



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

IN RE: REGULATION FOR THE EVALUATION
AND APPROVAL OF AGREEMENTS
BETWEEN ELECTRIC SERVICE COMPANIES

CASE NO.: NEPR-MI-2020-0014

SUBJECT: Notice of Proposed Regulation and
Request for Public Comments.

RESOLUTION

I. Introduction.

According to Act 57-2014,¹ the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") has the duty to establish and implement regulations and the regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of the rates of Puerto Rico's electrical system.² The Energy Bureau also has the responsibility to establish the guidelines, standards, practices, and processes to be followed to purchase power, modernize power plants or electric power generation facilities.³ Additionally, under Section 6.32 of Act 57-2014, the Energy Bureau shall evaluate and approve all agreements between electric power service companies before their execution, and shall adopt guidelines and standards to which the agreements shall adhere to.

To this purpose, the Energy Bureau publishes its Proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies ("Proposed Regulation").

II. Proposed Regulation.

The purpose of the Proposed Regulation is to establish guidelines and standards to ensure that power purchase agreements between electric service companies are in the public interest and consistent with the policy objectives as set forth in the energy public policy of Puerto Rico. Additionally, through the Proposed Regulation, the Energy Bureau shall review the qualifications of electric power service companies, including their financial and technical ability, to guarantee that the services described in its contract are provided at just and reasonable rates. Through the review and approval of power purchase agreements, the Energy Bureau seeks to ensure that the technical specifications of any project, or contractual conditions, do not jeopardize the reliability and safety of the electric grid.

¹ *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

² Section 6.3, Act 57-2014.

³ *Id.*

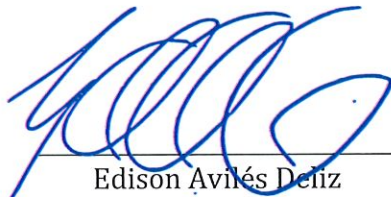
III. Comments and Public Participation.

Under Act 38-2017,⁴ the Energy Bureau will publish a notice on the proposed rulemaking process in a newspaper of general circulation. Under Section 2.2 of Act 38-2017, the general public may present its comments regarding the proposed regulation until November 18, 2020. Copy of the Proposed Regulation is included as Attachment A to this Resolution. Furthermore, a copy of the Proposed Regulation is available for public scrutiny at the Energy Bureau's Clerk Office and at the Energy Bureau's website, www.energia.pr.gov.

Comments may be filed as following:

- 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, at the address set forth above.

Be it notified and published.



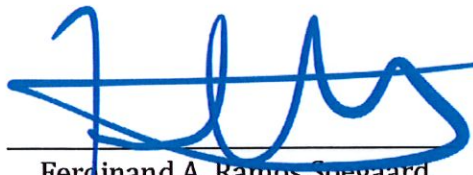
Edison Avilés Deliz
Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Kraujo
Associate Commissioner


⁴ Administrative Procedure Act of the Government of Puerto Rico, as amended.




CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on October 19, 2020. I also certify that on October 19, 2020 a copy of this Resolution was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aepr.com and c-aquino@prepa.com. I also certify that today, October 19, 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 October 19, 2020.


Wanda I. Cordero Morales
Clerk





GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board
Puerto Rico Energy Bureau

REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES

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REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES

ARTICLE 1.- GENERAL PROVISIONS

Section 1.01.- Title.

This Regulation shall be known as the Regulation for the Evaluation and Approval of Agreements between Electric Service Companies.

Section 1.02.- Legal Basis.

This Regulation is adopted pursuant to Section 6.3 and Section 6.32 of Act 57-2014, known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended by Section 5.28 of Act 17-2019, known as the *Puerto Rico Energy Public Policy Act*, and pursuant to Section 1.7 of Act 17-2019.

Section 1.03.- Purpose and Executive Summary.

The purpose of this Regulation is to carry out the legislative mandate as set forth in Act 17-2019, Act 120-2018 and Act 57-2014. The legislature required in Section 6.3 (c) of Act 57-2014 that the necessary regulatory actions be taken to guarantee the capacity, reliability, safety, efficiency, and reasonableness of the rates of Puerto Rico's electrical system, including the establishment of regulations, guidelines, standards, practices, and processes to be followed to purchase power, modernize power plants or electric power generation facilities. This Regulation carries out this mandate to ensure that power purchase agreements between electric service companies are in the public interest and consistent with the policy objectives as set forth by the legislature. This Regulation further follows the specific directives of the legislature regarding power purchase agreements by requiring the Energy Bureau's review of the financial and technical ability, among other qualifications, of the electric power service companies to provide the services in its contract at just and reasonable rates. By approving the power purchase agreements, the Energy Bureau seeks to ensure that the electric service company has the capability of providing the capacity required under the agreement, reliably, safely, efficiently and at a reasonable rate, consistent with the public interest.

Section 1.04.- Applicability.

This Regulation shall apply to all agreements between electric service companies, including independent power producers. This includes, but shall not be limited to, the evaluation and approval of power purchase agreements between an independent power producer and PREPA. However, when a power purchase agreement is part of a PREPA Transaction, the Energy Compliance Certificate shall suffice in accordance with the provisions of Act 120-2018, known as the *Puerto Rico Electric Power System Transformation Act*. The procedure for the issuance of the Energy Compliance Certificate is set forth in Article 5 of this Regulation.

- A) The provisions of this Regulation shall not apply to power purchase agreements that have been entered into by PREPA prior to the approval of Act 17-2019. However, any extension of, or amendment to, a power purchase agreement executed prior to the approval of Act 57-2014 shall be subject to the approval of the Energy Bureau, in accordance with this Regulation.
- B) This Regulation shall also apply to large scale industrial and commercial consumers, energy cooperatives, or other demand aggregator structure that enters into power purchase agreements directly with an independent power producer or with PREPA.
- C) This Regulation shall apply to the provision of energy from any single generator that is equal to or greater than one megawatt. For a demand aggregator, this Regulation shall apply to aggregated demands of one megawatt or greater that are sold to PREPA.

Section 1.05.- Interpretation.

This Regulation shall be interpreted so as to promote the highest public good and the protection of the interests of the residents of Puerto Rico, such 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 follows Act 57-2014 and Act 17-2019.

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 act, event, or noncompliance that triggers the period shall not be counted, and the established period shall 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, these terms will have the meaning established below, unless the context of the content of any provision indicates something else:

- 1) "Act 83" means Act No. 83 of May 2, 1941, as amended, known as the "Puerto Rico Electric Power Authority Act".
- 2) "Act 239-2004" means Act 239-2004, as amended, known as the "General Cooperative Associations Act of 2004".
- 3) "Act 29-2009" means to Act 29-2009, as amended, known as the "Public Private Partnerships Act".
- 4) "Act 82-2010" means Act 82-2010, as amended, known as the "Public Policy Energy Diversification through Sustainable and Alternate Renewable Energy in Puerto Rico Act".
- 5) "Act 57-2014" means Act 57-2014, as amended, known as the "Puerto Rico Energy RELIEF and Transformation Act".
- 6) "Act 2-2018" means Act 2-2018, as amended, known as the "Anti-Corruption Code for a New Puerto Rico".
- 7) "Act 120-2018" means Act 120-2018, as amended, known as the "Act to Transform the Puerto Rico Energy System".
- 8) "Act 17-2019" means Act 17-2019, as amended, known as the "Puerto Rico Energy Public Policy Act".
- 9) "Agreement" or "Contract" means the Power Purchase Agreement or Contract entered into between Electric Service Power Companies.
- 10) "Applicant" means the Electric Power Service Company seeking certification and includes its officers and directors and any personnel that have responsibility and decision-making authority regarding the finances and operations of the Electric Power Service Company in Puerto Rico. In the case of a contract or agreement between two or more electric power service companies, then the electric power service companies who are parties to the agreement shall submit a joint application and shall be known as the "Applicants." As used in these Regulation, "applicant" means single or joint applicants.
- 11) "Certification" means the process in which an Electric Service Company seeks approval by the Energy Bureau to operate or provide services in Puerto Rico pursuant to Regulation 8701¹ or other subsequent regulation to those effects.

¹ Amendment to Regulation 8618, on Certification, Annual Fees and Operational Plans for Electric Service Companies in Puerto Rico, February 5, 2016.

- 12) "Contractor" means a natural or legal Person that enters into a Partnership Agreement regarding a PREPA Transaction, pursuant to Act 29-2009 and Act 17-2019.
- 13) "Customer" or "Consumer" means a natural or judicial person that receives or consumes Electric Services.
- 14) "Electric Cooperative" means a cooperative organized under Act 239-2004, as amended, for the main purpose of meeting individual and common electric power needs of their cooperative members, affiliated consumers and/or communities through electric power generation, transmission and/or distribution systems. "Cooperative Microgrids" as defined in Regulation 9028² shall not be considered Energy Cooperatives as defined in this Regulation.
- 15) "Electric Service" or "Energy Service" means a set of activities that comprise an electrical system and that allow a customer to receive and consume electrical energy. The term electric service includes, but is not limited to, all those activities related to the generation, transmission, distribution, ancillary services, commercialization, billing, storage, wheeling of electrical energy and any other service that an Electric Power Service Company is authorized to provide.
- 16) "Electric Power Service Company" or "Electric Power Company" means any person or entity, natural or legal, including energy cooperatives, dedicated to offering generation services, transmission and distribution services, billing, wheeling, grid services, energy storage, electric energy resale, and any other electric service as defined by the Energy Bureau. PREPA, its successor, and any operator of the electricity transmission and distribution network, shall be considered an Electric Service Company for this Regulation.
- 17) "Energy Bureau" means the Puerto Rico Energy Bureau, created by Act 57-2014 and renamed and reorganized in the Reorganization Plan of the Public Service Regulatory Board and Act 211-2018, formerly known as the Puerto Rico Energy Commission.
- 18) "Electric Grid" or "Electric Power Grid" means the electric power transmission and distribution infrastructure of the Government of Puerto Rico, operated, supported, and administered by PREPA or by an Electric Service Company.
- 19) "Energy Compliance Certification" means the Certificate issued by the Energy Bureau in any PREPA Transaction certifying that the Preliminary Contract

² Regulation Microgrid Development, May 16, 2018

complies with the regulatory framework of Act 17-2019, the energy public policy and the current law.

- 20) "Energy Generation" or "Power Generation" means the production of electric power using fuel oil and its derivatives, natural gas, renewable energy sources, or any other method, for the production of electrical energy.
- 21) "Energy Generation Company" means any person, natural or legal, dedicated to the production or generation of electric power in Puerto Rico, for sale through Power Purchase Agreements or any other legal endeavor authorized by the Energy Bureau. For this Regulation, the term includes cogenerators already established in Puerto Rico, that supply energy to PREPA through a Power Purchase Agreement, energy cooperatives, and renewable energy producers.
- 22) "Energy Public Policy Program" means the Energy Public Policy Program of the Department of Economic Development and Commerce of Puerto Rico, formerly known as the Commonwealth Energy Public Policy Office, created by virtue of Reorganization Plan of the Puerto Rico Public Service Regulatory Board and Act No. 211-2018, in charge of developing and promulgating the public policy on energy of the Government of Puerto Rico.
- 23) "Energy System" means the system for the generation, transmission and distribution of electrical energy.
- 24) "Independent Power Producer" means an Electric Power Generation Company without a Provider of Last Resort obligation. An Independent Power Producer may, but is not required to, be qualified as an exempt business described in Section 3(d)(1)(H) of Article 1 of Act 73-2008, as amended, known as the *Economic Incentives Act for the Development of Puerto Rico*.
- 25) "Interconnection" or "Electrical Interconnection" means the connection of power plants, Energy Generation Companies, Independent Energy Producers, Persons, Electric Service Companies, microgrids or solar communities to the same transmission and distribution network, so that they are electrically connected.
- 26) "Integrated Resource Plan" or "IRP" means a plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of time, including those related to the offering of electric power, whether existing, traditional and/or new resources, and those relating to energy demand, such as energy conservation and efficiency or demand response and localized energy generation by the customer, while recognizing the obligation of compliance with law and regulations that constrain resource selections.

- 27) "P3A" means the Puerto Rico Public-Private Partnerships Authority created by Act 29-2009.
- 28) "Partnership Agreement" has the same meaning ascribed to such term by Act 29-2009, and, for the purpose of this Regulation, refers to agreements entered between PREPA and a Contractor under a PREPA Transaction.
- 29) "Partnership Committee" means the committee appointed by the P3A under Act 29-2009, to evaluate and select qualified persons and Proponents of a PREPA Transaction, and to establish and negotiate the terms and conditions deemed appropriate for the corresponding Partnership Agreement or Sales Agreement.
- 30) "Partnership Committee Report" means the report prepared by the Partnership Committee under Article 9(g) of Act 29-2009, regarding a PREPA Transaction, to be submitted to the Energy Bureau.
- 31) "Person" means any natural person, company or legal entity independent of how it is organized.
- 32) "Preliminary Contract" means the specific clauses and conditions of a Partnership Agreement or Sales Contract, agreed by the Partnership Committee and the chosen Proponent and submitted to the P3A Board.
- 33) "Power Purchase Agreement" or "PPA" means any agreement or contract approved by the Energy Bureau in which an Energy Generation Company is bound to sell electric power, at a just and reasonable rate, to another natural or juridical person, and that other person is bound to acquire said electric power.
- 34) "PREPA" means the Puerto Rico Electric Power Authority, a corporate entity created in Act No. 83 of May 2, 1941, as amended, and any successor entity responsible for operating the transmission and distribution system.
- 35) "PREPA Transaction" means any and every transaction through which PREPA or the Government of Puerto Rico establishes one or more Partnerships with regards to any function, service or installation of PREPA or a Sales Contract of PREPA's generation assets, that is carried out in accordance with the provisions of Act 29-2009 and Act 120-2018.
- 36) "Proponent" means any person, or its affiliated or related entities, that has submitted a proposal to enter a Partnership in accordance with Act 29-2009 for a PREPA Transaction.
- 37) "Renewable Resource" means any combination of Alternative Renewable Energy Resources or Sustainable Renewable Energy Resources as such terms are defined in Act 82-2010, that is located within Puerto Rico.

- 38) "Retail Electric Service" means the sale of electricity to end use customers by an Electric Power Service Company.
- 39) "Sales Contract" means any contract, power purchase agreement, document, deed, agreement and instrument related to a PREPA Transaction that includes an agreement to sell, transfer or dispose of PREPA's generation assets to one or several proponents of the private sector.
- 40) "Supplementary Study" means the study prepared by the Electric Power Service Company responsible for operating the Electric Grid to determine the technological feasibility of interconnection in support of the proposed contract, as set forth in Section 2.03 of this Regulation.
- 41) "Transmission and Distribution Contractor" or "T&D Contractor" means the Contractor that has entered into a Partnership Agreement to operate PREPA's transmission and distribution network.
- 42) "Wholesale Electric Service" means the sale of electricity to an Electric Power Service Company for resale to the end user.

B) 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 English version shall prevail.

Section 1.11.- Severability.

If any article, provision, word, sentence, paragraph, subsection, or section of this Regulation is disputed, before a court and declared unconstitutional or null and void, such ruling shall not affect, impair, 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, unless 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 under 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 Energy Bureau order.

Section 1.13.- Mode of Submission.

The forms, documents, and appearances required by this Regulation or any order of the Energy Bureau must be submitted in electronic format through the Energy Bureau's portal <https://radicacion.energia.pr.gov/> or any other electronic filing system that the Energy Bureau may establish through an administrative order.

If the electronic filing system is temporarily out of service or not functioning, the forms, documents, and appearances required by virtue of this Regulation, or by any order of the Energy Bureau, shall be filed before the Office of the Clerk under 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 the document is true and correct, and that, according to the signer's best knowledge, information, and belief, formed after reasonable analysis, the document is based on reliable and trustworthy facts, arguments, judicial sources, and information.

Section 1.15.- Confidential Information.

If in compliance with this Regulation or any of the Energy Bureau's orders, a Person has the duty to disclose information to the Energy Bureau considered 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 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.

Under Section 2.8 of Act 38-2017, known as the *Uniform Administrative Procedures Act of the Government of Puerto Rico*, 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.- Penalties for Non-Compliance.

Any Person who fails to comply with any of the requirements set forth in this Regulation may be subject to a Notice of Non-Compliance under Chapter IV of Regulation 8543³ and, because of such non-compliance, may, after opportunity for hearing, be subject to any and all of the measures available under the law, including but not limited to:

- A) Administrative fines of not more than twenty-five thousand dollars (\$25,000) per day per infraction, as set forth on Article 6.36 of Act 57-2014. Each day's continuance of the violation shall be considered a separate offense.
- B) Suspension, rescission, conditional rescission, or revocation of the Energy Service Company's certificate granted under Article 6.13 of Act 57-2014, or denial of a request for renewal of a certificate thereof.

Section 1.18.- 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.- SUBMISSION OF APPLICATION AND DOCUMENTATION FOR POWER PURCHASE AGREEMENTS

Section 2.01.- Contracts Subject to Energy Bureau's Review and Approval.

- A) The following contracts or agreements, if they are for one megawatt or greater as specified in Section 1.04(D), must be submitted by the Applicant to the Energy Bureau for review and approval, before their execution:
 - 1) Contracts between Electric Service Companies;
 - 2) Power Purchase Agreements executed after the enactment of Act 57-2014;
 - 3) Power Purchase Agreements executed by PREPA before the enactment of Act 57-2014, when extended or amended after the enactment of Act 57-2014; and,
 - 4) Large scale industrial and commercial consumers, energy cooperatives, or other demand aggregator structure that enters into power purchase agreements directly with an independent power producer.

³ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, December 18, 2014.

- B) Power Purchase Agreements executed in connection with a PREPA Transaction for which the Energy Bureau has granted an Energy Compliance Certification prior to the effective date of this Regulation, need not be submitted to the Energy Bureau for review and approval under this Regulation prior to their execution.
- C) Power Purchase Agreements executed in connection with a PREPA Transaction for which the Energy Bureau has not granted an Energy Compliance Certification shall follow the requirements set forth in Article 5 of this Regulation.

Section 2.02.- Documents to be included with the Application for review and approval of a Power Purchase Agreement

- A) Applications for review and approval of a contract shall include the following information in order to be considered:
 - 1) A completed application form as adopted by the Energy Bureau.
 - 2) A statement that the Electric Service Company has been certified by the Energy Bureau under Regulation 8701 and a copy of that certificate. If the Applicant is not certified, the Applicant shall describe the status of its Application.
 - 3) A copy of the proposed contract, in an electronic searchable format.
 - 4) A Supplementary Study, if required, or a certification that a Supplementary Study is not required, as provided in Section 2.03 of this Regulation.
 - 5) A Statement of Compliance with the IRP, explaining how the proposed contract complies with the most recently approved IRP.
 - 6) A Statement of Compliance with Act 17-2019, with a sworn statement by each Applicant, avowing that it has read the legislation, understands the requirements and obligations, and agrees to comply with all laws and regulations.
 - 7) If the Application is submitted by multiple entities, including, without limitation, a consortium, joint venture, or partnership, a description of each party's roles and responsibilities in the transaction and a statement as to which entities have received a certification pursuant to Regulation 8701.
 - 8) A statement that the Applicant will make itself available within forty-eight hours to meet with the Energy Bureau either in person or through a telecommunications or electronic means, as appropriate, to provide further information in accordance with the Energy Bureau's directives.

- 9) All documents listed in Section 2.04 of this Regulation.
- 10) If the proposed contract is for Transmission and Distribution services, all documents listed in Section 2.05 of this Regulation.
- 11) If the proposed contract is for Generation services, all documents listed in Section 2.06 of this Regulation.
- 12) Any other information that the Energy Bureau deems necessary to conduct the evaluation and approval process required by this Regulation and applicable law.

Section 2.03.- Supplementary Study; when required.

- A) Before an application for review and approval of a contract is submitted by the Electric Service Company to the Energy Bureau, all Supplementary Studies and technical evaluations must be completed as set forth in this Section. An application will not be deemed complete until the results of the Supplementary Studies and/or technical evaluations are filed with the Energy Bureau and the Energy Public Policy Program files its recommendation, as established herein.
- B) PREPA shall complete and issue the results of any required Supplementary Study, within ninety (90) days from the date the Electric Service Company or the Independent Power Producer presented its interconnection evaluation to PREPA. Such results shall include an analysis determining the technological feasibility of interconnection of the project subject to the proposed Power Purchase Agreement and shall be provided by the Applicant before the Energy Bureau can make a determination that the Application is complete.
- C) If the project does not require a Supplementary Study, PREPA shall issue a certificate stating the reasons as to why the circumstances and characteristics of the proposed project do not warrant a Supplementary Study or technical evaluation, within forty five (45) days from the date the Electric Service Company or the Independent Power Producer presented its interconnection evaluation before PREPA.
- D) PREPA must submit to the Energy Bureau the results of the Supplemental Study or the certification that such Supplemental Study is not needed, within five (5) days from the date the corresponding document was issued.
- E) If PREPA fails to comply with the terms established herein, the Energy Bureau may impose an administrative fine of up to twenty-five thousand dollars (\$25,000.00) per day per infraction, and/or the revocation of the Energy Service Company's certificate, at the Energy Bureau's discretion. In such instances, the Energy Bureau will request

the Energy Public Policy Program to present a memorandum including its evaluation of the proposed project and the proposed contract, as well as its recommendations to the Energy Bureau.

Section 2.04.-Application for Approval; General Requirements for Power Purchase Agreements and Energy Compliance Certificates.

In addition to the requirements set forth in Section 2.02 of these Regulations, governing applications for review and approval of power purchase agreements, all applications for approval of a power purchase agreement and for Energy Compliance Certification submitted by the Applicant shall include:

A) Competitive Bidding.

- 1) Information as to whether the proposed contract is a product of a competitive bid.
 - a) If the proposed contract is not the product of a competitive bid, the Applicant will provide a detailed explanation as to why no competitive bid took place.
 - b) If the proposed contract is the product of a competitive bid, then the Applicant shall include a chart showing all the bidders and the price bid along with other relevant information as to the terms and conditions of the proposed bids.
- 2) The Applicant shall provide copies of all responses to the competitive bid process upon the Energy Bureau's request.

B) Documents Related to Applicant's Managerial Capabilities and Experience.

- 1) A list of all jurisdictions in which the Applicant or any affiliate of the Applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail or wholesale electric services, generation services, transmission and distribution services, billing, wheeling, grid services, energy storage, electric energy resale, and any other electric service as defined by the Energy Bureau.
- 2) A description of the Applicant's experience with providing contracted services, billing statements, and responding to Customer inquiries and complaints under the Energy Bureau's rules.

- 3) A concise summary of the Applicant's experience in providing the service(s) it is seeking to be certified to provide (*e.g.*, number and types of Customers served, number of utility service areas, amount of load, etc.).
- 4) A description of the Applicant's plan for contracting with customers in Puerto Rico to provide the services it is seeking certification to offer.
- 5) A detailed description of how the Applicant intends to acquire its generation.
- 6) A description, including docket or case numbers of all existing, pending or past rulings, judgments, contingent liabilities, revocation of authority, regulatory or other legal investigations, or any other matter that could adversely affect the Applicant's financial or operational status or ability to provide the services it is seeking to be certified to provide.
- 7) A disclosure as to whether the Applicant, a predecessor of the Applicant, or any principal officer of the Applicant has ever been convicted of a felony or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five (5) years. If the answer is affirmative, the Applicant shall provide a separate attachment detailing such violation(s) and providing all relevant documents.
- 8) A disclosure of whether the Applicant or a predecessor of the Applicant or an affiliate has had any certification, license, or application to provide retail or wholesale electric service denied, curtailed, suspended, revoked, or cancelled within the past three (3) years. If the answer is affirmative, the Applicant shall provide information detailing such action(s) and all relevant documents.

C) Documents Relating to Financial Capability and Experience.

- 1) The three (3) most recent Annual Reports to Shareholders. If the Applicant does not have annual reports, the Applicant should provide similar information or indicate why this provision is not applicable.
- 2) The most recent 10-K/8-K and 10-Q Filings with the Securities and Exchange Commission (SEC). If the Applicant does not have such filings, it may submit those of its parent company. An Applicant may submit a current link to the filings or provide them in paper form. If the applicant does not have such filings, then the Applicant may indicate that the Applicant does not have to file with the SEC and why.

- 3) The most recent FERC Form 1 as required under 18 C.F.R. § 141.1. If the Applicant does not have such filings, it may submit those of its parent company. An Applicant may submit a current link to the filings or provide them in paper form. If the applicant does not have such filings, then the Applicant may indicate that the Applicant is not required to file with the SEC and why.
- 4) Copies of the Applicant's three (3) most recent years of audited financial statements (opinion letter, balance sheet, income statement, cash flow statement, and footnotes). If audited financial statements are not available, the Applicant shall provide officer-certified financial statements. If the Applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer-certified financial statements covering the life of the business. If the Applicant does not have a balance sheet, income statement, and cash flow statement, the Applicant may provide a copy of its three (3) most recent years of tax returns (with social security numbers and account numbers redacted).
- 5) Identification of all off balance sheet liabilities in excess of \$25 million in aggregate.
- 6) Copies of the Applicant's financial arrangements to satisfy collateral requirements to conduct retail electric business activity in Puerto Rico such as parental or third-party guarantees, surety bonds, letters of credit, contractual arrangements, or other credit agreements. The Applicant may also provide statements demonstrating that it is investment grade rated by Moody's Investors Service, Inc., Standard & Poor, or Fitch IBCA or other reputable credit agency.
- 7) Three (3) years of forecasted statements (balance sheet, income statement, and cash flow statement) for the Applicant's business as an Electric Power Service Company in the Commonwealth of Puerto Rico along with an explanation of all the assumptions used in the forecast. The Applicant shall also include the name(s), address, email address, and telephone number of the preparer(s). The forecast should be in an annualized format for the three (3) years succeeding the Application year.
- 8) A statement disclosing the Applicant's credit rating as reported by two (2) of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody's Investors Service, Standard & Poor, or a similar organization. In instances where an Applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the Applicant submits a statement signed by a principal officer of the Applicant's parent or affiliate organization that guarantees the obligations of the

Applicant. If an Applicant or its parent does not have such a credit rating, it shall so indicate.

- 9) A copy of the Applicant's credit report from Experian, Dun and Bradstreet, or other similar organization. An Applicant that provides an investment grade credit rating shall so indicate.
- 10) A list and description of any reorganizations, protection from creditors, or any other form of bankruptcy filings or proceedings made by the Applicant or a parent or affiliate organization that guarantees the obligations of the Applicant or any officer of the Applicant in this current year this year or within the three (3) most recent years preceding the Application.
- 11) A statement describing any dissolution or merger or acquisition of the Applicant within the three (3) most recent years preceding the Application.
- 12) A description of the Applicant's corporate structure, with an internal organizational chart, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply electric service to customers. If the Applicant is a stand-alone entity, then no graphical depiction is required, and Applicant may respond by stating that it is a stand-alone entity with no affiliate or subsidiary companies.
- 13) A disclosure of any material changes in financial condition occurring or having effect in the past three years and an explanation of each change's anticipated effects. If the effects are anticipated to be negative, an explanation of measures, if any, that the Applicant plans to undertake to manage the effects of the change.

D) Technical Capability.

- 1) A written description of the operational nature of the Applicant's business. This shall include whether the Applicant's operations will consist of the generation of power for retail sales, the scheduling of retail power for transmission and delivery, and/or the provision of retail ancillary services and other services used to arrange for the purchase and delivery of electricity to retail Customers.
- 2) Given the operational nature of the Applicant's business, the applicant shall provide evidence of the Applicant's experience and technical expertise in performing such operations.

- 3) References from previous clients for similar projects. Information shall include the reference's name, position, company or agency, and project details.
- 4) The names, titles, e-mail addresses, telephone numbers, and the background of key personnel involved in the operational aspects of the Applicant's business and with services delivered in Puerto Rico.
- 5) If the Applicant intends to contract with an independent third-party entity to perform any of these services, then the Applicant shall provide the same information as set forth in this Section 2.04(D) regarding the independent third-party entity.

E) Compliance with Regulations and Orders.

- 1) Proof that the Applicant is authorized to do business in Puerto Rico.
- 2) Copies of all required forms and any attachments thereto which were submitted to the Puerto Rico Public-Private Partnerships Authority, if applicable.
- 3) In the case in which an entity owns more than one company or is performing separate functions under a functional separation, its plans for keeping its accounting, books and records separate and an affirmation that it will comply with any Energy Bureau regulation or order on code of conduct.
- 4) Provide its plan for complying with all environmental and other laws and regulations of the Government of Puerto Rico and the federal government of the United States.
- 5) Its affirmation that at a minimum, it will adhere to all statutes and regulations involving consumer rights and protections; including, but not limited to information on deposits, billing, payment arrangements, and disconnection of service, as applicable, and provide any plans that are different from these regulations, in which case, these plans shall be required to exceed the requirements under existing regulations.
- 6) Its plan to provide a free internet portal and a description of the kinds of information that can be accessed.
- 7) Its plan to notify the public of scheduled service interruptions.
- 8) Its plan for addressing disputes with Customers regarding billing or payment and its plan for offering payment plans that provide customers with a reasonable opportunity to pay arrearages to avoid disconnections of service.

F) Rates and Pricing Information.

- 1) A copy of the proposed Agreement along with any attachments, appendices and other relevant information.
- 2) Pricing information for the entire term of the Agreement including actual rates and estimates of prices based on any escalation clauses provided for each year during the term of the contract.
- 3) A list of all riders that allow the rate to be adjusted as a result of price fluctuations including the rationale for the rider and any estimates of the bandwidth for the fluctuations in cost.

G) Operation and Maintenance of Asset.

- 1) Information on plans to achieve efficiencies in operations along with any plans to share cost savings with customers.
- 2) A copy of all Insurance Plans including but not limited to corporate or asset insurance.

H) If PREPA is one of the parties to the Agreement for which an Application for approval has been filed, PREPA shall not be required to file the documents required in Paragraphs B, C, and D of this Section 2.04.

Section 2.05.- Additional Requirements for Applications to provide Transmission & Distribution Services.

Any application for contract review and approval, or any application for an Energy Compliance Certification, by a T&D Contractor, shall include:

A) Compliance with Regulations and Orders.

- 1) Applicant's affirmation that it will comply with all Energy Bureau Regulations and Orders.
- 2) Applicant's affirmation that it will timely file a complete Integrated Resource Plan and/or Integrated Distribution Plan, in accordance with the Energy Bureau's regulations thereon.
- 3) If applicable, Applicant's plan to ensure that universal access to electric service is provided to all customers.

B) Operations, Maintenance, and Improvements of the Transmission and Distribution Grid.

- 1) Plan and timeline to design the infrastructure of the electrical system to be resilient to protect against atmospheric phenomena and other disasters and to design codes complying with existing nationally recognized standards and safety requirements for distribution posts with electrical, telecommunications, and other infrastructures.
- 2) Plan to comply with the legislative priorities for system upgrades as set forth in Article 1.15 of Act 17-2019.
- 3) Plan for developing long-term strategies to maintain the standardization of transmission and distribution infrastructure voltage to maintain compatibility with industry standards adopted in other jurisdictions of the United States, in order to improve resilience and plans for mutual aid response.
- 4) Plan to maintain the infrastructure to ensure the reliability, resilience and security of electric service.
- 5) Plan to maximize the use of federal funds for the modernization of the electricity grid.
- 6) Plan for making the capital investments necessary to modernize the island's electricity network, including estimated budgets and proposals for the payment of the costs associated with grid modernization.
- 7) An affirmation that it will comply with any performance metrics, along with incentives and penalty mechanisms, for operations of the electric grid and compliance with regulatory orders.
- 8) Plans for the standardization of assets, inventories of replacement parts, and plans to utilize best practices in system maintenance.
- 9) Plan and timeline to design mitigation options tailored to its information and operational technology networks, which may include the adoption of specific cyber security measures to prevent and manage cyber-attacks.
- 10) Plans (trimming cycles, tree clearance, invasive species) and budgets for vegetation management of the transmission and distribution system.
- 11) A statement detailing the Applicant's ability to address and resolve safety issues, including a description of the Applicant's knowledge of safety strategies and methodologies. If available, copies of the Occupational Safety and Health Administration (OSHA) 300 forms for the past three years as related to electric

utility operations. If not available, a statement explaining the reasons for not submitting the forms.

C) System Operations Responsibilities.

- 1) Plan for providing open access to any independent generator.
- 2) Plan for communicating customer usage to generators and to accommodate billing for that usage.
- 3) Plans for the provision of default service.

D) Integration of Renewables and Distributed Energy Resources (DER) into the Grid.

- 1) Plan for integrating renewable energy generation into the grid, including its plan to make the necessary improvements to meet the renewable portfolio standard established by Act 82-2010.
- 2) Plan for integrating distributed energy resources into the grid.
- 3) Plan for maintaining net-metering for Distributed Generation.
- 4) Plan for maximizing the use of renewable energy.
- 5) Plans for interconnection of DERs, including microgrids, into the grid, in compliance with Energy Bureau Regulations, including a simplified process for residential rooftop solar.
- 6) Plan for encouraging microgrid development, especially in rural areas.
- 7) Plan for the continuous improvement of the grid to promote resilience and diversification by combining generation capacity with demand by region and facilitating an effective transition to new technologies and renewable energy sources.
- 8) Plan to develop and implement demand response programs under the guidelines or regulations established by the Energy Bureau.

Section 2.06.- Additional Requirements for Applications that provide Generation Services.

- A) All applications for contract review and approval, or applications for an Energy Compliance Certification related to Energy Generation services and/or PPA, shall include:

- 1) Plans to comply with all applicable legislation and environmental regulation, including, but not limited to, the Mercury and Air Toxic Standards (M.A.T.S.), controlled by the U.S. Environmental Protection Agency (EPA).
- 2) Affirmation that Applicant will comply with all Energy Bureau Regulations and Orders.
- 3) Affirmation that the Applicant will comply with all Energy Bureau Regulations and Orders on Integrated Resource Planning; including filing all necessary information to the Transmission and Distribution Provider as it requires and as required by the Energy Bureau on a timely basis to facilitate the filing of a complete IRP on time and to allow electrical energy to be provided reliably, cleanly, efficiently, resiliently and affordably thereby contributing to the general well-being and sustainable development of the people of Puerto Rico.

B) Costs and Rates.

- 1) A copy of the proposed Power Purchase Agreement for the sale of electric services by the Applicant.
- 2) A description of the mechanisms for taking advantage of price reductions in the market and passing on the cost savings to customers.
- 3) A Plan for communicating billing information to the Transmission and Distribution Contractor on customer usage to accommodate billing for that usage.
- 4) Estimates for impacts on rates during the term of the Agreement regarding any provisions in the Agreement that address prices, adjustments, escalators and profit margin for energy purchase contracts.
- 5) Detailed and quantitative descriptions of the prices, adjustments, escalators, and profit margin in the proposed Power Purchase Agreement.
- 6) Its plan to ensure that no profit is attributable to fuel.
- 7) Its plan to enable the Energy Bureau to monitor its profit margin on an ongoing basis in order to ensure continued compliance with the Energy Bureau's parameters.

C) Operation of Generating Units.

- 1) For fossil fuel plants, a Capital budget plan to retire and replace, if needed, existing generating assets with renewable energy in a period not greater than five (5) years, in accordance with the most recently approved IRP.
- 2) A plan to ensure that coal and its derivatives are not used as a generation fuel in accordance with the timeframe set forth in the most recently approved IRP.
- 3) A commitment to provide the appropriate reserve margin to cover its load.

ARTICLE 3.- CONTRACT REQUIREMENTS

Section 3.01.- Required Terms and Conditions, in General.

- A) Any contract executed under this Regulation, shall include the following provisions:
- 1) A definition and description of the project to be developed and the services to be provided.
 - 2) In the case of new facilities or repairs, replacements or improvements to existing facilities, the plan for the financing, development, design, building, rebuilding, repair, replacement, improvement, maintenance, operation of administration of the facility.
 - 3) The term of the contract.
 - 4) The contractual rights and the mechanisms available to the contracting parties to ensure compliance by the other party with the conditions of the contract, including but not limited to compliance with the project specifications, quality standards, adequate maintenance of the facility, if applicable, or compliance with the approved design and other standards for building, repair or improvement projects or to ascertain compliance by the Proponent with its obligations under the contract.
 - 5) The contractual rights and mechanisms available to the contracting parties in the event of a default by one of the parties.
 - 6) In the case of contracts whereby a party shall charge fees to the other party for rendering a service or providing energy: (i) the right that a party shall have, if any, to charge and adjust fees or pricing for rendering such goods or services, (ii) the contractual limitations and conditions with which a party must comply in order to alter or modify such fees or charges, and (iii) the mechanisms available to a party to ensure that the other party complies with such limitations and conditions. It may also be provided that the adjustments in prices or charges

may be computed (i) based on fixed adjustment amounts previously agreed upon in the contract; (ii) by price units as specified in the contract; (iii) based on costs that are attributable to the circumstances which have led to the adjustment as provided for in the contract; or (iv) in such other way as the parties mutually agree, provided however, that any pricing and adjustment mechanism agreed upon shall be within the boundaries of the pricing and escalator parameters approved by the Energy Bureau.

- 7) The obligation to comply with applicable federal and local laws.
- 8) The causes for terminating the contract, and the rights and remedies available to a party in cases of the noncompliance or the delay in the compliance of obligations under the contract by the other party.
- 9) Provisions for non-binding informal proceedings: to meet and address allegations by a party as to breach or interpretation of contract and, to discuss discrepancies to settle the discrepancies prior to instituting other formal methods for the settlement of disputes.
- 10) The procedures and rules for amending or assigning the contract, providing that any amendment to the economic and technical terms of the contract or the scope of the project or assignment must be approved by the Energy Bureau.
- 11) The rights concerning inspections by an independent engineer of the parties or the creditors of the project for the building or repair of or improvements to the project facility, and the operational compliance under the terms and conditions of the contract.
- 12) The requirements for obtaining and maintaining all such insurance policies as required by law and such other additional policies as deemed necessary by the contracting parties.
- 13) The requirement for the parties to file such other report in connection with the contract as requested by the Energy Bureau.
- 14) The circumstances under which the contract may be modified in order to maintain a financial balance between the parties, and the provisions on noncompliance and the remedies allowed in such cases, including the imposition of penalties, fines and such other circumstances as the parties may agree under the contract.
- 15) The kind of bond or security to ensure compliance with the contract.

- 16) A provision establishing that the contract shall be governed by the laws of the Commonwealth of Puerto Rico.
- 17) Any provision required by law or agreed by the parties to protect the best interests of PREPA, the Commonwealth of Puerto Rico and the clients.
- 18) A provision on Assignment of Contract whereby the Assignee assumes the Contract under the same terms and conditions unless otherwise negotiated and agreed to by the original contracting parties.
- 19) A clause through which each contracting party commits to defend and indemnify the other party for any claim caused by its own negligence, gross negligence or intentional acts or omission.
- 20) Provisions for damages and remedies a default.
- 21) Provisions on extensions to the contract within the limits allowed under this Regulation.
- 22) Provisions on compliance with laws, norms and regulations that are applicable to the parties and to activities under the contract, including but not limited to a requirement and conditions that the parties shall comply with provisions applicable to them as an Electric Power Service Company as defined in these regulations.
- 23) A clause that clearly states that none of the provisions of the contract shall be construed as limiting the regulatory powers of the Energy Bureau.

Section 3.02.- Contracts between PREPA and an Independent Party for Electric Services.

- A) In addition to the requirements of Section 3.01 of this Regulation, any contract executed between PREPA and an Independent Power Producer under the provisions of this Regulation, shall include the following provisions:
 - 1) The causes for terminating the contract and the rights and remedies available to a party in cases of the noncompliance or the delay in the compliance of obligations under the contract by the other party, provided, however, that PREPA shall not be responsible for unforeseeable, special, indirect or punitive damages.

- 2) The rights concerning inspections by PREPA, as applicable, or any independent engineer of the parties or the creditors of the project for the building or repair of or improvements to the project facility, and the operational compliance under the terms and conditions of agreed to under the contract.
- 3) The requirements for obtaining and maintaining all such insurance policies as required by law and such other additional policies as PREPA in its judgment, deems necessary for the contract.
- 4) The requirement for a party to periodically file audited financial statements with PREPA, if so required.
- 5) The requirement for the parties to file such other report in connection with the contract as may be requested by PREPA or the Energy Bureau.
- 6) Provisions to ensure compliance with Title III of Act 2-2018, known as the Anti-Corruption Code for a New Puerto Rico.
- 7) Terms and conditions related to the transfer of the goods or services object of the contract, and the transition duties related thereto, once said contract has been terminated or expired.
- 8) All contracts with PREPA shall include the following language regarding the assignment of Contract:

All clauses, conditions and laws that govern contracts shall be binding and enforceable for all parties through the term of the contract. Therefore, without prejudice to any transfer or change of control restrictions specified in the contract, any change or transfer of the rights of a contractor to a third party with respect to the rights of the contractor shall make this third party a successor contractor that shall have the same responsibilities and benefits of the original contractor and that shall comply with the requirement of a party. Any permitted change in contractor shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the contract. If a successor contractor that is permitted under the terms of the contract requests a change in the contract, it shall be notified to the Energy Bureau, and to the extent that it impacts pricing or adjustments to the escalator or the scope of the project, it must be approved by the Energy Bureau.

Section 3.03.- Allowable Reasonable kWh Costs.

The Energy Bureau will review the cost per kilowatt-hour in the proposed contract and determine if the proposed cost is just and reasonable. In reaching its decision, the Energy

Bureau shall consider whether the rates are the lower of average cost or marginal cost consistent with system stability.

ARTICLE 4.- PROCEDURE FOR REVIEW AND APPROVAL OF POWER PURCHASE AGREEMENTS

Section 4.01.- Review of Application for Completeness.

- A) Within thirty (30) days from the date in which an Application is entered for consideration, the Energy Bureau shall review the Application to determine whether it fully complies with the requirements of this Regulation.
 - 1) If the Energy Bureau finds that the Application complies with the requirements of this Regulation, the Energy Bureau shall issue a resolution indicating that the Application is complete and that the review of the Application shall commence. A determination of completeness by the Energy Bureau shall not be construed as a ruling on the substance of the Application.
 - 2) If the Energy Bureau finds that the Application is not in compliance with this Regulation, the Energy Bureau shall issue a resolution identifying the specific areas in which the Application is deficient, and the information required to correct any deficiencies.
 - 3) Once the Applicant refiles the proposed Application with the corrections of the identified deficiencies, the Energy Bureau shall evaluate such deficiencies within thirty (30) days to determine if it complies with this Regulation and shall issue any appropriate order or resolution.
 - 4) The process set forth in Section 4.01(A) (2) and (3) shall be repeated until the Application is deemed complete.
- B) The Energy Bureau, at its discretion, may extend its review period to determine whether the Application complies with this Regulation.
- C) For the purposes of the initial term of thirty (30) days set forth in Section 6.32(e) of Act 57-2014, the Application will be considered to be filed, or submitted, on the date the Energy Bureau issues a resolution or order determining it is complete and in compliance with this Regulation.

Section 4.02.- Timeline for Energy Bureau's Review and Approval of Purchase Power Agreements.

- A) Upon issuing a resolution indicating that the Application is complete, the Energy Bureau shall have thirty (30) days to review the Application and issue an order stating that:
 - 1) The Agreement is approved;
 - 2) The Agreement is found to be against public interest, and is therefore denied;
 - 3) The Agreement may be approved upon the acceptance by the parties to the contract modifications set forth by the Energy Bureau; or,
 - 4) The Agreement requires further review, thus extending the review period to ninety (90) days.
- B) If the Energy Bureau issues a resolution in accordance with Section 4.02(A)(3) above, the Applicant shall submit a revised Agreement, with the modifications required by the Energy Bureau and signed by the parties to the Agreement. The Energy Bureau shall have thirty (30) to review the modified Agreement and issue a Resolution in Accordance with Section 2.04(A).
- C) If the Energy Bureau does not issue a Resolution within the thirty-day review period as set forth in Section 2.04(A) and (B) of this Regulation, the Application shall be deemed approved. If the Energy Bureau issues an order extending the review period, as set forth in Section 2.04(A)(4) of this Regulation but fails to issue a final order after the extended ninety-day period, the Application will be deemed approved.

Section 4.03. - Waivers

An Applicant may request a waiver of any provision of this regulation and shall set forth in its request the specific provisions for which it seeks a waiver. An explanation as to why the waiver is requested and a statement that the counterparty to the Contract does not object to the waiver request.

ARTICLE 5. - ENERGY COMPLIANCE CERTIFICATION

Section 5.01.- Energy Compliance Certification, in General.

- A) Prior to the execution of a contract under a PREPA Transaction, the Applicant shall obtain from the Energy Bureau an Energy Compliance Certification, acknowledging that the Preliminary Contract complies with the regulatory framework, of Act 17-2019, the energy public policy and the current law.

- B) An Applicant seeking an Energy Compliance Certification shall file before the Energy Bureau the documents enumerated in Sections 2.02 through 2.06 of this Regulation, as applicable.
- C) Any amendments to a Preliminary Contract after an Energy Compliance Certification has been issued, requires a new Energy Compliance Certification.
- D) The mere issuance of an Energy Compliance Certification will not grant the right to claim compensation, reimbursement, or payments, for expected earnings, expenses incurred during the qualification process or incurred in the presentation of proposals.

Section 5.02.- Documents to be included with the with the Application for review and approval of the Energy Compliance Certification.

All applications for an Energy Compliance Certification shall include:

- A) Application form adopted by the Energy Bureau.
- B) A copy of the Preliminary Contract, in an electronic searchable format.
- C) The Partnership Committee Report.
- D) Statement of Compliance with the IRP, explaining how the Preliminary Contract complies with the IRP.
- E) Statement of Compliance with Act 17-2019, along with a sworn statement by each Applicant, avowing that it has read the legislation, understands the requirements and obligations, and agrees to comply with all laws and regulations.
- F) Statement recognizing that the thirty-day review period, as described in Section 5 of Act 120-2018, will commence when the Energy Bureau determines that the application is complete, as set forth in this Regulation.
- G) If the Application is submitted by multiple parties, including, without limitation, a consortium, joint venture, or partnership, a description of each party's roles and responsibilities in the transaction.
- H) A statement that the Applicant will make itself available within forty-eight hours to meet with the Energy Bureau, as appropriate, to provide the information in accordance with the Energy Bureau's directives.
- I) A statement that the Applicant shall promptly furnish any further written documentation the Energy Bureau requires.
- J) All documents listed in Sections 2.02 through 2.06 of this Regulation, as applicable.

- K) Any other information that the Energy Bureau deems necessary in order to conduct the evaluation and approval process required by this Regulation and applicable law.

Section 5.03.- Partnership Committee Report.

The Partnership Committee must prepare and submit to the Energy Bureau a Partnership Committee Report, stating the reasons for choosing the Contractor, a description of the selection process, including comparisons of all the Proponents and proposed Partnership Agreements, as required by Article 9(g) of Act 29-2009 and P3A regulations.

Section 5.04.- Energy Bureau Evaluation; Timeline for Review.

- A) Within thirty (30) days from the date in which an Application is entered for consideration, the Energy Bureau shall review the Application to determine whether it fully complies with the requirements of this Regulation.
 - 1) If the Energy Bureau finds that the Application complies with the requirements of this Regulation, the Energy Bureau shall issue a resolution indicating that the Application is complete and that the review of the Application shall commence. A determination of completeness by the Energy Bureau shall not be construed as a ruling on the substance of the Application.
 - 2) If the Energy Bureau finds that the Application is not in compliance with this Regulation, the Energy Bureau shall issue a resolution identifying the specific areas in which the Application is deficient, and the information required to correct any deficiencies.
 - 3) Once the Applicant refiles the proposed Application with the corrections of the identified deficiencies, the Energy Bureau shall evaluate such deficiencies within thirty (30) days to determine if it complies with this Regulation and shall issue any appropriate order or resolution.
- B) The process set forth in Section 5.04(A)(2) and (3) shall be repeated until the Application is deemed complete.
- C) The Energy Bureau shall have thirty (30) days, from the date it determined the Application is complete, to review the Preliminary Contract and the Partnership Committee Report and to issue an order granting or denying the Energy Compliance Certification, stating the reasons for such determination.

- D) If the Energy Bureau does not issue an order within thirty-days, the Energy Compliance Certification will be deemed granted and the Preliminary Contract will be considered approved by the Energy Bureau.

Section 5.05.- Energy Bureau's Oversight for Performance and Compliance.

The Energy Bureau will assist the P3A in supervising the Contractor's performance and compliance with the Partnership Agreement entered as part of a PREPA Transaction. Within thirty (30) days of the consummation of the PREPA Transaction, PREPA, P3A and the Energy Bureau will jointly prepare and approve a Plan for supervising the Contractor's performance and compliance with the Partnership Agreement.

Section 5.06.- Energy Bureau's Review and Approval of Modification of Rates and Charges.

- A) Any modification to the rights, rents, fees, and charges established in the Partnership Agreement entered upon consummating a PREPA Transaction, requires the approval of the Energy Bureau. A Contractor seeking modification of the rights, rents, fees, and charges established in such Partnership Agreement must file a petition for review and approval before the Energy Bureau, by providing the following information:
- 1) Information on the current rate and the proposed new rate;
 - 2) The basis for changes in rates and the rate impacts;
 - 3) If the rights of the parties are impacted by the modifications, a description of the modifications and the basis for them; and,
 - 4) Any other information that the Energy Bureau may require.
- B) The Energy Bureau shall have thirty (30) day, starting on the date on which the Energy Bureau issues an order declaring that the petition is complete, to review the petition for modification. If the Energy Bureau does not issue an order within the thirty-day period, the petition for modification shall be deemed granted, unless the Energy Bureau issues an Order extending the thirty-day review period to ninety days.
- C) If the Energy Bureau issues an order extending the review period, but fails to issue a final order after the extended ninety-day period, the Application will be deemed approved

ARTICLE 6.- RECONSIDERATION AND JUDICIAL REVIEW

Section 6.01.- Request for Reconsideration.

Any person adversely affected by a resolution of the Energy Bureau under this Regulation may file, within a term of twenty (20) days from the date on which such resolution is notified, a request for reconsideration, stating the grounds that support the request and the remedy sought.

The request for reconsideration shall be filed and served under the terms and provisions of Act 38-2017, known as the Uniform Administrative Procedures Act of the Government of Puerto Rico.

Section 6.02.- Judicial Review.

Any person adversely affected by a final resolution of the Energy Bureau under this Regulation may file, within a term of thirty (30) days from the date on which the final resolution addressing a request for reconsideration is notified, a request for judicial review before the Puerto Rico Court of Appeals.

Notwithstanding the above, any person adversely affected by the issuance of the Energy Compliance Certification may file, within a term of fifteen (15) days from the date of notification of issuance, a request for judicial review before the Puerto Rico Court of Appeals. If the Energy Compliance Certification is deemed granted because the Energy Bureau failed to issue an order within the timeline provided in Article 4 of this Regulation, the fifteen-day term to file a petition for judicial review before the Puerto Rico Court of Appeals will commence on the date the Energy Compliance Certification is deemed granted.

Requests for judicial review must be filed and served under the terms and provisions of Act 38-2017, known as the Uniform Administrative Procedures Act of the Government of Puerto Rico, and the applicable Rules of the Court of Appeals.

ARTICLE 7.- REQUIRED DISCLOSURES

Section 7.01.- Internet Publication of Resolutions and PPAs.

The Energy Bureau must publish on its website the following:

- A) Resolutions adopted by the Energy Bureau approving a contract.
- B) Resolutions adopted by the Energy Bureau finding that the proposed contract was against public interest and therefore denied.
- C) Power Purchase Agreements approved by the Energy Bureau.

D) Power Purchase Agreements for which the Energy Bureau granted an Energy Compliance Certification.