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

In Re:	Case no. NEPR-MI-2019-0009
INTERCONNECTION REGULATIONS	Subject: Motion regarding the Supplemental Studies Threshold

MOTION REQUESTING MODIFICATION OF SUPPLEMENTAL STUDIES THRESHOLD

TO THE HONORABLE ENERGY BUREAU:

COMES NOW, the **PUERTO RICO SOLAR ENERGY INDUSTRIES ASSOCIATION CORP. DBA SOLAR AND ENERGY STORAGE ASSOCIATION OF PUERTO RICO** ("SESA"), represented by the undersigned legal counsel and respectfully states and submits the following:

1. The Regulation to Interconnect Generators to the Distribution System of the Puerto Rico Electric Power Authority and to Participate in the Net Metering Programs, Regulation No. 8915 ("Reg. 8915") which governs the interconnection process for distributed generation systems with a capacity up to 1MW provides that distributed generators which propose to interconnect with a feeder that exceeds a threshold of 15% of its annual peak demand[1] must undergo a supplemental study.

2. On April 11, 2019, the Governor of Puerto Rico signed into law Act No. 17 known as the "Puerto Rico Public Policy Act" ("Act 17-2019") which significantly modified the existing interconnection framework by introducing amendments to Act no. 114-2007 known as the "Puerto Rico Net Metering Program Act" ("Act 114-2007"), resulting in substantial changes to the interconnection process of distributed

[1] Reg. 8915, at Sec. IV, Art. A (4). ("PREPA maintains a published list in its website that indicates the feeders that require a supplemental study. This list includes feeders that exceed the 15% of annual peak demand") .

generators to the electrical grid. Key among these changes is the automatic interconnection of photovoltaic energy systems with capacities of up to 25 kilowatts (kW)[2], subject to certain requirements. This legislative shift intended to streamline the integration of small-scale renewable energy systems into the grid and promote the adoption of clean energy technologies. Of note, Act 114-2007, as amended pursuant to Act 17-2019, provides that "[t]he fact that the feeder exceeds its capacity shall not constitute an obstacle for the interconnection of photovoltaic or renewable energy systems with a generation capacity that does not exceed 25 kilowatts"[3].

3. Thus, Act 17-2019 and its amendments to Act 114-2007 changed the interconnection process in ways that are not reflected in, or are inconsistent with Reg. 8915. This is understandable because, of course, Reg. 8915 predates Act 17-2019. Specifically, the requirement in Reg. 8915 that calls for supplemental studies when the capacity of the feeder exceeds 15% of its annual peak demand[4] is in conflict with the statutory provisions allowing automatic interconnection for systems up to 25 kW, regardless of feeder capacity[5]. This discrepancy creates uncertainty regarding the appropriate application of the interconnection requirements and is hindering the integration of renewable energy systems in alignment with legislative goals[6].

4. It is a well-established legal principle that regulations must align with existing laws, as they cannot contravene or override statutory provisions. This fundamental rule ensures that regulations, while providing necessary detail and implementation mechanisms, do not conflict with the broader legislative framework in which if conflict arises, the law must supersede the regulation. Puerto Rico's Supreme Court has stated that "the concept of the hierarchy of sources of law implies that some legal norms have greater weight or legal value than others. The hierarchy is particularly important when resolving a dispute that may have different solutions

[2] Act 114-2007, Section 9 (a) states: "Photovoltaic or renewable energy generation systems registered in the renewables registry of Act No. 82-2010, whose generation capacity does not exceed 25 kilowatts shall be interconnected automatically to the transmission and distribution network." 22 L.P.R.A. § 1019
[3] Id., Section 9 (b). 22 L.P.R.A. § 1019.
[4] Reg. 8915, Section IV, Art. D (g).
[5] Act 114-2007, Section 9 (a). 22 L.P.R.A. § 1019
[6] In the January 2024 Net Metering Compliance Hearing it was stated that approximately 35,000 cases of requests to interconnect their residential distributed generators were still pending the supplemental study required by Reg. 8915 when the feeder's capacity exceeds the 15% threshold.

depending on which legal norm applies. In our jurisdiction, the hierarchy of sources of law is ordered as follows: (1) the Constitution of the Commonwealth of Puerto Rico, as the supreme law; (2) the laws approved by the Legislative Assembly; (3) the rules and regulations approved and promulgated under the authority of law by public agencies."[7] In the same case, the Supreme Court ruled that "the hierarchy of sources of law dictates that regulations cannot contradict what is established by a special law".[8]

5. Additionally, the Supreme Court has previously stated that "a regulation promulgated to implement the execution of a law may complement it, but it cannot be in conflict with it."[9] In a similar vein, "[a] regulation or administrative action that is clearly in conflict with or contrary to the law is null and void. Such a regulatory provision must yield to the legislative mandate, as the text of a law should never be understood as modified or replaced by the regulation. Therefore, if there is any conflict between the text of the law and its regulation, the law's text must prevail."[10]

6. With the foregoing background in mind and based on the following reasons, SESA respectfully requests that this Honorable Energy Bureau issue a resolution and order directing LUMA to require supplemental studies only when the relevant feeder exceeds 30% in annual peak demand.

7. On July 18, 2024, the Smart Inverter Technical Conference ("Technical Conference") was held with the participation of LUMA, the Honorable Energy Bureau and several stakeholders. During the Technical Conference, the Senior Director of Grid Modernization, Renewable Eerngy Integration and Asset Management for LUMA, Mr. Babak Enayati proposed a significant adjustment regarding supplemental studies for distributed generation systems. The proposal, which suggests increasing the current threshold for requiring the supplemental studies from 15% to 30%, was detailed in the motion filed by LUMA on June 21, 2024 titled "Motion to Submit Presentation Shown at Technical Conference/Stakeholder Workshop held on June

[7] Consejo de Titulares del Condominio Centro Internacional de Mercadeo Torre II v. PRCI LOAN CR, LLC, 210 DPR 403, 413 (2002).
[8] Id., at p. 406.
[9] P.S.P. v. Com. Estatal de Elecciones, 110 DPR 400, 409 (1980).
[10] Yiyi Motors, Inc. v. E.L.A., 177 DPR 230, 248 (2009).

18, 2024, with Correction and Revised Technical Bulletin" ("June 21st Motion")[11]. The majority of the stakeholders agreed on the suggested proposal made by Mr. Enayati but the proposal was not formally presented to the Honorable Energy Bureau.

8. As presented in LUMA's June 21st Motion, the reasonable considerations to elevate the threshold are the following: (i) the results of cluster studies show that it is possible to increase the threshold from 15% to 30% without overlooking network violations; (ii) a 30% threshold will allow the detection of system violations in a timely manner, before they become significant system issues; and (iii) as penetration levels increase, these levels need to be revised based on operational conditions and reliability considerations.

9. Based on the analysis presented by LUMA, the supplemental studies for feeders with penetration levels between 15% and 30% are not essential. Conducting these studies at a 15% threshold will result in unnecessary expenditures and delays. By contrast, approving this change will prevent wasteful spending, provide cost savings, and accelerate the integration of distributed renewable energy generation. Such result aligns with the objective of ensuring that resources are utilized efficiently while maintaining system reliability.

10. Although this proposal is not a comprehensive solution to all interconnection challenges, SESA respectfully submits that it represents a positive step towards streamlining the application process for the interconnection of distributed generation systems. By eliminating the requirement for supplemental studies for distributed generation systems within the 15% to 30% range, the interconnection process will be substantially simplified. It will reduce administrative burdens and accelerate the integration of new systems into the grid.

11. Given the conflict between Reg. 8915 and the legislative amendments introduced by Act 17-2019, there is a pressing need for clarity on how Reg. 8915, Act 114-2007 and other requirements should be harmonized. The PREB's determination on these matters is crucial to resolve inconsistencies, ensuring that the regulatory framework supports the legislative intent and facilitates a seamless interconnection

[11] See June 21st Motion, at p. 13.

process for distributed generation systems.

12. Therefore, under the authority of the Honorable Energy Bureau regarding interconnection to the electrical grid[12] [13], and recognizing the agency's authority to interpret the laws it administers[14] [15], SESA respectfully requests this Honorable Energy Bureau to issue a resolution and order requiring supplemental studies when the relevant feeder exceeds 30% in annual peak demand. This determination is essential to implement the proposed changes effectively and ensure that regulatory standards reflect the updated operational parameters contained in the law.

WHEREFORE, SESA respectfully requests that this Honorable Energy Bureau issue a Resolution and Order determining that the threshold for requiring supplemental studies for the interconnection of distributed generation systems will be when the feeder exceeds 30% in annual peak demand.

Respectfully submitted, on August 20, 2024, in San Juan, Puerto Rico.

We hereby certify that we filed this motion using the electronic filing system of this Puerto Rico Energy Bureau and that copy of this motion was notified to Agustin.irrizary@upr.edu; javrua@sesapr.org; hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; aconer.pr@gmail.com; john.jordan@nationalpfg.com;

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[12] Act 57-2014, at Subchapter B, Section 6.3 (w) indicates the PREB has the power to "Review and approve proposals to the interconnection regulations and minimum technical requirements (MTRs), additional technical requirements (ATRs), **and any other type of requirement established for the interconnection of distributed generators** and microgrids to the electric power grid, and oversee compliance therewith;". (emphasis supplied) (22 L.P.R.A § 1054b)

[13] Id., at Subchapter B, Section 6.3 (ss) states: the "PREB, in conjunction with the Energy Public Policy Program of the Department of Economic Development and Commerce and electric power companies, shall evaluate and **make determinations regarding the interconnection of distributed renewable energy** and large-scale renewable energy **to the transmission and distribution system in order to ensure access thereto justly and equitably.**" (emphasis supplied) (22 L.P.R.A § 1054b)

[14] In Rolon Martinez v. Caldero Lopez, 201 DPR 26, 37 (2018) the Court indicated that "Courts must give weight and deference to the interpretations made by the agency of the specific laws it administers."

[15] Jorge Farinacci Fernós, AMBIGÜEDADES Y VAGUEDADES EN EL DERECHO ADMINISTRATIVO PUERTORRIQUEÑO, LI U.I.P.C. J.L., 497 (2016) at p. 501 states: "the agencies have the faculty to interpret, particularly in regards to laws that the legislative assembly has delegated the administration and implementation [to such agency]". (emphasis supplied)

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