

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

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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: Notice of Proposed Regulation and Request for Public Comments
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**COMMENTS ON PROPOSED REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES**

COMES NOW Sunnova Energy Corporation (hereinafter, "Sunnova"), represented by the undersigned legal counsel, and very respectfully state and pray:

1. On March 18, 2021, the Energy Bureau issued a Resolution notifying the issuance of a revised version of the proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies ("Proposed Regulation").
2. On March 30, 2021, a public notice was published to invite stakeholders to submit comments on the Proposed Regulation. Sunnova herein submits its comments to the Proposed Regulation.
3. Sunnova is a certified electric service company registered with the Energy Bureau. Sunnova became an electric service company on account of its offering of electric generation services for sale through interconnected distributed generators with an aggregated capacity that exceeds 1 MW. See Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico, Regulation No. 8701 ("Regulation No. 8701"), Section 1.08(5)(c). Such services are offered through power purchase agreements or "PPAs," which Sunnova no longer issues in Puerto Rico but continues to honor and service for all of its legacy customers. Sunnova's current offerings in Puerto Rico consist of the leasing of residential solar systems with energy storage, or the offering of loans to finance

the acquisition of such systems. Sunnova also offers loans to add energy storage to existing solar systems.

4. Sunnova's comments center on Article 8 of the Proposed Regulation, which provides the following:

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.

5. First, the text of Section 8.01 refers to an "Electric Power Service Company" that "sells or leases a solar installation to an end-use residential or small commercial Customer for self-generation ..." However, Act 57-2014, as amended, defines an electric service company differently, as:

(l) "Energy company" or "Electric power company." – Means any person or entity, whether natural or legal, [or] energy co-op[,] dedicated to offering generation services, transmission and distribution services, invoicing, energy wheeling, grid services, energy storage, electric power resale, as well as any other electric power service as defined by the [Energy] Bureau. The Puerto Rico Electric Power Authority or its successor, as well as any Contracting Party under a Partnership Agreement or a Transfer Agreement executed in connection with PREPA Transactions agreed to under Act 120-2018 shall be considered Electric Power Companies for purposes of this Act."

Laws of P.R. Ann., tit. 22, § 1051a(l) (our translation).

6. In turn, Regulation No. 8701, defines what constitutes an electric service company for the Energy Bureau:

"Electric Power Company" refers to:

- a) PREPA
- b) Any natural person or legal entity that generates energy through use of fossil fuels or renewable energy sources to sell to PREPA or to another electric power authority in virtue of a power purchase agreement. This does not include persons who generate

energy for self-consumption through distributed generators having net metering agreements with PREPA.

- c) Any natural person or legal entity that offers any of the following services:
  - a. Energy generation for sale in Puerto Rico through distributed generators interconnected to PREPA's grid with an aggregate capacity of one megawatt (1 MW) or more, regardless of whether such distributed generators or clients to whom the energy is sold participate or not in PREPA's Net Metering Program;
  - b. Storage of energy, when at least one storage unit has a nominal capacity of one megawatt (1 MW) or more;
  - c. Invoicing of electric power; or
  - d. Resale of electric power.

- d) Any natural person or legal entity that performs or offers energy wheeling services

See Section 1.08(A)(5) of Regulation No. 8701 (our translation).

7. Evidently, none of the categories of electric service companies – in Act 57-2014 or in Regulation No. 8701 – include entities which are engaged in the business of selling or leasing of solar systems. In other words, the premise on which Section 8.01 is based – that a company that sells or leases solar systems is an electric service company – is incorrect. If it were correct, hundreds of solar installers throughout Puerto Rico would become electric service companies. Clearly, the Energy Bureau does not intend this result, as solar installers are exempted from the application of the proposed regulation under Section 1.04(D)(2) of the Proposed Regulation.<sup>1</sup> In fact, none of the provisions of Section 1.04 regarding applicability of the Proposed Regulation address contracts whose purpose is the sale or lease of solar systems but instead deal with “Agreements, which are defined as “Power Purchase Agreement[s] or Contract[s] entered into with an Electric Service Power Company for the provision of generation, transmission, distribution and/or storage services”. The **only** mention of the sale or lease of solar systems is found in Section 8.01.

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<sup>1</sup> Which provides that the Proposed Regulation would 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.”

8. In addition, the text of Section 8.01 refers to sales or leases of “end-use residential or small commercial [customers] for self-generation.” However, the heading of the Article points to something different, as it refers to “PPAs” or power purchase agreements – which contradicts the body of Section 8.01 – and to “Community Solar Projects.” The latter are defined in the Proposed Regulation as “distributed renewable energy projects at the residential level with a minimum capacity of five megawatts or greater.” Therefore, it is not clear what type of systems are covered under Section 8.01 of the Proposed Regulation. Neither residential nor small commercial solar systems will have a 5-MW capacity, but community solar projects composed of scores of residences might reach that capacity.

9. Another concern that Section 8.01 cited above brings about for Sunnova is duplication of administrative burden and over-regulation. If the Energy Bureau's intent is to subject electric service companies which offer generation services through PPAs to another layer of regulation in connection with a different line of business<sup>2</sup>, namely solar loans and leases, the Bureau should be aware that the latter businesses are already pervasively regulated by the Office of the Commissioner of Financial Institutions. Under the Puerto Rico Personal Property Leasing Institutions Act implemented by the Puerto Rico Office of the Commissioner of Financial Institutions, Sunnova (through an affiliate) is required to obtain a license to lease solar systems. See Laws of P.R. Ann., tit. 10, § 996b.<sup>3</sup> Sunnova lease agreements are also regulated under

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<sup>2</sup> Which, as noted above, would lack legal basis, given that a company that offers solar leases or loans is not an electric service company under the purview of the Energy Bureau.

<sup>3</sup> Under the Personal Property Leasing Institutions Act, for example, applicants of a license must have financial solvency, experience, character, and general ability such as to justify the belief that the business will be administered legally and **fairly** within the scope of the law, and that the issuance of the license **will be convenient and profitable for the community within which business will operate**. See Laws of P.R. Ann., tit. 10, § 996d(a) (added emphasis).

Duties of the licensee include placing at the disposal of the Commissioner of Financial Institutions the accounting books, records, documents, and any other data that the Commissioner may deem necessary and allow the Commissioner or his or her representatives free access to the property, facilities, and places of operation. See Laws of P.R. Ann., tit. 10, § 996h(1).

the Regulation of Personal Property Lease Contracts Act. See Laws of P.R. Ann., tit. 10, § 2041 et seq.<sup>4</sup>

10. In addition, loan contracts for solar systems sold by Sunnova are regulated under the Puerto Rico Retail Installment Sales and Finance Companies Act (see Laws of P.R. Ann., tit. 10, § 731 et seq), for which Sunnova (through an affiliate) must obtain a license (see Laws of P.R. Ann., tit. 10, § 761) and must submit a copy of the retail installment sale contract to be used in its installment sales (see Laws of P.R. Ann., tit. 10, § 780(c)(3)). Such Act is also implemented by the Puerto Rico Office of the Commissioner of Financial Institutions.<sup>5</sup>

11. Therefore, Sunnova respectfully suggests that the Energy Bureau's requirement to submit model contracts 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

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<sup>4</sup> The Regulation of Personal Property Lease Contracts Act generally seeks fairness in the leasing of personal property. For example, it has very specific content requirements of the lease agreement for prominence of reading, such as the inclusion of the purchase price and the cost of the chattel subject to the lease contract; the number of payments to be made, the amount of the down payment, if any, itemized into the rate and any other amount, in addition to its expiration date, including the final payment; the amount to which the residual value increases; the amount paid to the supplier through the down payment; delinquency charges; the total amount of the lease contract financing charges; and the amount to be paid for insurance and description of the applicable insurance coverage included, if arranged by the lessor on request of the lessee; among others. See Laws of P.R. Ann., tit. 10, § 2403.

Also, the lessee may freely select the supplier of the personal property subject to the lease contract. Once the personal property is inspected, if the chattel meets the lessee's requirements, the lessee requests the lessor to deliver it. After the delivery is made, the lessee signs a Delivery Receipt and hands over the down payment, as agreed. If the lessee does not sign, the lessor will not be bound to pay the sale price to the supplier. At any moment, the lessee may desist from the contract, without any penalty, until the moment the chattel is delivered or its possession is acquired. Once the chattel is accepted and the delivery receipt is acquired, the lessor will process, prepare, and remit the payment in the amount of the amount to the supplier, as agreed. The lessee may request the lessor to advance the payments of the chattel's cost or issue purchase orders or commitments to the supplier, in which case, the lessee shall be bound from said moment, as long as the chattel received meets the required specifications. See Laws of P.R. Ann., tit. 10, § 2407.

<sup>5</sup> For example, under the Installment Sales and Finance Companies Act, the Financial Board of the Office of the Commissioner of Financial Institutions "shall establish **fair and reasonable charges** with due regard to the cost factors involved in the retail installment sales business and in the financing of such sales, as the case may be. It shall also consider the market conditions and economic factors which might affect its findings." Laws of P.R. Ann., tit. 10, § 774(c) (emphasis added).

same contract form and that it shall not engage in discriminatory pricing would constitute duplicate regulation on the part of the Energy Bureau when the subject matter is already under the jurisdiction of, and regulated by, the Puerto Rico Office of the Commissioner of Financial Institutions. Also, if the Bureau adopted Section 8.01 as drafted, Sunnova would be exposed to the risk of inconsistent determinations, as both agencies would be passing judgment over the very same contracts and what one agency may authorize may not be approved by the other.

12. In sum, the Puerto Rico Office of the Commissioner of Financial Institutions has jurisdiction over Sunnova with regard to the leasing of solar systems and the offering of solar loans. For its part, the Energy Bureau has authority to regulate "electric service companies" that offer to sell energy generation through distributed generators, as defined in Section 1.08(A)(5)(c)(1) of Regulation No. 8701. In the case of solar loans and leases, Sunnova does not offer to sell energy generation but instead leases such solar systems or sells them through retail installment contracts. Therefore, Sunnova respectfully suggests the Energy Bureau to consider abstaining from regulating electric service companies like Sunnova with regard to solar loans and leases. Not only would such regulation be unsupported by the text of Energy Bureau's enabling statute and by Regulation No. 8701, it would also be duplicative of the laws and regulations implemented by the Office of the Commissioner of Financial Institutions.

WHEREFORE, Sunnova Energy Corporation requests that the foregoing comments be considered by the Puerto Rico Energy Bureau.

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