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

In Re: REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES	Case no. NEPR-MI-2020-0014 Subject: Notice of Commencement of the Informal Process for the Evaluation and Approval of Agreements between Electric Service Companies

COMMENTS ON PROPOSED REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES

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 as follows:

I. Relevant Procedural History and Background

1. On October 19, 2020, the Puerto Rico Energy Bureau ("Energy Bureau" or "PREB") issued a Resolution through which it issued a preliminary draft of the Regulation for the Evaluation and Approval of Agreements between Electric Service Companies ("Proposed Regulation") to establish the guides, standards, practices, and processes that must be followed for the purchase of energy, modernize power plant or electric power generation facilities under section 6.3(u) and 6.32 of Act No. 57-20141 and Act No. 17-2019, known as the Puerto Rico Energy Public Policy Act.

2. The preliminary draft received significant feedback from stakeholders, including Windmar Group, Oriana Energy, Horizon Energy, LLC, Renewable Energy Coalition, Puerto Rico Chamber of Commerce, SESA, Puerto Rico Electric Power Authority ("PREPA"), AES Puerto Rico, LP, Dupont, FMC And Bristol Myers ("commenters"). A central concern raised by commenters was the inclusion of private Power Purchase Agreements ("PPAs") under the purview of the Regulation, which commenters argued would impose unnecessary regulatory

burdens and hinder renewable energy development. Suggestions included either excluding these private agreements or addressing them in a separate regulation.

3. On March 18, 2021, the Energy Bureau issued a Resolution and Order ("March 18 Resolution") to begin the formal process as established under Act 38 of June 30, 2017, known as the “Government of Puerto Rico’s Uniform Administrative Procedure act” (“Act 38-2017”). As part of the March 18 Resolution, the Energy Bureau published a Proposed Regulation and set the period to provide comments. On March 30, 2021, the Energy Bureau also published a timely notice (“March 30 Resolution”) on the regulation adoption process in a newspaper of general circulation to give the general public the opportunity to present their comments regarding the Proposed Regulation published, in compliance with the applicable regulations and legislation.

4. Entities such as Sunnova Energy Corporation, PREPA, Dupont Electronics Microcircuits Industries, LTD., FMC Agricultural Caribe Industries, Ltd., Bristol Myers Squibb Holdings Pharma Ltd. Liability Company, SESA, and the Independent Consumer Protection Office (“OIPC” by its Spanish acronym) submitted comments during this period. The major concerns in these comments were with regards to the applicability of the regulation to commercial and industrial customers, community solar projects, and certain terms that were deemed to be lacking definition or applicability.

5. On November 22, 2024, the Energy Bureau issued a Resolution (“November 12 Resolution”) emphasizing the need for an updated regulatory framework that aligns with emerging technologies and public policy objectives. Consequently, the Energy Bureau determined it is in the public interest to continue an informal process to receive additional feedback from stakeholders on the potential adoption of the Proposed Regulation. The PREB also highlighted that the informal commenting process would eventually transition into a formal rulemaking process as required by Act 38-2017.

II. Comments on Proposed Regulation

6. SESA objects to the enactment of the proposed regulation and wishes to provide the following observations. For member companies and nonmember companies looking to provide electric services above the 5 MW threshold, the Proposed Regulation will most certainly increase administrative and operational costs due to its extensive filing requirements and ongoing oversight found in Articles 3 through Article 9. It may also reduce flexibility in negotiating and amending contracts, as PREB’s review and approval process could delay execution or impose mandatory modifications. Additionally, these measures could create competitive disadvantages,

as contracting entities may face constraints in structuring innovative or cost-effective agreements that the PREB determines do not align with the energy public policy guidelines. The discretionary nature of PREB's oversight, specifically the power to impose or reject modifications, further introduces uncertainty, complicating long-term planning and investment decisions. While PREB likely intends to centralize oversight, align contracts with public policy goals, and address inefficiencies in Puerto Rico's energy sector, the added regulatory hurdles could discourage private investment and disproportionately burden smaller or resource-constrained companies. This outcome would be contrary to the energy public policy established under Act 17 of April 11, 2019, known as the "Puerto Rico Energy Public Policy Act" ("Act 17-2019").

7. In addition, Article 4 of the Proposed Regulation may introduce additional layers of complexity to the approval process for utility-scale contracts, which are already subject to the PREB's review and approval[1]. In this regard, the Public Private Partnerships Authority ("P3A") has previously concluded that contracts subject to PREPA's request for proposals "constitute PREPA Transactions under Act 120."[2] While the P3A authorized PREPA to continue the procurement processes at issue in the referenced communication, subject to the provision of updates and notices, the P3A reserved the right to decide otherwise with respect to future transactions or projects.

8. The drafting of Article 9 of the Proposed Regulation partially addresses the concerns raised by the commenters with respect to the overreach into contractual agreements between private parties (specifically for industrial and commercial customers). This provision indicates that the PREB presumes that such contracts arise from an arms-length transaction and "shall not subject to an initial review" by the agency and adds that "however, the PREB reserves the right to exercise its authority over such contracts if complaints arise from such agreements". **For clarity and consistency, SESA submits this last clause from proposed Article 9, from the word 'however' to the word 'agreements' should be deleted.** Also, Section 2.01(A)(4) of the Proposed Regulation provides that "Large scale industrial and commercial Consumers[3] or

[1] For example, the Proposed Regulation would require the submission to PREB of the "Partnership Committee Report," which is the report prepared by the Partnership Committee under Article 9(g) of Act 29-2009, known as the Public Private Partnerships Act, regarding a PREPA Transaction, in which the contract is evaluated and the terms and conditions of the contract are negotiated until deemed appropriate.

[2] See letter from Fermín E. Fontanés Gómez, Executive Director, to Suheil M. Acevedo Serrano, Chairperson, RFP Evaluation Committee, of February 11, 2022.

[3] The term "Large scale industrial and commercial consumers" is not defined in the Proposed Regulation.

Electric Cooperatives that enter into PPAs directly with EPSCs" are contracts subject to the Energy Bureau's review and approval. **For clarity and consistency, Section 2.01(A)(4) of the Proposed Regulation should be deleted**. Additionally, Section 1.04(C) of the Proposed Regulation provides that this regulation applies to "industrial and commercial consumers," while Section 1.04(D) exempts PPAs with a capacity of less than 5 MW from regulation, except as otherwise provided in Article 8[4]. Interpreted together, these provisions could be read to indicate that PPAs involving industrial and commercial customers for systems with a capacity in excess of 5 MW would be subject to the Proposed Regulation. To clarify which provisions of the Proposed Regulation apply to "Large scale industrial and commercial consumers" or "industrial and commercial consumers", we suggest that a revised Section 1.04 (C) should read:

> "Special conditions for the application of this Regulation to Agreements between EPSCs and entities which are not EPSCs. This Regulation shall apply to industrial and commercial Consumers as stated in Article 9, and to Energy Cooperatives, and Municipalities that enter into PPAs directly with an EPSC as specifically provided in this Regulation."

9. Consequently, we suggest that a revised Section 2.01 (A) (4) and new Section 2.01 (A) (5) should read:

> "Except as otherwise noted, the following Contracts or Agreements must be submitted to the Energy Bureau for review and approval, under the applicable requirements as stated in Articles 3 through 9 of this Regulation: ... 4) Electric Cooperatives that enter into PPAs directly with EPSCs."

10. Section 3.02 of the Proposed Regulation is titled "Additional Documents to be Included in Applications for Approval of Agreements with Microgrids, Energy Cooperatives, Municipal Ventures and Community Solar Projects." However, the first paragraph states that this section also applies to PPAs with Electric Power Service Companies ("EPSCs") and PREPA. This can be confusing because they are not mentioned in the title of Section 3.02, while in Section 3.03 EPSCs are mentioned in the title and first paragraph of the section.

11. Section 1.09 (18) of the Proposed Regulation defines "Electric Service" to include, "but is **not limited to**, all those activities related to the generation, transmission, distribution, electric energy resale, ancillary services, commercialization, billing, storage, wheeling of electrical energy and any other service that an Electric Power Service Company may provide." (emphasis

[4] The reference to Article 8 appears to be a typo, as we expect the correct reference is to Article 9.

provided) The bolded text may cause confusion because it could lead to an exceedingly broad interpretation of what may be classified as an “electric service.” In addition, the expansiveness of the definition could also affect whether a business may be considered an EPSC because Section 1.09 (17) provides that an EPSC includes “any person or entity, natural or legal, including energy cooperatives and municipalities, dedicated to offering Electric Service.” (emphasis provided) We suggest that such broad language from Section 1.09 (18) be stricken from the Proposed Regulation.

12. The definitions provided in Section 1.09 (18) for “Electric Service” and in Section 1.09 (23) for “Energy Generation Services” in the Proposed Regulation seem to be overlapping. We recommend eliminating Section 1.09 (23) and integrating any necessary information from Section 1.09 (23) into Section 1.09 (18).

13. The acronym "PPA" for "Power Purchase Agreement" should be used consistently throughout the document without an apostrophe when referring to more than one PPA. The terms "PPA'-s" “PPA’s” are grammatically incorrect in the Proposed Regulation and should be replaced with "PPAs" or "PPA" as appropriate, wherever it appears, including in headings and the Table of Contents.

WHEREFORE, SESA respectfully requests that the foregoing comments be considered by the Honorable Energy Bureau.

Respectfully submitted, on December 23, 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.

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