SESA SOLAR AND ENERGY STORAGE ASSOCIATION OF PUERTO RICO

August 30th 2021

VIA EMAIL comentarios@jrsp.pr.gov

Mr. Edison Avilés-Deliz
Chairman
Puerto Rico Energy Bureau
World Plaza Building
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Hato Rey, PR 00918

RE: **Comments by SESA to Informal Preliminary Draft "Regulation on Renewable Energy Certificates Market and Compliance with the Renewable Portfolio Standard of Puerto Rico", NEPR-MI-2021-0011**

Comes now, the Puerto Rico Solar Energy Industries Association Corp., d/b/a/ Solar and Energy Storage Association of Puerto Rico (hereinafter, "SESA") the non-for-profit association that represents Puerto Rico's solar and energy storage industries. SESA advocates for solar and storage technologies at all scales as a central solution to the energy needs of Puerto Rico, promotes public policy that benefits the growth of these industries, 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 reiterates its appreciation to the Honorable Energy Bureau (hereinafter "PREB" or "the Bureau") for the opportunity granted to stakeholders to provide comments to the above-captioned preliminary draft rule.

SESA reiterates and reaffirms its comments on other regulatory dockets, particularly stressing the importance and need for professionally facilitated workgroup sessions with interested parties affected by rulemakings, and especially critical ones, like the current proposal. Asking for simple written input provides low value to the Bureau and to the consultants helping the Bureau craft this important rule in comparison with robust engagement. SESA strongly recommends and requests an interactive, multi-step process whereby impacted stakeholders are able to discuss with each other and with the Bureau and the Bureau's consultants involved the meaning and intent behind each section of the proposed rule, and discuss the merits and potential impacts of changes to improve upon the Preliminary Draft REC Rule.

SESA Comments to Informal Preliminary Draft "Regulation on Renewable Energy Certificates Market and Compliance with the Renewable Portfolio Standard of Puerto Rico", NEPR-MI-2021-0011

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I. Introduction

In 2019, PREB embarked in a series of stakeholder engagement workshops, focused on the creation of the REC market in Puerto Rico and the challenges arising from its implementation as reflected in Act 82-2010, after a hiatus, the current proceeding restarts to eventually and finally produce a REC Rule that, if well drafted and enforced, shall be a critical tool to enforce the legislative mandate that Puerto Rico become a 100% renewable energy jurisdiction by 2050.

On July 23d, 2021, the Honorable Bureau published the above captioned preliminary "Renewable Energy Certificates Market and Compliance with the Renewable Portfolio Standard" draft rule, for an initial stakeholder comment period set to end today, August 30th.

SESA presents the following comments to the draft:

II. Initial Comments

1. SESA applauds the Energy Bureau for moving forward to quickly implement the mandates of Act 17/2019, particularly the Renewable Portfolio Standard (RPS) included therein. Pursuant to Act 82-2010, as amended, by Act 17/2019 PREB has the duty of creating, through regulation, a market system for RPS compliance via Renewable Energy Certificates ("REC"). The proposed draft must not lose sight that its object and purpose is to implement the legislative mandate to swiftly transform Puerto Rico into a jurisdiction independent from imported fossil fuels, and fully availing itself of its local renewable energy sources.

2. Clarity & strong PREB enforcement is needed for compliance by PREPA of Act 17's mandates, including REC purchases for RPS compliance. Correctly valued RECs aid in renewables deployment. PREPA progress in energy generation through renewables, such as solar, is still minuscule, below 3%, and far removed from the 12.0% mandatory minimum renewable generation required in the prior, and much less aggressive, RPS under Act 82-2010, which would today be in force. This Energy Bureau must leave no policy unaligned, no obstacle eliminated, nor stone unturned to ensure that that fossils-dependency percentage is inverted, swiftly, as per the legislative will, transforming Puerto Rico into a self-sufficient, renewables-based island.

3. As per Act 82-2010, as amended our Legislature has established a Puerto Rico's RPS as a "**mandatory** percentage of sustainable renewable energy or alternate energy required from each retail provider of energy […]." PREPA is the only retail energy provider, as per Act 82, Article 1.4 (29). Pursuant to Article 2.3 of Act 82, "the compulsory amount" of alternate or sustainable renewable energy required funder the prior RPS from each retail

provider was: 12% between 2015 and 2019, and 15% between 2020 and 2027. Subsequent to these dates, a "progressive plan" was required that would establish the annual percentages for the years between 2028 and 2035, and would attain 20% by 2035.

4. Today, under Act 82, as amended by Act 17-2019, and posterior amendments per Act 33 of May 22nd, 2019, the Puerto Rico RPS is as follows: Twenty percent (20%) energy generation from renewable sources by 2022; forty percent (40%) from 2023 to 2025; sixty percent (60%) from 2026 to 2040; and one hundred percent (100%) from 2041 to 2050. It is worth noting that provisions of Act 82, as amended, including everything related to RPS compliance therewith, were designed to be self-executing "since the absence of any regulation contemplated in this Act shall not prevent the application thereof." Article 3.3, Act 82-2010. However, PREB clarity on the matter via strong, correctly focused, regulation and substantial fines for non-compliance are critical to implement the RPS. This regulatory oversight has yet not occurred, and is evidently necessary, as PREPA never complied with the prior RPS.

5. As per current law, PREPA may comply with the RPS a) by generating its own renewable energy; b) by purchasing renewable energy wholesale from other producers; c) by acquiring RECs from renewable energy producers. One REC represents the equivalent of one (1) megawatt hour (MWh) of electricity generated by a source of sustainable renewable energy or alternate renewable energy and, in turn, includes all environmental and social attributes" of said energy. Article 1.4 (8), Act 82, as amended.

6. The Energy Bureau must swiftly act as the enforcer of the RPS, by ensuring all RECs are purchased and paid, whether from systems up to 25KW, or larger scales, up to industrial, utility scales. Act 17-2019 is clear that "[a]ll RECs including distributed renewable energy and those of net metering customers, may be acquired by a retail electricity supplier for purposes of complying with the Renewable Portfolio Standard, or by other buyers for any legal purpose." Section 4.1, Act 17-2019.

III. Specific Comments

7. SESA supports the comments on the record by our distinguished member company Windmar, in particular to the on the topic of correct RECs valuation (*See* email by Mr. Víctor González of July 27th). Specifically, that REC valuation should be based on Puerto Rico-specific climate data, not on blended national averages.

   In regards the additional filing by Windmar of August 3rd, SESA fully agrees with the general concept that any regulatory proposal has to strictly align with the object, purpose and text of Act 82, as amended by Act 17 of 2019, to truly move Puerto Rico towards the mandatory path, set in law by our legislature, to a clean, diversified and fully renewables-based energy generation system.

8. Draft Sec. 1.04: The draft regulation applies to the entities that under Act 82-2010, as amended, are bound by the RPS. These are the so-called "Retail Energy Providers or Providers of Energy at Retail", which today means only PREPA. However, the draft regulation also applies to "any other company that sells energy at retail and has sold more than fifty thousand 50,000 megawatt-hours (MWh) of electrical energy to electrical energy consumers in Puerto Rico during the previous calendar year or that plans to sell said amount during the current year". The term Retail Energy Provider does not include an Energy Producer whose energy is intended to be resold, or a "Renewable Energy Producer" as per that term is defined in Act 82, as amended. SESA comments that the applicability of RPS could be further clarified given that if a Wheeling Regulation were actually successfully implemented, a "Renewable Energy Producer" could at some point theoretically sell at retail to consumers "more than fifty thousand 50,000 megawatt-hours (MWh) of electrical energy" and could therefore be bound by the draft's regulation compliance requirements and the RPS itself.

   The clarification required is that the draft regulation "shall never apply" to a company that is a "Renewable Energy Producer". Or in other words, that it only applies to those companies that sold at retail more than fifty thousand 50,000 megawatt-hours (MWh) of electrical energy that was generated by non-renewable sources. Such non-renewable energy producers would be required to purchase RECs from renewable energy producers in sufficient quantities to achieve RPS compliance, and the draft proposal must reflect that.

9. Draft Sec. 2.01.-

   a) This section is the most problematic for several reasons. Firstly, it introduces the term "Large-Scale Renewable Energy Producer" (or "Utility Scale Renewable Power Producer") but it is not defined anywhere in the draft. The term "Virtual Power Plant" is also mentioned, yet not defined. Perhaps the term "VPP Aggregator" from the Demand Response Rule could be imported, because that is the type of entity that an off-taker would contract, as that VPP Aggregator is the entity that manages those aggregated and networked DER storage resources.

   b) It is rather troubling that this section proposes to mandate that all contracts between PREPA/LUMA with such a "Large-Scale Renewable Energy Producer" (same as "Utility Scale Renewable Power Producer") or a "Virtual Power Plant" -after the entry into force of this regulation- must clearly establish that the price of the energy purchased includes the value of RECs and that value is $0. Firstly, price micromanagement by a regulator in private-private negotiations and contracts (*e.g*. a LUMA contract with a renewable energy producer) is clearly regulatory overreach.

   c) Secondly, and perhaps more importantly- there is a basic difference between the "price of power" and the additional social, environmental, health, etc. benefits that renewable energy creates for society and that are monetized as tradable RECs. Creating a regulatory

norm that establishes RECs as non-value proposition *ab initio* is, in our view, contrary to the will of the legislature and the nature of what a REC is: a mechanism to incentivize renewables deployment. Also, this norm, as it purports to devalue RECs to a price of $0, could face constitutional regulatory takings challenges.

Lastly, the Bureau's only method of enforcing the entire RPS law is the imposition of fines based on the price of RECs. If the Bureau itself defines any RECs to have a value of zero, then the resulting penalties to be imposed for noncompliance would also be zero, risking rendering the law to be *de facto* unenforceable.

10. Draft Sec. 2.02(A).- For clarity, section should substitute the term "*Fuente de Energía*" (energy source) to the term used in the rest of the regulatory proposal as the entities that generate RECs: "Productor de Energía Renovable" (Renewable Energy Producer).

11. Section 4.9 of Law 17 (amending Section 2.11 of Act No. 82-2010 and renumbering as Section 2.10), section (a)(iii) says:

    "All RECs including distributed renewable energy and those of net metering customers, may be acquired by a retail electricity supplier for purposes of complying with the Renewable Portfolio Standard, or by other buyers for any legal purpose.

    This means that owners of the RECs produced by distributed renewable energy systems have financial value, and can be sold either to the utility for purposes of RPS compliance, or to another buyer for another purpose.

    We encourage this rule to require and specify the best practice of the utility to be the following: utilities must purchase, up-front, many years of REC production from customer systems, with future system production being estimated. For small (up to 25kW) systems, it is generally not worth the cost of installing a dedicated meter to measure actual system output and compensating customers with a monthly, or even annual payment. Rather, we recommend and request that this rule require utilities to purchase, up-front, RECs representing 20 years' worth of solar production. This transaction leaves the customer with in effect an up-front rebate, and allows the utility the flexibility and predictability to "book" the RECs for use in future compliance years.

12. Section 3.01 of the Preliminary Rule establishes interim % renewable energy requirements for the RPS rule. This is an important function of rulemaking for implementation of any RPS.

    One important feature of interim % targets is that they be physically possible to occur. Therefore, we discourage this rule, from "requiring" 20% renewable energy in the year 2021, when that's physically impossible. Rather, we encourage facilitating active stakeholder input and engagement in developing specific interim % stairstep requirements for the RPS in ways that are possible to achieve, and establish both enough practical flexibility as well as sufficient

clarity of specific penalty consequence amounts as to be understood by the utility, renewable energy providers, and all interested stakeholders.

13. We note potentially very troubling language in the Proposed Rule section 4.04(A) stating the phrase "good faith of its defenses to non-compliance".

    There are two types of Renewable Portfolio Standards: Voluntary, and Mandatory. Voluntary RPSs use the phrase "good faith effort" regarding compliance, and Mandatory RPS's enforce strict penalties for noncompliance.

    The RPS of Act 17-2019 is not a Voluntary RPS, but rather a mandatory one. Preliminary Rule 4.01(A) contains a long list of reasons a utility could point to in appealing to the Bureau for a future exemption, and nearly all of them could be the result of a utility's total or partial lack of trying to comply in the first place. For example, Preliminary Rule 4.01(A) (e) and (f) list as valid reasons for noncompliance:

    "e. Insufficiency of Renewable Energy Sources;

    f. Insufficiency of Renewable Energy Producers;"

    Both of these would be the result of a utility not trying to procure renewable energy in the first place. *ie* without strong, robust procurement processes, developers won't develop renewables, resulting in an "insufficiency" of both Renewable Energy Sources and Renewable Energy Producers.

    We recommend revisiting "**Section 4.04.- Justifications for non-compliance",** keeping in mind Puerto Rico's track record of failure at previous RPS compliance, consider limiting this list in a way that strongly encourages compliance.

14. Proposed Preliminary Rule Section 4.04(B) states:

    "For the purposes of this Section, the term "excessive cost" shall be interpreted as that cost that exceeds the fine that would be imposed on the Retail Energy Provider for not acquiring the electrical energy or the REC in question."

    This definition of "excessive cost" may be functional only if the financial amount of the fine (or "alternative compliance mechanism) is clearly defined.

    Section 2.14 (g) of Act 82-2010, as amended by Act 17-2019, states the statutory requirement for penalties for noncompliance with the RPS. Specifically for noncompliance, the statute states:

    "(g) No fine or penalty imposed by the Commission [Bureau] shall have a lesser economic value than the potential cost for the retail electricity supplier to comply

> *with the Renewable Portfolio Standard through the purchase of RECs, multiplied by a factor of two (2)…"*

We reiterate our previous comment that, if the Bureau establishes a price of $0 for RECs, then $0 multiplied by 2 is also $0, meaning there would be no financial penalty at all for noncompliance. Even if this rule establishes separately a specific value for some RECs, if other RECs are valued at $0, then overall enforcement could be questionable in court later.

15. We note also that Act 17-2019 does not specify what happens to fines imposed for noncompliance. Fines for noncompliance are commonly referred in other jurisdictions as "Alternative Compliance Mechanisms", with penalty money being wholly dedicated to investment in renewables. Since the law is silent on what happens to penalty money collected, it is essential that this rule specify that any fines collected are to be directly invested (as overseen by the Bureau) in renewable energy development.

SESA-PR reaffirms its appreciation to the Bureau for the opportunity to comment in this docket, and looks forward to continued involvement, hopefully including face to face discussion and facilitated stakeholder engagement.

Cordially,

[signed]

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