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Mr. Edison Avilés-Deliz
Chairman
Puerto Rico Energy Bureau
World Plaza Building
268 Ave. Muñoz Rivera
Nivel Plaza Suite 202
Hato Rey, PR 00918

RE: SESA Comments to Revised Proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies; Docket NEPR-MI-2020-0014

Dear Chairman,

The Puerto Rico Solar Energy Industries Association Corp., d/b/a/ Solar and Energy Storage Association of Puerto Rico (hereinafter, “SESA”) is a non-for-profit organization that represents Puerto Rico’s solar and energy storage industries. We advocate for solar and storage technologies as a central solution to the energy needs of Puerto Rico and promote public policy that benefits the growth of these industries. SESA-PR brings awareness and understanding of these technologies to both government policymakers and the public and facilitates collectively beneficial collaboration and good business practices within the industry. SESA-PR appreciates this opportunity to comment in the above-captioned matter.

Background

On October 19, 2020, the Energy Bureau notified the publication of an initial *Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies* (hereinafter, “Proposed Regulation”). Given the importance of the Proposed Regulation, SESA respectfully requested a procedural conference be held to allow for a more robust discussion of the proposed rule, which was never granted, and presented objections to the then Proposed Regulation based on serious practical and legal¹ concerns on the apparent overreach into contracts between commercial

¹ SESA pointed to the fact the fact that although Act 57-2014 and Act 17-2019 provide PREB with a broad grant of authority to regulate electric service companies, when Art. 6.3 and 6.32 of Act 57-2014 are read together with Art. 1.7 of Act 17-2019, the legislative intent appears to point to the review and approval of contracts to allow large scale

and industrial customers and private energy suppliers. Specifically, SESA-PR requested the Energy Bureau to remove from the then Proposed Regulation all of the text addressing such private contracts.

On March 18, 2021, the Energy Bureau issued a Resolution through which it published a *Revised Proposed Regulation for the Evaluation and Approval of Agreements with Electric Power Service Companies* (“Revised Proposed Regulation”) and on March 30, 2021, the Energy Bureau published a newspaper public notice initiating a 30-day public comment period that will conclude on April 29th, 2021.

Comments to the Revised Proposed Regulation

Section 1.04(D)(1) of the Revised Proposed Regulation expresses that:

“This Regulation does not apply [to] PPAs for less than five (5) megawatts [...]” except that the proposal, via Article 8 [PPAs with Community Solar Projects], does create an obligation for an ESPSC “that sells or leases a solar installation to an end-use residential or small commercial Customer for self-generation” to provide the 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.”

Without conceding on the desirability of this provision, SESA-PR strongly recommends that the Bureau rewrite the article to conform to its heading, which circumscribes the article to “Community Solar Projects”, a term that is specifically defined in Article 1.09(B) as “distributed renewable energy projects at the residential level with a minimum capacity of **five megawatts or greater**”. As such, a revised Article 8 should read:

“Community Solar Projects 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

commercial and industrial consumers to make a choice as to the energy provider from which they will be purchasing electricity (i.e., similar to “energy choice” programs), not contracts in connection with distributed generation “behind the meter” projects.

shall be provided the same Contract form and that it shall not engage in discriminatory pricing.”

The suggested re-drafting conforms to the specific intent expressed by PREB in section 1.04 to apply the Revised Proposed Regulation only to projects larger than 5MW, and avoids the slippery slope of subjective and undefined terms like “end-use residential” or “small commercial”. This re-write would also clarify what we understand is the intent of the Bureau to not impact via the Revised Proposed Regulation regular day-to-day residential sales & installs of solar systems, but instead apply only to aggregated residential projects of 5MW or greater. This approach would also conform to the terms included in the PREB IRP-mandated Request for Proposal (RFP) for PREPA to acquire Act 17/2019-compliant level of renewables and storage, particularly the focus on Virtual Power Plants (VPPs) for which the minimum sized bid is precisely 5MW.

Article 8 also inserts concepts such as “discriminatory pricing”, yet no definition is provided. Although the Revised Proposed Regulation does pull back from the previous approach of perhaps legally unwarranted specific overreach into contracts between commercial and industrial customers and private energy suppliers, the final adopted proposal should still delete any and all vestigial language of regulatory oversight of entities other than PREPA or LUMA, including price controls, or other such burdens on private entities. Similar to the post 1996 experience in the telecom sector, the regulator is the forum where competitive private companies can hope to surmount the sometimes capricious obstacles placed by a former monopoly, not a place to be regulated as a utility or a monopoly. This Energy Bureau should be -and is- the forum for the Puerto Rico clean electricity sector to thrive in a regulatory playing field which fosters competition and innovation.

Again, SESA appreciates this opportunity to comment and looks forward to continued engagement and collaboration with the Honorable Energy Bureau.

Cordially,
[signed]
Javier Rua-Jovet
Chief Policy Officer
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