

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

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<p>IN RE: REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES</p> <p>DUPONT ELECTRONICS MICROCIRCUITS INDUSTRIES, LTD.; FMC AGRICULTURAL CARIBE INDUSTRIES, LTD.; AND BRISTOL-MYERS SQUIBB HOLDINGS PHARMA LTD. LIABILITY COMPANY</p> <p>Commenters</p>	<p>CASE NO.: NEPR-MI-2020-0014</p> <p>SUBJECT: Notice of Proposed Regulation and Request for Public Comments</p>
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**SECOND SET OF COMMENTS ON PROPOSED REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES**

COME NOW DuPont Electronics Microcircuits Industries, Ltd., FMC Agricultural Caribe Industries, Ltd., and Bristol-Myers Squibb Holdings Pharma Ltd. Liability Company (hereinafter, jointly, "Commenters"), represented by the undersigned legal counsel, and very respectfully state and pray:

1. On October 19, 2020, the Energy Bureau issued a Resolution wherein it notified the publication of the Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies.
2. On November 13, 2020, the Commenters filed a Request for Extension to Submit Comments.
3. On November 17, 2020, the Energy Bureau issued an extension to submit comments until December 3, 2020.
4. On December 3, 2020, the Commenters filed their "Comments on Proposed Regulation for the Evaluation and Approval of Agreements Between Electric Service Companies." Said comments focused on the applicability of the proposed regulation to large scale industrial and

commercial consumers, energy cooperatives, or other demand aggregator structures that enter into power purchase agreements directly with an independent power producer.

5. On March 18, 2021, the Energy Bureau issued a Resolution wherein it notified the issuance of a revised version of the proposed regulation.

6. On March 30, 2021, the Energy Bureau issued a public notice inviting the public to submit comments on the proposed regulation.

7. The Commenters herein submit their comments on the revised proposed Regulation for the Evaluation and Approval of Agreements with Electric Service Companies (“Revised Draft Regulation”).

8. Definition 25 of the Revised Draft Regulation defines “Highly Efficient Generation” as “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 pound 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.”

The definition in the Revised Draft Regulation references the Resolution dated March 20, 2019, in case CEPR-MI-2016-0001. However, the term “Highly Efficient Generation” was defined in Act 40-2020, signed into law on April 16, 2020. The definition of “Highly Efficient Generation” in Act 40-2020 is as follows:

(A) In the case of electrical plants belonging to or being operated by the Puerto Rico Electric Power Authority (or its successor) or by third parties that sell energy to the Puerto Rico Electric Power Authority (or its successor) at utility scale (which excludes “net metering”), production of electric power at a minimum of sixty percent (60%) in a highly efficient manner, as established by the Energy Bureau, in accordance with Section 6.29(a) of Law 57-2014, as amended; provided that in the case of energy generation in the form of combined heat and power, the standard shall be modified to consider heat generation; and

(B) In the case of other energy generation facilities in Puerto Rico: (i) except in the case of combined heat-and-power, the energy generation efficiency standards (including heat

and power) that the Energy Bureau establishes in accordance with Section 6.29(a) (b) of Law 57-2014, as amended, or any other industry parameter that guarantees energy generation efficiency, or (ii) in the case of combined heat-and-power cogeneration facilities, they must comply with the same efficiency standards adopted by the Federal Energy Regulatory Commission in the provisions applicable to qualified cogeneration facilities codified at 18 C.F.R. § 292.205(a)(2)(i) and (d)(1)-(3) and shall apply to facilities that use natural gas, propane gas that complies with these requirements, or any other subsequent regulation that replaces or complements the same.

9. It is not clear how the definition of “Highly Efficient Generation” contained in the Revised Draft Regulation should be interpreted in light of the definition of “Highly Efficient Generation” contained in Act 40-2020. Evidently, the definition in Act 40-2020 provides more latitude as to systems that may qualify as “Highly Efficient Generation.” In addition, the pricing included in the definition of “Highly Efficient Generation” contained in the Revised Draft Regulation would also be limiting. While this price limitation could make sense for utility scale projects, it should not apply to commercial or industrial projects, which the Energy Bureau has determined not to regulate under Article 9. The Commenters suggest the Revised Draft Regulation include the definition of “Highly Efficient Generation” of such term as legislated in Act 40-2020.

10. Furthermore, the Revised Draft Regulation defines “Power Purchase Agreement” as “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.”

11. The above definition is limiting, as it appears that, if an agreement under which energy is to be sold, for example, is not approved by the Energy Bureau, then it would not be considered a “Power Purchase Agreement.” The Collective proposes that the phrase “approved by the Energy Bureau” be stricken from the definition or that additional language be added to indicate that approval by the Energy Bureau would be to the extent required by the regulation.

12. Article 9 of the Revised Draft Regulation provides the following:

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and Approval of Agreements Between Electric Service Companies  
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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 Agreement.

However, other provisions of the Revised Draft Regulation seem to indicate that PPAs between electric power service companies and commercial or industrial customers are indeed regulated under the Draft Regulation. For example, Section 2.01(A) provides for contracts that would be subject to the Energy Bureau's review and approval "under the applicable requirements as set forth in Articles 3 through 9" of the Revised Draft Regulation" and lists such contracts or agreements. Subsection 2.01(A)(3) specifically mentions "[l]arge scale industrial and commercial Consumers or Electric Cooperatives that enter into [power purchase agreements] directly with [electric power service companies]." However, as stated above, Article 9 specifically excludes PPAs between electric power service companies and commercial or industrial customers. We suggest that Section 2.01(A) be eliminated to avoid confusion as to applicability.

13. Another example is Section 2.02, which provides for classifications of PPAs and mentions "commercial and industrial Customers" as a category of customers who are permitted to engage in energy wheeling and thus enter into PPAs in accordance with Section 5.26 of Law 17-2019, which in turn amends Section 6.30 of Law 57-2014. However, neither of said sections of law mentions commercial and industrial customers. Moreover, if the Revised Draft Regulation is not applicable to them, mentioning in Section 2.02 causes more confusion. We recommend striking the phrase "commercial and industrial Customers" from Section 2.02 of the Revised Draft Regulation.

14. In conclusion, since the "industrial and commercial Consumers" are sparsely mentioned in the Revised Draft Regulation (for example, the term "industrial and commercial Consumers" is still not defined), it may be clearer if the Revised Draft Regulation only mentions said term in Article 9. That is, if the intention of the Energy Bureau is to regulate power purchase

agreements negotiated between electric power service companies and commercial or industrial customers discretionarily if complaints related to such agreements arise, it may be clearer to simply refer to commercial or industrial customers only in Article 9. A formal definition of “Commercial or Industrial Consumers” or “Large-Scale Commercial or Industrial Consumers” may also clarify the status of such consumers going forward.

WHEREFORE, DuPont Electronics Microcircuits Industries, Ltd., FMC Agricultural Caribe Industries, Ltd., and Bristol-Myers Squibb Holdings Pharma Ltd. Liability Company request that the foregoing comments be considered.

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