

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

**NEER**

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

CASE NO.:  
NEPR-MI-2020-0014

SUBJECT:  
Comments on Proposed Regulation

**THE PUERTO RICO ELECTRIC POWER AUTHORITY'S COMMENTS ON THE  
PROPOSED REGULATION FOR THE EVALUATION AND APPROVAL OF  
AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority, through its counsel, and respectfully submits its comments to the proposed *Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies* published by the Puerto Rico Energy Bureau of the Public Service Regulatory Board on October 19, 2020.

In San Juan, Puerto Rico, this 3<sup>rd</sup> day of December 2020.

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Exhibit A

PREPA's Comments on the Proposed Regulation

**THE PUERTO RICO ELECTRIC POWER AUTHORITY’S COMMENTS ON THE  
PROPOSED REGULATION FOR THE EVALUATION AND APPROVAL OF  
AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES**

The Puerto Rico Electric Power Authority (PREPA) hereby submits for the Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) consideration comments on the proposed *Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies* published in the captioned proceeding on October 19, 2020. This submission is being made in accordance with the Energy Bureau’s Resolution of November 17, 2020 which announced that the deadline for the submission of public comments would be extended to December 3, 2020.

These comments suggest revisions that are intended to make the proposed regulation clearer and in its use of certain technical terms more consistent with electric industry practice. Certain of the comments suggest changes in definitions and regulation text that will result in a regulation that more closely tracks the relevant laws and related Energy Bureau regulations.

The Authority first offers general recommendations concerning the organization of the definitions section, and then offers detailed suggestions for changes in certain defined terms. The comments also suggest clarifying changes to various elements of articles 2, 3 and 5.

**Section 1.09 – Definitions**

**General Notes:**

1. Some definitions are out of alphabetical order; we recommend revising the definitions so that they appear in alphabetical order.
2. The terms “Electric,” “Energy” and “Power” are sometimes used in the proposed regulation in an inaccurate fashion. Each use of these terms should be evaluated for accuracy and appropriateness.
3. Some terms are defined but are either not consistently used with capitalized letters or appear in forms that are variations on the defined term. The document should be reviewed to ensure that the correct terms are used, are used consistently and are capitalized in each instance in which they are used. Examples include, but are not limited to:
  - a. “Agreement” or “Contract” (see for example sections, 2.01, 2.02, 2.03)

- b. “Customer” (sections 2.04, 2.05, 2.06 (B)(2) and 2.06 (B)(3))
  - c. “Electric Cooperative” – section 2.01 uses the term *energy cooperative*
  - d. “Electric Power Service Company” or “Electric Power Company” – section 2.03 uses the term *Electric Service Company* and the definition of the term “Applicant” uses the term “Electric Service Power Company”. We suggest below that the term “Electric Service Company” be used throughout.
  - e. “Electric Service” (sections 2.04 (C)(12), 2.05 (B)(4), 2.06 (B)(1), 2.06 (A)(3))
  - f. “Electric Grid” (section 2.05 (B)(7); section 2.05 (B)(5) uses the terms *electricity grid* and section 2.05 B)6 *electricity network*; section 2.05 (D)(7) uses the term *grid*
  - g. “Independent Power Producer” (section 2.01)
  - h. “Interconnection” (section 2.03(B))
  - i. “Power Purchase Agreement” (section 2.04)
  - j. “Renewable Resources” – section 2.05 (D)(7) uses the term *renewable energy sources*
  - k. “Transmission and Distribution Contractor” – section 2.06 (A)(3) uses the term *Transmission and Distribution Provider*
4. Some terms are not defined in the proposed Regulation but appear **capitalized** in the document:
- a. Annual Report (section 2.04 (C)(1))
  - b. Distributed Generation (section 2.05)
  - c. Integrated Distribution Plan (section 2.05)
  - d. Statement of Compliance (section 2.02)

If these terms are intended to have specific meanings, definitions for them should be provided.

**Specific Comments on Definitions:**

*Definition #10* (“Applicant”) includes an Electric Service Company’s “officers and directors and any personnel that have responsibility and decision-making authority regarding the finances of the Electric Power Service Company in Puerto Rico.” This inclusion of individuals in the definition of a regulated entity is highly unusual and makes the definition overbroad. The Applicant will be a legal entity (or a “Person” as defined in Definition #31), and it will be subject as such to the legal obligations imposed by the Energy Bureau through its approval of an Agreement or Contract. By incorporating in the defined term “Applicant” that entity’s officers, directors and decision-making personnel, the regulation could be read as imposing duties and potential liabilities on individuals associated with the Applicant, not merely the Applicant. This is not typical of definitions of entities subject to regulation used in the United States. Treating officers, directors and decision-making personnel as “Applicants” could have a negative impact on the willingness of individuals to serve as officers, directors or even employees of an entity that could end up being an “Applicant” as defined in the PPOA regulation. This is an outcome the Energy Bureau should seek to avoid.

*Definition #15* (“Electric Service” or “Energy Service”) should be revised. In this definition, in place of the phrase “a set of activities that comprise an electrical system,” the Energy Bureau should consider inserting the phrase “relate to use, maintenance or construction of an Electric Grid.” This would be more precise and would use a defined term in place of the imprecise term “electrical system.”

*Definition #16* presents the terms “Electric Power Service Company” and “Electric Power Company” as defined terms, but these terms are not consistently used throughout the definitions and the proposed regulation. Variants including “Electric Power Service Company,” “Electric Service Company,” “Electric Service Power Company” (in the definition of “Applicant;” clearly a typo) and “Electric Power Company” appear at various places throughout the proposed regulation. Only one of these terms should be used, and the selected term should be used consistently throughout the regulation. The term “Electric Service Company” is defined in

Regulation 8701,<sup>1</sup> and in the interest of consistency among Energy Bureau regulations, this definition should be incorporated verbatim into the PPOA regulation.

*Definition #18* (“Electric Grid” or “Electric Power Grid”) and *Definition #23* (“Energy System”) identify three terms that appear to have overlapping meanings. This might lead to confusion as the three terms might be interpreted as referring to the same infrastructure. The term “Electric Grid” is comprehensive enough to cover the terms covered in both definitions 18 and 23, and in our view should be used to the exclusion of the alternative terms “Electric Power Grid” and “Energy System.”

*Definition #20* (“Energy Generation” or “Power Generation”) only includes “production of electrical energy”; other services, such as capacity or ancillary services, should also be addressed in the definition as well.

*Definition #21* (“Energy Generation Company”) states that the term is meant to refer to “cogenerators already established in Puerto Rico, that supply energy to PREPA through a Power Purchase Agreement”, as well as “energy cooperatives, and renewable energy producers.” As currently structured, this definition could be read narrowly as not including the utility scale renewable energy projects that have signed PPOAs with PREPA, or entities that are parties to future renewable PPOAs resulting, for example, from the upcoming renewables and energy storage

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<sup>1</sup> Energy Bureau, *Amendment to Regulation No. 8618 On Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico* (No. 8701) (February 5, 2016), Section 1.08 (5), defines the term “Electric Service Company” as referring to:

- a) PREPA;
- b) Any natural or legal person that generates electric power through the use of fossil fuels or renewable energy sources for sale to PREPA or any other electric service company in accordance with a power purchase agreement. This shall not include persons that generate electric power for their own consumption by means of distributed generation that have net metering agreements with PREPA;
- c) Any natural or legal person that offers any of the following services:
  - i. Electric power generation for sale in Puerto Rico through distributed generators that are interconnected to the PREPA power grid with an aggregate capacity of one megawatt (1 MW) or more, regardless of whether or not said distributed generators or the clients to whom the electric power is sold are participants of PREPA’s Net Metering Program;
  - ii. Electric power storage, where at least one storage unit has a nominal capacity of one megawatt (1 MW) or more;
  - iii. Electric power billing; or
  - iv. Electric power resale.
- d) Any natural or legal person that that carries out or offers electric power transmission (wheeling) service.

procurement plan and associated RFPs. In addition, this definition might not be broad enough to include entities that withdraw electrical energy from a battery energy storage system or other storage system. The definition would be clearer if it were revised to read:

“Energy Generation Company” means any Person engaged in the production, generation or storage of electric power in Puerto Rico for sale through Power Purchase Agreements or any other legal endeavor authorized by the Energy Bureau. For purposes of this Regulation, an “Energy Generation Company” shall include (i) Persons qualifying as cogenerators which, as of the date on which this Regulation is promulgated, supply energy to PREPA under Power Purchase Agreements, (ii) Electric Cooperatives, and (iii) Persons which own or control Renewable Resources or energy storage resources which supply electric power (including ancillary services) through Power Purchase Agreements.

*Definition #25* (“Interconnection” or “Electrical Interconnection”) should refer to *assets* (generators, power plants, BESS, DER, microgrids, solar communities), not entities or companies. Energy Generation Companies, Independent Power Producers, Electric Service Companies and Persons interconnect their assets to the Electric Grid. This definition should eliminate the references to such entities. The definition also uses the term “Independent Energy Producers,” which is not defined in the proposed regulation (the term “Independent Power Producers” is).

*Definition #26* (“Integrated Resource Plan”) should make specific reference to (and use the definitions contained in) the corresponding Acts passed by the Puerto Rico Legislature.

*Definition #33* (“Power Purchase Agreement”) makes reference to the sale of electric power, but does not mention sales of capacity, ancillary services or RECs, which are likely to be addressed in at least some Power Purchase Agreements. The definition should be expanded to include these additional products and attributes.

*Definition #34* (“PREPA”) states that PREPA is “responsible for operating the transmission and distribution system.” This leaves out the generation system, perhaps inadvertently. The definition should clearly state that currently PREPA is also responsible for the operation of the generation system.

*Definition #39* (“Sales Contract”) – The term *power purchase agreement* should use initial capital letters (as in “Power Purchase Agreement”), since it is defined in the proposed regulation.

*Definition #40* (“Supplementary Study”) – Since 2008, the term *Estudio Suplementario* has been included in the Distributed Generation interconnection regulations adopted by PREPA. This is a specific study carried out when proposed generation facilities do not satisfy expedited evaluation criteria, and is of limited scope. An alternate and more general term should be used for this definition (such as “Interconnection Studies”). This will limit confusion and establish a more appropriate term for the different evaluations that may need to be carried out.

## **Article 2.- Submission of Application and Documentation for Power Purchase Agreements**

*Section 2.01:* Subsection (A)(4) should be revised to read, “Power Purchase Agreements between Independent Power Producers and (i) commercial and industrial electricity Consumers, (ii) Electric Cooperatives or (iii) demand aggregators, which provide for the sale of electric energy, capacity or ancillary services.”

*Section 2.03:*

- a. Use of the term “Supplementary Study” – see comments above. We recommend changing the term to “Interconnection Studies.”
- b. Section 2.03 (B) requires that PREPA complete its interconnection study “within 90 days from the date the Electric Service Company or Independent Power Producer presented its interconnection evaluation to PREPA.” This should be revised to state that the prescribed 90-day period shall begin to run once the Applicant has submitted to PREPA all technical information required to perform the study.
- c. Section 2.03 (C) – as in Section 2.03 (B) this subsection should clearly state that the 45-day period for PREPA to submit its determination that an interconnection evaluation is not needed shall begin once the Applicant has submitted all information PREPA requires to evaluate the project.
- d. Section 2.03 (E) provides that the Energy Bureau may impose administrative fines on PREPA for non-compliance with the proposed regulation. PREPA is not the only entity



that will be subject to the requirements of the regulation, and entities other than PREPA may well fail to comply with regulatory requirements in a manner that should be sanctioned. Thus, the proposed regulation should also clearly establish fines for non-compliance by parties other than PREPA.

In addition, this section contemplates that the Energy Bureau will request the Energy Public Policy Program to evaluate a proposed project and proposed contract in instances in which PREPA “fails to comply with the terms established [in the proposed regulation].” This provision should be revised to eliminate this directive. PREPA is not aware that the Energy Public Policy Program has any experience in performing interconnection studies or evaluating generation projects or contracts.

*Section 2.04:*

- a. Section 2.04 (A)(1)(b) requires Applicants to provide a chart setting forth all competitive bids, including price and other terms and conditions of the bids. Section 2.04 A) 2) requires the Applicant to provide copies of all responses to the competitive bid process. The definition of Applicant requires that when the transaction is between two or more Electric Service Companies, the entities involved will submit a joint Application. However, it appears that some of the information requested might be confidential in nature, in which case it should be provided separately by the Electric Service Company that carried out the competitive bidding process and should be treated as confidential by PREB.
- b. In Section 2.04 (B)(5), the term “generation” should be replaced by the defined terms “Energy Generation” or “Power Generation.”
- c. In Section 2.04 (C)(1), the term “Annual Report” is capitalized in the first sentence and not capitalized in the second sentence. This term is not defined in the proposed regulation, so either it should not be capitalized or should be capitalized and defined.
- d. Section 2.04 (D)(1) should be revised to eliminate the word “retail” appearing before the terms “power” and “ancillary services.”

- e. Section 2.04 (H) specifies that if PREPA is one of the parties involved, it shall not be required to file the documents required in paragraphs B, C and D of Section 2.04. However, it appears that PREPA should also be exempt, depending on the type of arrangement proposed, from the requirement to file certain other documents. For example, if PREPA is entering into a Power Purchase Agreement under which the third party is responsible for the construction, operation, maintenance and repair of its facility, PREPA should not be required to provide information such as required under Paragraph H (Operation and Maintenance of Asset).

*Section 2.05:*

- a. Section 2.05 (A)(2) – The term “Integrated Distribution Plan” is not defined in the proposed regulation.
- b. Section 2.05 (B)(1) – replace the term “posts” with “poles.”
- c. Section 2.05 (C)(1) – consider replacing the term “independent generator” with “Independent Power Producer.”
- d. Section 2.05 (D)(3) – The term “Distributed Generation” is not defined in the proposed regulation. The word “eligible” must be included before the term “distributed generation” since not all distributed generators may qualify for net metering. Also, although it is outside of the scope of this proposed regulation, the Energy Bureau must look into the eventual transformation of the Net Metering program, as is happening in other jurisdictions. As such, we propose modifying this item to read “Plan for offering net metering to eligible distributed generators in accordance with applicable laws and regulations.”

*Section 2.06:*

- a. 2.06 (A)(1) – The term should be “Mercury and Air Toxics Standards.”
- b. 2.06 (A)(3) – The term “Transmission and Distribution Provider” is not defined; consider replacing with “Transmission and Distribution Contractor.” Also, consider replacing the term “electrical energy” with “Electric Service.”

- c. 2.06 (C)(3) – The use of the concept of “reserve margin” seems inappropriate in the context of a discussion of an individual provider of Generation Services. A utility system needs to include a “reserve margin” in its planning; an individual generator does not. The nature of the proposed commitment and the rationale for requiring it should be clarified.

### **Article 3. Contract Requirements**

*General* – All contracts should be required to include, and Applicants should be required to provide to the Energy Bureau, relevant interconnection and other technical data and studies. This should include, but not be limited to, a copy of the corresponding Minimum Technical Requirements for the proposed facility.

#### *Section 3.01:*

- a. Section 3.01 (A)(2) – There seems to be typo at the end of this section in the use of the word “of;” it appears it should be “and”.
- b. Section 3.01 (A)(4) – The defined term “Proponent” (*i.e.*, “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”) used in this section is narrower than would seem appropriate. Consider replacing this term with either the defined term “Electric Service Company” or the defined term “Independent Power Producer.”

### **Article 5. Energy Compliance Certification**

*Section 5.02* – revise the caption to eliminate the repetition of the words “with the.”

#### *Section 5.06:*

- a. Section 5.06(B) – The term “day” should be “days”.