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Oriana Energy, LLC and Horizon Energy, LLC - Comments to Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies, Case No. NEPR-MI-2020-0014

1 message

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Wed, Nov 18, 2020 at 6:14 PM

Good afternoon,

On behalf of Oriana Energy, LLC and Horizon Energy, LLC ("the entities") and pursuant to the Puerto Rico Energy Bureau's Resolution issued on October 19, 2020 in the referenced matter, attached please find a letter covering the entities' comments to the *Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies*.

We appreciate your receipt confirmation of this filing by email.

If you have any questions, please do not hesitate to contact us.

Cordially,

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Oriana Energy, LLC and Horizon
Energy, LLC

sonnedix.com

November 18, 2020

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RE: Oriana Energy LLC and Horizon Energy LLC (together with their affiliates, "Sonnedix") Comments to the Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies.

Dear commissioners:

On October 19, 2020, the Puerto Rico Energy Bureau ("PREB") issued a resolution publishing its proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies ("Proposed Regulation") and requesting comments from the public regarding the same by November 18, 2020 (the "Resolution"). Pursuant to the Resolution, PREB's authority to issue the Proposed Regulation stems from the Puerto Rico Energy Transformation and Relief Act, Act 57-2014, 22 P.R. Laws Ann. § 1051 *et seq.* ("Act 57-2014"), and particularly, its Sections 6.3 and 6.32, 22 P.R. Laws Ann. §§ 1054b and 1054ff, as amended by Act 17-2019.¹ Oriana Energy, LLC and Horizon Energy, LLC, which are owner-operators of renewable energy projects with existing power purchase and operating agreements with Puerto Rico Electric Power Authority ("PREPA"), we appreciate the opportunity to provide the comments discussed herein.

¹ Section 1.02 of the Proposed Regulation states that it is also adopted pursuant to Section 1.7 of the Puerto Rico Energy Public Policy Act, Act 17-2019.

Pursuant to Section 6.32 (c), (f), and (g) of Act 57-2014, PREB has the duty to: 1) ensure compliance with the public policy of Puerto Rico,² 2) verify the reliability and safety of the interconnections to the electric power grid, and 3) oversee that the rates, fees, rents or charges paid to independent power producers are just and reasonable, while protecting the public interest and the treasury. In other words, Act 57-2014 was enacted to protect the safety, reliability and cost-efficiency of Puerto Rico's electric power grid and its interconnections, while aiming at increasing its renewable energy production. *See* Act 57-2014, Sec. 1.2(a) (declaring the public policy of Puerto Rico that the cost of the electric power generated transmitted and distributed in Puerto Rico shall be affordable, just and nondiscriminatory for all consumers). Act 57-2014 was not necessarily enacted to regulate, for example, contracts for: 1) auxiliary or maintenance services and projects provided by (or for) electric power companies which are not directly aimed at generating, storing or distributing energy; 2) services that do not affect the rates paid to power producers for generating, storing or distributing energy; 3) contracts for services that do not directly affect the rates charged to consumers such as contracts between private parties; and 4) projects that are not connected to the power grid.

Given the various types of services that a power service company could provide (or receive) and the parties that may be involved, Sonnedix understands that the Proposed Regulation should be more specific as to the types of entities, services, and contracts that will be subject to the Proposed Regulation. This is particularly important since Section 1.04 of the Proposed Regulation states generally that it "shall apply to **all** agreements between electric service companies..." (Emphasis added). Such broad language could be construed to apply to entities and agreements that may not necessarily be within the scope of Act 57-2014. Similarly, Sections 1.04(B) and 2.01(A)(4) reference "large scale industrial and commercial consumers" without defining such term or the reason why PPAs with large consumers should be subject to the Proposed Regulation.

Moreover, the Proposed Regulation contains a series of broadly defined terms that may lead to confusion or error. For example, Section 1.09(16) defines *Electric Power Company* as any person or entity "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." Pursuant to the scope of Act 57-2014 and to avoid misunderstandings, Sonnedix proposes that certain particular entities be expressly excluded from this definition, such as companies that provide or receive maintenance or installation services for energy generating equipment or facilities, or entities that provide administrative services to energy producers. Also, for clarification purposes, the defined term should exclude residential, commercial and industrial consumers of energy that also generate their own energy. It would be extremely burdensome that, for example, every residential consumer that generates its own renewable energy be required to comply with all the requirements of the Proposed Regulation. This would be counterproductive to the public policy of increasing renewable energy production in Puerto Rico.

² Puerto Rico has adopted a public policy of sourcing 100% of its energy from renewable sources by 2050. Sec. 1.6 of Act 17-2019.

Also, the terms "Agreement" or "Contract" are defined in two different ways, namely: 1) the Power Purchase Agreement ("PPA"), or 2) "Contract entered between Electric Power Companies." *See* Proposed Regulation, Sections 1.09(9) and 2.01(A)(1). This proposed definition is somewhat circular, since the definition of "Contract" is defined as a "Contract between Electric Service Power Companies." Note, however, that Electric Service Companies could enter into different types of contracts, including agreements unrelated to energy generation, storage or distribution. For this reason, Sonnedix proposes that this definition be clarified so that it is limited to contracts between Electric Power Companies for the sale and purchase of energy, excluding other types of contracts such as maintenance, installation and administration services.

Moreover, Section 2.01(A) of the Proposed Regulation provides a list of contracts that would be subject to the PREB's review and approval, including its subsections (2) to (4), regarding PPAs. Meanwhile, Section 2.01(A)(1) states that "Contracts between Electric Service Companies" are also subject to the PREB's approval. However, it is not entirely clear which other types of "Contracts between Electric Service Companies" would be subject the Proposed Regulation. Therefore, Sonnedix respectfully proposes that Section 2.01(A)(1) be clarified to specify which particular types of contracts will be subject to the PREB's approval, and which are not subject to PREB's approval. As an alternative, Sonnedix respectfully suggests that Section 2.01(A)(1) be changed to read "Power Purchase Agreements between Electric Service Companies for the sale, storage or distribution of energy service."

Another defined term that may warrant attention is "Applicant" which was defined as "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." Although Sonnedix understands that the PREB might require specific information or certifications from particular individuals within an organization, Sonnedix respectfully understands that if an Applicant is a legal entity, then its officers, directors and employees should not be considered applicants in their personal capacity. This would be especially burdensome for multinational companies that have many directors and officers, most of which are unrelated to their Puerto Rico operations. Therefore, Sonnedix understands that this definition warrants attention, taking into consideration the potential unintended ramifications of including officers, directors, and personnel as Applicants.

In addition to clarifying the aforementioned defined terms, Sonnedix hereby provides the following comments to other sections of the Proposed Regulation that warrant attention or consideration:

1. Section 1.04(C) broadly states that the Proposed Regulation "shall apply to the provision of energy from any single generator that is equal to or greater than one megawatt." *See also* Section 2.01(A). As a general comment, we understand that the PREB has jurisdiction to regulate all PPAs with PREPA (or its successor or concessionaire). For projects between private parties, we think that the PREB's focus should be in regulating the technical aspects of such projects to protect the safety and stability of the grid, not in commercial aspects of contracts between private entities. To achieve this, and to avoid duplicity, Sonnedix recommends that all technical aspects

and requirements covered by PREB's regulation(s) should be aligned with PREPA's technical requirements and regulation(s). With that in mind, the process with respect to renewable energy projects between private entities between 1 to 5 megawatts should be more streamlined than the ordinary process, so that it is consistent with the public policy of promoting a complete shift toward renewable energy by 2050.

2. Section 1.14 of the Proposed Regulation requires the party signing any document to the PREB to certify that its contents is true and correct. However, the Proposed Regulation Sec. 2.04 requires, for example, that certain projections and/or forecasts be submitted to the PREB. Given the nature of projections and forecast, it is implausible to certify the correctness of a forecasted event or result that will occur in the future.
3. Section 2.01(A) makes reference to Section 1.04(D), which is nonexistent and it seems that it should instead make reference to Section 1.04(C) of the Proposed Regulation.
4. Section 2.02(2) requires a statement regarding the status of the PREB certification. Given that such information is under the control of the PREB, this requirement could be removed to simplify the process. Also, this certification is not required by entities operating prior to the approval of Regulation 8701 in 2016.
5. Section 2.04(B) requires the Applicant to provide the PREB with information about its capabilities and experience. Sonnedix proposes that the Applicant should be allowed to provide relevant information about the capabilities and experience of relevant affiliates in its discretion if the Applicant is a newly created entity.
6. Section 3.02(1) states that PREPA shall not be responsible for certain damages. It should be modified to benefit both parties, not just PREPA.
7. Section 3.02(8)'s language should be modified to exclude collateral assignments in favor of a lender.
8. Section 4.01 provides the PREB with an expandable 30-day period to review the Application for completeness. This term is in addition to the 30-day period (expandable to 90 days) to issue a decision over the Application, provided in Section 4.02. Sonnedix proposes that the initial 30-day review period be decreased or eliminated altogether as it was not provided by Act 57-2014, and such delay may hinder the negotiations between parties and may delay the projects.
9. Section 4.02 (B) and (C) makes reference to Section 2.04, but it seems that it should instead make reference to Section 4.02.

After a careful analysis of the Proposed Regulation, we understand that it is intended to regulate a wide array of contracts, including those in which PREPA (or its successor or concessionaire) is a party. For this reason, the Proposed Regulation contains a series of requirements that should apply to some but not all types of Applicants and contracts. Sonnedix understands that Puerto Rico's public policy and the PREB's interests would be better served if the PREB bifurcates the Proposed Regulation into two separate regulations. One that applies to PPAs with PREPA or its successor or concessionaire (using the Proposed Regulation as a basis) and another that applies to PPAs between private parties. This is particularly important because most requirements set forth in, for example, Sections 2.04, 2.06 (B) and 3.01 of the Proposed Regulation would more appropriately apply to PPAs with PREPA, and not to PPAs between two private entities. Below we discuss some examples of requirements that should not apply to PPAs between private entities:

1. Section 2.04 requires a series of requirements that are significantly burdensome and may have a countereffect to the public policy of increasing renewable energy production in Puerto Rico. Sonnedix proposes that the following requirements be lessened, more flexible and/or be deemed inapplicable for PPAs between private entities:
 - a. Subsection (A) requires information about a competitive bidding process, which should apply only to PPAs with PREPA or its successor. Private entities should have the flexibility to enter into private contracts between them without the need, if they so choose, for a competitive bidding process and without incurring in the costs associated with such process.
 - b. Subsection (C) requires the Applicant to provide to PREB a number of documents regarding the financial capability and experience of the Applicant, which entails a partially duplicative process with regards to the information that is already provided to PREPA (or its successor or concessionaire). Moreover, items 1, 2, 5, 7, 12 and 13 of subsection (C) are particularly burdensome and excessive, as it would require a significant amount of time and resources to collect and prepare for submission. Sonnedix respectfully proposes that this requirement be more flexible and limited to non-confidential information, to the extent it exists and is reasonably available.
 - c. Subsection (E) requires a plan to provide a free internet portal and to notify the public of scheduled service interruptions. Considering that not all Electric Power Companies would necessarily serve the public, Sonnedix proposes that these requirements be eliminated for contracts between private entities. In the alternative, they could be clarified to explain whether they apply to all or certain types of Electric Power Companies that serve the public, and for what purpose.
 - d. Subsection (G) requires information on plans to achieve efficiencies in operations and to share cost savings with customer. However, it is not clear why this would be required for all Electric Power Companies with PPAs, particularly, private Electric Power Companies that enter into agreements with a fixed price or rate with private customers.
2. Along those lines, Section 2.06(B), applicable to Generation Services contracts, requires a description of the mechanism for price reductions and passing costs savings to customers. Respectfully, Sonnedix understands that this section warrants revision as it suggests that, if an energy generation company achieves additional efficiencies, it should pass on the savings to the customer. However, if two private companies agree on a particular price and contractual terms, and one of the entities achieves cost savings, there is no reason why it should pass it on to another private party. In addition, it is not clear why the Proposed Regulation requires information about profit margins. It is Sonnedix's interpretation that these types of requirements should only apply to contracts with PREPA or its successor or concessionaire.
3. Although PREPA and its successor or concessionaire may be required to incorporate certain contractual terms, Section 3.01 contains a series of contractual requirements that attempt to intervene with private parties' freedom to negotiate and agree on the contractual terms that they deem acceptable. For this reason, Sonnedix considers that

Section 3.01 warrants some additional clarification as to what parties would be bound by it, while taking into consideration that private parties require flexibility when negotiating contractual terms between them.

The purpose of these comments is to promote a better understanding of the Proposed Regulation; particularly its scope and the entities that will be bound by it. Sonnedix understands that most of the Proposed Regulation should not apply to contracts between private parties. To the extent it may apply to contracts between private parties, Sonnedix suggests that the Proposed Regulation include an expedited approval process with lessened requirements and a greater degree of flexibility to promote investment and development of renewable energy production in Puerto Rico. As discussed above, the PREB's interests and Puerto Rico's public policy might be better served if the requirements are more flexible and, for example, eliminate the bidding information requirement for contracts between private entities. This could more easily be achieved if the PREB issues a separate regulation that applies to PPAs between private parties (excluding the requirements that apply to PREPA or its successor or concessionaire). In the alternative, this could also be achieved by segregating into separate sections the requirements applicable to contracts between private entities from the requirements that would apply to contracts with PREPA (or its successor or concessionaire). Also, to the extent the PREB and PREPA or its successor or concessionaire require similar information, synergies should be formed to avoid duplicating information requirements by standardizing the data required by both entities. In sum, the application process with the PREB should be as fast and flexible as possible to ensure the goal of increasing the renewable energy sources in Puerto Rico.

Sonnedix appreciates the opportunity to participate in this process by providing these comments that are aimed in good faith to facilitate the review of the Proposed Regulation. We urge you to take these comments into consideration, which we are open to discuss with you, as well as providing additional comments as warranted during the review process.

Cordially,

ORIANA ENERGY, LLC

HORIZON ENERGY, LLC

By: 

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