid to the TPA.

The incentive structure should be scalable, with an anticipated incentive amount for reaching certain targets, but with pro-rated incentives for making progress toward, and exceeding, the established targets. The incentive structure should be geared towards encouraging compliance with the pathway to 30% savings by 2040 at a minimum, but should attempt to effectively encourage the capturing of all possible cost effective savings.

9. Keep Initial Cashflow and EM&V with PREB

VIEC recommends that funds from the Systems Benefit Charge go directly to the TPA, rather than being collected by PREPA, given to PREB, and then made available to the TPA. Their rationale is logical, however we recommend PREB maintain responsibility for initially ensuring funds are collected at least through the first 3-year program implementation period.

Similarly, VIEC recommends that the TPA contract directly with EM&V providers, citing the efficiencies involved in doing so. Given the widespread accusations of corruption in Puerto Rico, we recommend that PREB maintain responsibility for selection and administration of all EM&V, again at least through the first 3-year program implementation period. Doing so would also potentially provide more consistency in the event PREB decides to switch TPAs at some point along the way; in that case they would have the option of remaining with the same EM&V provider, having developed and administered the EM&V contract directly.

10. Whether to Sount Savings from Building Efficiency Codes

The question of whether to encourage the TPA to aspire to inspire energy efficiency savings through the creation or strengthening, and/or increased enforcement of building codes should be carefully thought through. While on one hand, massive efficiency savings could result from effective implementation of modern efficiency building codes – on the other hand, there's a near-absence of enforcement of building codes on the island, so encouraging a TPA to wade into the political waters of lobbying for policy change to require code enforcement could create a political backlash that could threaten the overall implementation of the EE/DR policy.

This is an issue that could be carefully thought through and decided upon by PREB as part of these rules, or it could simply be one item to be included in the Potential Study, and whether or not, or to what degree, TPA involvement in building efficiency codes is included as an efficiency metric could be recommended by the Stakeholder Advisory Group, and decided by PREB at a later date.

11. Who Markets the Programs?

There's a question raised by some stakeholders regarding whether the intention is for the TPA to be completely responsible for marketing EE/DR programs, or whether multiple energy service companies will be doing so; and VEIC recommends that the Government of Puerto Rico do a widespread

education campaign to begin the education process and signal public support for the upcoming new EE/DR programs.

We suggest a mix of all three. Before the TPA is chosen, perhaps concurrently with while the Potential Study is being performed, PREB could directly contract to use some of the funds collected to educate consumers about the widespread upcoming benefits of EE/DR. An education outreach campaign of various stakeholder groups and the public could make these audiences more receptive when the TPA begins its outreach campaigns.

And while the TPA should be responsible for all aspects of marketing the programs it develops, it should utilize existing marketing channels and messengers by creating a marketing certification program where companies are trained on how to accurately include the TPA's marketing materials in their sales pitches for other compatible products.

We note that PREPA strongly objects to the TPA communicating with customers at all, and request that PREPA have veto authority over language the TPA might use to do so. To the contrary, we view effective messaging to be a primary role of the TPA. To address PREPA's concern, PREB should ensure some process is in place so that the Stakeholder Advisory Group can give input on TPA's marketing materials development, and have a formal process by which any stakeholder can express objections if they think any of the TPA's marketing materials are misleading or harmful in some way; and PREPA should be included as a stakeholder in both cases.

12. Municipal Non-Payment Challenges

One "elephant in the room" that's gone unaddressed by the draft rule is specific challenges faced by a large swatch of government-owned buildings which pay no electricity bills at all, and thus have no incentive for implementing efficiency measures. There could be other restrictions affecting some of the government buildings which do pay electric bills, which may be required under PROMESA to pay any savings from energy efficiency back to repay the debt, as opposed to being free to reinvest savings from efficiency into deeper efficiency savings or other budgetary needs.

Many government buildings in this situation may be unable to participate in traditional EE/DR programs for these reasons. A detailed analyses of this situation, and ways it could be addressed, could be included in the Potential Study.

13. Fuel-Switching

There is an important factor to keep in mind when considering whether or not to encourage customers switching away from gas appliance and to electric, because of the reduced overall environmental impact of cooking and water heating with electricity as opposed to gas. Up to $36 million in currently approved Department of Housing funds are dedicated to encouraging customers to switch away from electric stoves and water heaters and TO gas stoves and water heating, the thinking being that all electric appliances will be useless during the next inevitable long-term electric blackout.

The impact of each EE/DR program should include as a metric its impact on a customer's ability to function during a grid failure.

14. Other Cost-Effectiveness Tests to Consider

Section 1.9B(39) of the rule defines the Puerto Rico Benefit Cost Test as a screening test to gauge whether the benefits of a program exceed its costs. The Regulation proposes an ad hoc test when there are five established tests that have long been in existence[1]. The PR test, in the broad outline form in which it has been proposed, lacks the focus that can be gained from considering the existing tests. All of these are cost-benefit tests but they have different emphases.

The total resource cost test (TRC) is the most widely used. It takes a system-wide look at energy costs to serve all customers, both participants and non-

[1] ACEEE, "Cost-Effectiveness Tests: Overview of State Approaches to Account for Health and Environmental Benefits of Energy Efficiency", https://aceee.org/sites/default/files/he-ce-tests-121318.pdf

participants, and includes both costs borne by the customers and those costs borne by the utility or third-party provider.[2] The PR test points in this direction with its focus on system costs, but it adds "societal impacts" and "social equity impacts." Section 5.1A. This brings it closer to the Societal Cost Test (SCT), which includes the costs and benefits of the TRC but also includes non-energy costs and benefits such as those related to health and the environment.[3] This corresponds to the PR test's use of "Hard to Quantify" impacts, sec. 5.1B(3).

The other three tests are distributional; they look at cost-effectiveness from the standpoint of particular constituencies.[4] The participant cost test (PCT) assesses costs and benefits solely from the perspective of the participant.[5] Energy savings under the PCT are calculated at the full retail rate experienced by the customer. The program administrator cost test (PACT, or UCT when the administrator is a utility) omits the portion of costs paid by customers, which are included in the TRC, and calculates energy savings at the wholesale or production cost experienced by the utility.[6] Finally the ratepayer impact measure (RIM test) focuses on the impact on rates instead of overall savings. The RIM test can be informative but should never be used as a screening test for EE since many cost-effective measures tend to fail this test, even though such measures often result in substantial energy bill savings.[7] In general, the TRC and SCT are the standard tests of overall cost-effectiveness.[8]

It would clarify the thinking of the Energy Bureau, administrators, utilities and all concerned if the Regulation acknowledged that it is pursuing a version of the societal cost test (SCT).

The cost-effectiveness tests are not identically defined and applied in every jurisdiction, but the essential benefits and costs in the TRC are as shown in Table

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[2] National Action Plan for Energy Efficiency (NAPEE), "Understanding Cost-Effectiveness of Energy Efficiency Programs," pp. 3-1, 6-5–6-6. https://www.epa.gov/energy/understanding-cost-effectiveness-energy-efficiency-programs

[3] NAPEE, Understanding Cost-Effectiveness, p. 6-7

[4] Sedano, TRC and Avoided Costs, Workshop for Public Utilities Commission of Ohio, slide 14. https://www.raponline.org/knowledge-center/total-resource-cost-trc-test-and-avoided-costs/

[5] NAPEE, pp. 6-1–6-2.

[6] *Id.*, pp. 6-2–6-3.

[7] *Id., pp.* 6-4–6-5; Shirley, "Benefit Cost Tests for Energy Efficiency," Kansas Corporation Commission workshop, slide 11. https://www.raponline.org/knowledge-center/benefit-cost-tests-for-energy-efficiency/

[8] *Id.*, pp. 3-1, 6-7.

6-4.[9]

Table 6-4. Benefits and Costs Included in the Total Resource Cost Test

Benefits and Costs from the Perspective of All Utility Customers (Participants and Non-Participants) in the Utility Service Territory	
Benefits	**Costs**
▪ Energy-related costs avoided by the utility ▪ Capacity-related costs avoided by the utility, including generation, transmission, and distribution ▪ Additional resource savings (e.g., gas and water if utility is electric) ▪ Monetized environmental and non-energy benefits (see Section 4.9) ▪ Applicable tax credits (see text)	▪ Program overhead costs ▪ Program installation costs ▪ Incremental measure costs (whether paid by the customer or the utility)

Source: Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects.

The SCT adds the health, environmental and social equity benefits.[10]

Table 6-5. Benefits and Costs Included in the Societal Cost Test

Benefits and Costs to All in the Service Territory, State, or Nation as a Whole	
Benefits	**Costs**
▪ Energy-related costs avoided by the utility ▪ Capacity-related costs avoided by the utility, including generation, transmission, and distribution ▪ Additional resource savings (e.g., gas and water if utility is electric) ▪ Non-monetized benefits (and costs) such as cleaner air or health impacts	▪ Program overhead costs ▪ Program installation costs ▪ Incremental measure costs (whether paid by the customer or the utility)

Source: Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects.

SESA is glad to see that low-income programs need not pass the PR test, for reasons touched on in the comments of some stakeholders. The impact of programs, and rates, on low-income participants merits a different threshold of cost effectiveness than for non low-income participants.

[9] NAPEE, p 6-6.
[10] *Id.*, p. 6-7.

15. Third Party Administration and EM&V Best Practices

The Energy Bureau has chosen to contract with a third party administrator (TPA) financed by a system benefits charge (SBC). In most U.S. jurisdictions utilities are the administrators, but it is worth noting that states with TPAs[11] populate the higher rankings in ACEEE's annual state scorecard for 2019[12]: Vermont (No. 3), Oregon (9), Maine (15), and Hawai'i (16). (Experts caution that no one administrative model is necessarily best,[13] and a high score from ACEEE is also determined by the presence of other policies that Puerto Rico is adopting, such as the target of 30% energy efficiency by 2040 and the goal of "all cost-effective" efficiency savings and demand response resources, Section 3.2A.)

Hawai'i provides a case study for the transition from utility to third-party administration.[14] The initial TPA contract there included performance indicators and awards.[15] ACEEE credits the program with enhanced flexibility, innovation, customer choice and equity, and overall efficacy.[16] In particular, "Real time incorporation of EM&V results into program design and subsequent year savings claims have greatly improved in this area."[17] This points to what SESA sees as a shortcoming in the Regulation — it insufficiently addresses evaluation, measurement and verification (EM&V).

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[11] Regulatory Assistance Project (RAP), Energy Efficiency Administration: Principles and Models in the US, slide 18 (independent TPAs as distinct from government agencies, slide 20); https://www.raponline.org/knowledge-center/energy-efficiency-administration-principles-and-models-in-the-us/

[12] https://aceee.org/press/2019/10/50-state-scorecard-reveals-states

[13] RAP, EE Administration, note 11, slides 8-9; ACEEE, "Overview: Administrative Structures for Utility Customer Energy Efficiency Programs in the United States," slide 14;

https://www.raponline.org › wp-content › uploads › 2016/05 › iea-pepdee...

[14] ACEEE, "Transition from Utility Administered to Third-Party Administered Energy Efficiency Programs in Hawaii: Success through Flexibility," https://aceee.org/files/proceedings/2012/start.htm

[15] *Id.,* p. 3/5-141.
[16] *Id.,* pp. 5-148–5-149.
[17] *Id.,* p. 5-148.

Article 6 of the Regulation provides for reporting by the TPA and evaluation and verification by the Energy Bureau. There is no explicit procedure to ensure the expertise and independence of the TPA or the expertise needed by the Bureau to perform these tasks. EM&V is a complex process that typically demands 3–5% of the total program budget.[18] As ACEEE states, "most states require that program administrators conduct independent, third-party EM&V,"[19] and when the administrator itself is a third party, that means outside contractors and consultants.[20]

The Regulation should ensure that EM&V budgets are adequate; that outside evaluators evaluate the TPA; and that separate evaluators assist the Energy Bureau in reviewing the reports that issue from the TPA.

IV. CONCLUSIONS

SESA commends PREB and all stakeholders for their work shaping this important rule. We stand ready to help with the following steps in implementation of Energy Efficiency & Demand Response programs on the island.

Respectfully Submitted,

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[18] https://aceee.org/sector/state-policy/toolkit/emv
[19] *Id.*
[20] See, e.g., Cal. Evaluation Plan, pp. 2-5, 3-11–3-12, 3-17–3-19, 4-1, etc.; https://www.cpuc.ca.gov/General.aspx?id=5399

Appendix 1

Additional Comments

Below are a few additional comments on the text of the proposed draft rule.

1.9(B)30: The definition of "Non-Bypassable Charge" needs to be changed to clarify that at no time will any charges be assessed against a customer's own solar production. This definition should clarify that this charge, like all per-kWh charges, can only be legally assessed on a customer's net consumption of electricity from PREPA or its successor.

1.9(B)45: Likewise the "System Benefits Charge" should be clear in its definition that it is a charge not applied to any net metering customer's own production of electricity, as this is specifically not allowed per Law 17.

1.9(B)46: The definition of "Third-Party Administrator" should not include the phrase "other than customer-sited generation services", as there could be programs offered involving subsidizing customer-sited generation from batteries, or from solar, included in Demand Response programs.

1.9(B)49: Typeo: Insert the word "and" before "impact" toward the end of the sentence.

1.9(B)51: For the definition of "Wheeling", please note that it is physically impossible to "transmit electricity from an independent power producer to the end consumer through Puerto Rico's Electric Power Grid…", unless there is literally a single dedicated wire running all the way from the power producer to the power consumer. This definition should be changed both here and in the pending Wheeling rule to not say something that's physically impossible. This could be fixed by adding the word "representation" before "transmission", so that it reads: " "Wheeling" means a representation of the transmission of electricity…", or otherwise modified to reflect the reality that when electricity is produced and put onto the grid, the electricity itself will flow to the nearest

point of demand, and physically can not be directed to go to any one specific consumer.

2.1(A): We agree with PREPA's recommendation that PREB consider issuing an RFQ stage before the RFP stage, to first screen companies qualified to bid on the proposal to act as a TPA. Adding language to this effect would allow PREB the flexibility to do so if it so desires.

2.1(A)1, and 2.2(B): The rules should reflect that PREB will not issue an RFP for the TPA until after a review and comment period from interested stakeholders. We also urge PREB to consider the strong recommendation of VEIC that this RFP NOT be issued until after a professional Potential Study is administered, which would likely take between 1 and 2 years to complete. Without a Potential Study completed, bidders would be making wild guesses as to what savings targets would be appropriate.

2.1(D): The last sentence should be reconsidered: "The TPA is also encouraged to pursue other sources of funds to support its programs." This appears to be encouraging the TPA to engage in lobbying from federal agencies and private foundations for funding for these programs, as opposed to focusing on the revenue collected from customers through the Systems Benefit Charge.

Recommendation: Keep this entire rule limited only to revenue collected from customers. Specify that the TPA is to coordinate efforts with any other programs happening concurrently that could impact the TPA-administered programs, but don't set a vague expectation that the TPA is "encouraged to pursue other sources of funds".

2.2(A): These rules should not state that PREB "shall establish…the details of the process for the selection of a TPA…" Rather, these rules should establish that process.

2.2(D): Instead of "…present that Three-Year Plan to the Energy Bureau for approval during…" this should read "…present that Three-Year Plan to the Energy Bureau for approval, rejection or modification."

2.3(A): We agree with VEIC's recommendation to extend the term of a Program Implementation Period to sometime longer than 3 years. With a 3 year program period, it may take half a year after Year 1 to have concrete data on how Year 1 went, then 9 months later the next draft 3-year plan is due; thus conceivably the second 3-year plan could be based on only 1 year of data. Extending this term to 5 or 6 years is advisable.

Also, this language makes it appear that a TPA is only able to request one extension, at which time the TPA couldn't request any more extensions. The rule should clarify if that's the intent, or if the intent is to allow a TPA to request an indefinite amount of extensions.

2.3(A)2)a): 90 days isn't enough time. If a TPA does NOT want to seek a term extension, then PREB would have to go through an entire RFP process for a new TPA…in a month? This timeframe should be revisited.

2.4(A)1): The RFP should not request each bidder to include in their proposal the "structure, process and amounts…for performance-based compensation". These things should be defined by this rule and made clear as part of the RFP, so that it's clear to bidders what they're bidding on.

2.4(A)2): This kind of "behind closed doors" arrangement is the opposite of transparency. The "structure, including the frequency and conditions for payment, process, and amounts of performance incentives and other compensation" should all be completely and clearly defined by these rules, and publicly transparent for any bidders considering bidding on this.

2.4(A)4): Again, "the structure and amount of the performance-based compensation for that period will be negotiated between the Energy Bureau and TPA…" sets up a "behind closed doors" financial lobbying situation that is entirely nontransparent. All of these things need to be clearly spelled out as part of these rules.

3.1(A) and (B): This rule should create a clear process by which budgeting occurs for EE and DR programs; it should not just declare that PREB will "establish by order" what the budget will be with no guidelines on how this will occur and no stakeholder involvement.

3.1(B)4): The promotion of load shifting is important, but the wording of this sentence deserves a revision. Since peak solar production happens before peak consumption, it's unclear what is meant by "…and increase the utilization of excess renewable energy generation." If the intention here is to encourage subsidization of customer-sited battery storage systems to facilitate peak-load shifting, then this is a concept that SESA supports, but we encourage it to be re-phrased to clearly say this.

3.2(B)10): This has been commented elsewhere, but we recommend re-thinking PREB's intention regarding the phrase "encourage compliance" (this could mean "policing", or literally "calling the police to report violations"), and "contribute to increasing the stringency of" could literally mean paying lobbyists to push legislators to change laws requiring more stringent building energy codes. This requirement appears as a "shall", which, if published as-is, would mean that it's a legal requirement for the TPA to do these things; this could be outside the scope of PREB's authority to require these things, and might not be the intention anyway. It deserves a second look.

3.3(A)6): The beginning of this sentence could be changed to "Identify and attempt to overcome" instead of just "Attempt to overcome"

3.3(C)1)(b): "…shall endeavor to solicit" should be changed to "shall solicit".

3.3(C)1)(b): The stakeholders' list should include specifically "Energy efficiency companies, solar companies, and storage companies."

3.3(C)2): 120 days isn't nearly enough time for this. After a TPA submits a multi-year plan, it must go through a robust stakeholder process, culminating with PREB approval, and THEN the TPA needs a period of months to plan for continuity in order to avoid stoppage of program offerings in-between program plan cycles. This is one reason that program cycles need to be longer than 3 years.

4.1(B): The relationship between SBC funds collected from customers for these programs, and to funds from private grants or federal sources, should be carefully thought through on the front-end. For example, if federal funds suddenly appear and similar efficiency programs are offered by a different part

of Government, does that count towards a TPA's performance incentives? How is that impacted by whether the TPA lobbied, at the federal and/or local level, for those incentives?

One way to address this would be to simply keep these rules limited to the only thing PREB has jurisdiction over: What happens with ratepayer funds. If the concepts of private foundation grants and federal funds are going to be potentially mixed together with ratepayer funds, this could complicate, delay or prevent the implementation of this rule.

4.1(D): How and when is "prudent spending" determined, as opposed to "non-prudent spending"? What happens when there is "non-prudent spending"?

6.1(A) & (B): The rules should clarify that these reports are to be made public upon submittal to the Energy Bureau.

6.2(D)1): This language makes it sounds like PREB staff will be going out into the field to perform EM&V field testing. If the intention is rather that PREB be responsible for EM&V, this could be reworded to say something like "The Energy Bureau shall be responsible for contracting with an EM&V specialist for the evaluation of the TPA's EE and DR programs, in accordance…"

6.2(E)2): Again, is PREB staff going to go out into the field and conduct site visits and metering analyses? If that's not the intention, consider rewording to clarify that PREB will contract with a qualified professional to do the Verification component.

6.3(C): If the TRM needs to be modified, it shouldn't be modified without stakeholder input. Recommend: Change "…it may, at its discretion.." to "…it shall…"

7.2(A): The TPA should have the flexibility to use its own staff for some aspects of implementation as well.

7.2(C): TPA should have the flexibility to use "…one or more of the following", in case it wants to use an RFQ followed by an RFP process, for example.

7.2(E): The end of this sentence should read "RFP, RFQ, and / or PON"

7.2(J)(10): Please check for consistency between when "the Director of the TPA" is referenced, as opposed to when "the Director of the TPA, or the Director's designee…" is used. If there's not a clear intention for a distinction between the meaning of these phrases, then please modify them so that they're consistent.

7.3(A): The subsection says that the TPA doesn't ever have to do any competitive bidding processes, meaning that tens or hundreds of millions of dollars a year could be awarded with no competitive bidding whatsoever. The TPA would only have to provide very minimal justification for this, such as in 7.3(A)(2)(2) "there is not enough time to use a competitive bidding process".

Recommend: Revisit this and erase any room for corruption.

10.2(A)(1): Demand charges for residential customers should be specifically disallowed by rule.

11.1(C)(1)(a): "achievable increases" should be defined.