

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



IN RE: REGULATION FOR ENERGY
EFFICIENCY AND DEMAND RESPONSE

CASE NO.: NEPR-MI-2019-0015

SUBJECT: Commencement of Rulemaking
Procedure on the Proposed Demand
Response Regulation

RESOLUTION

I. Introduction

On September 4, 2019, the Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") pursuant to the provisions of Act 17-2019¹, Act 57-2014², and Act 38-2017³, issued a Resolution commencing a regulatory proceeding for the adoption of a Regulation for Energy Efficiency and Demand Response ("DR").⁴ As part of the process, the Energy Bureau held a public hearing on October 8, 2019⁵ and received several comments from the general public and stakeholders.⁶

Subsequently, the Energy Bureau initiated a proceeding to hold a series of Stakeholder Workshops regarding Energy Efficiency under Case No. NEPR-2019-0019.⁷ The mentioned workshops were interrupted by the Covid-19 pandemic.

Given the importance of demand response programs and their potential benefit to help manage unforeseen generation incidents, the Energy Bureau determined it would be beneficial to split the original proposed regulation into two separate regulations: one to

¹ Known as the *Puerto Rico Energy Public Policy Act*.

² Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

³ Known as the *Uniform Administrative Procedures Act of the Government of Puerto Rico*, as amended.

⁴ See, Resolution, In Re: Regulation for Energy Efficiency and Demand Response, Case No. NEPR-MI-2019-0015, September 4, 2019.

⁵ See, Resolution, In Re: Regulation for Energy Efficiency and Demand Response, Case No. NEPR-MI-2019-0015, November 22, 2019.

⁶ The Energy Bureau deemed appropriate to extend the public commenting period until October 11, 2019 and the replying to comments period until October 21, 2019. See, Resolution and Order, In Re: Public Policy on Energy Efficiency, Case No. NEPR-MI-2019-0019, October 8, 2019.

⁷ See, Resolution and Order, In Re: Public Policy on Energy Efficiency, Case No. NEPR-MI-2019-0019, October 8, 2019.

regulate Energy Efficiency and one to regulate Demand Response.⁸ As such, the Energy Bureau developed a standalone draft for Demand Response ("Preliminary Draft").

On July 2, 2020, the Energy Bureau issued a Resolution through which it invited the stakeholders who submitted comments in the instant case, as well as any other person or groups who frequently appear before the Energy Bureau, to provide initial comments on the Preliminary Draft, before initiating the rulemaking procedure established in Act 38-2017. The Energy Bureau's intention was to improve the Preliminary Draft, before commencing the formal rulemaking process. Initial comments were due on August 2, 2020.

As part of this preliminary process, the Energy Bureau received a total of seven (7) written comments from stakeholders and interested parties.⁹ After careful evaluation of the filed comments, the Energy Bureau revised the Preliminary Draft.

The revised draft Demand Response Regulation ("Proposed Regulation"), included as Appendix I to this Resolution, simplifies the overall structure for demand response resource acquisition relative to the Preliminary Draft. It does this primarily by establishing a clear expectation that PREPA will design and run its own DR programs (potentially with contracted assistance), and giving PREPA the exclusive responsibility to develop, over time, all cost-effective demand response resources. The Preliminary Draft was established with a structure in which DR Aggregators would be the primary mechanism by which DR resources were acquired, and only large customers would participate in programs run directly by PREPA.

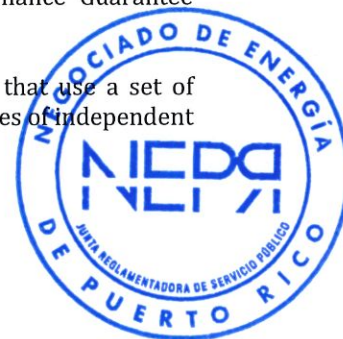
Moreover, under the Preliminary Draft, PREPA could have acquired all or almost all its DR resources through DR Aggregators; this is no longer true in the Proposed Regulation. To that effect, the Preliminary Draft adopted its structure to reflect PREPA's resource limitations. In its comments on the Preliminary Draft, PREPA confirmed this concern by suggesting that it lacks the capacity to design and run DR programs, conduct planning exercises, etc., and would expect to hire a consultant to assist with these tasks. The Energy Bureau understands PREPA's resource constraints and designed the Proposed Regulation with the expectation that PREPA may select (via a competitive process) one or more contractors to develop, administer, and run DR programs.¹⁰

The Proposed Regulation also simplifies the structure by removing all discussion of

⁸ The Energy Bureau will undertake the Energy Efficiency rulemaking procedure at a later date, once the mentioned stakeholder workshops have been completed.

⁹ The Energy Bureau received comments from the Puerto Rico Electric Power Authority ("PREPA"); the Independent Consumer Protection Office ("OIPC", for its Spanish acronym); the Solar and Energy Storage Association of Puerto Rico ("SESA-PR"); the National Resources Defense Council ("NRDC"); Windmar Renewable Energy, Inc.; Environmental Defense Fund ("EDF"); and National Public Finance Guarantee Corporation ("National").

¹⁰ To some extent, part of these contractors' roles could be to act as "DR Aggregators" that use a set of standardized programs to provide resources to PREPA. They could also facilitate the activities of independent DR Aggregators.



wheeling and the role of independent power producers ("IPP"). While IPPs are allowed, under the Proposed Regulation, to use demand response to help manage the cost of power supply, the Energy Bureau believes that, at least for the near future, DR should be centrally dispatched by PREPA as part of managing the overall electric system. Energy Cooperatives still have an explicit role to play in the Proposed Regulation because they are particularly well positioned to act as DR Aggregators for their members.

Throughout the Proposed Regulation, the Energy Bureau simplified the way that the draft refers to PREPA and its successor as the operator of the transmission and distribution system ("T&D System"). To that effect, the Proposed Regulation defines "PREPA" as the entity that is operating the T&D System. Today, that entity is PREPA; in the future it is expected to be Luma Energy, LLC ("Luma").

II. Relevant Changes to the Preliminary Draft and general descriptions of the Proposed Regulation

1. Article 1: General Provisions

Article 1 of the Proposed Regulation primarily establishes the legal basis, applicability, and objectives of the regulation, and includes standard language regarding the regulations and how it relates to other authorities and regulations. It also includes the definitions of the terms used throughout the Proposed Regulation. Section 1.04 (Applicability) has been amended to remove reference to IPP and wheeling, and to clarify language regarding DR Aggregators.

The Definitions in Section 1.09 were updated to reflect the changes discussed in the Introduction, as well as for clarity and consistency. In particular, the definition of the term "Demand Response" was substantially amended to incorporate feedback from PREPA and SESA-PR. The revised definition makes clear that DR concerns changes in customers' demand as seen from the perspective of the utility electric grid which, because of the use of storage, may or may not require changes in the end-use of electricity in customers' appliances or other building systems. The revised definition also makes clear that DR is intended to be used as a resource option by the electric utility to help balance supply and demand. This means that DR may, for example, include increasing net load by charging battery storage at certain times, or provide fast ramping or regulation services.

2. Article 2: Demand Response Services

Article 2 of the Proposed Regulation begins by describing the roles of each different kind of entity involved in the development of DR programs and resources. PREPA has the primary obligation to pursue all cost-effective DR through the combined effects of its programs, aggregated resources under contract, and rate designs. PREPA also dispatches DR to support least cost reliable operation of the grid. DR Aggregators collect DR resources and either enroll them in DR programs offered by PREPA or respond to RFPs from PREPA for such resources. DR Aggregators must be certified by the Energy Bureau under Regulation



8701.¹¹ Energy Cooperatives can either become DR Aggregators or facilitate the enrollment of their members in PREPA's programs or aggregations run by other Aggregators.

Article 2 also lays out how customers can participate in DR programs. In the Preliminary Draft, each service account was only able to participate in the programs of one DR provider. However, with the focus on PREPA programs and a revised role for DR Aggregators, the Proposed Regulation allows participation in programs from more than one provider as long as there is no risk that a resource will be double counted and/or double compensated. This could allow, for example, a household to enroll its water heater in a direct load control program from PREPA, while also having a battery system that is aggregated by their solar + storage vendor which participates in a different program, as long as the DR responses can be independently verified.

Because the storage system has its own control system, it should be possible to distinguish the responses, and thus allow such dual participation. **The Energy Bureau particularly seeks feedback from stakeholders and potential aggregators on this portion of the draft rule to make it effective and implementable.**

The remainder of Section 2.03 primarily addresses customer enrollment and un-enrollment from DR programs, as well as how programs interact with each other and customers. Changes from the Preliminary Draft include added language about the need for technical requirements to be met¹² and explicitly allowing minimum participation periods, in order to avoid customers gaming a program by participating before the peak summer season and then withdrawing before the times when their resource would be most valuable.

Section 2.04 requires that each entity involved in DR programs has the capabilities to perform their duties: dispatch DR resources and allow PREPA to verify that dispatch. It also requires that PREPA not discriminate between DR providers based on factors other than cost and performance. Note that performance includes the location and temporal value, as well as the certainty that a resource will respond when dispatched.

3. Article 3: Demand Response Programs and Plans

Article 3 of the Proposed Regulation begins by laying out the requirements for PREPA to develop DR programs in more detail, and how PREPA relates to DR Aggregators and (potentially) to large customers. PREPA indicated in its comments on the Preliminary Draft that it would likely need to hire external expert assistance to develop and implement its DR activities. The Proposed Regulation makes explicit that this is permitted.

Section 3.01 establishes that PREPA will develop programs that offer standardized approaches, which customers may participate in directly. For example, PREPA could offer a

¹¹ Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico, Regulation No. 8701, February 17, 2016.

¹² Incorporated at PREPA's suggestion.



water heater direct load control program in which customers are credited a fixed amount each month for making their water heater available for load control, or PREPA could offer a large customer program that offers a monthly credit per kW of DR resource for dispatch up to some limited number of times per year.

DR Aggregators may also assemble resources to participate in those programs. For example, a customer may have the desire to provide capacity but is not large enough to participate on its own in the large customer program or can only participate in a smaller number of DR events. An Aggregator could combine that customer with others in similar situations and provide a virtual resource that does meet PREPA's program requirements.

PREPA may also issue competitive solicitations for DR resources from DR Aggregators. This may be a promising way to solicit DR resources from distributed battery storage, for example, where the multiple capabilities and locational value of storage are combined with customers' desire to manage state of charge to maintain resilience. These types of solicitations may increase certain customer participation that would otherwise not respond to a simple \$/kW program. Section 3.01 also clearly establishes that, in order to avoid encouraging the use of fossil fuel resources for DR when the island is on a path to 100% renewable power, fossil fuel backup generators may only be used for DR in situations where they are necessary to avoid an outage event, rather than for only economic dispatch.

Section 3.02 establishes requirements for the content and process for a Three-Year DR Plan. In contrast to the Preliminary Draft, the Proposed Regulation requires only PREPA to file a Three-Year Plan. The Three-Year Plan satisfies the requirements of Act 17-2019 for electric power service companies to file a DR plan. The content of the Three-Year Plan now includes the budget and funding sources, as well as projected savings. PREPA must engage with diverse stakeholders in developing the plan, and the Energy Bureau expects to hear from those stakeholders during its process of review of the plan that PREPA submits.

The Energy Bureau has found non-contested workshop-type proceedings to be a useful and productive way to engage with stakeholders around energy efficiency, and the Proposed Regulation allows the Energy Bureau to use such approaches for reviewing PREPA's Three-Year DR Plan. It is our hope that this lowers barrier to participation and increases the quality of the resulting plan and programs. At the same time, if the Energy Bureau determines a formal adjudicative process is required, the proposed Regulation allows for such process to be used.

This Article also requires annual DR updates, focused on identifying any changes or divergence from the Three-Year Plan. As programs launch, the Energy Bureau particularly expects that there will be changes in program design and approach. New text in the Proposed Regulation allows PREPA to begin pilot or "quick start" DR programs quickly, even before the Three-year Plan is filed and approved, to find low-cost resources and provide near-term relief.

This Article also states that Energy Bureau's approval of the Three-Year Plan, with its associated budget, constitutes approval for PREPA to recover the plan's prudently incurred



costs from ratepayers. We appreciate National Public Finance Guarantee Corp. for pointing out this omission from the Preliminary Draft. The Proposed Regulation establishes that the DR programs are part of PREPA's budget for transmission and distribution service. Their net costs are to be recovered as part of that budget, rather than through a separate rider or charge. DR programs are cost-effective by definition and generally provide near-term value along with ongoing costs, rather than being front-loaded. As such, the Energy Bureau anticipates that the net rate impact from including programmatic and administrative costs in the transmission and distribution budget will be small. The operations contract between PREPA and Luma establishes a regular budget process. The Energy Bureau understands that the approval of the DR budget will be compatible with that process. **We welcome feedback from stakeholders regarding this approach to, and process for, secure programmatic funding.**

Section 3.03 deals with Emergency Situations. The Proposed Regulation adds a requirement for the Three-Year Plan to include DR programs to be deployed in the event of an Emergency Situation. This, to ensure that emergency program planning happens in advance of an emergency, in addition to flexibility to develop rapid programs after the event.¹³

4. Article 4: Cost Effectiveness

Article 4 of the Proposed Regulation adopts a two-step process to establish cost-effectiveness for DR resources. The purpose of a two-step process is to first establish a test that can be utilized almost immediately for evaluating proposed programs (a standard Utility Cost Test), and then to evolve to using a test that is better tailored to Puerto Rico's context and public policy (using the Resource Value Framework established by the National Standard Practice Manual for Assessing Cost-Effectiveness of Energy Efficiency Resources¹⁴). Developing a Puerto-Rico-specific test will take some time, and we believe it is important not to let the development of the tailored cost-effectiveness test delay the beginning of program implementation. The Energy Bureau intends to use the same Puerto Rico Test for the evaluation of energy efficiency programs.

The Proposed Regulation makes several small changes to clarify the initial Utility Cost Test. It clarifies that costs include both program administrative costs and incentive payments, that reserve margins need to be accounted for in avoided costs, and that time- and location-dependent factors could have a substantial effect on costs and benefits. The Energy Bureau has accelerated the expected timeline for the development of the Puerto Rico Test to begin the process six months after the Proposed Regulation is final, rather than twelve months. This decision was based in part on stakeholder feedback that establishing the final test sooner is valuable. Given that the Energy Bureau expects to conduct a demand response and energy efficiency potential study as soon as feasible, and the potential study will be most

¹³ This decision was informed by a suggestion from comments on the Preliminary Draft.

¹⁴ See <https://www.nationalenergyscreeningproject.org/the-national-standard-practice-manual-for-energy-efficiency/>



valuable if it has the final cost-effectiveness test at hand, we share stakeholders' urgency to establish this test.

5. *Article 5: Reporting, Evaluation, Measurement and Verification*

Article 5 of the Proposed Regulation establishes annual reporting requirements for DR Aggregators, which the Energy Bureau believes will be valuable input to its oversight of DR on the Island. It also requires quarterly reports from PREPA, but not from other entities. The Proposed Regulation includes a new section on program evaluation, which establishes that the Energy Bureau will conduct evaluations of PREPA's DR programs, with the goal that the evaluations can be useful to PREPA, stakeholders, and the Energy Bureau in considering each Three-Year Plan.

The Measurement and Verification requirements in Section 5.03 establish that PREPA will develop procedures for the measurement and verification of DR resources. These procedures are, in effect, a "technical reference manual" for the DR resources. The Energy Bureau expects to review these procedures carefully and will value stakeholder and potential participant and vendor input to make sure they are appropriately rigorous and implementable.

6. *Article 6: Privacy, Consumer Data and Complaints*

Article 6 of the Proposed Regulation established the requirements for the protection and reasonable use of customer information, how it may be appropriately shared, including the sharing required for DR Aggregators to fulfill their obligations to PREPA and to customers, and the complaint procedure.

The primary changes to this Article from the Preliminary Draft are:

- Adding a requirement that policies must be consistent with the Voluntary Code of Conduct developed for smart grid data by the U.S. Department of Energy and a national stakeholder group;
- Eliminating the ability for DR Program Providers (that is, PREPA or DR Aggregators) to share customer information with others for the purposes of marketing (which also results in removal of requirements for how such sharing could be accomplished);
- Adding explicit time requirements for developing the data sharing form; and
- Establishing that pre-existing Energy-Bureau-approved complaint procedures can be used until they are explicitly approved for use in DR, and that the procedures must inform customers about how to contact the Independent Consumer Protection Office.

7. *Article 7: Rate Design*



Article 7 of the Proposed Regulation requires that PREPA develop rate designs that are consistent with customer implementation of DR. This Article does not require that PREPA develop DR-specific rate designs, only that it may not develop rate designs that are inconsistent with successful DR resource implementation. Given the different levels of deployment of interval and smart meters to different classes and customers, the Energy Bureau expects that any development of rates that would directly send demand-shaping signals (such as time of use rates with large ratios between high- and low-period prices, critical peak pricing, or peak-time rebates) would proceed in a gradual fashion to provide customers with new options. This Article also places some limits on time-varying rates and/or demand charges to ensure that the rate designs are cost-based and consistent with Puerto Rico's energy policy, beneficial electrification, and efficient use of the electric grid.

8. Article 8: Resource and Grid Planning

The Energy Bureau is very aware of the importance of the Integrated Resources Plan ("IRP"), and of the importance of integrating DR resources into that planning process. Article 8 of the Proposed Regulation establishes structures whereby that goal can be achieved, and the IRP has access to the best information on the DR resources. It does this by requiring that in the IRP, PREPA use insights gained from its DR programs (and the actions and programs run by DR Aggregators) and by any studies (such as potential studies) conducted in Puerto Rico.

It also requires that transmission and distribution plans take an integrated approach and use DR resources to avoid or defer investments where possible. The Article concludes by requiring that PREPA gather relevant information from other parties (such as Cooperatives and DR Aggregators) to conduct its planning, and that those entities supply the relevant information that PREPA requires, including a mechanism for obtaining confidential and protected information.

III. Comments and Public Participation

Pursuant to Act 38-2017, the Energy Bureau will publish a notice on the initiation of the rulemaking process in a newspaper of general circulation. In accordance with the provisions of Section 2.2 of Act 38-2017, the general public may file its comments regarding the Proposed Regulation until **October 22, 2020**.

Comments may be filed with the Energy Bureau as follows:

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



- d. In person, at the Energy Bureau's Clerk's Office, located at the addressed identified in paragraph (c) above.

Be it notified and published.



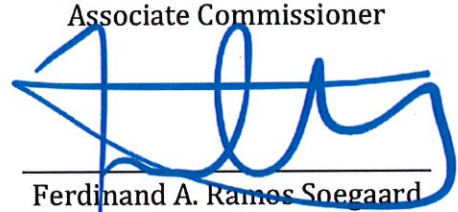
Edison Avilés Deliz
Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on September 21, 2020. I also certify that on September 21, 2020 a copy of this Resolution was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeep.com, c-aquino@prepa.com, rgold@acee.org, acarbo@edf.org, pjcleanenergy@gmail.com, jmadej@veic.org, nicolas@dexgrid.io, javrua@gmail.com, lmartinez@nrhc.org, thomas.quasius@aptim.com, carlosalberto@espur.net, rtorbert@rmi.org, tjtorres@amscm.com, gmch@4@gmail.com, norywrivera@constructores.net, lionel.orama@upr.edu, mhernandez@tudpr.com, nolosus@gmail.com, aconer.pr@gmail.com, hriviera@oipc.pr.gov, dortiz@elpuente.us, yan.oquendo@ddec.pr.gov, ingridmvila@gmail.com, valvaros@gmail.com, malu.blazquez@reimagina.pr.org, rstgo@gmail.com, agc@agcpr.com, presidente@ciapr.org, cpsmith@unidosporutuado.org, jmenen6666@gmail.com, cpares@maximosolar.com, CESA@cleanegroup.org, aarpp@aarpp.org, victorluisgonzalez@yahoo.com, acasepr@gmail.com, secretario@ddec.pr.gov, julia.mignuccisanchez@gmail.com, professoraviles@gmail.com, ramonluisnieves@rlnlegal.com, gmch24@gmail.com, ausubopr88@gmail.com, carlos.rodriquez@valairlines.com, acarbo@edf.org, amaneser2020@gmail.com, acasellas@amgprlaw.com, presidente@camarapr.net, jmarvel@marvelarchitects.com, amassol@gmail.com, jmartin@arcainc.com, and cathykunkel@gmail.com. I also certify that today, September __, 2020, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today September 21, 2020.


Wanda I. Cordero Morales
Clerk



ATTACHMENT I



GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board
Puerto Rico Energy Bureau

REGULATION FOR DEMAND RESPONSE

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REGULATION FOR DEMAND RESPONSE

ARTICLE 1. GENERAL PROVISIONS

Section 1.01 Title.

This Regulation shall be known as the *Regulation for Demand Response*.

Section 1.02 Legal Basis.

This Regulation is adopted pursuant to the provisions of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014"); Act 17-2019, known as the *Puerto Rico Energy Public Policy Act* ("Act 17-2019"); and Act 38-2017, as amended, known as the *Uniform Administrative Procedures Act of the Government of Puerto Rico* ("LPAU", for its Spanish acronym). Specifically, Section 6.29A of Act 57-2014, as amended by Act 17-2019, requires the Energy Bureau to develop guidelines for demand response programs and requires electric power service companies to submit proposed plans on demand response in accordance with the established guidelines.

Section 1.03 Purpose and Executive Summary.

Demand response has a significant role to play in rebuilding a stronger energy system that is responsive to customers' needs. The development of demand response programs can be used as a resource to reduce system costs. Specifically, demand response can help reduce the cost of capacity, energy, and other energy services for all customers while increasing system flexibility and allowing for better integration of renewable resources. Customers participating in demand response programs will benefit through having opportunities to reduce their energy costs by better managing their usage.

Section 1.04 Applicability.

This Regulation shall apply to the following:

- A) PREPA or its successor as the operator of the Transmission and Distribution System;
- B) Energy Cooperatives as defined in Regulation No. 9117.¹
- C) All Demand Response Aggregators that enroll customers and provide demand response resources to PREPA, as well as companies that intend to operate as Demand Response Aggregators in Puerto Rico.

¹ Regulation on Energy Cooperatives in Puerto Rico.

Section 1.05 Interpretation.

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

Section 1.06 Provisions of Other Regulations.

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

Section 1.07 Unforeseen Proceedings.

When a specific proceeding has not been planned for in this Regulation, the Energy Bureau may attend to it in any way that is consistent with Act 57-2014.

Section 1.08 Dates and Time Periods.

In computing any time period established in this Regulation, or by order of the Energy Bureau, the day of the occurrence of the act, event, or noncompliance that triggers the period shall not be counted, and the established period shall begin to elapse on the following day. Whenever a due date falls on a Saturday, Sunday, or legal holiday, said due date shall be extended until the next workday.

Section 1.09 Definitions.

- A) These definitions are to be used for this Regulation and are not intended to modify the definitions used in any other Energy Bureau regulation or order.
- B) For the purposes of this Regulation, the following terms will have the meaning established below, except when the context or the content of any provision clearly indicates something else:
 - 1) "Annual Demand Response Update" or "Annual DR Update" means a report filed by PREPA regarding changes to its plans for programs and initiatives in the coming year relative to the approved Three-Year DR Plan.
 - 2) "Annual Report" means a report filed annually by a DR Program Provider that includes information regarding the programs implemented in the immediately preceding year and the impacts of those programs.
 - 3) "Demand Response Aggregator" or "DR Aggregator" means any company authorized to act as an interface party between PREPA and end-use customers to deliver demand response resources to PREPA. DR Aggregators are Electric Power Service Companies.
 - 4) "Customer" means any Person who receives electric power service from an

Electric Power Service Company.

- 5) "Customer Class" means the classification of a customer in accordance with PREPA's tariff provisions that define applicability and rates, as may change from time to time.
- 6) "Demand Response" or "DR" means changes in utility-supplied electric usage by end-use customers from their normal consumption patterns in response to changes in the price of electricity over the course of a day and/or season, or to other economic compensation designed to induce change in the use of utility-supplied electricity, in order to provide a resource option for electric system planners and operators in balancing supply and demand.
- 7) "Demand Response Program Provider" or "DR Program Provider" means any Electric Power Service Company that enrolls customers in the provision of demand response resources. PREPA and all DR Aggregators are Demand Response Program Providers.
- 8) "Distributed Energy Resource" means Distributed Generation, Energy Storage, Microgrids, or any other resource, including but not limited to energy efficiency or demand response, that is connected to the distribution or transmission system and that assists in meeting at least one Customer's electrical load.
- 9) "Distributed Generation" means an electric power generation facility in Puerto Rico connected to the distribution or transmission system and producing power for self-supply, reduction in net consumption, or sale.
- 10) "Electric Power Service Company" or "EPSC" means any natural or juridical person or entity, including energy cooperatives, engaged in the rendering of energy generation, transmission, and distribution services, billing, wheeling, grid services, energy storage, the resale of electric power, as well as any other electric power service as defined by the Energy Bureau.
- 11) "Emergency Situation" refers to events such as blackouts for periods longer than 24 hours or prolonged interruptions of electric service caused by an atmospheric phenomenon, as well as any other event that has been declared an emergency situation by the Governor of Puerto Rico, through an Executive Order.
- 12) "Energy Bureau" means the Puerto Rico Energy Bureau, a specialized independent entity in charge of regulating, supervising, and enforcing the energy public policy of the Government of Puerto Rico, created by Act 57-2014 and renamed and reorganized by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board and Act 211-2018, formerly known as the Puerto Rico Energy Commission.

- 13) "Energy Cooperative" means a cooperative organized in accordance with Act 258-2018; with the purpose of satisfying the individual and common needs of electric energy services of its members and/or their communities, through electric power generation, transmission, and distribution, in accordance with Energy Bureau Regulations, including Energy Bureau Regulation No. 9117.
- 14) "Energy Storage" means any resource that is capable of receiving electric energy from the Electric Power Grid or any other generation resource and storing it for later injection of electricity back to the Electric Power Grid or to serve any load.
- 15) "Meter" means the equipment used to measure consumption and/or generation of energy at the point of connection between an individual Customer and the distribution system as well as associated communications and control capabilities.
- 16) "Microgrid" means a group of interconnected loads and Distributed Energy Resources within electrical boundaries clearly defined by the Energy Bureau that acts as a single controllable entity that can connect and disconnect from the Electric Power Grid to enable it to operate in either grid-connected or off-the-grid (islanded) mode.
- 17) "Municipality" means the local government legal entity organized and existing pursuant to Article VI, §1 of the Constitution of the Commonwealth of Puerto Rico and Act No. 81 of August 30, 1991, as amended, known as the Autonomous Municipality Act of the Commonwealth of Puerto Rico.
- 18) "Person" means a natural person; a legal entity created, organized, or existing under the laws of the Commonwealth 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 a government entity (other than PREPA).
- 19) "PREPA" means the Puerto Rico Electric Power Authority, a corporate entity created by virtue of Act No. 83 of May 2, 1941, as amended, and any successor operator of the Transmission and Distribution System as selected and contracted under the provisions of Act 120-2018.
- 20) "Puerto Rico Benefit Cost Test" or "PR Test" means a cost-effectiveness screening test developed in accordance with this Regulation, reflecting Puerto Rico public policy and used to evaluate whether proposed or actual DR programs or initiatives provide greater benefits than their costs.
- 21) "Three-Year DR Plan" means a plan filed by PREPA, and subject to review and approval by the Energy Bureau, that identifies the proposed DR programs and goals for a three-year period, and the associated budget.
- 22) "Transmission and Distribution System" or "Electric Power Grid" means the

electric power transmission and distribution system of Puerto Rico.

23) "Utility Cost Test" means a cost-effectiveness screening test used to evaluate whether proposed or actual DR programs or initiatives provide greater benefits than costs to the Puerto Rico electric system.

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

Section 1.10 Controlling Version.

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

Section 1.11 Severability.

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed, for any reason, before a court and declared unconstitutional or null and void, such ruling shall not affect, damage, or invalidate the remaining provisions of this Regulation, rather the effect shall be limited to the article, provision, word, sentence, paragraph, subsection, or section that has been declared unconstitutional or null and void. The nullity or invalidity of any article, word, sentence, paragraph, subsection, or section, in any specific case, shall not affect or jeopardize in any way its application or validity in any other case, except where it has been specifically and expressly invalidated for all cases.

Section 1.12 Forms.

The Energy Bureau shall establish the forms it deems necessary to conduct the proceedings pursuant to this Regulation and shall inform the public via its website. The fact that the Energy Bureau has not adopted one or more forms, is in the process of reviewing them, or the Internet website is out of service, shall not relieve any party of its obligation to comply with the provisions stated herein, provide the information required by this Regulation, or otherwise comply with any applicable Energy Bureau order.

Section 1.13 Mode of Submission.

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

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

Section 1.14 Effect of Submission.

In filing any document before the Energy Bureau, the party undersigning such document shall be deemed to have Certified that the content of said document is true and that, according to the signer's best knowledge, information, and belief, formed after reasonable inquiry, the document is based on reliable and trustworthy facts, arguments, judicial sources, and information.

Section 1.15 Confidential Information.

If in compliance with the provisions of this Regulation or any of the Energy Bureau's orders, a Person has the duty to disclose information to the Energy Bureau considered to be privileged, pursuant to applicable evidentiary privileges, said Person shall identify the alleged privileged information and request in writing for the Energy Bureau to treat such information as confidential, pursuant to Article 6.15 of Act 57-2014. In identifying privileged information and requesting confidential treatment by the Energy Bureau, the requesting party shall follow the rules and procedures established by the Energy Bureau in Resolution CEPR-MI-2016-0009, as such resolution may be amended from time to time, for the filing, handling, and treatment of confidential information. Except in the case of information protected under the attorney-client privilege, the claim of confidential treatment shall, under no circumstances, be grounds for denying such information from being filed with the Energy Bureau.

Section 1.16 Validity.

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

Section 1.17 Compliance with Other Applicable Legal Requirements.

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

ARTICLE 2. DEMAND RESPONSE SERVICES

Section 2.01 Demand Response Roles.

A) PREPA shall develop and offer Demand Response programs.

- 1) PREPA may hire external expert consultants via competitive solicitation to assist in the development, administration, and/or operation of its DR programs.

B) PREPA shall pursue all cost-effective Demand Response resources (as defined

pursuant to the cost-effectiveness test established in ARTICLE 4 of this regulation), including diverse technologies and various services provided, through its own DR programs and rate designs, and through DR Aggregators.

- C) Demand Response Aggregators shall aggregate the Demand Response resources provided by one or more customers and enroll the aggregated resource or resources in the DR programs offered by PREPA and/or provide the resources to PREPA under the terms of a contract developed pursuant to a competitive solicitation under Section 3.01(E) of this regulation.
- D) PREPA need not accept DR resources offered by a DR Aggregator if the aggregate resources offered by the DR Aggregator have a capacity of less than 50 kW.
- E) PREPA shall dispatch the DR resources that participate in its programs, whether directly or through DR Aggregators, in a manner that supports the least cost reliable operation of the Puerto Rico electric system, when viewed from a total system perspective and consistent with the cost-effectiveness test established in ARTICLE 4 of this regulation and in accordance with applicable standards and prudent utility practice.
- F) An Energy Cooperative shall either:
 - 1) develop and offer cost-effective Demand Response programs to its customers, and aggregate the resulting resources to offer to PREPA; or
 - 2) facilitate the enrollment of its Customers in the Demand Response programs offered by PREPA or other DR Aggregators.
- G) Each Energy Cooperative that is not a DR Aggregator must file annually a description of the process the Energy Cooperative uses to refer customers to DR programs offered by PREPA and/or DR Aggregators.

Section 2.02 Certification of Demand Response Aggregators.

- A) The Energy Bureau shall be the sole certifying entity for approved Demand Response Aggregators.
- B) Demand Response Aggregators shall be certified by the Energy Bureau under the processes established in Energy Bureau Regulation 8701², or its successor.
 - 1) As part of the operational report submitted to the Energy Bureau pursuant to Regulation 8701, the DR Aggregator shall include a copy of the Annual Report

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

as specified in Section 5.01 of this Regulation.

- 2) In its Request for Certification under Regulation 8701, a DR Aggregator shall, in addition to meeting the requirements of Regulation 8701:
 - a) describe the type of DR resources it seeks to develop and aggregate;
 - b) identify the DR program or programs offered by PREPA that it intends to utilize on behalf of its customers;
 - c) provide the privacy and data security policy required by Section 6.01 of this Regulation; and
 - d) if the DR Aggregator intends to serve residential or small commercial customers, provide the standard form letter or electronic communication and agreement to be submitted to each customer explaining the terms and conditions of participating in the DR service as required by Section 2.03 of this Regulation.
- C) The Energy Bureau shall maintain, and publish on its web site, a list of certified DR Aggregators, including contact information for each DR Aggregator.

Section 2.03 Customer Participation.

- A) Customers served by PREPA may choose to:
 - 1) participate directly in PREPA's DR programs;
 - 2) participate in the DR programs offered by a DR Aggregator; or
 - 3) not participate in DR programs.
- B) Customers of Energy Cooperatives may choose to:
 - 1) participate in the DR programs offered by its Energy Cooperative if the Cooperative is a DR Aggregator;
 - 2) select a different DR Aggregator and participate in its programs if the Cooperative is not a DR Aggregator;
 - 3) participate directly in PREPA's DR programs; or
 - 4) not participate in DR programs.
- C) Each DR Program Provider shall ensure that there is no risk of double-counting of a DR resource resulting from a service account participating in more than one DR program. To facilitate this determination, PREPA shall, as part of its Three Year DR Plan, identify the DR programs that conflict or create double-counting risk.

- 1) PREPA's verification procedures developed pursuant to Section 5.03 of this regulation shall be designed to clearly identify where double-counting risk may occur.
 - 2) Each DR Program Provider shall maintain an accurate and up to date list of the service accounts that participate in each of its DR programs, and provide such list to PREPA at least once per quarter to ensure no double participation.
 - 3) The terms and conditions of service for DR Program Providers shall contain language advising customers that the same DR resource cannot be offered to different DR Program Providers and such behavior is subject to penalty.
 - 4) In the event that PREPA identifies that a service account is participating or requesting to participate in conflicting programs (that is, those which create a double-counting risk), PREPA shall inform the DR Program Provider(s) in question and the customer shall be required to select one DR program.
- D) Prior to enrolling a customer in DR service, any DR Program Provider must obtain the customer's written consent for the enrollment in DR service and ensure that the customer has not, and understands that it should not, enroll in any DR program that would result in double-counting of the DR resource during the term of its agreement with its DR Program Provider.
- E) DR Program Providers shall exercise due diligence in meeting obligations under this regulation so as to facilitate a customer's election to participate in DR programs as quickly as possible.
- 1) PREPA shall provide any requested information it is obligated to provide under Section 6.02, in a timely fashion, to an inquiring DR Aggregator to facilitate a customer's enrollment or participation in a DR program. The DR Aggregator shall demonstrate that the customer authorizes this data request by either (i) providing the appropriate form under Section 6.02 with the customer's signature or (ii) demonstrating that the customer is enrolled in the DR Program Provider's DR program(s).
- F) PREPA may not disrupt, disturb, or interfere with any customer's relationship with any DR Aggregator regarding DR services. Technical requirements, instructions, and procedures as may be necessary for DR program operation and dispatch, or to maintain electric system reliability, do not constitute undue disruption, disturbance or interference with any customer's relationship with DR Aggregator regarding DR services.
- G) PREPA and any DR Aggregators intending to enroll residential and small commercial customers in DR programs are required to meet the following additional requirements.
- 1) PREPA and such DR Aggregators must obtain approval from the Energy

Bureau for a standard form letter or electronic communication and agreement to be submitted to each customer explaining the terms and conditions of participating in the DR service.

- 2) PREPA and such DR Aggregators must transmit each standard letter or electronic communication to the customer within five (5) business days of the customer's agreement to participate in the DR service. PREPA and such DR Aggregators shall then provide such customer five (5) business days after receipt of the standard letter or electronic communication to opt-out of such participation through written response or electronic communication.
- H) In the event that the Energy Bureau terminates or revokes a DR Program Provider's certification or orders the termination of some or all of a DR Program Provider's DR services, the DR Program Provider shall notify each affected customer and PREPA within five (5) business days.
- I) In the event of a discontinuation of a DR service or program by a DR Program Provider:
- 1) The DR Program Provider must find another DR service provider to assume the contract under the same terms and conditions; or,
 - 2) The DR Program Provider must un-enroll the affected customer(s) from the DR program and inform PREPA within five (5) business days. The customer shall thereafter be eligible and have the right at any time to enroll in another DR service or program(s) pursuant to this regulation, operated by any DR Program Provider in good standing. In the event that the Energy Bureau issues an Order requiring the discontinuance of a DR service, the DR Program Provider shall provide its customers with written notice within five days of the Order that shall explain the discontinuance and provide the customer with information on PREPA DR programs, approved DR Aggregators, and any other information the Energy Bureau requires in its Order on the discontinuance.
- J) A DR Program Provider shall not create any undue barriers to prevent a customer from leaving its DR programs or service. However, a DR Program Provider's terms and conditions of service may require a minimum duration of enrollment in a DR program. If a customer makes a request to leave a DR program in accordance with the terms and conditions of that program, the DR Program Provider must, within five (5) business days:
- 1) Un-enroll the affected customer(s) from the DR program and
 - 2) Inform PREPA of any resulting changes to the characteristics of the DR resource that the DR Program Provider provides to PREPA.
- K) DR Program Providers shall be solely responsible for having appropriate contractual or other arrangements with their customers necessary to implement DR service

consistent with all applicable laws, Energy Bureau requirements, and this regulation.

- L) Customer inquiries concerning a DR Program Provider's charges or services should be directed to the DR Program Provider.
- M) To the extent that a customer takes service from an Energy Cooperative or DR Aggregator, PREPA shall have no obligations to the customer with respect to the DR services provided by the Energy Cooperative or DR Aggregator.

Section 2.04 Dispatching Demand Response Resources.

- A) PREPA shall maintain the ability to dispatch DR resources made available by participants in its programs as well as those made available by DR Aggregators.
- B) When dispatching DR resources, PREPA shall not discriminate among the resources offered by any DR Program Provider (including itself), on any basis other than the cost to ratepayers for the performance delivered (including any temporal or locational value, and taking account of the certainty with which the resource will be delivered).
- C) Each DR Aggregator shall maintain the ability to comply with PREPA's system dispatch instructions and procedures for demand response resources that it has acquired, in accordance with PREPA's operating procedures, as approved by the Energy Bureau.
- D) Each DR Program Provider shall verify the reliability of each DR resource or aggregated collection of DR resources it enrolls in PREPA's programs, in accordance with PREPA's procedures under Section 5.03 of this regulation.
- E) DR Program Providers may compensate the customers who provide DR resources based on the resources' availability, location, ancillary services and performance.

ARTICLE 3. DEMAND RESPONSE PROGRAMS, PLANS, AND BUDGETS

Section 3.01 Demand Response Programs.

- A) PREPA shall develop Demand Response programs that provide the most cost-effective Demand Response resources over time in accordance with its approved DR Plan.
- B) PREPA shall develop and offer DR programs that provide standardized, cost-effective compensation in exchange for dispatchable DR. PREPA shall submit these programs and associate compensation mechanisms to the Energy Bureau for approval, rejection, or modification.
 - 1) When considering PREPA's proposed programs, the Energy Bureau shall evaluate the compensation offered to participating DR resources on the basis

of the programs' projected ability to optimize for the least cost of the Puerto Rico electric system.

- 2) PREPA should never compensate a DR resource more than the value that resource provides to the Puerto Rico electric system (on an annual average basis) and should design its compensation mechanism to pay the minimum needed to attract the DR resource.
- C) DR Aggregators may aggregate DR resources from one or more customers and enroll the aggregate resource in PREPA's standardized programs.
- D) PREPA, in its operating procedures, and all DR Program Providers, in their DR program designs, shall differentiate among types of DR resources in a manner befitting the characteristics of the resources and the services the resources can provide.
- 1) PREPA shall, in the development of standardized DR programs, consider DR programs that dispatch with different frequency and duration and which may be well suited to different technologies, including those which might dispatch daily, those which dispatch occasionally (a limited number of times per year), and those which dispatch only in Emergency Situations.
- E) PREPA may issue competitive solicitations to procure DR resources from DR Aggregators. Such DR resource solicitations can be intended to acquire services or reach customers that are not well addressed by PREPA's standardized programs. PREPA has the right to reject any resources offered in response to a competitive solicitation.
- F) PREPA shall develop and implement a process whereby an individual customer with a peak load of at least 100 kW may propose alternative custom-tailored arrangements to provide PREPA with a DR resource that does not fit well in PREPA's standardized DR programs.
- 1) Once PREPA and the customer have come to an agreement regarding the custom-tailored arrangement, PREPA and DR Aggregator shall jointly file the proposed plan with the Energy Bureau for approval, rejection, or modification.
 - 2) In the event that PREPA and the customer are not able to come to an agreement regarding a custom-tailored arrangement, the customer may request the Energy Bureau to resolve the differences between PREPA and the customer under the procedures established by Regulation 8543.
 - 3) For the purposes of this Regulation, such custom-tailored arrangements shall be considered to be a part of PREPA's DR programs.
- G) Fossil fueled backup generators may be used only in DR programs that call for dispatch only in power supply or grid contingency situations in which customers

would lose electric service without the use of such resources.

Section 3.02 Demand Response Plans.

- A) PREPA is required to file Three-Year DR Plans and Annual DR Updates in accordance with this Section.
- B) Each Three-Year DR Plan shall include, but need not be limited to:
 - 1) PREPA's targets for the acquisition of cost-effective demand response resources consistent with its most recently approved IRP;
 - 2) Planned programs to acquire demand response resources, including associated education and public awareness efforts;
 - 3) A defined calendar for offering such programs;
 - 4) Justification for the program designs based on cost-effectiveness to the Puerto Rico energy system;
 - 5) The required budget, by year, for DR program expenditures (including both administrative costs and compensation to participants), including identifying the proposed sources of funding (such as rates, government funding, philanthropic support, etc.);
 - 6) The annual expected operational and other savings expected to result from the operation of the DR programs;
 - 7) The anticipated reductions in peak demand that the PREPA programs will provide along with anticipated peak reductions anticipated by DR Aggregators; DR Aggregators shall cooperate with PREPA to provide this information;
 - 8) An analysis that demonstrates that the system savings from the DR programs will exceed the cost;
 - 9) An evaluation plan that includes a strategic plan to conduct evaluation activities (which examine the performance, design, delivery, and operations of DR programs) through competitively procured independent evaluators, under contract to the Energy Bureau, throughout the 3-year period of the plan;
 - 10) Plans for the implementation and continuation of time varying rate programs offered to all customer classes, if such plans exist;
 - 11) A defined schedule for feasible programs over the short-, medium-, and long-term (e.g. over three-, five-, and ten-year periods);
 - 12) Identification of the Customer Classes to be served by each program;

13) A description of how the intended DR programs are consistent with the requirements for DR in the most recent approved IRP; and

14) Any other information as required by the Energy Bureau.

C) The Three-Year DR Plan procedural schedule shall be as follows.

1) The Energy Bureau shall establish the filing deadline for the Three-Year DR Plan by order or resolution.

a) PREPA's first Three Year DR Plan shall be filed no later than six (6) months after the effective date of this Regulation.

2) PREPA shall present its draft Three-Year Plan to an open meeting of interested stakeholders and members of the public no later than ninety (90) days before the filing deadline and make the written document publicly available at that time.

a) PREPA shall solicit feedback from stakeholders in meetings and via written comments.

b) PREPA shall endeavor to solicit stakeholder participation and input from diverse perspectives including, but not limited to, the following:

i. Residential consumers;

ii. Low income consumers;

iii. Small businesses;

iv. Large commercial consumers;

v. Manufacturers;

vi. Relevant trade groups and associations;

vii. Environmental organizations;

viii. Organized labor;

ix. The Independent Consumer Protection Office;

x. Energy Public Policy Program of the Department of Economic Development and Commerce;

xi. Municipalities;

xii. Other public interest organizations; and

xiii. Certified or potential DR Aggregators.

- c) PREPA shall prepare a summary of feedback received and a discussion of how the feedback has or has not been incorporated into the Three-Year DR Plan, and file this document as part of submission of the Three-Year DR Plan to the Energy Bureau.

3) Upon of the filing of the Three-Year DR Plan:

- a) The Energy Bureau shall initiate a proceeding to evaluate the filed Three-Year DR Plan, along with its associated budget and performance objectives.
 - b) The Energy Bureau shall solicit comments on the filed Three-Year DR Plan from stakeholders and the public, specifically invite the participation of stakeholders who provided feedback on the draft Three-Year DR Plan and of the Independent Consumer Protection Office. The Energy Bureau shall hold at least one public workshop before comments are due at which PREPA shall present the Three-Year Plan and stakeholders shall have an opportunity to ask questions.
 - c) The Energy Bureau need not require formal testimony or an adjudicative process, although it may use such processes at its discretion. The Energy Bureau shall provide an opportunity for interested parties to be heard in a public hearing.
- D) The Energy Bureau shall issue a decision on each filed Three-Year DR Plan. The Energy Bureau shall approve each Three-Year DR Plan, reject and require the resubmission of the Plan, or accept the Plan in part and require resubmission with instructions on other parts of the Plan.
- 1) The Energy Bureau's decision regarding the Three-Year DR Plan shall serve as approval for the recovery for the net cost of the approved DR programs through PREPA's rates for transmission and distribution service. Approval of cost recovery is conditioned on prudent program management in accordance with sound utility practice and judgement.
- E) Annual DR Updates.
- 1) In each of the first and second years of implementation of each Three-Year DR Plan, PREPA shall file an Annual DR Update with the Energy Bureau on the schedule established by the Energy Bureau in its order or resolution approving the Three-Year DR Plan.
 - 2) The Annual DR Update shall describe in detail changes that PREPA proposes to make to the Three-Year DR Plan for implementation in the coming year (years two and/or three of the Three-Year DR Plan).

- 3) PREPA shall publish a draft Annual DR Update for stakeholder feedback no later than ninety (90) days before the filing deadline for the Annual DR Update, and welcome stakeholder feedback within thirty (30) days to facilitate incorporation of responses to this feedback in PREPA's Annual DR Update filing to the Energy Bureau.
 - 4) In PREPA's Annual DR Update:
 - a) PREPA may request changes to its DR programs' performance metrics or targets;
 - b) PREPA may make changes to the program offerings based on evaluation of a program or other circumstances, with associated changes in the DR budget.
 - 5) The Energy Bureau shall consider each filed Annual DR Update.
 - a) The Energy Bureau shall solicit stakeholder comments on the filed Annual DR Update to inform its decision.
 - b) The Energy Bureau may, at its discretion, open a proceeding for the purpose of evaluating any proposed Annual DR Update.
 - 6) The Energy Bureau shall approve each Annual DR Update, reject and require the resubmission of the Update, or accept the Update in part and require resubmission with instructions on other parts of the Update. Energy Bureau approval of the Annual DR Update (as modified) constitutes approval of changes to the DR budget for inclusion in transmission and distribution rates. Each approved Three-Year DR Plan, as modified by any past approved Annual DR Update, remains in effect until an order approving the Annual DR Update is issued.
- F) In order to expedite the use of cost-effective DR to lower electric system costs and maintain safe and reliable service, PREPA may propose pilot or quick start DR programs (including solicitations for DR Aggregators) to the Energy Bureau before it files its first Three Year DR Plan, and the Energy Bureau may approve, reject, or modify these proposed pilot or quick start programs.

Section 3.03 Demand Response Programs During Emergency Situations.

- A) PREPA's Three Year DR Plan shall include proposed DR programs that would be used in the event of an Emergency Situation that affects the provision of electric service from PREPA to its customers.
- B) In the event of such an Emergency Situation, PREPA *motu proprio* or pursuant to an Energy Bureau's order, may develop and offer additional DR programs to individual customers or members of a Customer Class, for the purposes of providing continuous

and reliable electric service.

- C) PREPA shall submit such additional programs to the Energy Bureau for approval, rejection, or modification. The Energy Bureau will review these programs in an expedited manner and issue any Resolution accordingly. However, the Energy Bureau shall ensure the compensation offered to participating DR resources is based on the value of the DR resources to the Puerto Rico electric system during the Emergency Situation.

ARTICLE 4. COST EFFECTIVENESS

Section 4.01 Interim Cost Benefit Test

- A) The cost benefit test defined in this Section shall be used until the Energy Bureau establishes the Puerto Rico Test by order or resolution, as described in Section 4.02.
- B) PREPA and the Energy Bureau shall assess the cost-effectiveness of DR programs according to the Utility Cost Test. The Utility Cost Test measures cost-effectiveness from the perspective of the Puerto Rico electric system.
- C) The costs included in this test shall be:
 - 1) Program administrative costs and
 - 2) Incentive payments to participants
- D) The benefits included in this test shall be:
 - 1) Avoided energy costs;
 - 2) Avoided generation capacity costs, including reserve margins;
 - 3) Avoided transmission and distribution capacity costs;
 - 4) Avoided line losses; and
 - 5) Avoided environmental compliance costs.
- E) Each of these costs and benefits shall be calculated in a manner that reflects the possibility for temporal and locational variation in its cost or value (such as, for example, higher costs when the load is high relative to renewable production or when the transmission or distribution system is congested), and which accounts for the value of marginal changes in load.
- F) In its Three-Year DR Plan, PREPA shall describe in detail the methodologies used to calculate the costs and benefits of its DR programs, and provide the underlying data.

Section 4.02 Puerto Rico Test

- G) The Puerto Rico Test shall replace the interim Utility Cost Test described in Section 4.01 above and shall be determined as set forth in this Section 4.02.
- A) The Puerto Rico Test shall reflect the policy objectives of Puerto Rico with regard to energy, environmental, and societal impacts.
- B) The Energy Bureau shall develop the specific benefits and costs to be included in the Puerto Rico Test, informed by stakeholder input.
- C) The Energy Bureau shall include in the Puerto Rico Test all relevant generation, transmission, and distribution impacts, reliability and resilience, other fuel impacts, and environmental impacts, and may include other non-energy impacts, water impacts, economic development impacts, and social equity impacts. The accrual of specific non-energy impacts to certain programs or technologies, such as income-eligible programs or combined heat and power, may be considered.
- D) The Energy Bureau shall initiate a proceeding to define the Puerto Rico Test within six (6) months of the effective date of this Regulation.

ARTICLE 5. REPORTING, EVALUATION, MEASUREMENT, AND VERIFICATION

Section 5.01 Reporting.

- A) On an annual schedule established by the Energy Bureau, each DR Aggregator shall report to the Energy Bureau a description of the DR Aggregator's complete activities during the year, including a summary of the DR resources aggregated, the DR programs in which they are enrolled, and the performance of their resources during events when DR has been dispatched, as well as any other such information as the Energy Bureau shall determine by order or resolution. A DR Aggregator may request to the Energy Bureau that some or all of its annual report be treated as confidential business information.
- B) PREPA shall provide quarterly public reports to the Energy Bureau. These reports shall be filed within thirty (30) days of the end of each quarter. The reports shall include a description of PREPA's progress in implementing the Three-Year DR Plan and any relevant Annual DR Updates. PREPA shall submit a summary of the DR resources acquired, the DR programs in which they are enrolled, the portion of resources that are directly enrolled in PREPA's programs or participate via a DR Aggregator, the performance of the acquired resources during events when DR has been dispatched, and other such information as the Energy Bureau shall determine and establish by order or resolution.

Section 5.02 Program Evaluation.

- A) The Energy Bureau shall evaluate PREPA's DR programs, in accordance with the

evaluation plan contained within the approved Three-Year Plan. The Energy Bureau may contract with independent consultants to conduct such evaluations. The Energy Bureau shall publish the final report from each program evaluation.

- B) When developing the evaluation plan, PREPA shall ensure that the evaluations will be conducted at a time and in a manner such that they can be useful to PREPA in the development of its subsequent Three Year DR Plan, to stakeholders to inform their engagement with the draft Three Year DR Plan, and to the Energy Bureau in its consideration of that plan.

Section 5.03 Measurement and Verification.

- A) PREPA shall adopt, subject to approval by the Energy Bureau, procedures to measure and verify the DR resources provided by all DR Program Providers (including PREPA itself). The Energy Bureau shall establish a deadline, by order or resolution, for the adoption of these procedures. The Energy Bureau shall solicit comments on PREPA's proposed procedures from stakeholders and the public. PREPA's procedures may include multiple methods to measure and/or verify DR resources. PREPA may assign a DR resource to use a particular methodology based on its particular characteristics or may allow the customer's DR Program Provider or the customer providing the DR resource to select the methodology from among the methods included in the approved procedures.
- B) PREPA's procedures to measure and verify DR resources shall include:
 - 1) How to establish the baseline load, to which changes in load are compared when measuring DR resources delivered, for DR resources that do not include dispatchable electric Energy Storage or fossil-fueled backup generation;
 - 2) How to measure the performance of DR resources that include dispatchable electric Energy Storage or fossil-fueled backup generation; and
 - 3) A process to test the deployment of each DR resource or aggregated set of DR resources provided by a DR Program Provider on a regular basis (such as twice per year). Measured dispatch of the resource by PREPA as part of standard grid operations shall be an allowed mechanism to verify the resource.
- C) Such procedures and baseline calculations shall be determined by PREPA and the Energy Bureau to be both reliable and feasible. Reliable procedures and calculations provide trust that reductions procured in the DR program are being delivered accurately. Feasible procedures and calculations are implementable by PREPA and DR Program Providers at reasonable cost using available technology that does not significantly disrupt customer operations.

ARTICLE 6. PRIVACY, CUSTOMER DATA, AND COMPLAINTS

Section 6.01 Customer Information.

- A) Prior to enrolling customers in a DR program, each DR Program Provider shall adopt and maintain a privacy and data security policy that describes and governs how it stores, safeguards, and limits disclosure of customer information.**
- B) Each DR Program Provider's privacy and data security policy is subject to review and approval by the Energy Bureau.**
- C) The Energy Bureau may audit each DR Program Provider's procedures and practices to ensure consistency with its privacy and data security policy.**
- D) Each DR Program Provider's privacy and data security policy shall ensure at a minimum that:**
 - 1) The company's policy is consistent with the principles for data privacy and the smart grid in the DataGuard Energy Data Privacy Program Voluntary Code of Conduct.
 - 2) The company may not sell private or proprietary customer information.
 - 3) The company may not disclose private or proprietary customer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a retail electric customer who does not already subscribe to that service or product.
 - a) The DR Program Provider shall be allowed to share customer information with its DR vendors, verifiers, and evaluators, with data sharing limited to that which is necessary for the effective operation of each vendor's DR program or programs or the verification or evaluation of such programs.
 - 4) This section does not require customer permission for or prevent disclosure of private or proprietary customer information by the DR Program Provider to a third party with which the DR Program Provider has a contract where such contract is directly related to conduct of the DR Program Provider's business and the services being provided, provided that the contract prohibits the third party from further disclosing or selling any private or proprietary customer information obtained from the DR Program Provider to a party that is not the DR Program Provider and not a party to the contract with the DR Program Provider.
 - 5) A DR Program Provider may collect and release retail electric customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

Section 6.02 Sharing Customer Usage Data.

- A) PREPA shall develop and publish, subject to approval from the Energy Bureau and no later than the date on which it files its first Three Year DR Plan, a standard form that will allow for customer authorization to share customer-specific information and usage data with a DR Aggregator or Energy Cooperative. PREPA will provide confidential customer-specific information and usage data to parties specified by the customer, if those parties have customer authorization using this form.
- B) PREPA shall ensure that the Meter data that it provides to Energy Cooperatives and DR Aggregators is accurate. PREPA must transfer the data required to evaluate DR event performance within a reasonable period of time (24 hours) following the event.
 - 1) PREPA shall establish a simple process using the approved standardized form for requests of DR-relevant customer data by DR Program Providers and customers. Data shall include: twelve (12) months of historical usage data if available, the Meter and service account numbers, the location of the customer on the grid, and whether the customer is currently enrolled in any DR programs (and with which DR Program Provider).
 - 2) If the customer is enrolled in a DR program provided by the DR Aggregator, PREPA shall further provide, upon request, ongoing usage data as required by the DR Aggregator for billing and settlement at a minimum of fifteen (15) minutes interval data, within twenty-four (24) hours from the time PREPA acquires the usage data, or as mutually agreed to by PREPA and DR Aggregator, or as frequently and at the interval ordered by the Energy Bureau.
- C) PREPA shall ensure that customers wishing to participate in DR services have the appropriate metering devices, and shall respond to requests by customers for appropriate metering equipment within 14 days. If the request is accepted, a timely projected installment date should be included in PREPA's response. PREPA may charge the customer or DR Program Provider for the cost difference for a device that is different from the metering equipment the customer would otherwise have been provided.
 - 1) With approval and authorization from the customer, a DR Program Provider may install and use a telemetry solution (e.g., a KYZ pulse device or metering incorporated in an inverter or other control electronics) that has the consent of PREPA. The data from the telemetry solution can be used by the DR Program Provider in measuring customer performance and meeting requirements of PREPA. The DR Program Provider shall be responsible for the installation cost of the telemetry solution.
 - 2) In the event that a Meter change is required (i.e. the existing Meter is not an appropriate interval Meter), if the customer has the option of a Meter that would provide the appropriate interval information as part of a PREPA deployment of such metering, the customer and DR Program Provider can

elect to begin DR services after the Meter installation date.

- D) If DR participation requires a Meter or telemetry solution that would not otherwise be installed at no charge to the customer, the customer may elect to have the necessary metering equipment installed by PREPA. PREPA shall charge the DR Program Provider for the cost of this equipment. Nothing in this regulation is intended to prevent a DR Program Provider and its customer from agreeing to allocate these costs between them.

Section 6.03 Complaint Procedure

- A) Prior to enrolling customers in a DR program, each DR Program Provider shall develop and publish a procedure for addressing any complaints a Customer may have with regards to the DR services or compensation provided to the Customer. The procedure shall clearly describe the process through which a Customer may file any complaint or grievance with the DR Program Provider and the process through which the DR Program Provider will address said complaint or grievance, including the time period within which such complaints or grievances will be addressed.
 - 1) A DR Program Provider that has a pre-existing complaint procedure that has been approved by the Energy Bureau may use that procedure until it develops a complaint procedure fully aligned with this regulation. At the time it begins implementation of a DR program, such provider shall propose to the Energy Bureau the timeline for updating its complaint procedure to be fully aligned with this regulation, or shall explain why it believes that its preexisting procedure is fully aligned with this regulation.
 - 2) Each DR Service Provider's complaint procedure shall include information regarding how to contact the Independent Consumer Protection Office.
- B) The procedure must include processes for investigation and resolution of complaints by a Customer whose private or proprietary information may have been sold by the DR Program Provider or disclosed by the DR Program Provider for the purposes of marketing services or product offerings in violation of this Article.
- C) Any Customer dissatisfied with a determination made by the DR Program Provider in relation to a complaint or grievance made pursuant to this Section may file a complaint with the Energy Bureau for review of such determination by the DR Program Provider. Such complain shall be filed pursuant to Regulation 8543.

ARTICLE 7. RATE DESIGN

Section 7.01 Rate Designs.

- A) PREPA shall develop, for the Energy Bureau's approval, rejection, or modification, rate designs that are consistent with customer implementation of cost-effective DR resources. The Energy Bureau shall provide an opportunity for comment by

stakeholders of any new rate designs.

- B) Any new rate design filed on a standalone basis shall not result in an increase in revenues for PREPA. New rate designs that do impact the revenue requirements may be considered as part of a rate increase application filed by PREPA.
- C) PREPA may develop and implement, with the Energy Bureau's approval, time-varying rates and/or demand charges that are informed by the costs of distribution or transmission infrastructure. Any such rate structure must be just and reasonable, must be cost-based, and must be consistent with Puerto Rico's energy policy and not discourage beneficial electrification or the more efficient use of the grid.
- D) PREPA may develop and implement, with the Energy Bureau's approval, time-varying rates and/or demand charges that are informed by the costs of energy supply and capacity. Any such rate structure must be just and reasonable, must be cost-based, and must be consistent with Puerto Rico's energy policy and not discourage beneficial electrification.

ARTICLE 8. RESOURCE AND GRID PLANNING

Section 8.01 Responsibilities of PREPA.

- A) As part of its responsibilities for planning for and developing a least cost reliable and efficient electric grid, PREPA shall include in all planning processes the changes in energy consumption and peak load that result from the activities of PREPA and DR Aggregators.
 - 1) In developing the IRP, PREPA shall consider the projected cost-effective DR resources available to Puerto Rico over the twenty (20) year planning horizon.
 - a) PREPA shall include in its IRP analysis:
 - i. the impact of market transformation and codes and standards;
 - ii. DR resources that have been identified and approved by the Energy Bureau in the most recent Three-Year DR Plan, Annual DR Update, or other proceeding;
 - iii. the achievable cost-effective DR potential identified in any relevant studies conducted in Puerto Rico on behalf of PREPA or the Energy Bureau;
 - iv. any other information as required by the Energy Bureau
 - b) PREPA shall identify whether achievable increases in the projected DR resources, when considered alongside development of other Distributed Energy Resources, could avoid specific infrastructure

investments (including generation investments) or other costs to ratepayers.

- c) PREPA shall consider DR resources acquired by DR Aggregators as well as those which directly participate in its own DR programs.
- 2) In developing transmission or distribution plans, PREPA shall include the potential for development and deployment of DR resources to avoid or defer the need for transmission or distribution investment.
 - a) In the event that PREPA identifies opportunities where DR resources may cost-effectively avoid or defer the need to construct transmission or distribution infrastructure, PREPA shall develop a plan of action that maintains reliability at least cost to ratepayers and submit it to the Energy Bureau for approval, rejection, or modification. Such a plan may include the offering of geographically- and/or temporally-targeted DR programs.
- 3) PREPA shall request from Energy Cooperatives and DR Aggregators, and the Energy Cooperatives and DR Aggregators shall provide, any information necessary for an accurate and up to date assessment of demand side resources in the IRP or any transmission or distribution planning processes.

ARTICLE 9. RECONSIDERATION AND JUDICIAL REVIEW

Section 9.01 Reconsideration.

Any person who is not satisfied with a decision made by the Energy Bureau under this Regulation may file, within the term of twenty (20) days from the date copy of the notice of such decision is filed by the Energy Bureau's Clerk, a request for reconsideration before the Energy Bureau wherein the petitioner sets forth in detail the grounds that support the request and the decisions that, in the opinion of the petitioner, the Energy Bureau should reconsider.

Section 9.02 Judicial Review.

Any person dissatisfied with a final decision of the Energy Bureau under this Regulation may, within thirty (30) days from the date copy of notice of a final decision addressing a request for reconsideration is filed by the Energy Bureau's Clerk, or within thirty (30) days from the date copy of the notice of an Energy Bureau final decision is filed by the Energy Bureau's Clerk, if a request for reconsideration has not been filed, appear before the Puerto Rico Court of Appeals by way of writ of judicial review, pursuant to Section 4.2 of LPAU and the applicable Rules of the Court of Appeals.

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