

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: Adoption of Regulation for
Performance Incentive Mechanisms.

RESOLUTION

I. Introduction and brief background.

Through this Resolution, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") adopts and publishes the *Regulation for Performance Incentive Mechanisms* ("Final Regulation"). The Final Regulation establishes the reporting requirements for all Eligible Power Service Companies, and outlines the process to establish said metrics, its targets and possible financial incentives per type of company. The Energy Bureau adopts and publishes this Final Regulation pursuant to its regulatory powers established on Act 57-2014,¹ Act 17-2019² and Act 38-2017.³

On August 26, 2019, the Energy Bureau published the proposed *Regulation for Performance Incentive Mechanisms* ("Proposed Regulation"). Pursuant to Act 38-2017, the Energy Bureau provided a thirty (30) day period for the general public to submit written comments regarding the Proposed Regulation. The deadline for written comments was September 25, 2019.⁴ Furthermore, the Energy Bureau established a ten (10) day period for the submittal of replies to comments filed within the general commenting period. Such ten-day period expired on October 7, 2019. Additionally, a public hearing was scheduled for September 25, 2019 at the Energy Bureau's Hearing Room.

The Energy Bureau received written comments from the following entities:

1. Oficina Independiente de Protección al Consumidor ("OIPC");
2. Sunrun, Inc.;
3. AES Puerto Rico ("AES-PR");
4. Crowley; and
5. Solar and Energy Storage Association of Puerto Rico ("SESA-PR").

¹ Puerto Rico Energy Transformation and RELIEF Act.

² Puerto Rico Energy Public Policy Act.

³ Administrative Procedure Act of the Government of Puerto Rico, as amended.

⁴ See Notice about Proposed Regulation Adoption, *Primera Hora* Newspaper, August 26, 2019.



The public hearing was held as scheduled. At the public hearing, the Energy Bureau received oral testimony from the following persons:

1. Javier Rúa Jovet, Esq., in representation of Sunrun, Inc.;
2. José Maeso, in representation of Crowley; and
3. Carlos Fernández, Esq. in representation of SESA-PR.

After reviewing the comments submitted as part of the public comment period and the testimonies received at the public hearing, the Energy Bureau amended the proposed Regulation in order to incorporate suggestions made by the aforementioned participants. Part II of this Resolution provides a detailed explanation of the main modifications the Energy Bureau made to the Proposed Regulation.

II. Main Revisions and Amendments Incorporated into the Final Regulation for Performance Incentive Mechanisms.

This part identifies and addresses the main revisions and amendments incorporated into the Final Regulation. Besides these amendments, the Energy Bureau made additional changes to clarify certain language and to provide uniformity throughout the Final Regulation. Attachment A to this Resolution contains a redline version of the Final Regulation.

1. Article 3

The sections contained in Article 3 were modified to clarify the procedure the Energy Bureau shall undertake regarding the proceedings to establish Performance Incentive Mechanisms and set forth Metrics, Targets and Financial Incentives. Specifically, Section 3.1 details that the Energy Bureau shall establish Metrics, Targets and Financial Incentives in an initial proceeding. After the initial proceeding the Energy Bureau shall hold annual proceedings to evaluate the company's performance on the Reporting Period. The Energy Bureau maintains the discretion to hold the initial proceeding or any annual proceeding as a single proceeding for all companies, or to divide such proceedings by individual company or by type of company.

Section 3.2 establishes that, as part of the initial proceeding, the Energy Bureau will issue an Order of Intent proposing the Metrics for reporting purposes, the Metrics that will be subject to Targets, and the Metrics that will be subject to Financial Incentives. The Order of Intent shall also propose the Companies or types of Companies that will be required to report on their performance for the first Reporting Period. Furthermore, Section 3.3 clarifies that if a Company comes into operation after a Reporting Period started, it shall be subject to the applicable Metrics, Targets, and Financial Incentives for the type of Company, unless determined otherwise by the Energy Bureau.

The Energy Bureau adopted these modifications based upon Crowley's comments and recommendations.⁵

2. Article 5

Subsection (E) of Article 5 was amended to clarify that the costs related to any independent audit required by the Energy Bureau shall be paid for by the Company. In the case where an independent audit is required of PREPA, PREPA may petition the Energy Bureau to recover the audit costs through rates.

The Energy Bureau adopted these modifications based upon OIPC's comments and recommendations.⁶

III. Conclusion.

For all of the above, the Energy Bureau **APPROVES** the Regulation for Performance Incentive Mechanisms.

Be it notified and published.



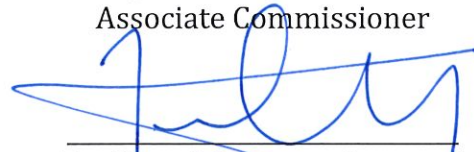
Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ángel R. Rivera de la Cruz
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



⁵ See Crowley's written comments, p. 2.

⁶ See OIPC's written comments, p. 4.


CERTIFICATION


I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 2, 2019. I also certify that on December 11, 2019 a copy of this Resolution, with its Attachments, was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeep.com, c-aquino@prepa.com, hriviera@oipc.pr.gov, javier.ruajovet@sunrun.com, axel.colon@aes.com, jose.maeso@crowley.com, pjcleanenergy@gmail.com. I also certify that today, December 11, 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

Nitza D. Vázquez Rodríguez
Astrid I. Rodríguez Cruz
Jorge R. Ruíz Pabón
PO Box 363928
San Juan, PR 00936-3928

For the record, I sign this in San Juan, Puerto Rico, today December 11, 2019.


Wanda I. Cordero Morales
Clerk





GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board
Puerto Rico Energy Bureau



REGULATION FOR PERFORMANCE INCENTIVE MECHANISMS



TABLE OF CONTENTS

ARTICLE 1.- GENERAL PROVISIONS.....	4
Section 1.1.- Title.....	4
Section 1.2.- Legal Basis and Applicability.....	4
Section 1.3.- Interpretation.	4
Section 1.4.- Provisions of Other Regulations.	4
Section 1.5.- Unforeseen Proceedings.....	4
Section 1.6.- Dates and Time Periods.....	4
Section 1.7.- Definitions.	5
Section 1.8.- Controlling Version.....	7
Section 1.9.- Severability.	7
Section 1.10.- Forms.	8
Section 1.11.- Mode of Submission.....	8
Section 1.12.- Effect of Submission.	8
Section 1.13.- Confidential Information.....	8
Section 1.14.- Validity.	9
Section 1.15.- Penalties for Non-Compliance.....	9
Section 1.16.- Compliance with Other Applicable Legal Requirements.....	9
ARTICLE 2.- ENERGY BUREAU AUTHORITY.....	9
ARTICLE 3.- PROCEEDINGS TO IMPLEMENT PERFORMANCE INCENTIVE MECHANISMS	9
Section 3.1.- Overview.	9
Section 3.2.- Initial Proceeding on Performance Incentive Mechanisms.	10
Section 3.3.- Annual Proceedings.....	10
Section 3.4.- Assessment of Financial Incentives.....	11
Section 3.5.- Comments by Interested Parties.	11
Section 3.6.- Public Hearings.	11
Section 3.7.- Technical Conferences.	11
Section 3.8.- Workshops.	11
ARTICLE 4.- METRIC REPORTING REQUIREMENTS.....	12
Section 4.1.- Interim Performance Reports.....	12
Section 4.2.- Annual Performance Report.....	12
ARTICLE 5.- COMPLIANCE AUDITS.....	13
ARTICLE 6.- PUBLICATION OF REPORTS, AUDITS AND ENERGY BUREAU'S ORDERS.....	14
ARTICLE 7.- PROCESS FOR ESTABLISHING PERFORMANCE INCENTIVE MECHANISMS	14
Section 7.1.- Principles for Establishing Performance Incentive Mechanisms.....	14
Section 7.2.- Establishment of Incentives and Penalties.....	15
Section 7.3.- Electric Power Service Companies.	16



ARTICLE 8.- RECONSIDERATION AND JUDICIAL REVIEW	17
Section 8.1.- Reconsideration	17
Section 8.2.- Judicial Review	18



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 of the Puerto Rico Public Service Regulatory Board ("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 as defined herein, 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 so it promotes the highest public good and the protection of the interests of the residents of Puerto Rico, and so proceedings are carried out rapidly, justly, and economically.

Deleted: in a way that

Deleted: in such a way that

Section 1.4.- Provisions of Other Regulations.

This Regulation may be supplemented by other regulations of the Energy Bureau compatible with this Regulation.

Deleted: The provisions of this

Deleted: the provisions of

Deleted: that are

Deleted: the provisions of

Section 1.5.- Unforeseen Proceedings.

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

Deleted: in any way that is

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 act, event, or noncompliance that triggers the period shall not be

Deleted: occurrence of the

¹ Act 57-2014, Article 6.25B.



counted, and the established period shall 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.

Deleted: begin to

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 this Regulation, these terms will have the meaning established below, unless the context of the content of any provision indicates something else:

Deleted: the purposes of

Deleted: the following

Deleted: except when

Deleted: clearly

Deleted: that is

1) "Demand-Side Management Provider" refers to any Person 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 Act 239-2004, known as the *General Cooperative Associations Act of 2004*, as amended, mainly to meet individual and common electric power needs of their cooperative members, affiliated consumers and/or communities through electric power generation, transmission and/or distribution systems.

Deleted: the provisions of

Deleted: for the main purpose of meeting

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, and any other electric power service as defined by the

Deleted: as well as



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 that may be attached to a Target and which, if it is attached, 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 under Article 4.1 of this Regulation.
- 14) "Annual Performance Report" refers to the report a Company files with the Energy Bureau under 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,

Deleted: pursuant to

Deleted: pursuant to

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 Act No. 83 of May 2, 1941, as amended, and any successor entity, including but not limited to a transmission and distribution concessionaire.

Deleted: virtue of

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 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.

Deleted: , among other things,

21) "Target" refers to the goal that may be associated with a Metric and against which, if it is so associated, 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 English version shall prevail.

Deleted: provisions of the

Section 1.9.- Severability.

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed, before a court and declared unconstitutional or 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 declared unconstitutional or void. The nullity or invalidity of any article, word, sentence, paragraph, subsection, or section, in any specific case, shall not affect or jeopardize as its application or validity in any other case, unless it has been specifically and invalidated for all cases.

Deleted: , for any reason,

Deleted: null and

Deleted: that has been

Deleted: null and

Deleted: in any way

Deleted: except where

Deleted: expressly



Section 1.10.- Forms.

The Energy Bureau shall establish the forms it deems necessary to conduct the proceedings under 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 reviewing them, or the Internet website is out of service, shall relieve no party of its obligation to comply with the provisions stated, provide the information required by this Regulation, or otherwise comply with any Energy Bureau Order.

Deleted: pursuant to

Deleted: in the process of

Deleted: not

Deleted: any

Deleted: herein

Deleted: applicable

Section 1.11.- Mode of Submission.

The forms, documents, and appearances required by this Regulation or any Order of the Energy Bureau must be submitted before the Energy Bureau in electronic format according to the instructions which, occasionally, the Energy Bureau establishes through an Order in relation to the electronic filing system.

Deleted: virtue of

Deleted: from time to time

If the electronic filing system is temporarily not operating or functioning, the forms, documents, and appearances required by this Regulation or by any Order of the Energy Bureau shall be submitted before the Energy Bureau under any instructions that the Energy Bureau shall provide at that time through an Order,

Deleted: virtue of

Deleted: in accordance with

Deleted: 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 the 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.

Deleted: said

Section 1.13.- Confidential Information.

If in compliance with this Regulation or the Energy Bureau's Orders, a Person must disclose information to the Energy Bureau considered confidential, a commercial or industrial secret under Act 80-211, or privileged, under 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, under 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 with 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.

Deleted: the provisions of

Deleted: any of

Deleted: has the duty to

Deleted: to be

Deleted: pursuant to

Deleted: pursuant to

Deleted: in the case of



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 in this Regulation may be subject to an enforcement action under 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.

Deleted: set forth

Deleted: pursuant to the provisions of

Section 1.16.- Compliance with Other Applicable Legal Requirements.

Compliance with this Regulation shall relieve no party affected by this Regulation from complying with other applicable legal and regulatory requirements enforced by any other government entity.

Deleted: not

Deleted: any

Deleted: fully

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 includes the use of Performance Incentive Mechanisms.⁷

Deleted: necessarily

ARTICLE 3.- PROCEEDINGS TO IMPLEMENT PERFORMANCE INCENTIVE MECHANISMS

Section 3.1.- Overview.

The Energy Bureau shall establish Metrics, Targets and Financial Incentives in an initial proceeding. After the initial proceeding, the Energy Bureau shall hold an annual proceeding

Deleted: initiate a proceeding per type of Company and/or per Company to

Deleted: the

Deleted: .

Deleted: to implement the Performance Incentive Mechanisms...

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.



to evaluate the relevant Companies' Performance Reports, to make any adjustments to the Performance Incentive Mechanisms, and to determine whether to establish, eliminate, or modify any Metric, Target, or Financial Incentive. At the Bureau's discretion, the initial proceeding or any annual proceeding may be divided into separate proceedings by individual Company or by Company type.

Deleted: Metrics, Targets, or Financial Incentives

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 proposing (1) the Metrics, for reporting purposes, (2) the Metrics that will be subject to Targets, and (3) the Metrics that will be subject to Financial Incentives. The Order of Intent shall also propose the Companies or types of Companies that will be required to report on their performance 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.

Deleted: setting forth

Deleted: ,

Deleted: ,

Deleted: mechanism applicable to each Company

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. In the Order, the Energy Bureau will specify (1) the Metrics for reporting purposes, (2) the Metrics that will be subject to Targets, and (3) the Metrics that will be subject to Financial Incentives. The Energy Bureau will also specify the Companies or types of Companies that will be required to report on their performance for the first Reporting Period.

Section 3.3.- Annual Proceedings.

A) The purpose of each annual proceeding shall be to set forth the Metrics, Targets, and Financial Incentives that shall apply for the next Reporting Period. In the event that a new Company comes into operation during the middle of any Reporting Period, the new Company shall be subject to the applicable Metrics, Targets, and Financial Incentives for the type of Company, unless determined otherwise by the Energy Bureau.

Deleted: the

B) The Energy Bureau shall initiate each annual proceeding at least three (3) months prior to the end of the current Reporting Period.

Deleted: open the Annual Proceeding

C) Each annual proceeding shall consider the Annual Performance Report(s) previously filed, if available, as well as all available Interim Performance Reports.

Deleted: year's

Deleted: by a Company during that year (i.e., pertaining to the previous year),

Deleted: from that year

Deleted: the

D) The Energy Bureau, at its discretion, may suspend any 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 suspended annual proceeding and issues an Order setting forth the new Metrics, Targets, and, if applicable, Financial Incentives.



E) At the conclusion of each annual proceeding, 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(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,and any Financial Incentives to be established, for the next Reporting Period.

Deleted: The

Deleted: , the Company's

Deleted: as well as

Section 3.4.- Assessment of Financial Incentives.

Any penalty or reward assessed or imposed due to compliance or noncompliance with the Metrics and Targets, shall be implemented through an Order issued by the Energy Bureau.

Deleted: as a result of

Deleted: applicable

Section 3.5.- Comments by Interested Parties.

In each proceeding 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.

Deleted: of the proceedings

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 present testimony or comments on the Initial Proceeding to establish of new Metrics, Targets, and Financial Incentives and Annual Proceedings.

Deleted: provide

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 under Sections 4.1 and 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.

Deleted: in accordance with Section

Deleted: Section

Section 3.8.- Workshops.

The Energy Bureau, at its discretion, may issue an Order establishing one or more workshops on 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.

Deleted: Annual Reporting for



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, for failing to achieve that level;
 - d) All workpapers or documents supporting the Company's findings;

Deleted: , if any,



e) The processes put in place by the Company to enable progress and any other pertinent information;

Deleted: as well as

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 to improve performance; and

Deleted: better

h) Any other information the Energy Bureau requests or that the Company believes relates to the Energy Bureau's understanding of the Company's performance regarding that Metric.

Deleted: is relevant

Deleted: with respect to

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 deems necessary to provide to the Energy Bureau in support of its proposal.

Deleted: would like

Deleted: supply

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 to be filed before the Energy Bureau.

Deleted: that will

E) The auditor shall be paid for by the Company. PREPA may petition the Energy Bureau to recover auditor costs through rates.

Deleted: , with any costs to

Deleted: recoverable in rates in

Deleted: manner specified by the applicable

Deleted: Bureau's Order

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

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

Deleted: that is

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 imposing penalties or rewards; and

Deleted: on the imposition of

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 is filed with the Energy Bureau or notified by the Energy Bureau.

Deleted: one

Deleted: , 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 induce behavior consistent with public policy that would not otherwise occur to a sufficient degree in the absence of the Performance Incentive Mechanism.

Deleted: be used to

C) Performance Incentive Mechanisms shall be clearly defined, easily interpreted, and easily verified.

D) Performance Incentive Mechanisms shall focus on performance areas within reasonable control of affected Companies.

Deleted: that are

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 provide the affected Company with no more total financial incentives than are needed to align their performance with the public interest.

Deleted: be designed to

G) Performance Incentive Mechanisms should complement the existing financial incentives for each affected Company, without under- or over-compensating them for achieving the desired outcomes.

Deleted: be designed to

Section 7.2.- Establishment of Incentives and Penalties.

A) Regarding PREPA, the Energy Bureau shall apply Metrics and Targets only, until the point when there is a for-profit successor company operating as the transmission and

Deleted: With respect to

Deleted: in time



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 regulated by the Energy Bureau, the Bureau may impose penalties for noncompliance under its authority pursuant to Section 6.36 of Act 57-2014.

Deleted: that are

Deleted: in accordance with

Deleted: pursuant to Section 5.32 of Act 17-2019 amending ...

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 subject to Metrics, Targets, and Financial Incentives may include, but are not limited to:
 - 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:

Deleted: that will be

Deleted: , the following



- 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 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 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) Sharing rewards and penalties between customers and the entity subject to the Financial Incentives.

Deleted: that is

Deleted: that is

Deleted: A sharing of

B) Other types of Electric Power Service Companies

- 1) Except for 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.

Deleted: With the exception of

ARTICLE 8.- RECONSIDERATION AND JUDICIAL REVIEW

Section 8.1.- Reconsideration

Any Person 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.

Deleted: that is



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, under Section 4.2 of LPAU and the Rules of the Court of Appeals.

Deleted: pursuant to

Deleted: applicable

Agreed upon by the Puerto Rico Energy Bureau, in San Juan, Puerto Rico, on December 2019.

Edison Avilés Deliz
Chairman

Ángel R. Rivera de la Cruz
Associate Commissioner

Lillian Mateo Santos
Associate Commissioner

Ferdinand A. Ramos Soegaard
Associate Commissioner



GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board
Puerto Rico Energy Bureau

REGULATION FOR PERFORMANCE INCENTIVE MECHANISMS

TABLE OF CONTENTS

ARTICLE 1.- GENERAL PROVISIONS.....	4
Section 1.1.- Title.....	4
Section 1.2.- Legal Basis and Applicability.....	4
Section 1.3.- Interpretation.	4
Section 1.4.- Provisions of Other Regulations.	4
Section 1.5.- Unforeseen Proceedings.....	4
Section 1.6.- Dates and Time Periods.....	4
Section 1.7.- Definitions.	5
Section 1.8.- Controlling Version.....	7
Section 1.9.- Severability.	7
Section 1.10.- Forms.	8
Section 1.11.- Mode of Submission.....	8
Section 1.12.- Effect of Submission.	8
Section 1.13.- Confidential Information.....	8
Section 1.14.- Validity.	9
Section 1.15.- Penalties for Non-Compliance.....	9
Section 1.16.- Compliance with Other Applicable Legal Requirements.....	9
ARTICLE 2.- ENERGY BUREAU AUTHORITY	9
ARTICLE 3.- PROCEEDINGS TO IMPLEMENT PERFORMANCE INCENTIVE MECHANISMS	9
Section 3.1.- Overview.	9
Section 3.2.- Initial Proceeding on Performance Incentive Mechanisms.	10
Section 3.3.- Annual Proceedings.....	10
Section 3.4.- Assessment of Financial Incentives.....	11
Section 3.5.- Comments by Interested Parties.	11
Section 3.6.- Public Hearings.	11
Section 3.7.- Technical Conferences.	11
Section 3.8.- Workshops.	11
ARTICLE 4.- METRIC REPORTING REQUIREMENTS	12
Section 4.1.- Interim Performance Reports.....	12
Section 4.2.- Annual Performance Report.....	12
ARTICLE 5.- COMPLIANCE AUDITS.....	13
ARTICLE 6.- PUBLICATION OF REPORTS, AUDITS AND ENERGY BUREAU'S ORDERS.....	14
ARTICLE 7.- PROCESS FOR ESTABLISHING PERFORMANCE INCENTIVE MECHANISMS	14
Section 7.1.- Principles for Establishing Performance Incentive Mechanisms.....	14
Section 7.2.- Establishment of Incentives and Penalties.....	15
Section 7.3.- Electric Power Service Companies.	16

ARTICLE 8.- RECONSIDERATION AND JUDICIAL REVIEW	17
Section 8.1.- Reconsideration	17
Section 8.2.- Judicial Review	18

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 of the Puerto Rico Public Service Regulatory Board ("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 as defined herein, 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 so it promotes the highest public good and the protection of the interests of the residents of Puerto Rico, and so proceedings are carried out rapidly, justly, and economically.

Section 1.4.- Provisions of Other Regulations.

This Regulation may be supplemented by other regulations of the Energy Bureau compatible with 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 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 act, event, or noncompliance that triggers the period shall not be

¹ Act 57-2014, Article 6.25B.

counted, and the established period shall 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 this Regulation, these terms will have the meaning established below, unless the context of the content of any provision indicates something else:
 - 1) "Demand-Side Management Provider" refers to any Person 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 Act 239-2004, known as the *General Cooperative Associations Act of 2004*, as amended, mainly to meet 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, and 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 that may be attached to a Target and which, if it is attached, 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 under Article 4.1 of this Regulation.
- 14) "Annual Performance Report" refers to the report a Company files with the Energy Bureau under 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 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 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 that may be associated with a Metric and against which, if it is so associated, 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 English version shall prevail.

Section 1.9.- Severability.

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed before a court and declared unconstitutional or 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 declared unconstitutional or void. The nullity or invalidity of any article, word, sentence, paragraph, subsection, or section, in any specific case, shall not affect or jeopardize as its application or validity in any other case, unless it has been specifically and invalidated for all cases.

Section 1.10.- Forms.

The Energy Bureau shall establish the forms it deems necessary to conduct the proceedings under 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 reviewing them, or the Internet website is out of service, shall relieve no party of its obligation to comply with the provisions stated, provide the information required by this Regulation, or otherwise comply with any Energy Bureau Order.

Section 1.11.- Mode of Submission.

The forms, documents, and appearances required by this Regulation or any Order of the Energy Bureau must be submitted before the Energy Bureau in electronic format according to the instructions which, occasionally, 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 this Regulation or by any Order of the Energy Bureau shall be submitted before the Energy Bureau under any instructions that the Energy Bureau shall provide at that time through an Order.

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 the 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 this Regulation or the Energy Bureau's Orders, a Person must disclose information to the Energy Bureau considered confidential, a commercial or industrial secret under Act 80-211, or privileged, under 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, under 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 with 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 in this Regulation may be subject to an enforcement action under 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 relieve no party affected by this Regulation from 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 includes the use of Performance Incentive Mechanisms.⁷

ARTICLE 3.- PROCEEDINGS TO IMPLEMENT PERFORMANCE INCENTIVE MECHANISMS

Section 3.1.- Overview.

The Energy Bureau shall establish Metrics, Targets and Financial Incentives in an initial proceeding. After the initial proceeding, the Energy Bureau shall hold an annual proceeding

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.

to evaluate the relevant Companies' Performance Reports, to make any adjustments to the Performance Incentive Mechanisms, and to determine whether to establish, eliminate, or modify any Metric, Target, or Financial Incentive. At the Bureau's discretion, the initial proceeding or any annual proceeding may be divided into separate proceedings by individual Company or by Company type.

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 proposing (1) the Metrics for reporting purposes, (2) the Metrics that will be subject to Targets and (3) the Metrics that will be subject to Financial Incentives. The Order of Intent shall also propose the Companies or types of Companies that will be required to report on their performance 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. In the Order, the Energy Bureau will specify (1) the Metrics for reporting purposes, (2) the Metrics that will be subject to Targets, and (3) the Metrics that will be subject to Financial Incentives. The Energy Bureau will also specify the Companies or types of Companies that will be required to report on their performance for the first Reporting Period.

Section 3.3.- Annual Proceedings.

- A) The purpose of each annual proceeding shall be to set forth the Metrics, Targets, and Financial Incentives that shall apply for the next Reporting Period. In the event that a new Company comes into operation during the middle of any Reporting Period, the new Company shall be subject to the applicable Metrics, Targets, and Financial Incentives for the type of Company, unless determined otherwise by the Energy Bureau.
- B) The Energy Bureau shall initiate each annual proceeding at least three (3) months prior to the end of the current Reporting Period.
- C) Each annual proceeding shall consider the Annual Performance Report(s) previously filed, if available, as well as all available Interim Performance Reports.
- D) The Energy Bureau, at its discretion, may suspend any 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 suspended annual proceeding and issues an Order setting forth the new Metrics, Targets, and, if applicable, Financial Incentives.

- E) At the conclusion of each annual proceeding, 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(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, and 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 due to compliance or noncompliance with the Metrics and Targets, shall be implemented through an Order issued by the Energy Bureau.

Section 3.5.- Comments by Interested Parties.

In each proceeding 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 present 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 under Sections 4.1 and 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 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 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 and 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 to improve performance; and
 - h) Any other information the Energy Bureau requests or that the Company believes relates to the Energy Bureau's understanding of the Company's performance regarding 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 deems necessary to provide 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 to be filed before the Energy Bureau.
- E) The auditor shall be paid for by the Company. PREPA may petition the Energy Bureau to recover auditor costs through rates.

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

Any Company 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 imposing 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 is filed with the Energy Bureau or notified by the Energy Bureau.

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 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 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 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 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) Regarding PREPA, the Energy Bureau shall apply Metrics and Targets only, until the point 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 regulated by the Energy Bureau, the Bureau may impose penalties for noncompliance under its authority pursuant to 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 subject to Metrics, Targets, and Financial Incentives may include, but are not limited to:
 - 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 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 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) Sharing rewards and penalties between customers and the entity subject to the Financial Incentives.

B) Other types of Electric Power Service Companies

- 1) Except for 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 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, under Section 4.2 of LPAU and the Rules of the Court of Appeals.

Agreed upon by the Puerto Rico Energy Bureau, in San Juan, Puerto Rico, on December 2, 2019.



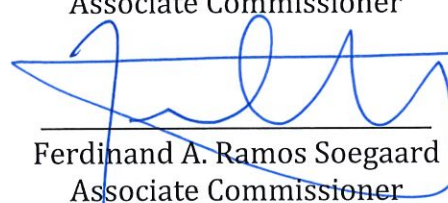
Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ángel R. Rivera de la Cruz
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner