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RE: Comments by SESA to proposed “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 is the Puerto Rico affiliate of the national Solar Energy Industries Association (SEIA).

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 proposed rule.

**SESA Comments to proposed “Regulation on Renewable Energy Certificates Market and Compliance with the Renewable Portfolio Standard of Puerto Rico”, NEPR-MI-2021-0011
November 18th, 2021**

I. Introduction

In the summer of 2019, on June 14th and 28th, the Honorable Energy Bureau hosted two workshops^{1,2} focused on Renewable Portfolio Standard (RPS) laws generally, the creation of a REC market in Puerto Rico as a required mechanism for implementation of the new RPS created as part of Act 17-2019, and learnings from the implementation failures of the original RPS law as reflected in Act 82-2010.

Many stakeholders participated in these workshops, both in the morning informational sessions and in the afternoon group sessions. These workshops provided valuable input to PREB, however it's very important to note:

1. These workshops were not focused on the development of Puerto Rico's RPS rule itself, but rather on RPS implementation concepts generally.
2. These workshops were not focused on developing consensus from stakeholders, but rather educating and receiving initial input from stakeholders.
3. Many important stakeholders were not part of these workshops, likely aren't even aware that they occurred and are thus not aware of the discussions and initial recommendations suggested as part of the workshops.
4. Who the key stakeholders are today is significantly different than who the key stakeholders were in June 2019. At that time, LUMA did not exist, thus no one from LUMA could have participated. Almost all PREPA employees involved have now been transferred to other government agencies, are now working at LUMA either in similar or different roles.

It's also important to note that the expectation established at these workshops was that the Honorable Energy Bureau would develop and publish a draft RPS rule in the fall of 2019. Recently, after an unexplained hiatus of nearly two years, the current proceeding has restarted to produce an RPS Rule that, if well designed and enforced, should become a critical tool to enforce the legislative mandate that Puerto Rico become a 100% renewable energy jurisdiction by 2050.

¹ Energy Bureau Docket # Caso No. NEPR-MI-2019-0010

² Links to workshops:

June 14th Part 1 (Spanish): <https://www.youtube.com/watch?v=U6X6fOs5xYs>

June 14th Part 2 (Spanish): <https://www.youtube.com/watch?v=qVhpynGtR1g>

June 14th Part 1 (English translation): <https://www.youtube.com/watch?v=yXK6ilQWTIQ&t=6340s>

June 28th Part 1: (Spanish): <https://www.youtube.com/watch?v=KnuuoHPpW4M>

June 28th Part 2: (Spanish): https://www.youtube.com/watch?v=FOZBke_il-c&t=89s

June 28th Part 3: (Spanish): <https://www.youtube.com/watch?v=hRof-UFmAs4>

June 28th (English translation): <https://www.youtube.com/watch?v=ixL1RKt4jY0>

**SESA Comments to proposed “Regulation on Renewable Energy Certificates Market and Compliance with the Renewable Portfolio Standard of Puerto Rico”, NEPR-MI-2021-0011
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On July 23rd, 2021, the Honorable Bureau published a preliminary “Renewable Energy Certificates Market and Compliance with the Renewable Portfolio Standard” draft rule, for an initial stakeholder comment period. SESA filed comments to said preliminary proposed August 30th 2021, along with four other stakeholders (ICSE, LUMA, OIPC, and Windmar).

On October 21st, 2021, this Honorable Bureau published the current regulatory proposal for comments, which are due today. It is our reading that none of SESA’s prior comments or suggestions were integrated into the current proposal, thus it is not possible to know to what extent they were considered, if at all. We have also not detected that any of the comments or suggestions by other stakeholders to the preliminary proposed have been considered by nor integrated into the current proposal.

It’s an indisputable principle of rulemaking that robust stakeholder input generally results in more robust rules, which are typically then a lot more supported by the stakeholders themselves than when rules are developed by a regulator “in a silo” with little or no stakeholder input.

Our desire is for the Honorable Energy Bureau to move forward with development of this rule in a way that considers and/or integrates the comments and suggestions provided by stakeholders to-date, then seeks to develop synergy and, where possible, consensus among stakeholders. The Honorable Energy Bureau might also consider gauging or surveying stakeholder impressions and views regarding the objective and subjective effectiveness of processes such as this rulemaking as a way to continually improve this and future PREB proceedings, and endeavoring to cement PREB’s role as the gold standard agency in Puerto Rico’s administrative sphere.

SESA presents the following comments to the current proposed rule:

II. General Comments

1. Given the current situation, particularly the absence of considered stakeholder input, SESA strongly urges this Honorable Bureau to pause the current formal process, and instead a) provide in this docket a summary of learnings and suggestions offered during the summer of 2019 workshops, b) develop written responses to written stakeholder input submitted thus far, c) hold two or more workshops that are expertly facilitated and are focused on cultivating input and, where possible, consensus between stakeholders on the content of this rule.

If this rulemaking proceeds without any collaborative interactive feedback, the possible result could be a rule that adds to already abnormally high market uncertainty, and could also result in increased risk of one or more stakeholders requesting judicial review of the

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published rule. Of particular concern is the development of this important rule in the middle of multiple multi-billion dollar RFPs being issued for renewables, all of which could be strongly impacted by the content of this rule.

2. Once this process restarts after requested pause and reoriented as requested herein, we encourage PREB to maintain its focus on the very strong and consistent PREB enforcement that is required to ensure PREPA and LUMA compliance with Act 17's mandates, including REC purchases for RPS compliance. Effectively valued RECs are in most markets central to renewables deployment. We encourage this Honorable Energy Bureau to choose the pathway forward for REC pricing only after much more robust input from stakeholders, with the goal of resulting in REC pricing and payments that are compatible with the current renewables market, and are most likely to achieve their fundamental purpose: to result in more renewables developed than would otherwise have occurred without REC pricing and purchases, and help result in successful achievement of the required % targets of the RPS law.
3. PREPA progress in energy generation through renewables, such as solar, is still minuscule, below 3%, a far cry from the 12.0% mandatory minimum renewable generation required in the prior and much less aggressive RPS under Act 82-2010 by today. We encourage this Honorable Energy Bureau to leave no policy unaligned, nor stone unturned to ensure that the percentage requirements are met, as per the legislative mandate, including assessing strong fines (or “Alternative Compliance Payments”) for noncompliance if necessary.
4. 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 under 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 (but never developed) that would establish the annual percentages for the years between 2028 and 2035, and would attain 20% by 2035.
5. 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%) by 2025; sixty percent (60%) by 2040; and one hundred percent (100%) by 2050.

It is worth noting that provisions of Act 82, as amended, including everything related to RPS compliance therewith, were originally designed to be self-executing “since the absence of any regulation contemplated in this Act shall not prevent the application

thereof.”³ However, the original RPS law was developed before PREB existed, and upon modification by Law 17-2019, various regulatory requirements were created, including the requirement for development of a REC market.⁴

Artículo 2.4 - Poderes y Deberes del Negociado.

...(j) El Negociado establecerá mediante reglamentación la creación de un sistema de mercado de Certificados de Energía Renovable (CERs), incluyendo mecanismos de subastas o trámites competitivos para estos, considerando los derechos adquiridos, si alguno, de productores de energía que cuenten con CERs. Dicha reglamentación deberá incluir mecanismos para asegurar el cumplimiento de la Autoridad de Energía Eléctrica o su sucesora, el contratante de la red de transmisión y distribución y los proveedores de energía al detal.

PREB clarity on these matters via strong, effectively focused regulation and substantial fines for non-compliance (with clear definitions established for the amount of fines, or “Alternative Compliance Mechanisms”) are critical to implement the RPS. This regulatory oversight has not yet occurred, and is evidently necessary, as PREPA never complied with the prior RPS, and appears to be on a path of non-compliance with the current RPS.

6. 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.⁵
7. The Energy Bureau must swiftly act as the enforcer of the RPS, by ensuring all RECs are paid for and registered in a transparent REC registry system, for all scales of renewable energy systems, including residential systems under 25KW and other scales of distributed generation, as well as utility-scale projects. 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.”⁶

³ Article 3.3, Act 82-2010

⁴ Article 2.4, Act 82-2010 as amended

⁵ Article 1.4 (8), Act 82-2010, as amended.

⁶ Section 4.1, Act 17-2019.

III. Specific Comments

8. Regarding the required purchases of RECs from residential prosumers, we strongly recommend the estimation of output from small systems, as it's widely acknowledged that is not worth the cost of metering, tracking, accounting for, and paying customers with small systems on a regular basis. While the practice of paying RECs on larger industrial and utility-scale systems is practical, as each kWh is being measured and tracked anyway, it's simply not worth the cost of doing so for small solar systems.

Rather, we strongly encourage the best practices of allowance of utility demonstration of RPS compliance by up-front estimating of system output of sufficiently small systems (which could be defined as “all residential customers”, or “all customers with systems under 25kW in size”), with payments to customers occurring up-front for a fixed amount of time.

For example, a 5kW residential system would generate around the same amount of electricity every year – for illustration purposes, let's say 9 MWh, which would be represented by 9 RECs. Broken down monthly, that would be around 0.75 RECs per month. If we assumed REC pricing around \$40 per REC, that would mean a payment to the customer of \$30 each month.

Once installed, nearly all residential solar systems remain in place for the useful life of the system, because of the high cost of labor of un-installing and re-installing a system on a different home. Although a tiny number of systems might functioning early due to a home being abandoned, burning down, etc, that amount is easily estimatable and could be accounted for in a way that would far outweigh the cost of attempting to deploy hundreds of thousands of meters across the island to measure specific kWh output of each small system.

In this example, with \$40 REC pricing, a 5kW system could be compensated an amount of \$3,600 (\$30 x 12 months x 10 years) as an up-front rebate to the customer (ideally paid directly to the solar company selling & installing the system, so that the customer receives the benefit as soon as the system is installed), with the regulator permitting - specifically as part of this RPS rule - the utility to “retire” these RECs for compliance purposes over the following 10 year period.

9. As mentioned in our prior comments to the preliminary draft of these proposed rules, 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). 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.

10. Sec. 1.04: The proposed regulation applies to the entities that under Act 82-2010, as amended, are bound by RPS. These are the so-called “Retail Energy Providers or Providers of Energy at Retail”, which today basically means PREPA. However, the proposed 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 would therefore be bound by the proposed regulation’s compliance requirements and the RPS itself. The clarification required is that the proposed 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.

11. Sec. 2.01.-

- a) This section is problematic for several reasons. Firstly, it introduces the term “Large-Scale Renewable Energy Producer” (or “Utility Scale Renewable Power Producer”) which is not defined anywhere in the proposed rule. The term “Virtual Power Plant” is also mentioned, yet not defined. Perhaps the term “VPP Aggregator” from the Demand Response Rule could be utilized, 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 problematic that this section mandates 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, which means that the financial value of RECs would be exactly \$0.

- c) 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 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, as a mechanism to incentivize renewables deployment. Also, this norm, as it devalues RECs to zero, could face constitutional regulatory takings challenges as existing RECs would not be possible to economically use in these future contracts, and could make the entire RPS unenforceable since the financial penalties for noncompliance are required by law to be pegged to a clearly established price of RECs at that time. In fact, Law 82-2010 as amended states:

Artículo 4.4..(j) El Negociado establecerá mediante reglamentación la creación de un sistema de mercado de Certificados de Energía Renovable (CERs), incluyendo mecanismos de subastas o trámites competitivos para estos, considerando los derechos adquiridos, si alguno, de productores de energía que cuenten con CERs. Dicha reglamentación deberá incluir mecanismos para asegurar el cumplimiento de la Autoridad de Energía Eléctrica o su sucesora, el contratante de la red de transmisión y distribución y los proveedores de energía al detal.“

The letter and spirit of this language requires this Honorable Energy Bureau to develop mechanisms of competitive pricing, and clearly does not contemplate a scenario where the value of a REC in Puerto Rico is \$0.

12. Sec. 2.02(A).- For clarity, this 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).
13. Inclusion of DDEC. The law contains several provisions indicating a very important role of DDEC in the implementation of the RPS Law, which should be clarified as part of this RPS rule only after robust stakeholder input, including from and with DDEC. Specifically, Article 2.5 of Law 82-2010 as amended states:

“Artículo 2.5. — Poderes y Deberes del Departamento de Desarrollo Económico y Comercio Además de las facultades delegadas al Programa mediante otras leyes, el Secretario del Departamento de Desarrollo Económico y Comercio tendrá los siguientes poderes y deberes para cumplir cabalmente con los propósitos de esta Ley:

(a) Desarrollar y ofrecer alternativas de financiamiento e incentivos especiales para el desarrollo de fuentes de energía renovable sostenible y fuentes de energía renovable alternas.

(b) Desarrollar y ofrecer alternativas de financiamiento e incentivos especiales que permitan exceder la Cartera de Energía Renovable aplicable antes del tiempo calendarizado por esta Ley.

(c) Preparar análisis sistemáticos de los programas de energía renovable sostenible y evaluar los análisis completados por otras agencias gubernamentales, y recomendar programas diseñados para lograr los objetivos de esta Ley.

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- (d) Diseñar y recomendar propuestas específicas para la conservación de electricidad.*
- (e) Asistir con la implantación de programas de eficiencia y conservación de electricidad de personas, agencias o corporaciones públicas y/o privadas bajo su jurisdicción.*
- (f) Solicitar cualquier información relacionada con las medidas de conservación de electricidad diseñadas, implantadas, utilizadas o propuestas por un proveedor de energía al detal para lograr la conservación de electricidad.*
- (g) Promulgar, enmendar o derogar reglamentos, conforme a las disposiciones de esta Ley y los procedimientos establecidos en la Ley 38-2017 conocida como la “Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico”.*
- (h) Implantar las decisiones, determinaciones, órdenes, resoluciones y reglamentos del Negociado de Energía.*
- (i) Suscribir acuerdos y convenios con entidades con propósitos afines que cuenten con experiencia y recursos humanos, técnicos y laboratorios especializados en materia energética con el propósito de facilitar y asesorar al Programa en el cumplimiento de sus funciones.”*

It should be noted that there has been no formal input from DDEC or interaction between DDEC and other stakeholders on the development of this rule, thus many questions remain about the implementation of the law, underscoring the importance of pausing the current process to consider or integrate stakeholder input from, and facilitate interaction between key stakeholders, including DDEC, SESA, and all entities that have or will submit comments and suggestions.

14. Again, SESA reaffirms that given the near absence of stakeholder engagement and buy-in, coupled with the fact that a new RPS/REC regime published while the 1st Tranche of PREB’s-IRP mandated renewables RFPs appears to be on an uncertain path, we ask this Honorable Bureau to pause the current process until all matters and suggestions are directly and thoroughly addressed.

Cordially,

[signed]

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**SESA Comments to proposed “Regulation on Renewable Energy Certificates Market and Compliance with the Renewable Portfolio Standard of Puerto Rico”, NEPR-MI-2021-0011
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ATTACHMENTS

Attachment A: (unofficial) English translation of proposed RPS rule

Attachment B: Summary of key sections of proposed RPS rule

Attachment C: SESA comments originally filed in this docket on August 30th, 2021

ATTACHMENT A

**RENEWABLE ENERGY CERTIFICATES REGULATION AND COMPLIANCE WITH THE
RENEWABLE ENERGY PORTFOLIO OF PUERTO RICO**

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**REGULATION OF CERTIFICATES OF RENEWABLE ENERGY AND COMPLIANCE WITH
THE RENEWABLE ENERGY PORTFOLIO OF PUERTO RICO**

ARTICLE 1.- GENERAL PROVISIONS

Section 1.01.- Title.

This Regulation will be known as the “Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico”.

Section 1.02.- Legal Basis.

This Regulation is adopted under the protection of Law 57-2014, as amended, known as the *Act 57-2014, known as the Puerto Rico Energy Transformation and RELIEF Act*; Law 17-2019, known as the *Puerto Rico Public Policy Law*; Law 82-2010, as amended, known as the *Public Policy Law for Energy Diversification through Sustainable and Alternative Renewable Energy in Puerto Rico*; and Law 38-2017, as amended, known as the *Uniform Administrative Procedure Act of the Government of Puerto Rico* (“LPAU”).

Section 1.03.- Purpose and Executive Summary.

The Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) adopts and promulgates these Regulations to oversee compliance with the Renewable Energy Portfolio and establish the regulatory provisions applicable to Renewable Energy Certificates. Through this Regulation, the Energy Bureau promulgates a stable and predictable regulatory framework, capable of promoting and making viable the activity of renewable energy generation, as well as compliance by Retail Energy Suppliers with the Renewable Energy Portfolio, as established in Law 82-2010.

This Regulation also includes the provisions regarding the way in which a Retail Energy Provider can demonstrate compliance with the Renewable Energy Portfolio during each applicable calendar year. It also describes the process that Retail Energy Providers will use to submit Annual Compliance Reports for the Energy Bureau's evaluation. It also provides the terms that the Energy Bureau has to evaluate the Annual Compliance Reports, as well as the minimum content that the resolutions and orders issued by the Energy Bureau in these respects must have.

Finally, the way in which the Energy Bureau will notify Retail Energy Suppliers about any breach with the Renewable Energy Portfolio is established. The procedural mechanisms that the Energy Bureau will use to impose fines and sanctions on Retail Energy Suppliers for the aforementioned breach are also established.

Section 1.04.- Applicability.

This Regulation shall apply to any person subject to the Renewable Energy Portfolio, whether it is established by federal or local legislation or regulation, to any Electric Service

Company, to any Renewable Energy Producer, as these terms are defined in this Regulation, and to all Persons who register, buy, sell, or otherwise transfer a Renewable Energy Certificate, originated in accordance with the provisions of this Regulation.

Section 1.05.- Interpretation.

This Regulation shall be interpreted in a way that promotes the highest public interest and the protection of the interests of the residents of Puerto Rico, and in such a way as to guarantee compliance with the Renewable Energy Portfolio in a fast, fair and economical manner.

Section 1.06.- Provisions of other Regulations.

These Regulations may be supplemented by the provisions of other regulations of the Energy Bureau that are compatible with the provisions of these Regulations.

Section 1.07.- Unforeseen procedures.

When a specific procedure has not been foreseen in these Regulations, the Energy Bureau may attend it in a manner consistent with Law 57-2014, Law 17-2019 and Law 82-2010.

Section 1.08.- Definitions.

- A. These definitions will be used for the purposes of this Regulation and are not intended to modify the definitions used in any other regulation or order of the Energy Bureau.
- B. For the purposes of this Regulation, the following terms will have the meaning established below, unless the context of the content of any provision clearly shows otherwise:

1. "Renewable Energy Purchase Agreements". - means the agreements for the purchase of electrical energy produced by a Renewable Energy Source. These agreements may include the purchase of RECs, as defined in this Regulation, which are the product of the energy generated by the Renewable Energy Producer, either for an agreed amount or through a pre-established rate and indexed to a pre-established long-term term.

2. "Environmental and Social Attributes". - means all the qualities and properties of CERs that are inseparable and that include benefits to nature, the environment and society that are a product of the generation of Green Energy, but excluding the Energy Attributes, as defined in this Regulation. Environmental and Social Attributes include, but are not limited to, the reduction of environmental pollutants, such as carbon dioxide and other greenhouse gas emissions.

3. "Energy Attributes". - refers to the benefits of the production of electrical energy, measured in units or fractions of a megawatt-hour (MWh), which results from a

Renewable Energy Source, and includes electricity and other network services such as voltage regulation and frequency.

4. "Authority". - means the Puerto Rico Electric Power Authority, its subsidiary, its successor or the Contractor of the transmission and distribution network. Contracting Party refers to those persons who enter into Partnership Contracts with respect to PREPA's Transactions as such terms are defined in Law 29-2009, as amended, known as the *Public-Private Partnerships Law*.
5. "Initial Notice of Default". - refers to the initial determination of the Energy Bureau that the Retail Energy Provider did not comply with the Renewable Energy Portfolio applicable to the calendar year under evaluation.
6. "Renewable Biomass". - means all organic or biological material derived from organisms that has the potential to generate electricity, such as wood, waste, and fuels derived from alcohol, natural biomass, which is produced in nature without human intervention, and residual biomass, which is the by-product or residue generated in agricultural, forestry and livestock activities, as well as solid waste from the agri-food industry, and in the wood processing industry; It also includes any biomass of a similar nature to those described, as designated by the Energy Public Policy Program.
7. "Renewable Energy Portfolio". - means the mandatory percentage of Sustainable Renewable Energy or Alternative Renewable Energy required of each Retail Energy Supplier, as established in Law 82-2010 and these Regulations.
8. "Renewable Energy Certificate" or "REC". - It is a movable good that constitutes a marketable and negotiable asset or economic value, which can be bought, sold, transferred and transferred between people for any lawful purpose, and which in its entirety and inseparable form represents the equivalent of one (1) megawatt-hour (MWh) of electricity generated by a Sustainable Renewable Energy Source or an Alternative Renewable Energy Source in Puerto Rico, issued and registered in accordance with this Regulation and which, in turn, comprises all the Environmental and Social Attributes of said MWh of electricity.
9. "Electric Service Company". - refers to any Person, dedicated to the provision of electricity generation services, transmission and distribution, billing, transshipment, network services, energy storage, resale of electrical energy, and any other energy service as defined by the Energy Bureau in Regulation 8701.¹The Authority and the Contractor of the transmission and distribution network will be considered Electric Service Companies.

¹ Reglamento 8701, *Enmienda al Reglamento Núm. 8618, sobre Certificaciones, Cargos Anuales y Planes Operacionales de Compañías de Servicio Eléctrico en Puerto Rico*, 5 de febrero de 2016, según enmendado.

10. "Energy Bureau". - means the Energy Bureau of the Puerto Rico Public Service Regulatory Board, as established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board and Act 211-2018, which is a specialized independent entity in charge to regulate, supervise and enforce the public energy policy of the Government of Puerto Rico, formerly the Puerto Rico Energy Commission, created by virtue of Act 57-2014.
11. "Hydroelectric power". - means the energy produced by: (i) an increase in efficiency or increase in production capacity, achieved in a hydroelectric installation, built before the effective date of Law 82-2010 or (ii) a hydroelectric installation built later as of the effective date of Law 82-2010.
12. "Alternative Renewable Energy". - means the energy derived from the following sources:
 - a. gas combustion derived from a landfill system;
 - b. anaerobic digestion; and
 - c. Fuel cells ("fuel cells").
13. "Distributed Renewable Energy". - means Sustainable Renewable Energy or Alternative Renewable Energy supplied to an electric service company or generated for the producer's own consumption or for sale to a third party, and whose generation source is connected to distribution voltage. Community systems are considered renewable energy distributed at the residential level and their maximum capacity will be determined by the Energy Bureau through Resolution, with input from the Authority or the Contractor of the transmission and distribution network, as applicable.
14. "Sustainable Renewable Energy". - means energy derived from the following sources:
 - a. Solar energy;
 - b. Wind power;
 - c. Geothermal energy;
 - d. Combustion of renewable biomass;
 - e. Combustion of gas derived from renewable biomass;
 - f. Combustion of biofuels derived exclusively from renewable biomass;
 - g. Hydroelectric power;
 - h. Hydrokinetic and marine renewable energy (*"marine and hydrokinetic renewable energy"*), as defined in Section 632 of the Energy Independence and Security Act of 2007 of the United States of America (The Energy Independence and Security Act of 2007, Pub. L 110-140, 42 USC § 17211); and
 - i. Thermal ocean energy.
15. "Green energy". - It jointly includes the terms "Sustainable Renewable Energy", "Alternative Renewable Energy" and "Distributed Renewable Energy".

16. "Source of Renewable Energy". - It jointly includes the terms "Alternative Renewable Energy Source", "Distributed Renewable Energy Source" and "Sustainable Renewable Energy Source".
17. "Alternative Renewable Energy Source". - means any source of electricity that produces electrical energy through the use of Alternative Renewable Energy.
18. "Distributed Renewable Energy Source". - means any source of electricity that produces electrical energy through the use of Distributed Renewable Energy.
19. "Source of Sustainable Renewable Energy". - means any source of electricity that produces electrical energy through the use of Sustainable Renewable Energy.
20. "Overwhelming force". - means an event that cannot be foreseen or that if foreseen is unavoidable. It includes exceptional acts caused by nature itself, such as earthquakes, floods and hurricanes, as well as those events that are properly the result of the acts of human beings, such as riots, strikes, and wars, among others.
21. "Annual Compliance Report". - means the annual report that all Retail Energy Providers must present to the Energy Bureau in order to certify their compliance with the Renewable Energy Portfolio.
22. "Beginning of operations". - means when a power generation system, including those that generate Green Energy, begins its ordinary operation (*ie*, the stages or phases of testing and adjustments (*commissioning*) have been completed).
23. "Measurer". - instrument whose function is to measure and record the bidirectional flow (in two directions) of electricity, understood as the energy delivered and received in kilowatt-hours by the customer with a distributed generation system interconnected with the Authority's electrical system.
24. "Operator". - means any person who controls or manages a Renewable Energy Source or a Retail Energy Provider.
25. "Period of Reconciliation". - means the period of sixty (60) days subsequent to the last day of the calendar year just concluded, during which a Retail Energy Provider may acquire CERs to comply with the standards imposed by the Renewable Energy Portfolio applicable to the calendar year just concluded. .
26. "Person". - means any individual, partnership, company, association, corporation, public corporation or entity under the jurisdiction of the Energy Bureau. The term "Person" specifically includes, but is not limited to, any Sustainable Renewable Energy Producer, Alternative Renewable Energy Producer, Retail Energy Provider, Distributed Renewable Energy Producer, Transmission and Distribution Network Contracting Parties and the Authority.

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27. "Fuel Cells". - means any electrochemical system in which the energy from a chemical reaction is directly converted into electricity.
28. "Producer of Renewable Energy". - jointly includes the terms "Alternative Renewable Energy Producer", Distributed Renewable Energy Producer "and" Sustainable Renewable Energy Producer".
29. "Alternative Renewable Energy Producer". - means an Alternate Renewable Energy Source Operator that generates and sells electricity and has a capacity greater than one (1) megawatt (MW).
30. "Producer of Distributed Renewable Energy". - means any Operator of a Distributed Renewable Energy Source.
31. "Producer of Sustainable Renewable Energy". - means an Operator of a Sustainable Renewable Energy Source that generates and sells electricity and that has a capacity greater than one (1) megawatt (MW).
32. "Energy Public Policy Program". - means the program attached to the Department of Economic Development and Commerce of Puerto Rico in charge of developing and disseminating the public energy policy of the Government of Puerto Rico, created by virtue of Law 211-2018, known as the *Execution Law of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board*.
33. "Prosumer". - Refers to any user or consumer of the Electricity System who has the capacity to generate electricity for their own consumption, and who, in turn, has the ability to supply any surplus energy to the Electricity Network or to other users.
34. "Retail Energy Provider". - Means the Authority or any other Person who sells energy at retail and who has sold more than fifty thousand 50,000 megawatt-hours (MWh) of electrical energy to consumers of electrical energy in Puerto Rico during the previous calendar year or who plans to sell said quantity during the current year. For purposes of determining whether a person is a Retail Energy Provider, retail energy sales in Puerto Rico of any affiliate of said person will be taken into consideration. Any company that controls or manages, is controlled or managed by, or is subject to a common control or administration, by a Retail Energy Provider shall be considered as an "affiliate". The term Retail Energy Provider does not include an Energy Producer whose energy is intended to be resold, or a Renewable Energy Producer.
35. "Red Eléctrica". - means the energy transmission and distribution infrastructure of the Government of Puerto Rico that is operated, maintained and administered by the Authority or an Electric Service Company.

36. "Registry of Renewables". - means the North American Renewable Registry (known as the "North American Renewable Registry") ("RRNA"), which manages an electronic platform that issues Renewable Energy Certificates ("CERs") with unique serial numbers, where sources registrants can create and manage their individual accounts, and post and transfer CERs; as well as any other registry established or authorized by the Energy Bureau to record and transfer CERs in Puerto Rico.

37. "Electric system". - means the electrical energy generation, transmission and distribution system.

C. Any word used in the singular in these Regulations shall be understood to include the plural as well, unless the context shows otherwise.

Section 1.09.- Prevailing version.

Should any discrepancy arise between the Spanish version and the English version of these Regulations, the Spanish version will prevail.

Section 1.10.- Forms.

The Energy Bureau will establish the forms it deems necessary to conduct the procedures in accordance with these Regulations, which will be available to the public through its cyber portal. However, the fact that the Energy Bureau has not adopted one or more forms, is in the process of reviewing them, or the Internet portal is out of service, will not relieve any person of their obligation to comply with the provisions established herein. , provide the information required by this Regulation or otherwise comply with any order of the Energy Bureau.

Section 1.11.- Presentation mode.

The forms, documents and appearances required by virtue of this Regulation or any order of the Energy Bureau, must be submitted to the Energy Bureau in electronic format in accordance with the instructions that, from time to time, the Energy Bureau establishes by order in relation to the electronic filing system and established appearance policies. In the event that the electronic filing system is not operating or is temporarily not working, the forms, documents and appearances required by virtue of this Regulation or any order of the Energy Bureau, will be presented to the Energy Bureau in accordance with the instructions that the Energy Bureau will establish at that time through an order.

Section 1.12.- Effect of the presentation.

The presentation of a document whose content has been formulated by the party that subscribes it, will be equivalent to the certification that the content of said document is true and that, according to their best knowledge, information and belief, formed after an analysis

reasonable, the document is based on facts, arguments, legal sources and correct information.

Section 1.13.- Confidential information.

If, in compliance with the provisions of this Regulation or any order of the Energy Bureau, a person has the duty to disclose to the Energy Bureau information that is privileged pursuant to applicable evidentiary privileges, said person shall identify the allegedly privileged information and request the protection of said information in writing to the Energy Bureau, in accordance with Article 6.15 of Law 57-2014. When identifying privileged information and requesting confidential treatment by the Energy Bureau, the requesting party will follow the rules and procedures established by the Energy Bureau in Resolution CEPR-MI-2016-0009, as said resolution is amended, for the presentation, handling and treatment of confidential information. Except in the case of information protected under the privilege of attorney-client, the claim of confidential treatment will not, under any circumstances, be a reason to deny that said information is presented to the Energy Bureau.

Section 1.14.- Exception clause.

If any article, provision, word, sentence, subsection or section of this Regulation is challenged, for any reason, before a court and declared unconstitutional or null, such judgment will not affect, impair or invalidate the remaining provisions of this Regulation, but rather its Effect will be limited to the article, provision, word, sentence, subsection or section thus declared unconstitutional or void. The nullity or invalidity of any article, word, sentence, subsection or section in any specific case, will not affect or harm in any way its application or validity in any other case, except when it is specifically and expressly invalidated for all cases.

Section 1.15.- Validity.

In accordance with the provisions of Section 2.8 of the LPAU, this Regulation will enter into force thirty (30) days from its presentation in the Department of State and the Legislative Library.

Section 1.16.- Penalties for non-compliance.

Any Person who fails to comply with any of the requirements established in this Regulation may be subject to a Notice of Non-compliance in accordance with Chapter IV of Regulation 8543² and may, as a result of said non-compliance, be subject to any applicable administrative sanction or fine that the Bureau of Energy deems appropriate. In addition, the The Energy Bureau may: (i) file lawsuits, claims or causes of action on its own behalf in the Court of First Instance of the General Court of Justice of Puerto Rico against any natural or legal person who fails to comply or interferes with the requirements, purposes and

² Reglamento 8543, *Reglamento sobre Procedimientos Adjudicativos, Avisos de Incumplimiento, Revisión de Tarifas e Investigaciones*, 18 de diciembre de 2014.

objectives of Law 82-2010, or in any other administrative forum of the General Court of Justice of Puerto Rico; and (ii) issue orders to make or cease and desist to any person to comply with the requirements, purposes and objectives of Law 82-2010, including, but not limited to compliance with the Renewable Energy Portfolio, being able to go directly to the Court of First Instance of the General Court of Justice of Puerto Rico to require said compliance.

Section 1.17.- Penalties for providing false information.

Any person who offers, provides or sends false or incorrect information knowing that it is false or incorrect in any document, report, request, statement and / or certification required under this Regulation with the intention of defrauding, will incur a serious crime and, if convicted, may be punished with imprisonment for a minimum term of six (6) months and a maximum of five (5) years, in addition to the imposition of a \$ 10,000 fine for each violation.

Section 1.18.- Compliance with other applicable legal requirements.

Compliance with the provisions of this Regulation will not exempt any person from complying with the other applicable legal and regulatory requirements established by the Energy Bureau or any other governmental entity.

ARTICLE 2.- RENEWABLE ENERGY CERTIFICATES

Section 2.01.- Large-scale Power Purchase and Sale Contracts

- A. Renewable energy purchase and sale contracts between the Authority or the Contractor of the Electricity Grid and a Large-Scale Renewable Energy Producer (*Utility Scale Renewable Power Producer*) or a *Virtual Power Plant* that are granted from the effective date of this regulation, will clearly establish that the price of the energy purchased includes all the Environmental and Social Attributes associated with said energy. Consequently, the RECs originated by virtue of the aforementioned power sale contract will be transferred to the Authority or to the Contractor of the Electric Grid, as the case may be, at no additional cost.
- B. The renewable energy purchase and sale contracts between the Authority or the Contractor of the Electricity Grid and a Large-Scale Renewable Energy Producer in force as of the effective date of this Regulation, which have clauses where the , will maintain said clauses. However, any renegotiation or renewal of said contracts will be subject to the provisions of paragraph (A) of this Section.

Section 2.02.- Origination of RECs

- A. The REC originates when the Registry of Renewables issues a document with a unique serial number that indicates the name of the source that generated the energy and the total megawatt-hours (MWh) of energy generated by an Energy Source located in Puerto Rico during the calendar year in which the energy was generated.

- B. For each calendar year, the Renewable Energy Producer may originate RECs from January 1 of the calendar year in which the energy is generated until January 31 of the following year. The period from January 1 to 31 of the year following the calendar year in which the energy is generated is granted for the purposes of correcting or updating any measurement during the calendar year in which the energy is generated and to originate the RECs produced during the month. from December.
- C. Distributed Renewable Energy generated by Prosumers or Distributed Renewable Energy Producers will have access to the Renewables Registry. However, to the extent that the Retail Energy Provider accounts for the energy exported to the Electric Grid for compliance with the Renewable Energy Portfolio, in accordance with the provisions of paragraph (A) (b) of Section 3.03 of this Regulation, only the energy generated by the Prosumer or by the Distributed Renewable Energy Producer for self-consumption will be available to originate RECs.
- D. All RECs may be acquired by a Retail Energy Provider for purposes of compliance with the Renewable Energy Portfolio, or by other buyers for any legitimate purpose.

Section 2.03.- Requirements for the origination and certification of RECs

- A. In the cases in which the Sustainable Renewable Energy Producer or the Alternative Renewable Energy Producer maintains a large-scale renewable energy purchase and sale contract with the Retail Energy Provider or with The Contractor of the Electric Network, this will maintain an agreement with the corresponding Retail Energy Provider or with the Contractor of the Electric Network for the reading of the production of renewable energy through meters. The Retail Energy Provider or Contractor of the Electricity Grid will send to the Renewables Registry the information on the generation by each Sustainable Renewable Energy Producer and Alternative Renewable Energy Producer, in accordance with the provisions of this Regulation. In the event that a Retail Energy Provider in turn produces Sustainable Renewable Energy and / or Alternative Renewable Energy, it will have the obligation to demonstrate to the Renewables Registry the independence between both functions.
- B. In all other cases, the Renewable Energy Producer may submit the information required by the Renewables Registry, in the manner established by the latter.

Section 2.04.- Ownership and rights over RECs

- A. The ownership of each REC issued will belong to the energy source that generated the electricity until its ownership is sold, assigned or otherwise lawfully transferred.
- B. Every holder of a REC has the right to negotiate, market, advertise, sell and in any other lawful way transfer or assign ownership of RECs, in accordance with the provisions of these Regulations.

Section 2.05.- Minimum value of RECs

- A. The Energy Bureau will establish the minimum value of each REC through Resolution. The minimum value of each REC will be based on the social cost of Carbon Dioxide (CO2) emissions, in dollars per metric ton of CO2, as established by a reliable source identified by the Energy Bureau through Resolution, and the factor of CO2 emission, in metric tons per MWh, corresponding to the electricity generation industry, based on the most recent version of the Emissions and Generation Resource Integrated Database (“eGRID”) of the United States Environmental Protection Agency.
- B. The Energy Bureau will review the minimum value of each REC at least every three (3) years. Once the Energy Bureau establishes the new value of the RECs, it will come into effect on January 1 of the calendar year following the date on which the Energy Bureau established the new value.

Section 2.06.- Modification of the Renewables Registry

The Energy Bureau may, by Order or Resolution, change the Registry of Renewables to be used to comply with the provisions of this Regulation. In any circumstance, the change or modification will come into effect after at least six (6) months have elapsed, counted from the date of issuance of the aforementioned Order or Resolution.

ARTICLE 3.- COMPLIANCE WITH THE RENEWABLE ENERGY PORTFOLIO

Section 3.01.- Renewable Energy Portfolio

The percentage of Sustainable Renewable Energy or Alternative Renewable Energy applicable to each Retail Energy Supplier will be, at least, the percentage corresponding to that calendar year, as expressed as follows:

<u>Natural Year</u>	<u>Percentage (%) of renewable energy required</u>
2021	20.00%
2022	20.00%
2023	26.66%
2024	33.33%
2025	40.00%
2026	41.33%
2027	42.66%
2028	44.00%
2029	45.33%
2030	46.67%
2031	48.00%
2032	49.33%
2033	50.66%
2034	52.00%

2035	53.33%
2036	54.66%
2037	56.00%
2038	57.33%
2039	58.66%
2040	60.00%
2041	64.00%
2042	68.00%
2043	72.00%
2044	76.00%
2045	80.00%
2046	84.00%
2047	88.00%
2048	92.00%
2049	96.00%
2050	100.00%

Section 3.02.- Amount of Green Energy required for compliance with the Renewable Energy Portfolio

- A. The amount of Green Energy required from a Retail Energy Provider in a given year is calculated by multiplying the percentage corresponding to the year, as established in Section 3.01 of this Regulation, by the total electric energy, expressed in megawatt-hours (MWh), sold by the Retail Energy Provider during the corresponding calendar year.
- B. For the purposes of this Section, the amount of electrical energy sold during each calendar year by a Retail Energy Provider that comes from a hydroelectric installation will not be counted as part of the total volume of electricity sold by the Retail Energy Provider for said energy.
- C. The amount of Alternative Renewable Energy that a Retail Energy Provider can use to demonstrate compliance with the Renewable Energy Portfolio in a given year may not exceed twenty percent (20%) of the amount of Green Energy required for that year.

Section 3.03.- Compliance mechanisms with the Renewable Energy Portfolio

- A. A Retail Energy Provider may comply with the Renewable Energy Portfolio by submitting to the Energy Bureau any of the following, or a combination of these:
 - a. A REC, issued and registered in the Renewables Registry in the name of the Retail Energy Provider, for each megawatt-hour (MWh) of electricity generated by a Renewable Energy Source located in Puerto Rico;
 - b. In the case of a Retail Energy Provider that accounts for the electricity generated by and purchased from Distributed Renewable Energy Producers located in Puerto Rico through a net metering program, and when it is not feasible to obtain RECs that represent said electricity, the Report of Acquisition

of Renewable Energy, in accordance with the provisions of Section 3.04 of this Regulation, which shows that the Retail Energy Provider purchased or obtained through the net measurement mechanism, the renewable energy produced by Distributed Renewable Energy Sources, together with all the environmental and social attributes related to the production of such energy.

- B. Every REC submitted by a Retail Energy Provider under the provisions of subsection (A) (a) of this Section must be accompanied by a certification that the electricity produced by the Renewable Energy Source was produced and sold in Puerto Rico.

Section 3.04.- Renewable Energy Acquisition Report; no viability of acquiring RECs

- A. The Renewable Energy Acquisition Report will include the following information:
- (a) The name and physical and postal address of the Distributed Renewable Energy Producer that produced the energy that the Retail Energy Provider alleges satisfies compliance with the Renewable Energy Portfolio. In the event that the number of Distributed Renewable Energy Producers is so numerous, as in the case of the Authority's net metering residential customers, it will suffice to provide the number of Distributed Renewable Energy Producers, presented by class;
 - (b) The amount of energy purchased from said Distributed Renewable Energy Producer (in MWh), including meter readings or a reference to where they can be accessed on the cybernetics network. In the event that the number of Distributed Renewable Energy Producers is so numerous, as in the case of the Authority's net metering residential customers, that it is not practical to provide meter readings or a reference to where they can be accessed in the cybernetic network, the Retail Energy Provider must provide the information in an aggregated form by class of Distributed Renewable Energy Producer, together with documents from its billing system that support the information provided. In the case of the Authority, it will be sufficient to present the monthly reports of its billing system (CC&B) by class of client;
 - (c) The power purchase agreement or a reference to where it can be accessed on the cyber network. In the event that the number of Distributed Renewable Energy Producers is so numerous, as in the case of the Authority's net metering residential customers, it will not be necessary to present the agreements. However, in such circumstances, the Retail Energy Provider must certify that it has a valid contract with the Distributed Renewable Energy Producers reported as part of the requirements of subsection (a) above;
 - (d) Evidence that the energy purchase or net metering agreement expressly establishes that the energy purchase includes all Environmental and Social Attributes related to the energy purchased or acquired;
 - (e) A duly substantiated explanation of the reasons why it is not feasible and feasible to require that the renewable energy produced by Distributed Renewable Energy Producers be individually registered and accounted for in

the Renewables Registry, so it is not possible to present to the Energy Bureau RECS that represent said energy;

(f) The following certification:

I certify that the Retail Energy Provider that I represent; purchased and resold the amount of energy specified in the document that accompanies this certification for the calendar year under review and that, as a result of such purchase and resale, the Retail Energy Provider that I represent fulfilled all or a portion of its obligation legal under the Public Policy Law of Energy Diversification through Renewable Energy in Puerto Rico. I acknowledge that I expose myself to civil and criminal penalties for providing false or incorrect information, knowing that it is false or incorrect.

(g) Any other information that the Energy Bureau requires through an Order or Resolution.

- B. The Energy Bureau may modify, through an Order or Resolution, the language of the certification described in subsection (f) of paragraph (A) of this Section.
- C. The Retail Energy Provider must include the Renewable Energy Acquisition Report as part of the Annual Compliance Report. If the Energy Bureau approves the Renewable Energy Acquisition Report, it will accredit the amount of energy acquired from Distributed Renewable Energy Producers as part of the energy required to comply with the Renewable Energy Portfolio.

Section 3.05.- Requirement to present the Annual Compliance Report

Every Retail Energy Provider must, on or before March 31 of the calendar year following the calendar year for which the Retail Energy Provider is subject to comply with the Renewable Energy Portfolio, submit to the Energy Bureau, for its evaluation and approval, an Annual Compliance Report, in accordance with the provisions of these Regulations.

Section 3.06.- Content of the Annual Compliance Report

- A. The Annual Compliance Report must contain the following information:
 - a. The total amount of megawatt-hours (MWh) sold by the Retail Energy Provider during the calendar year previously elapsed;
 - b. The total amount of megawatt-hours (MWh) sold by the Retail Energy Provider during the calendar year from a hydroelectric facility;
 - c. The total amount of megawatt-hours (MWh) sold by the Retail Energy Provider during the calendar year previously elapsed, net of the sales of energy that comes from a hydroelectric installation;

- d. The amount of megawatt-hours (MWh) that the Retail Energy Provider generated in or acquired from a Sustainable Renewable Energy Source or an Alternate Renewable Energy Source during the calendar year previously elapsed;
- e. RECs, issued and registered in the Renewables Registry, presented to satisfy compliance with all or part of the Renewable Energy Portfolio during the calendar year previously elapsed;
- f. RECs, issued and registered in the Renewables Registry, presented to satisfy compliance with all or part of the Renewable Energy Portfolio applicable to the current calendar year, if applicable;
- g. The Renewable Energy Acquisition Report, if applicable;
- h. The Distributed Renewable Energy that the Retail Energy Provider purchased to comply with all or part of the Renewable Energy Portfolio during the calendar year previously elapsed;
- i. The Distributed Renewable Energy that the Retail Energy Provider purchased to comply with all or part of the Renewable Energy Portfolio applicable to the current calendar year, if applicable;
- j. The total amount of Green Energy acquired by the Retail Energy Provider (in MWh) that it presents to prove total or partial compliance with the Renewable Energy Portfolio for the calendar year previously elapsed;
- k. The quantity of Green Energy acquired by the Retail Energy Provider during the calendar year previously elapsed, expressed as a percentage of the total amount of megawatt-hours (MWh) sold by the Retail Energy Provider during the calendar year previously elapsed, net of energy sales from a hydroelectric facility;
- l. The amount of megawatt-hours (MWh) that the Retail Energy Provider estimates it will sell during the current calendar year;
- m. The amount of megawatt-hours (MWh) that the Retail Energy Provider estimates must generate or acquire to comply with the Renewable Energy Portfolio applicable to the current calendar year;
- n. The total amount of megawatt-hours (MWh) of Sustainable Renewable Energy or Alternative Renewable Energy that the Retail Energy Provider estimates will be supplied to it under a power purchase agreement in effect at the time of filing the Annual Compliance Report;
- o. The total number of RECs temporarily preserved for future use that the Retail Energy Provider will present to satisfy compliance with all or part of the Renewable Energy Portfolio applicable to the current calendar year;
- p. The cost incurred by the Retail Energy Provider to comply with the Renewable Energy Portfolio applicable to the calendar year previously elapsed, separately breaking down the cost related to the purchase of Sustainable Renewable Energy or Alternative Renewable Energy, and the cost related to the purchase of the environmental and social attributes related to said energy, as well as the costs associated with the purchase of Distributed Renewable Energy;
- q. The cost estimated by the Retail Energy Provider to comply with the Renewable Energy Portfolio applicable to the current year, separately breaking down the cost related to the purchase of Sustainable Renewable

Energy or Alternative Renewable Energy, and the cost related to the purchase of the environmental and social attributes related to said energy, as well as the costs associated with the purchase of Distributed Renewable Energy; and

- r. Any other information or documentation that the Energy Bureau requires by order.

Section 3.07.- Withdrawal and cancellation of RECs

The Energy Bureau will withdraw and cancel all RECs presented as evidence of compliance with the Renewable Energy Portfolio. Once withdrawn and canceled, said REC may not be submitted in a subsequent calendar year.

Section 3.08.- Acquisition of RECs during the Reconciliation Period

A Retail Energy Provider may, during the Reconciliation Period, acquire RECs to comply with the Renewable Energy Portfolio applicable to the previous calendar year. The Retail Energy Provider may not present the RECs acquired to demonstrate compliance with the Renewable Energy Portfolio applicable to the current calendar year.

Section 3.09.- Preservation of RECs

- A. A Retail Energy Provider may temporarily preserve its RECs for future use. The effect of preserving a REC will be as follows:
 - a. Once preserved, such REC may not be sold or otherwise transferred.
 - b. A preserved REC may only be used to demonstrate compliance with the Renewable Energy Portfolio applicable to the two (2) consecutive calendar years, counted from the date the REC was preserved.
 - c. A REC preserved and subsequently submitted during the first calendar year following the preservation date will represent one (1) megawatt-hour (MWh) of electricity produced by a Sustainable Renewable Energy Source or an Alternate Renewable Energy Source.
 - d. A REC preserved and subsequently submitted during the second calendar year following the preservation date will represent one-half (0.5) megawatt-hour (MWh) of electricity produced by a Sustainable Renewable Energy Source or an Alternate Renewable Energy Source.

ARTICLE 4.- EVALUATION OF THE ANNUAL COMPLIANCE REPORTS

Section 4.01.- Assessment regarding compliance with submission requirements

- A. Within a term of fifteen (15) days, counted from the date of presentation of the Annual Compliance Report, the Energy Bureau must evaluate it to determine if it meets the requirements established in Section 3.05 of this Regulation.
- B. If the Energy Bureau determines that the Annual Compliance Report was not submitted in accordance with the requirements established in Section 3.05 of this

Regulation, it will issue a Resolution by which it will indicate the deficiencies found. The Retail Energy Provider will have a term of twenty (20) days, counted from the aforementioned Resolution, to correct the deficiencies indicated. At the request of a party, the Energy Bureau may extend said term for just cause.

- C. If the Energy Bureau determines that the Annual Compliance Report was submitted in accordance with the requirements established in Section 3.05 of these Regulations, it will issue a Resolution in this regard.

Section 4.02.- Term to evaluate the Annual Compliance Report; Initial determination

- A. The Energy Bureau must evaluate the Annual Compliance Report within a term of thirty (30) days, counted from the date of notification of the Resolution by which it reported that the Annual Compliance Report was presented in accordance with the requirements established in Section 3.05 of these Regulations.
- B. If, after evaluating the Annual Compliance Report, the Energy Bureau determines that the Retail Energy Provider complied with the requirements of the Renewable Energy Portfolio applicable to the calendar year under review, it will issue a Resolution and Order, within the term described in paragraph (A) of this Section, which will contain the following:
 - a. The determination that the Retail Energy Provider complied with the requirements of the Renewable Energy Portfolio applicable to the calendar year under review;
 - b. Requirement to the Retail Energy Supplier to transfer to the Energy Bureau the number of RECs necessary to comply with the applicable Renewable Energy Portfolio, within the term established by the Energy Bureau through Resolution and Order;
 - c. Determination as to whether the Retail Energy Provider is authorized to temporarily preserve RECs to demonstrate compliance with the Renewable Energy Portfolio applicable to subsequent calendar years;
 - d. If applicable, the number of RECs and / or the amount of megawatt-hours (MWh) that the Retail Energy Provider is authorized to temporarily preserve to demonstrate compliance with the Renewable Energy Portfolio applicable to subsequent calendar years; and
 - e. Any other determination or order that the Energy Bureau deems necessary and pertinent.
- C. If after evaluating the Annual Compliance Report, the Energy Bureau determines that the Retail Energy Supplier did not comply with the requirements of the Renewable Energy Portfolio applicable to the calendar year under review, it will issue an Initial Notice of Default, within the term described in paragraph (A) of this Section. In compliance with the applicable Renewable Energy Portfolio, it will issue an Initial Notice of Default that will contain the following:
 - a. The nature of the breach;

- b. The term for the Retail Energy Provider to submit its response to the Initial Notice of Default;
- c. Warning of the penalties to which the Retail Energy Provider is exposed for non-compliance with the Renewable Energy Portfolio and for not submitting a response to the Initial Notice of Non-compliance; and
- d. Any other determination or order that the Energy Bureau deems necessary and pertinent.

Section 4.03.- Term to respond to the Initial Notice of Default; content of the Initial Notice of Default

- A. The Retail Energy Provider must submit a response to the Initial Notice of Default within a term of thirty (30) days from the date of notification of the Initial Notice of Default.
- B. In response to the notice of non-compliance, the Retail Energy Provider may present the justifications for non-compliance, in accordance with the provisions of Section 4.04 of this Regulation. The Retail Energy Provider may argue that there was no such breach, supporting in detail his position.
- C. The Retail Energy Provider must also submit, for evaluation and approval of the Energy Bureau, a corrective action plan proposal to comply with the applicable Renewable Energy Portfolio in subsequent calendar years. The Energy Bureau may, at its discretion, approve the proposed corrective action plan, modify it or approve a different corrective action plan.

Section 4.04.- Justifications for non-compliance

- A. The Retail Energy provider may justify its non-compliance by demonstrating in detail the reasonable and good faith efforts it has made to comply with the Renewable Energy Portfolio. To establish the reasonableness and good faith of its defenses to non-compliance, the Retail Energy Provider must demonstrate to the satisfaction of the Energy Bureau that its non-compliance was due to one or more of the following reasons:
 - a. Force Majeure, as defined by this Regulation;
 - b. Unpredictable substantial loss of the renewable resource;
 - c. Labor riots and strikes;
 - d. Violation of contractual clauses of a renewable energy purchase agreement by a contracting party (which is not the Retail Energy Provider);
 - e. Insufficiency of Renewable Energy Sources;
 - f. Insufficiency of Renewable Energy Producers;
 - g. The excessive cost of acquiring electrical energy generated by a Renewable Energy Producer; and
 - h. The excessive cost of acquiring RECs.

- B. 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.

Section 4.05.- Determination regarding the response to the Initial Notice of Default

- A. The Energy Bureau shall evaluate the response to the initial notice of breach and issue a Final Resolution in this regard within a term of forty-five (45) days, counted from the date of filing the response to the notice of breach. The Final Resolution must clearly detail the determinations of fact and the legal conclusions on which the determination of the Energy Bureau is based.
- B. If the Energy Bureau determines that the Retail Energy Provider satisfactorily justified its non-compliance with the Renewable Energy Portfolio for the calendar year under review, the Final Resolution will also include:
 - a. The determination that the Retail Energy Provider demonstrated to the satisfaction of the Energy Bureau all reasonable and good faith efforts made to attempt to comply with the Renewable Energy Portfolio for the calendar year under review and that the response to the Initial Notice of Default satisfies the criteria established in Section 4.03 of this Regulation;
 - b. The corrective action plan approved to comply with the Renewable Energy Portfolio applicable in subsequent calendar years;
 - c. A moratorium on any imposition of fines to the Retail Energy Provider in relation to compliance with the Renewable Energy Portfolio for the calendar year under review; and
 - d. Any other determination or order that the Energy Bureau deems pertinent and necessary.
- C. If the Energy Bureau determines that the Retail Energy Provider did not provide adequate justification for its non-compliance with the Renewable Energy Portfolio for the calendar year under review, the Final Resolution will also include:
 - a. The determination that the Retail Energy Provider did not demonstrate to the satisfaction of the Energy Bureau reasonable and good faith efforts made to attempt to comply with the Renewable Energy Portfolio for the calendar year under review;
 - b. The level of compliance with the Renewable Energy Portfolio reached by the Retail Energy Provider for the calendar year under review, expressed in percent (relative to sales) and in megawatt-hours (MWh);
 - c. The difference between the required amount of Green Energy applicable to the Retail Energy Provider in the calendar year under review and the level of compliance with the Renewable Energy Portfolio achieved by the Retail Energy Provider, in megawatt-hours (MWh);
 - d. The corrective action plan approved to comply with the Renewable Energy Portfolio applicable in subsequent calendar years;

- e. The fine to be imposed on the Retail Energy Provider for non-compliance with the Renewable Energy Portfolio for the calendar year under review, as determined in accordance with the provisions of this Regulation;
 - f. The term to pay the fine described in paragraph (e) above; and
 - g. Any other determination or order that the Energy Bureau deems pertinent and necessary.
- D. In those cases in which the Energy Bureau determines that a Retail Energy Provider has failed to comply with the Renewable Energy Portfolio for the calendar year under review, the Energy Bureau shall render a report to the Governor and the Legislature, within a term of thirty (30) days, counted from the date of notification of the Final Resolution, without prejudice to any subsequent process that may be applicable by law.
- E. The report required in paragraph (D) of this Section will contain the following information and / or documents:
- a. The Annual Compliance Report;
 - b. The Initial Notice of Default;
 - c. The response to the Initial Notice of Default;
 - d. The Final Resolution; and
 - e. Any other document or information that the Energy Bureau deems necessary or pertinent.

Section 4.06.- Penalty for non-compliance with the Renewable Energy Portfolio

- A. If, after evaluating the response to the initial notice of non-compliance, the Energy Bureau determines that a Retail Energy Provider has defaulted on the Renewable Energy Portfolio applicable to the calendar year under review, it will impose a fine on the Retail Energy Provider, in accordance with with the provisions of this Section.
- B. The fine described in paragraph (A) above will be determined as follows:
- a. The Energy Bureau will establish the level of compliance with the Renewable Energy Portfolio reached by the Retail Energy Provider for the calendar year under review, in megawatt-hours (MWh);
 - b. The Energy Bureau will calculate the difference between the required amount of Green Energy applicable to the Retail Energy Provider in the calendar year under review and the level of compliance with the Renewable Energy Portfolio reached by the Retail Energy Provider, in megawatts- hour (MWh). This difference represents the level of default with the Renewable Energy Portfolio for the calendar year under review.
 - c. The fine will be equal to twice the multiplication of the level of non-compliance with the Renewable Energy Portfolio, as calculated in paragraph (b) above, and the minimum value of the RECs in effect during the calendar year under review.

- C. The Retail Energy Provider must settle the fine imposed by the Energy Bureau, within a term of thirty (30) days, counted from the date of notification of the fine, in the manner in which the Energy Bureau establishes in the notification.
- D. If the Retail Energy Provider must settle the fine imposed by the Energy Bureau within the term established in paragraph (C) above, the Energy Bureau may impose additional sanctions in accordance with the provisions of Law 57-2014. The Energy Bureau may also impose on the Retail Energy Provider the payment of interest and penalties for default, according to the interest set by regulation by the Financial Board, as certified by the Commissioner of Financial Institutions.

ARTICLE 5.- REQUEST FOR RECONSIDERATION AND JUDICIAL REVIEW

Section 5.01.- Request for Reconsideration

Any person who is not satisfied with a decision made by the Energy Bureau in accordance with this Regulation may submit, within a term of twenty (20) days from the date on which the Secretary of the Energy Bureau presents a copy of the notification of said decision, a request for reconsideration before the Energy Bureau in which the petitioner details the reasons that support his request and the decisions that, in the opinion of the petitioner, the Energy Bureau should reconsider.

Section 5.02.- Judicial Review

Any person dissatisfied with a final decision of the Energy Bureau in accordance with this Regulation may, within thirty (30) days from the date of notification of the copy of the final decision attending a request for reconsideration, or within thirty (30) days from the date on which a copy of the final decision of the Energy Bureau is notified by the Secretary of the Energy Bureau, if a request for reconsideration has not been submitted, appear before the Court of Appeals of the Port Government Rico through an appeal for judicial review, in accordance with Section 4.2 of the LPAU and the applicable Rules of the Court of Appeals.

ATTACHMENT B

Renewable Energy Certificates (REC) Regulation and Compliance with the Renewable Energy Portfolio (RPS) of Puerto Rico. NEPR-MI-2021-0011				
Section	Section Title	Page #	Summary	Text
ARTICLE 1.- GENERAL PROVISIONS				
1.03	Purpose and Executive Summary	5	Purpose of rule is to establish the framework for issuing RECs and to ensure compliance with RPS goals through the RECs	The Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") adopts and promulgates these Regulations to oversee compliance with the Renewable Energy Portfolio and establish the regulatory provisions applicable to Renewable Energy Certificates . Through this Regulation, the Energy Bureau promulgates a stable and predictable regulatory framework , capable of promoting and making viable the activity of renewable energy generation , as well as compliance by Retail Energy Suppliers with the Renewable Energy Portfolio, as established in Law 82-2010.
1.03	Purpose and Executive Summary	5	Rule also establishes criteria to measure progress towards RPS goals and sets the requirement for Retail Energy Providers to submit an Annual Compliance Report to the Energy Bureau	This Regulation also includes the provisions regarding the way in which a Retail Energy Provider can demonstrate compliance with the Renewable Energy Portfolio during each applicable calendar year . It also describes the process that Retail Energy Providers will use to submit Annual Compliance Reports for the Energy Bureau's evaluation . It also provides the terms that the Energy Bureau has to evaluate the Annual Compliance Reports, as well as the minimum content that the resolutions and orders issued by the Energy Bureau in these respects must have.
1.04	Applicability	5-6	Regulation applies to Electric Service Companies, Renewable Energy Producers, and anyone who sells/buys/transfers RECs	This Regulation shall apply to any person subject to the Renewable Energy Portfolio, whether it is established by federal or local legislation or regulation, to any Electric Service Company, to any Renewable Energy Producer , as these terms are defined in this Regulation, and to all Person who registers, buys, sells, or otherwise transfers a Renewable Energy Certificate , originated in accordance with the provisions of this Regulation.
1.08	Definitions	7	Rule defines a "REC" to represent 1 MWh of electricity from a Sustainable or Alternative Renewable Energy Source, whose value is determined by the market and environmental/social costs of electricity production	"Renewable Energy Certificate" or "REC" . - It is a movable good that constitutes a marketable and negotiable asset or economic value, which can be bought, sold, transferred and transferred between people for any lawful purpose, and which in its entirety and inseparable form represents the equivalent of one (1) megawatt-hour (MWh) of electricity generated by a Sustainable Renewable Energy Source or an Alternative Renewable Energy Source in Puerto Rico, issued and registered in accordance with this Regulation and which, in turn, comprises all the Environmental and Social Attributes of said MWh of electricity.
ARTICLE 2.- RENEWABLE ENERGY CERTIFICATES				
2.01	Large Scale	13	Purchase and sale contracts between the Authority and Utility Scale Producers of VPPs will transfer to Authority at no extra cost to the Authority and will differentiate between cost from energy generated and cost of REC.	A. Renewable energy purchase and sale contracts between the Authority or the Contractor of the Electricity Grid and a Large-Scale Renewable Energy Producer (Utility Scale Renewable Power Producer) or a Virtual Power Plant that are granted from the effective date of this regulation, will clearly establish that the price of the energy purchased includes all the Environmental and Social Attributes associated with said energy. Consequently, the RECs originated by virtue of the aforementioned power sale contract will be transferred to the Authority or to the Contractor of the Electric Grid, as the case may be, at no additional cost . B. The renewable energy purchase and sale contracts between the Authority or the Contractor of the Electricity Grid and a Large-Scale Renewable Energy Producer in force as of the effective date of this Regulation, which have clauses where the cost of RECs is separated from the cost of the energy generated, will maintain said clauses.
2.02	Origination of RECs	14	A REC is issued by the Registry of Renewables. A REC includes the energy source type, total MWh produced, and year it was generated.	The REC originates when the Registry of Renewables issues a document with a unique serial number that indicates the name of the source that generated the energy and the total megawatt-hours (MWh) of energy generated by an Energy Source located in Puerto Rico during the calendar year in which the energy was generated.
2.02	Origination of RECs	14	Renewable energy generated by DER is also eligible for a REC, however only energy generated by the DER Producer for self-consumption can be issued a REC	Distributed Renewable Energy generated by Prosumers or Distributed Renewable Energy Producers will have access to the Renewables Registry . However, to the extent that the Retail Energy Provider accounts for the energy exported to the Electric Grid for compliance with the Renewable Energy Portfolio, in accordance with the provisions of paragraph (A) (b) of Section 3.03 of this Regulation, only the energy generated by the Prosumer or by the Distributed Renewable Energy Producer for self-consumption will be available to originate RECs .
2.02	Origination of RECs	14	A Retail Energy Provider can buy/trade/sell a REC to comply with RPS goals	All RECs may be acquired by a Retail Energy Provider for purposes of compliance with the Renewable Energy Portfolio , or by other buyers for any legitimate purpose.
2.04	Ownership and rights over RECs	15	A REC is owned by the energy source that generated the electricity until sold/transferred/assigned. All REC owners have the right to market or negotiate the sale of their RECs	The ownership of each REC issued will belong to the energy source that generated the electricity until its ownership is sold, assigned or otherwise lawfully transferred . Every holder of a REC has the right to negotiate, market, advertise, sell and in any other lawful way transfer or assign ownership of RECs, in accordance with the provisions of these Regulations.

Renewable Energy Certificates (REC) Regulation and Compliance with the Renewable Energy Portfolio (RPS) of Puerto Rico. NEPR-MI-2021-0011				
Section	Section Title	Page #	Summary	Text
2.05	Minimum value of RECs	15	The minimum value of a REC is based on 1.) social cost of CO2 (\$ per ton CO2) and 2.) factor of CO2 emissions (tons per MWh). Energy Bureau reevaluates the minimum value of a REC every 3 years.	The Energy Bureau will establish the minimum value of each REC through Resolution. The minimum value of each REC will be based on the social cost of Carbon Dioxide (CO2) emissions, in dollars per metric ton of CO2, as established by a reliable source identified by the Energy Bureau through Resolution, and the factor of CO2 emission, in metric tons per MWh, corresponding to the electricity generation industry, based on the most recent version of the Emissions and Generation Resource Integrated Database ("eGRID") of the United States Environmental Protection Agency. The Energy Bureau will review the minimum value of each REC at least every three (3) years. Once the Energy Bureau establishes the new value of the RECs, it will come into effect on January 1 of the calendar year following the date on which the Energy Bureau established the new value.
2.06	Modification of the Renewables Registry	15	Any change to the Registry of Renewables by the Energy Bureau will come into effect after at least 6 months.	The Energy Bureau may, by Order or Resolution, change the Registry of Renewables to be used to comply with the provisions of this Regulation. In any circumstance, the change or modification will come into effect after at least six (6) months have elapsed, counted from the date of issuance of the aforementioned Order or Resolution.
ARTICLE 3.- COMPLIANCE WITH THE RENEWABLE ENERGY PORTFOLIO				
3.02	Amount of Green Energy required for compliance with the Renewable Energy Portfolio	16	Annual Green Energy Required from a Retail Energy Provider = RPS Goal (%) * total electricity sold (MWh)	The amount of Green Energy required from a Retail Energy Provider in a given year is calculated by multiplying the percentage corresponding to the year, as established in Section 3.01 of this Regulation, by the total electric energy, expressed in megawatt-hours (MWh), sold by the Retail Energy Provider during the corresponding calendar year
3.02	Amount of Green Energy required for compliance with the Renewable Energy Portfolio	16	No more than 20% of the annual Green Energy required can be from alternative renewable energy sources.	The amount of Alternative Renewable Energy that a Retail Energy Provider can use to demonstrate compliance with the Renewable Energy Portfolio in a given year may not exceed twenty percent (20%) of the amount of Green Energy required for that year.
3.03	Compliance mechanisms with the Renewable Energy Portfolio	17	To comply with the RPS goals, a Retail Energy Provider must provide a REC for each MWh of renewable electricity or a "Report of Acquisition" for electricity generated/purchased from DER and/or Net metering. All RECs must be from energy produced and sold in Puerto Rico.	A Retail Energy Provider may comply with the Renewable Energy Portfolio by submitting to the Energy Bureau any of the following, or a combination of these: A. A REC , issued and registered in the Renewables Registry in the name of the Retail Energy Provider, for each megawatt-hour (MWh) of electricity generated by a Renewable Energy Source located in Puerto Rico; B. In the case of a Retail Energy Provider that accounts for the electricity generated by and purchased from Distributed Renewable Energy Producers located in Puerto Rico through a net metering program, and when it is not feasible to obtain RECs that represent said electricity, the Report of Acquisition of Renewable Energy , in accordance with the provisions of Section 3.04 of this Regulation, which shows that the Retail Energy Provider purchased or obtained through the net measurement mechanism, the renewable energy produced by Distributed Renewable Energy Sources, together with all the environmental and social attributes related to the production of such energy. Every REC submitted by a Retail Energy Provider under the provisions of subsection (A) (a) of this Section must be accompanied by a certification that the electricity produced by the Renewable Energy Source was produced and sold in Puerto Rico.
3.05	Requirement to present the Annual Compliance Report	18	An Annual Compliance Report from each Retail Energy Provider is due to the Energy Bureau on March 31st (following the year it should meet RPS goal)	Every Retail Energy Provider must, on or before March 31 of the calendar year following the calendar year for which the Retail Energy Provider is subject to comply with the Renewable Energy Portfolio, submit to the Energy Bureau, for its evaluation and approval, an Annual Compliance Report , in accordance with the provisions of these Regulations.
3.08	Withdrawal and cancellation of RECs	20	Once a REC is used for compliance with RPS, said REC will be cancelled by Energy Bureau and cannot be resubmitted.	The Energy Bureau will withdraw and cancel all RECs presented as evidence of compliance with the Renewable Energy Portfolio. Once withdrawn and canceled, said REC may not be submitted in a subsequent calendar year.
3.09	Preservation of RECs	20	A REC may be "preserved" for future use for up to 2 years. A REC submitted in the first year is equal to 1 MWh of Sustainable Renewable Electricity. While a REC submitted in the second year is equal to 0.5 MWh of Sustainable Renewable Electricity. Once preserved a REC cannot be sold/transferred.	A Retail Energy Provider may temporarily preserve its RECs for future use. The effect of preserving a REC will be as follows: A. Once preserved, such REC may not be sold or otherwise transferred. B. A preserved REC may only be used to demonstrate compliance with the Renewable Energy Portfolio applicable to the two (2) consecutive calendar years, counted from the date the REC was preserved. C. A REC preserved and subsequently submitted during the first calendar year following the preservation date will represent one (1) megawatt-hour (MWh) of electricity produced by a Sustainable Renewable Energy Source or an Alternate Renewable Energy Source. D. A REC preserved and subsequently submitted during the second calendar year following the preservation date will represent one-half (0.5) megawatt-hour (MWh) of electricity produced by a Sustainable Renewable Energy Source or an Alternate Renewable Energy Source.

Renewable Energy Certificates (REC) Regulation and Compliance with the Renewable Energy Portfolio (RPS) of Puerto Rico. NEPR-MI-2021-0011				
Section	Section Title	Page #	Summary	Text
ARTICLE 4.- EVALUATION OF THE ANNUAL COMPLIANCE REPORTS				
4.01	Assessment regarding compliance with submission requirements	21	Energy Bureau has 15 days from the presentation of the annual compliance report to determine if it met requirements. If requirements are met it will issue a Resolution; otherwise Retail Energy Provider has 20 days to correct.	Within a term of fifteen (15) days, counted from the date of presentation of the Annual Compliance Report, the Energy Bureau must evaluate it to determine if it meets the requirements established in Section 3.05 of this Regulation. If the Energy Bureau determines that the Annual Compliance Report was not submitted in accordance with the requirements established in Section 3.05 of this Regulation, it will issue a Resolution by which it will indicate the deficiencies found. The Retail Energy Provider will have a term of twenty (20) days , counted from the aforementioned Resolution, to correct the deficiencies indicated. At the request of a party, the Energy Bureau may extend said term for just cause. If the Energy Bureau determines that the Annual Compliance Report was submitted in accordance with the requirements established in Section 3.05 of these Regulations, it will issue a Resolution in this regard.
4.02	Term to evaluate the Annual Compliance Report; Initial determination	21-22	Energy Bureau has 30 days to evaluate Annual Compliance Report, if compliant they must issue a resolution that includes 1.) whether the RPS goal was met 2.) requirement to transfer "X" RECs to Energy Bureau to meet RPS 4.) Any preserved RECs being used to comply with RPS goals and 4.) Authorization for any RECs that are to be preserved for future years	The Energy Bureau must evaluate the Annual Compliance Report within a term of thirty (30) days...If, after evaluating the Annual Compliance Report, the Energy Bureau determines that the Retail Energy Provider complied with the requirements of the Renewable Energy Portfolio applicable to the calendar year under review, it will issue a Resolution and Order...which will contain the following: A. The determination that the Retail Energy Provider complied with the requirements of the Renewable Energy Portfolio applicable to the calendar year under review; B. Requirement to the Retail Energy Supplier to transfer to the Energy Bureau the number of RECs necessary to comply with the applicable Renewable Energy Portfolio , within the term established by the Energy Bureau through Resolution and Order; C. Determination as to whether the Retail Energy Provider is authorized to temporarily preserve RECs to demonstrate compliance with the Renewable Energy Portfolio applicable to subsequent calendar years; D. If applicable, the number of RECs and / or the amount of megawatt-hours (MWh) that the Retail Energy Provider is authorized to temporarily preserve to demonstrate compliance with the Renewable Energy Portfolio applicable to subsequent calendar years; and E. Any other determination or order that the Energy Bureau deems necessary and pertinent.
4.04	Justifications for non-compliance	22-23	A Retail Energy provider can demonstrate non-compliance with RPS goals, which may include unpredictable loss of renewable energy source, contractual violation of renewable energy purchase agreement, insufficient renewable energy sources/producers, and excessive costs of REC s	The Retail Energy provider may justify its non-compliance by demonstrating in detail the reasonable and good faith efforts it has made to comply with the Renewable Energy Portfolio. To establish the reasonableness and good faith of its defenses to non-compliance, the Retail Energy Provider must demonstrate to the satisfaction of the Energy Bureau that its non-compliance was due to one or more of the following reasons: A. Force Majeure, as defined by this Regulation; B. Unpredictable substantial loss of the renewable resource; C. Labor riots and strikes; D. Violation of contractual clauses of a renewable energy purchase agreement by a contracting party (which is not the Retail Energy Provider); E. Insufficiency of Renewable Energy Sources; F. Insufficiency of Renewable Energy Producers; G. The excessive cost of acquiring electrical energy generated by a Renewable Energy Producer; and H. The excessive cost of acquiring RECs.
4.06	Penalty for non-compliance with the Renewable Energy Portfolio	24-25	Retail Energy Providers have 30 days to pay fine for non-compliance with RPS goals. Fine is determined by 2x the difference between Required Green Energy and Level of Compliance with RPS (in MWh)	If, after evaluating the response to the initial notice of non-compliance, the Energy Bureau determines that a Retail Energy Provider has defaulted on the Renewable Energy Portfolio applicable to the calendar year under review, it will impose a fine on the Retail Energy Provider , in accordance with with the provisions of this Section. The fine described in paragraph (A) above will be determined as follows: A. The Energy Bureau will establish the level of compliance with the Renewable Energy Portfolio reached by the Retail Energy Provider for the calendar year under review, in megawatt-hours (MWh); B. The Energy Bureau will calculate the difference between the required amount of Green Energy applicable to the Retail Energy Provider in the calendar year under review and the level of compliance with the Renewable Energy Portfolio reached by the Retail Energy Provider, in megawatts- hour (MWh). This difference represents the level of default with the Renewable Energy Portfolio for the calendar year under review. C. The fine will be equal to twice the multiplication of the level of non-compliance with the Renewable Energy Portfolio , as calculated in paragraph (b) above, and the minimum value of the RECs in effect during the calendar year under review. The Retail Energy Provider must settle the fine imposed by the Energy Bureau, within a term of thirty (30) days , counted from the date of notification of the fine, in the manner in which the Energy Bureau establishes in the notification.

ATTACHMENT C



August 30th 2021

VIA EMAIL comentarios@jrsp.pr.gov

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: 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

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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.

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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

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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

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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

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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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