

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

CASE NO.: NEPR-MI-2020-0014

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

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

RESOLUTION

On October 19, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) issued a Resolution (“October 19 Resolution”) through which it published its Proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies (“Proposed Regulation”). Also, the Energy Bureau initiated the instant case for the adoption of the proposed regulation, pursuant to Section 6.23 of Act 57-2014¹ and Act 38-2017.² The Energy Bureau granted the general public until November 18, 2020 to file its comments regarding the Proposed Regulation.

On November 17, 2020, the Energy Bureau issued a Resolution (“November 17 Resolution”) through which it determined to extend the term for the submission of comments from the general public due to the complexity and importance of the Proposed Regulation. The Energy Bureau extended the public comment period until December 3, 2020.

On November 17, 2020, the Windmar Group filed a document titled *Comments from the Windmar Group*.

On November 18, 2020, Oriana Energy, LLC and Horizon Energy, LLC filed a document titled *Re: Oriana Energy LLC and Horizon Energy LLC (with their affiliates, “Sonnedix”) Comments to the Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies*.

On November 23, 2020, the Energy Bureau received written comments from the Renewable Energy Coalition.

On December 2, 2020, the Puerto Rico Chamber of Commerce filed its written comments on the Proposed Regulation before the Energy Bureau.

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

² Administrative Procedure Act of the Government of Puerto Rico, as amended.



[Handwritten signatures and initials in blue ink, including 'JAA' and 'M']

On December 3, 2020, the Energy Bureau received the following written comments:

1. AES Puerto Rico, LP filed before the Energy Bureau a document titled *Motion to Submit AES Puerto Rico, LP, Initial Comments to the Notice of Proposed Regulation for Evaluation and Approval of Agreements Between Electric Service Companies*.
2. DuPont Electronics Microcircuits Industries, Ltd. FMC Agricultural Caribe Industries, Ltd., and Bristol-Myers Squibb Holdings Pharma LTd Liability Company filed before the Energy Bureau a document titled *Comments on Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies*.
3. The Puerto Rico Solar Energy Industries Association Corp., d/b/a Solar and Energy Storage Association of Puerto Rico filed a document titled *Re: Proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies NEPR-MI-2020-0014*.
4. The Puerto Rico Electric Power Authority filed a document titled *The Puerto Rico Electric Power Authority's Comments on the Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies*.

The comments received on the Proposed Regulation focused on the concern that the provisions included transactions between private parties. The comments received suggested that the regulation of private Power Purchase Agreements ("PPA") was commercially unreasonable and imposed unnecessary regulatory burden upon developing renewable energy projects. Commenters recommended (a) excluding these transactions from the Proposed Regulation and governing them through existing Energy Bureau regulations, or (b) creating a separate regulation to address transactions between private parties.

Based on the importance of establishing a clear scope of the Proposed Regulation and following the comments received during the public comment period, the Energy Bureau, exercising its discretion, hereby issues a Revised Proposed *Regulation for the Evaluation and Approval of Agreements with Electric Power Service Companies* ("Revised Proposed Regulation"). The Revised Proposed Regulation is included as Attachment I of this Resolution.

Pursuant to Act 38-2017, the Energy Bureau will publish a notice on the 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 Revised Proposed Regulation within thirty (30) days following the publication of the notice. A copy of the Revised 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@jrsp.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 00918-1925; 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 Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau of the Public Service Regulatory Board has so agreed on March 18, 2021. I also certify that on March 18, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today March 18, 2021.


Sonia Seda Gaztambide
Clerk





GOVERNMENT OF PUERTO RICO

Public Service Regulatory Board
Puerto Rico Energy Bureau

**REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS
WITH ELECTRIC POWER SERVICE COMPANIES**

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**REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS WITH
ELECTRIC POWER 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 with Electric Service Companies*.

Section 1.02.- Legal Basis.

This Regulation is adopted pursuant to Section 6.3 of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act*; Section 6.32 of Act 57-2014, as amended by Article 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 57-2014, Act 17-2019, and Act 120-2018, as amended, known as the *Puerto Rico Electric Power System Transformation Act*. The legislature required in Section 6.3 (c) 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 (PPAs) are in the public interest and consistent with the policy objectives as set forth by the legislature.

Section 1.04.- Applicability.

- A) Except as otherwise noted herein, this Regulation shall apply to all Agreements with Electric Power Service Companies (EPSCs).
- B) Special conditions for Agreements with PREPA. The application of this Regulation to Agreements with PREPA is set forth as follows:
 - 1) The evaluation and approval of PPAs between an Independent Power Producer and PREPA are subject to this Regulation; however, when a PPA is part of a PREPA Transaction, the Energy Compliance Certificate shall suffice in accordance with the provisions of Act 120-2018 and as specifically set forth in this Regulation.
 - 2) This Section shall not apply to PPAs entered into by PREPA before the approval of Act 17-2019. However, any extension of or amendment to a PPA executed

prior to the approval of Act 57-2014 shall be subject to this Regulation and to the approval of the Energy Bureau.

- C) Special conditions for the application of this Regulation to agreements between EPSCs and entities which are not EPSCs. This Regulation shall apply to large scale industrial and commercial Consumers, Energy Cooperatives, and Municipalities that enter into PPAs directly with an EPSC as specifically set forth in this Regulation.
- D) Exceptions. This Regulation does not apply in the following circumstances.
 - 1) PPAs for less than five (5) megawatts are exempt from this Regulation except as otherwise set forth in Article 8.
 - 2) This Regulation shall not apply to companies that provide maintenance or installation services for energy generating equipment or facilities, or entities that provide administrative services to energy producers.

Section 1.05.- Interpretation.

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

Section 1.06.- Provisions of Other Regulations.

This Regulation may be supplemented by other Regulations of the Puerto Rico Energy Bureau compatible with this Regulation.

Section 1.07.- Unforeseen Proceedings.

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

Section 1.08.- Dates and Time Periods.

In computing any time period established in this Regulation, or by Order of the Energy Bureau, the day of the 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, the following terms will have the meaning established below, except when the context of the content of any provision clearly 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 Transformation and RELIEF 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 with an Electric Service Power Company for the provision of generation, transmission, distribution and/or storage services.
- 10) “Applicant” means the Electric Power Service Company seeking approval of an Agreement to provide electric service.
- 11) “Certification” means the process in which an Electric Power 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*, as amended, February 5, 2016.

- 12) "Community Solar Projects" means distributed renewable energy projects at the residential level with a minimum capacity of five megawatts or greater.
- 13) "Contractor" means a natural or legal Person that enters into a Partnership Agreement regarding a PREPA Transaction, under Act 29-2009 and Act 17-2019.
- 14) "Customer" or "Consumer" means a natural or judicial person that receives or consumes Electric Services.
- 15) "Electric Cooperative" means a cooperative organized under Act 239-2004, as amended, mainly to meet 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.
- 16) "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.
- 17) "Electric Power Service Company" or "EPSC" or "Electric Power Company" means any person or entity, natural or legal, including energy cooperatives and municipalities, dedicated to offering generation, transmission and distribution services, wheeling, grid services, energy storage, and electric energy resale. PREPA, its successor, and any operator of the electricity transmission and distribution network, shall be considered Electric Service Companies for this Regulation.
- 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 Bureau" means the Puerto Rico Energy Bureau, created by Act 57-2014 and renamed and reorganized by virtue of Act 211-2018, known as "*The Reorganization Plan of the Public Service Regulatory Board*," formerly known as the Puerto Rico Energy Commission.

² Regulation 9028 on Microgrid Development, May 16, 2018.

- 20) “Energy Compliance Certification” means the Certificate issued by the Energy Bureau in any PREPA Transaction certifying that a Preliminary Contract complies with the regulatory framework of Act 17-2019, the energy public policy and the current law.
- 21) “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.
- 22) “Energy Generation Company” or “Independent Energy Producer” means any person, natural or legal, dedicated to the production or generation of electric power in Puerto Rico, for sale through PPAs 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 PPA, energy cooperatives, and renewable energy producers.
- 23) “Energy Generation Services” means the provision of energy, capacity, ancillary services and/or Renewable Energy Credits.
- 24) “Energy System” means the system for the generation, transmission, and distribution of electrical energy.
- 25) “Highly Efficient Generation” means a generation unit that meets the two following requirements:
 - a) The yearly unit total cost of generating electricity cannot exceed \$100/MWh adjusted to 2018 dollars; and
 - b) The average annual rate of carbon dioxide emissions from the generating unit, as measured in pounds per megawatt-hour, is lower than the United States national average for plants with the same primary fuel type, as reported in the U.S. Environmental Protection Agency’s Emissions & Generation Resource Integrated Database (“eGRID”) (or successor source) for the most recent year in which data is available.³
- 26) “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 No. 73-2008, as amended, known as the *Economic Incentives Act for the Development of Puerto Rico*.
- 27) “Interconnection” or “Electrical Interconnection” means the connection of power plants, Energy Generation Companies, Independent Energy Producers,

³ For more detail on the definition, see Case No. CEPR-MI-2016-0001, *Resolution*, March 20, 2019, p. 6-7.

Persons, Electric Service Companies, Microgrids or solar communities to the same transmission and distribution network, so they are electrically connected.

- 28) “Integrated Resource Plan or “IRP” means a plan that considers all reasonable resources to satisfy the demand for electric power services during a period of time, including those related to energy supply, whether existing, traditional, and/or new resources, and those related to energy demand, such as energy conservation and efficiency, demand response, and distributed generation by industrial, commercial, or residential customers.
- 29) “Microgrid” means a group of interconnected loads and Distributed Energy Resources within clearly defined electrical boundaries that acts as a single controllable entity that can connect and disconnect from the Electric Power Grid to enable it to operate in either grid-connected or off-the-grid (islanded) mode.
- 30) “Municipality” means the local government legal entity organized and existing under Article VI, §1 of the Puerto Rico Constitution and Act 81 of August 30, 1991, as amended, known as *the Autonomous Municipality Act of the Commonwealth of Puerto Rico*.
- 31) “Municipal Venture” means an enterprise authorized by a municipality to provide electric services to its citizens under applicable laws.
- 32) “P3A” means the Puerto Rico Public-Private Partnerships Authority created by Act 29-2009.
- 33) “Partnership Agreement” has the same meaning ascribed to such term by Act 29-2009, and, for this Regulation, refers to agreements entered between PREPA and a Contractor under a PREPA Transaction.
- 34) “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..
- 35) “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.
- 36) “Party” or “Parties” refers to any person or entity entering into a contract.
- 37) “Person” means any natural person, company, or legal entity independent of how it is organized.

- 38) "Preliminary Contract" means the specific clauses and conditions of a Partnership Agreement or Sales Contract, as agreed by the Partnership Committee and the chosen Proponent and submitted to the P3A Board.
 - 39) "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 energy, capacity, ancillary services and/or Renewable Energy Credits, at a just and reasonable rate, to another natural or juridical person, and that other person is, in turn, bound to acquire said energy, capacity, ancillary services and/or Renewable Energy Credits.
 - 40) "PREPA" means the Puerto Rico Electric Power Authority, a corporate entity created by Act No. 83 of May 2, 1941, as amended, and any successor entity.
 - 41) "PREPA Transaction" means any and every transaction through which PREPA or the Government of Puerto Rico establishes one or more Partnerships with regard 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.
 - 42) "Proponent" means any person, or its affiliated or related entities, that has submitted a proposal to enter a Partnership under Act 29-2009 for a PREPA Transaction.
 - 43) "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 within the Commonwealth of Puerto Rico.
 - 44) "Retail Electric Service" means the sale of electricity to end use customers by an Electric Power Service Company.
 - 45) "Sales Contract" means any contract, power purchase agreement, document, deed, agreement and instrument related to a PREPA Transaction that includes an agreement to, in any way, sell, transfer or dispose of PREPA's generation assets to one or several proponents of the private sector.
 - 46) "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.
 - 47) "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, for any reason, 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 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 relieve no Party of its obligation to comply with the provisions stated, 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 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 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 must 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 the August 31, 2016 Resolution in Case No. 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 8543⁴ and, as a result 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 over twenty-five thousand dollars (\$25,000) for each such failure, 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 relieve no Party affected by this Regulation from fully complying with other applicable legal and regulatory requirements enforced by any other government entity.

⁴ Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Procedures.

ARTICLE 2. – ELECTRIC SERVICE COMPANY PROVIDER CATEGORIES

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

- A) The following Contracts or Agreements must be submitted to the Energy Bureau for review and approval, under the applicable requirements as set forth in Articles 3 through 9 of this Regulation:
- 1) Contracts with Electric Service Companies for the provision of generation, transmission, distribution, or storage services;
 - 2) PPAs executed after the enactment of Act 57-2014;
 - 3) PPAs 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 or Electric Cooperatives that enter into PPAs directly with EPSCs.
- B) PPAs 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) PPAs 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 this Regulation, as applicable.

Section 2.02. – Classifications of PPAs.

The classification of PPA’s is based in part, upon the categories of Customers who are permitted to engage in wheeling and thus enter into PPA’s in accordance with Section 5.26 of Act 17-2019, amending Section 6.30 of Act 57-2014, which sets forth eligible wheeling Customers to include Electric Power Service Companies, commercial and industrial Customers, Microgrids, Energy Cooperatives, Municipal Ventures, and Community Solar Projects. The Regulations for each classification is set forth in Articles 3 through 9. This Regulation also includes PPA’s entered with PREPA.

Section 2.03. – Other Entities.

To the extent that an entity not included in Section 2.02 of this Regulation believes that it is eligible to enter into a PPA for services, it shall apply to the Energy Bureau for guidance as to which set of requirements shall apply, if it is eligible.

ARTICLE 3. – STANDARD FILING REQUIREMENTS FOR APPROVAL OF AGREEMENTS

Section 3.01 – Documents to be Included in All Applications for Review and Approval.

All applications for approval of a Power Purchase Agreement shall include:

- A) A statement that the Electric Service Company has been certified by the Energy Bureau under Regulation 8701 or as amended or superseded. If the Electric Service Company is not certified, then a description of the status of its application for certification shall be included.
- B) A copy of the proposed Agreement along with any attachments and appendices and other relevant information in an electronic searchable form. An Applicant may request confidential treatment of the Agreement in accordance with the procedures set forth in the August 31, 2016 Resolution in Case No. CEPR-MI-2016-0009, as amended.
- C) A Statement of Compliance with the Integrated Resource Plan (IRP), explaining how the proposed Agreement complies with the most recent IRP approved by the Energy Bureau.
- D) A Statement of Compliance with Act 17-2019, with a sworn statement by the Applicant, as applicable, avowing that it has read the legislation, understands that requirements and obligations, and agrees to comply with all laws and Regulations.
- E) 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.
- F) Information of the Applicant's plans to comply with all applicable legislation and environmental Regulations of the Federal Government and the Government of the Commonwealth of Puerto Rico, including but not limited to, the Mercury and Air Toxic Standards (M.A.T.S.) under the U.S. Environmental Protection Agency (EPA).
- G) An affirmation that the Applicant will comply with all Energy Bureau Regulations and Orders and Requests for Information.
- H) An affirmation that the Applicant will file all necessary information to the Transmission and Distribution Provider as it requires and as required by the Energy Bureau timely 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.

- I) For any fossil fuel units relied upon as part of the PPA, an affirmation of the Applicant's plan to ensure that the generating units are Highly Efficient Generation within a period of not greater than five years from the effective date of this Regulation and that the facility is capable of operating with at least two fuels. The Applicant shall provide a plan for the electrical energy generated from fossil fuels to be generated at least sixty percent (60%) in a highly efficient manner, under Article 6.29 of Act 57-2014.
- J) For any fossil fuel units relied upon as part of the PPA, a plan to ensure that coal and its derivatives are not used as a generation fuel in 2028 and beyond.
- K) Its plan to notify Customers and PREPA of any scheduled service interruption.
- L) Information as to how it will make its Customers aware of their right to seek mediation and arbitration for any disputes before the Energy Bureau as set forth in Regulation 8558⁵ as may be amended or superseded.

Section 3.02 – Additional Documents to be Included in Applications for Approval of Agreements with Microgrids, Energy Cooperatives, Municipal Ventures and Community Solar Projects.

In addition to the requirements in Section 3.01 of this Regulation, Applications for approval of a PPA with EPSCs, PREPA, Microgrids, Energy Cooperatives, Municipal Ventures or Community Solar Projects shall include the following information:

- A) Information as to whether the Contract is a product of competitive bidding.
 - 1) 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.
 - 2) 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. The Applicant may seek confidential treatment of this information in accordance with the procedures set forth in Case No. CEPR-MI-2016-0009.
 - 3) The Applicant shall provide copies of all responses to the competitive bid process upon the request of the Energy Bureau.
- B) In the case in which an entity owns more than one company or is performing separate functions under a functional separation, its plan for keeping its accounting books and records separate and an affirmation that it will comply with any Energy Bureau Regulation or Order on codes of conduct.

⁵ Regulation on Mediation and Arbitration Procedures of the Puerto Rico Energy Commission, February 6, 2015.

- C) Its affirmation that at a minimum, it will adhere to all laws 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 this Regulation, in which case these plans shall be required to exceed the requirements under existing Regulations.
- D) Its plan to provide a free internet portal and a description of the kinds of information that can be accessed.
- E) Its plan for addressing disputes with Customers regarding billing or payment as well as its plan for offering payment plans that provide customers with a reasonable opportunity to pay arrearages so as to avoid disconnections of service.
- F) 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.

Section 3.03 – Pricing Information to be Included in Applications for Approval of Agreements with EPSCs and Microgrids, Energy Cooperatives, Municipal Ventures or Community Solar Projects.

- A) In addition to the documents and information required under Section 3.01 and Section 3.02 of this Regulation, PPA's with PREPA, EPSCs and Microgrids, Energy Cooperatives, Municipal Ventures or Community Solar Projects shall provide the following information as applicable, regarding rates and pricing information:
 - 1) 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.
 - 2) A description of any mechanism 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, if applicable.
 - 4) Information on the rate design in the Agreement for each Customer class including the rates and charges for each function within the rate and charge and any anticipated future changes.

5) A list of any and 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.

B) An Applicant may request confidential treatment of the Agreement in accordance with the procedures set forth in Case No. CEPR-MI-2016-0009.

ARTICLE 4. – PPA’S BETWEEN PREPA AND A THIRD PARTY AND ENERGY COMPLIANCE CERTIFICATES

Section 4.01. – Procedures for the Selection of Third-Party for a PPA.

PREPA shall follow the Regulations set forth in Regulation 8815 as amended or superseded, regarding the procedures that shall precede filing a PPA. At a minimum PREPA shall have to solicit proposals consistent with the most recently approved Integrated Resource Plan through a competitive bid process.

Section 4.02 - Energy Compliance Certification, in General.

- A) Before the execution of a Contract under a PREPA Transaction, the Applicant must 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 3.01 through 3.03 of this Regulation, as applicable.
- C) Any amendments to a Preliminary Contract after an Energy Compliance Certification has been issued, require 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 4.03.- Documents to be Included with the Application for Review and Approval of the Energy Compliance Certification.

Besides the requirements of Sections 3.01 through 3.03, all Applications for an Energy Compliance Certification shall include:

- A) A completed application form as adopted by the Energy Bureau.
- B) The Partnership Committee Report.

- C) Statement recognizing that the thirty-day review period will commence when the Energy Bureau determines that the Application is complete.
- D) 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.
- E) A statement that the Applicant shall promptly furnish any further written documentation the Energy Bureau requires.
- F) Any other information that the Energy Bureau deems necessary to conduct the evaluation and approval process required by this Regulation and applicable law.

Section 4.04.- 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 4.05.- Energy Bureau Evaluation; Timeline for Review.

The Energy Bureau shall have thirty (30) days to review the Preliminary Contract and the Partnership Committee Report to issue an Order granting or denying the Energy Compliance Certification and stating the reasons for such determination.

- A) If the Energy Bureau does not issue an Order approving, denying or approving with modification the Energy Compliance Certificate within thirty-days (30) of receipt of a complete Application, the Energy Compliance Certification will be deemed granted and the Preliminary Contract will be considered approved by the Energy Bureau.
- B) An Application for an Energy Compliance Certificate will be considered complete when the Energy Bureau issues an Order declaring that the petition is complete.

Section 4.06.- 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 4.07.- Energy Bureau’s Review and Approval of Modification of Rates and Charges.

- A) Any modification to the rights, rents, fees, and any type of charges established in the Partnership Agreement that has been entered upon the consummation of a PREPA Transaction, requires the approval of the Energy Bureau. A Contractor seeking modification of the rights, rents, fees, and any type of charges established in such Partnership Agreement must file a petition for review and approval before the Energy Bureau, by providing the information required in Section 4.03 of this Regulation. The Energy Bureau shall determine whether to hold a hearing regarding any change in rates, fees, and any other type of charge.

- B) The procedure for review and approval of an Energy Compliance Certificate shall be under Article 11 of this Regulation. Notwithstanding Article 11, the Energy Bureau shall have thirty (30) days, 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.

- C) The Energy Bureau may issue an Order extending the review period by ninety (90) days, however, if it fails to issue a final Order after the extended ninety-day period, the Application will be deemed approved.

ARTICLE 5. – PPA’S WITH ELECTRIC COOPERATIVES

Section 5.01. Compliance with Regulations.

In addition to compliance with this Regulation, Electric Cooperatives shall also comply with the requirements of Regulation 9117⁶ as may be amended or superseded. This includes Section 4.02 and 4.03 of Regulation 9117 regarding the establishment of rates.

ARTICLE 6. – PPA’S WITH MUNICIPAL VENTURES

Section 6.01 – Categories of Municipal Transactions.

Municipal transactions culminating in a PPA shall be categorized as follows:

- A) PPA’s for the sale of electricity for municipal use; and,

- B) Sale of electricity for consumption by customers residing in the municipality.

⁶ Regulation on Energy Cooperatives in Puerto Rico, October 18, 2019.

Section 6.02. – Sale of Electricity for Municipal Use.

For the sale of electricity for municipal use, the Municipality shall comply with all applicable sections of this Regulation.

Section 6.03. – Sale of Electricity for Consumption by Customers Residing in the Municipality.

For the sale of electricity for consumption by Customers residing in the Municipality, the Municipality shall comply with all applicable sections of this Regulation and shall also comply with Regulation 8863⁷ as may be amended or superseded, regarding bill review and suspension of service for nonpayment.

ARTICLE 7. – PPA’S WITH MICROGRIDS

Section 7.01. – Compliance with Regulations.

Besides compliance with this Regulation, Microgrids shall also comply with the requirements of Regulation 9028 as may be amended or superseded.

ARTICLE 8. – PPA’S WITH COMMUNITY SOLAR PROJECTS

Section 8.01. – Review and Approval of Sample Contract Form.

For Contracts in which an Electric Power Service Company sells or leases a solar installation to an end-use residential or small commercial Customer for self-generation, the Electric Service Company shall provide the Energy Bureau with a sample Contract form for review and approval, along with an affirmation that all similarly situated Customers will be treated in a non-discriminatory manner and shall be provided the same Contract form and that it shall not engage in discriminatory pricing.

ARTICLE 9. – PPA’S WITH COMMERCIAL AND INDUSTRIAL CUSTOMERS

PPA’s negotiated between an Electric Power Service Company and a commercial or industrial Customer shall be presumed to result from arms-length bargaining in a competitive market and shall not be subject to an initial review and approval by the Energy Bureau. However, notwithstanding the foregoing, the Energy Bureau reserves the right to exercise its authority regarding these Agreements at its discretion if complaints arise regarding these Agreements.

⁷ Regulation on Procedure for Bill Review and Suspension of Electric Service Due to Failure to Pay, November 23, 2016.

ARTICLE 10.- CONTRACT REQUIREMENTS

Section 10.01.- Required Terms and Conditions, in General.

A) Any Contract executed under this Regulation, shall include these 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 if a default occurs by one party.
- 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 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 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, as well as 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 discrepancy 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 about 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, as well as 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 may be requested by the Energy Bureau.
- 14) The circumstances under which the Contract may be modified to maintain a financial balance between the Parties, as well as 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, if applicable, 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 in the case of a default.
- 21) Provisions on extensions to the Contract within the limits allowed under this Regulation.
- 22) Provisions on compliance with applicable 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 at all times comply with provisions applicable to them as an EPSC as defined in this Regulation.

Section 10.02.- Contracts between PREPA and any Person for Electric Services.

- A) In addition to the requirements of Section 3.02 of this Regulation, any Contract executed between PREPA and any Person under the provisions of this Regulation, shall include the following provisions:
- 1) The causes for terminating the Contract, as well as 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 about 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, as well as 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 transferring 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.

- 9) 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 consistent with system stability.

ARTICLE 11.- PROCEDURE FOR REVIEW AND APPROVAL OF PPA'S AND ENERGY COMPLIANCE CERTIFICATES

Section 11.01.- Review of Application for Completeness.

- A) Within thirty (30) days from the date in which an Application is filed, the Energy Bureau shall review the Application to determine whether it complies in full 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 10.01(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.

Section 11.02.- Timeline for Energy Bureau’s Review and Approval.

- 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 against public interest, and is therefore denied;
 - 3) The Agreement may be approved upon the acceptance by the Parties to the contract of 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 under 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) days to review the modified Agreement and issue a Resolution in Accordance with Section 4.02(A).
- C) If the Energy Bureau does not issue a Resolution within the thirty-day review period as set forth in Section 4.02(A) and (B), the Application shall be deemed approved. 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.

Section 11.03.- 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 12.- RECONSIDERATION AND JUDICIAL REVIEW

Section 12.01.- 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 12.02.- 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 an 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.