December 3rd, 2020

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Mr. Edison Avilés-Deliz
Chairman
Puerto Rico Energy Bureau
World Plaza Building
268 Ave. Muñoz Rivera
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Hato Rey, PR 00918

RE: Proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies
NEPR-MI-2020-0014

The Puerto Rico Solar Energy Industries Association Corp., d/b/a/ Solar and Energy Storage Association of Puerto Rico (hereinafter, "SESA") is an association that represents Puerto Rico's solar and energy storage industries. It advocates for solar and storage technologies as a central solution to the energy needs of Puerto Rico and promotes public policy that benefits the growth of these industries. It brings awareness and understanding of these technologies to both government policymakers and the public and facilitates collectively beneficial collaboration and good business practices within the industry.

On October 19, 2020, the Energy Bureau notified the publication of the Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies (hereinafter, "Proposed Regulation"). According to the Bureau's November 17, 2020 resolution, stakeholders may submit comments through December 3, 2020. Given the importance of the Proposed Regulation, SESA respectfully requests that a procedural conference be held to allow for a more robust discussion of the proposed rule. In the meantime, SESA herein presents preliminary comments to the Proposed Regulation.

In general, SESA has no objection to the regulation of contracts between independent power producers and the Puerto Rico Electric Power Authority ("PREPA") or the transmission and distribution concessionaire. However, SESA is extremely concerned, in terms of concept, practicality and even legality, about the attempt of the Energy Bureau to regulate contracts between commercial and industrial customers and private energy suppliers. For the reasons more fully explained below, SESA respectfully asks the Bureau to consider withdrawing all of the text of the Proposed Regulation addressing such private contracts. A comprehensive procedural conference would aid SESA in explaining its concerns and would be beneficial to the Energy Bureau in understanding the concerns the solar and energy storage industry has.

As the Energy Bureau may be aware, commercial and industrial scale generation projects have been developed in Puerto Rico for many years, and there are strong policy reasons that do not favor the application of the Proposed Regulation to such projects. There are numerous distributed generation projects with capacities of up to one (1) megawatt interconnected to the PREPA grid at sub-transmission voltage. There are also many similar projects with capacities of up to five (5) megawatts. Such projects have been developed pursuant to applicable PREPA interconnection regulations. See the Regulation for the Interconnection of Generators to the Electrical Distribution System of the Puerto Rico Electric Power Authority and for the Participation in the Net Metering Programs (Regulation No. 8915); and the Regulation for the Interconnection of Generators to the Electrical Transmission or Subtransmission System of the Puerto Rico Electric Power Authority and for the Participation in the Net Metering Programs (Regulation No. 8916).

Development and construction of these commercial and industrial scale projects require significant resources. Construction costs usually range in the hundreds of thousands to millions of dollars. The parties involved in such projects are typically sophisticated, possess the necessary financial resources, and are represented by able counsel. Contract terms and energy rates are negotiated at arms-length. Thus, no one party really has advantage over the other or others. Neither the companies developing such projects and acting as energy providers, nor the commercial or industrial entities acting as purchasers, have sought the government's aid to regulate their interactions.

The implementation of the Proposed Regulation, as it is drafted, could subject projects of the nature described above to extremely detailed and cumbersome requirements, including price regulation. To SESA's knowledge, there have been few legal or regulatory problems involving the parties in such projects. The majority of the issues that arise in the context of the projects concern the project´s interaction with PREPA and interconnection aspects. In general, negotiation of these contracts are contractual matters between private parties that are sophisticated and well-advised in the process of negotiation and execution thereof. If adopted as proposed, the Proposed Regulation would create new barriers to the development of projects like the foregoing, increase

development costs, cause unnecessary delays and potentially dissuade parties from pursuing them. This outcome would be contrary to the energy public policy established under Act 17-2019.

SESA also questions the jurisdictional basis for regulating the foregoing projects. In this regard, Section 1.7 of Act 17-2019 – cited in the Proposed Regulation – provides that the Energy Bureau may, **subject to said Act and in accordance with planning parameters considered in the Integrated Resource Plan ("IRP"),** adopt rules to regulate the process through which large-scale commercial and industrial consumers, energy cooperatives, and other aggregate demand structures may purchase energy directly from an independent energy producer.

First, as stated in Section 1.7, this grant of authority for rulemaking requires a future event that has yet to occur, which is the establishment in the IRP of planning parameters related to the direct purchase of energy by large scale commercial and industrial consumers from independent power producers. Second, while Act 57-2014 and Act 17-2019 provide PREB with a broad grant of authority to regulate electric service companies, when Art. 6.3 and 6.32 of Act 57-2014 – also cited in the Proposed Regulation – are read together with Art. 1.7 of Act 17-2019, the legislative intent appears to be that said grant of authority corresponds to the review and approval of contracts to allow large scale commercial and industrial consumers to make a choice as to the energy provider from which they will be purchasing electricity (i.e., similar to "energy choice" programs). That is, while the above-referenced provisions of Act 57-2014 fully supports the Energy Bureau's authority to regulate contracts between electric service companies, including contracts between independent power providers and PREPA or between independent power producers and the operator of the PREPA transmission and distribution system,[1] it is not clear that the Bureau has the power to review contracts in connection with distributed generation "behind the meter" projects, and that even if it had such power, it would be subject to parameters that have yet to be defined in a future IRP.

Because parameters as to the private purchase of energy from independent energy producers have yet to be evaluated in the IRP, the portion of the Proposed Regulation that intends to regulate transactions involving industrial or commercial customers and private generation suppliers is premature, since it is lacking the basis pursuant to which the Energy Bureau may promulgate these regulatory provisions. Also, the IRP is not prescriptive of distributed generation projects supplying commercial or industrial customers "behind the meter."

[1] *See* for example Section 6.3(n) of Act 57-2014, which generally grants the Energy Bureau the power to approve, review and modify, as necessary, rates and charges by electric service companies, and Section 6.32(a) of Act 57-2014 as amended by Section 5.28 of Act 17-2019, which grants authority to the Energy Bureau to review power purchase agreements between independent power producers and the operator of the transmission and distribution system.

In light of the foregoing, SESA respectfully requests the Energy Bureau to remove from the Proposed Regulation all of the text addressing such private contracts. Alternatively, the Energy Bureau should clarify that the proposed regulation (1) does not apply to distributed generation "behind the meter" projects, and (2) that the regulation of direct energy purchases by large scale commercial or industrial consumers from independent power producers must await consideration in an upcoming IRP process.

Finally, SESA respectfully reiterates its request that a procedural conference be scheduled to allow for a more meaningful discussion of the issues at hand.

Cordially,

[signed]

Patrick J. Wilson
President