

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

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

**CASE NO:** NEPR-MI-2021-0011

**SUBJECT:** Final Proposed REC Regulation

**RESOLUTION AND ORDER**

**I. Introduction**

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Act 82-2010<sup>1</sup> (“RPS Statute”) establishes the Puerto Rico Renewable Portfolio Standard (“RPS”) and specifies the requirements and percentage of electric power that retail electricity suppliers shall supply from renewable sources through 2050. Retail Energy Providers are required to achieve one hundred percent (100%) by 2050. Act 82-2010 also establishes the use of Renewable Energy Certificates (“REC”) as a mechanism for compliance with the RPS and charges the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) with the implementation of the requirements of Act 82-2010.

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The Energy Bureau issued a preliminary draft and two subsequent versions of the *Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico*. The Energy Bureau solicited stakeholder feedback on each version. In this Resolution and Order, the Energy Bureau discusses stakeholder feedback received and the modifications and clarifications made in response. The Energy Bureau also provides additional clarity on aspects related to REC accounting, ownership, and implementation of the regulation, and it establishes the next steps in the rulemaking process.

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The Energy Bureau **ORDERS** that compliance with the requirements outlined in the regulation be required beginning on January 1, 2027.

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While the regulation will not take effect until January 1, 2027, Retail Energy Providers are strongly encouraged to begin submitting the annual compliance report to the Energy Bureau in 2026 for calendar year 2025. Early reporting will allow Retail Energy Providers to establish data collection and reporting procedures before mandatory compliance begins in 2027. It will also allow the Energy Bureau to identify any issues or areas requiring additional guidance and support.

**II. Procedural History**

Pursuant to Act 57-2014,<sup>2</sup> the Energy Bureau has broad powers, duties, and responsibilities to establish and implement the regulatory actions to guarantee the capacity, reliability, safety, and efficiency of the Puerto Rico electrical system.<sup>3</sup>

On July 22, 2021, the Energy Bureau issued a Resolution and Order (“July 22, 2021 Resolution”) through which it issued a preliminary draft of the *Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico* (“Preliminary Draft”). The Preliminary Draft establishes the legal framework and guidelines for the documentation, registration, and verification requirements of RECs, in compliance with the applicable provisions of Act 82-2010.<sup>4</sup> In the July 22, 2021 Resolution, the Energy

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<sup>1</sup> *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*, as amended (“Act 82-2010”).

<sup>2</sup> *The Puerto Rico Energy Transformation and RELIEF Act*, as amended (“Act 57-2014”).

<sup>3</sup> Act 57-2014, Article 6.3.

<sup>4</sup> *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*, as amended (“Act 82-2010”).



Bureau invited interested parties and the public to submit informal comments on the Preliminary Draft. As part of the informal process, the Energy Bureau received written comments from the following persons or entities: (1) Mr. Víctor L. González;<sup>5</sup> (2) Windmar Renewable Energy, PV Properties, and Windmar PV Energy, (collectively, "Windmar");<sup>6</sup> (3) Independent Consumer Protection Office ("OIPC");<sup>7</sup> (4) Institute of Economic Competitiveness and Sustainability of Puerto Rico ("ICSE");<sup>8</sup> (5) Solar and Energy Storage Association of Puerto Rico ("SESA");<sup>9</sup> and (6) LUMA Energy, LLC, and LUMA Energy ServCo, LLC, (collectively, "LUMA").<sup>10</sup>

On October 21, 2021, the Energy Bureau issued a Resolution and Order ("October 21, 2021 Resolution") to commence the formal regulation process as established in Act 38-2017,<sup>11</sup> as amended. As part of the October 21, 2021 Resolution, the Energy Bureau published the proposed *Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio Puerto Rico* ("Proposed Regulation") and set the period to provide comments. The Energy Bureau also published a timely notice on the regulation process in a newspaper of general circulation to give the general public the opportunity to present their comments regarding the Proposed Regulation, in compliance with the applicable regulations and legislation. The Energy Bureau received formal comments from the following entities: (1) Windmar;<sup>12</sup> (2) ICSE;<sup>13</sup> (3) SESA;<sup>14</sup> and (4) LUMA.<sup>15</sup>

On November 10, 2023, the Energy Bureau issued a Resolution and Order ("November 10, 2023 Resolution") through which the Energy Bureau continued the informal process and published a revised version of the draft *Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico* ("Draft Regulation"). In the November 10, 2023 Resolution, the Energy Bureau also invited interested parties and the public to submit informal comments on the Draft Regulation. The Energy Bureau received

<sup>5</sup> Email from Mr. Víctor L. González received before the Energy Bureau on July 27, 2021. In his email, Mr. González included an Excel file and a PDF file with information in support of his comments.

<sup>6</sup> Windmar, August 3, 2021. *Solicitud de Comentarios Informales sobre Borrador Preliminar* ("Windmar Aug. 2021 Comments").

<sup>7</sup> OIPC, August 30, 2021. *Comentarios al Borrador Preliminar del Reglamento Sobre el Mercado de Certificados de Energía Renovable/ Caso Num. NEPR-MI-2021-0011*. ("OIPC Aug. 2021 Comments").

<sup>8</sup> ICSE, August 30, 2021. *Comentarios del Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico sobre el Reglamento Propuesto de Mercado de Certificados de Energía Renovable en Puerto Rico* (ISCE Aug. 2021 Comments).

<sup>9</sup> Solar and Energy Storage Association of Puerto Rico (SESA), August 30, 2021. *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* ("SESA Aug. 2021 Comments").

<sup>10</sup> LUMA, August 30, 2021. *Market Regulations for Renewable Energy Certificates and Compliance with the Puerto Rico Renewable Energy Portfolio* ("LUMA Aug. 2021 Comments").

<sup>11</sup> Known as the *Administrative Procedure Act of the Government of Puerto Rico*, as amended.

<sup>12</sup> Windmar, November 22, 2021. *Comparecencia de Windmar Renewable Energy, PV Properties y Windmar PV Energy (Windmar) con Relación al Reglamento de Mercado de Certificados de Energía Renovable y Cumplimiento con la Cartera de energía Renovable de Puerto Rico* ("Windmar Nov. 2021 Comments").

<sup>13</sup> ICSE, November 22, 2021. Informative Motion.

<sup>14</sup> Solar and Energy Storage Association of Puerto Rico (SESA), November 18, 2021. *Comments by SESA to proposed "Regulation on Renewable Energy Certificates Market and Compliance with Renewable Portfolio Standard of Puerto Rico"* ("SESA Nov. 2021 Comments").

<sup>15</sup> LUMA, November 20, 2021. *Motion Submitting Comments on Proposed Regulation* ("LUMA Nov. 2021 Comments").



written comments from the following entities: (1) OIPC;<sup>16</sup> (2) Windmar;<sup>17</sup> and (3) Marahu Solar LLC.<sup>18</sup>

On May 8, 2024, the Energy Bureau issued a Resolution and Order (“May 8, 2024 Resolution”) through which the Energy Bureau initiated the formal rulemaking process and published a revised version of the draft *Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico* (“Revised Proposed Regulation”). In accordance with Act 38-2017, as amended, the Energy Bureau published a public notice of rulemaking and invited interested parties and the public to submit comments on the Revised Proposed Regulation. The Energy Bureau received written comments from the following entities: (1) OIPC;<sup>19</sup> (2) Windmar;<sup>20</sup> (3) LUMA,<sup>21</sup> (4) SESA,<sup>22</sup> and (5) Coqui Power.<sup>23</sup> On July 10<sup>th</sup>, 2024, the Energy Bureau held a public hearing.

In response to stakeholder feedback, the Energy Bureau made several modifications and additional clarifications to the Revised Proposed Regulation. This Resolution and Order summarizes stakeholder comments and recommendations received and provides context for the modifications to the Revised Proposed Regulation. The Energy Bureau received stakeholder comments on previous regulation drafts and considered stakeholder recommendations and feedback in each subsequent draft. This Resolution and Order issues the final *Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico* (“RPS Regulation”), included as Attachment 1.

The Energy Bureau clarifies that the formal rulemaking procedure for the adoption of the regulation that is the subject of this resolution commenced on May 8, 2024, with the issuance of the public notice dated May 15, 2024. The information obtained in prior formal rulemaking procedures on the same subject matter, which were not completed, as well as informal rulemaking processes, informed the procedure commenced on May 8, 2024. However, such prior procedures shall not be construed as being part of this formal rulemaking procedure.

### III. Discussion and Findings by Topic Area

#### A. Regulatory Process

##### a) Stakeholder Comments

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<sup>16</sup> OIPC, November 30, 2023. *Comentarios al borrador preliminar del reglamento sobre el mercado de certificados de energía renovable/ caso núm. NEPR-MI-2021-0011* (“OIPC Nov. 2023 Comments”).

<sup>17</sup> Windmar, November 28, 2023. *Windmar Comments to Proposed Regulation Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico*. (“Windmar Nov. 2023 Comments”).

<sup>18</sup> Marahu Solar, LLC, November 10, 2023. *Comentarios al borrador de la Regulación de Certificados de Energía Renovable y Cumplimiento con el Portafolio de Energía Renovable de Puerto Rico*. (“Marahu Nov. 2023 Comments”).

<sup>19</sup> OIPC, June 13, 2024. *Comentarios de la Oficina Independiente de Protección al Consumidor/ caso núm. NEPR-MI-2021-0011* (“OIPC June. 2024 Comments”).

<sup>20</sup> Windmar, June 13, 2024. *Comparecencia de Windmar Renewable Energy con Relación a Reglamento de Certificados de Energía Renovable y Cumplimiento con la Cartera de Energía Renovable de Puerto Rico*. (“Windmar June. 2024 Comments”).

<sup>21</sup> LUMA June 13, 2024. *Motion Submitting Comments on the Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico*. (“LUMA June 2024 Comments”).

<sup>22</sup> SESA June 14, 2024. *SESA Comments on RPS Reg June 2024*. (“SESA June 2024 Comments”).

<sup>23</sup> Coqui Power, June 14, 2024. *Formal Comments regarding the Draft of the Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico*. (“Coqui Power June 2024 Comments”).



SESA recommends additional process and stakeholder discussion before adoption of the final REC regulation and recommends a professionally facilitated process.<sup>24</sup>

b) Discussion

The Energy Bureau finds that the benefits of stakeholder workshops or additional stakeholder processes do not outweigh the real costs of further delaying the implementation of the REC regulation. Commenters do not sufficiently show the need for workshops, stakeholder discussions, or public hearings.

The Energy Bureau has provided multiple opportunities for stakeholders and the general public to submit comments. These comments have been evaluated and are reflected in the Final Regulation.

**B. Definitions**

**1. Retail Energy Provider**

Section 1.08 of the Revised Proposed Regulation defines “Retail Energy Provider”:

1. Retail Energy Provider—means PREPA or any other Person that sells energy at retail and that has sold more than fifty thousand (50,000) megawatt-hours (MWh) of electric energy to consumers of electric energy in Puerto Rico during the previous calendar year or that plans to sell said amount during the current year, excluding any such provider that does not generate or have control over the procurement of the energy resources it transmits or distributes. To determine if a Person is a Retail Energy Provider, the retail energy sales in Puerto Rico of any affiliate of the Person will be considered. Any company that controls or manages, is controlled or managed by, or is subject to common control or management, by a Retail Energy Provider shall be considered an “affiliate.” The term Retail Energy Provider does not include an Energy Producer whose energy is intended for resale, or the T&D Operator so long as it does not generate or have control over the procurement of energy resources. If the definition of Retail Electricity Supplier is altered in Act 82-2010, as amended, the definition in this regulation shall reflect what is in force in public policy.

a) Stakeholder Comments

Several parties expressed concerns with the definition of Retail Energy Provider. SESA points out that definition excludes a provider that does not generate or have control over the procurement of the energy resources it transmits or distributes. “But neither PREPA nor LUMA currently control procurement, so that language would legally exclude them from definition, rendering them both to be unbound by RPS. This rule needs to establish complete clarity on what entity is specifically bound by the important RPS law”<sup>25</sup>

b) Discussion

The definition of “Retail Energy Provider” clearly states that it includes PREPA. Therefore, having the specific inclusion of PREPA is sufficient to interpret that PREPA is bound to any dispositions in the Revised Proposed Regulation applicable to Retail Energy Providers.

**C. Renewable Energy Certificates**

**1. Minimum REC Value**

<sup>24</sup> SESA June 2024 Comments, pp. 2.

<sup>25</sup> SESA June 2024 Comments, p 4.



The RPS Statute enables the Energy Bureau to set the minimum REC value.<sup>26</sup> Section 2.05 of the Revised Proposed Regulation states that the minimum REC Value is one cent (\$0.01) per MWh and that the Energy Bureau will review the minimum REC value at least every three years.

a) Stakeholder Comments

LUMA reiterates its position that not establishing a minimum REC price is most appropriate. However, if a minimum price is set, LUMA recommends that the REC minimum price should be set at one cent (\$0.01) per MWh to enable lowest possible cost of electricity to customers.<sup>27</sup> LUMA points out that a minimum REC price is unnecessary to incentivize development "[b]ecause of the relative economics both of the incumbent asset base of the Puerto Rico electricity system and of new renewable energy alternatives, many of these future renewable energy projects in Puerto Rico are likely to attract sufficient capital without requiring any market-distorting value to be attributed to RECs."<sup>28</sup> LUMA further adds that "it is likely that a sizable portion of any additional costs from non-zero REC prices would be passed on from REPS [Retail Energy Providers] to Puerto Rico electricity customers, potentially resulting in higher electricity rates driven by higher-than-required returns for REC suppliers."<sup>29</sup>

SESA reiterates its concerns about the minimum REC value<sup>30</sup> arguing that the "[e]ntire rule is essentially meaningless given its core content of proposing somewhere between a \$0 and \$1 per Renewable Energy Credit (REC)."<sup>31</sup> SESA further states that Act 17-2019 establishes the only financial penalty for noncompliance with the RPS is two times the value of RECs and so the effect of a minimum price at \$0 or \$1 per MWh would be to convert mandatory RPS into a "voluntary unenforceable suggestion." SESA recommends a minimum price based on the societal cost of carbon (SCC),<sup>32</sup> and asks that the Energy Bureau clearly indicate potential sanctions for non-compliance.<sup>33</sup>

Windmar argues for a minimum REC price based on the SCC and states that the minimum REC price of \$1 per MWh is unsupported.<sup>34</sup> Windmar further argues that since PREPA is the primary buyer of RECs, the usual supply/demand principles don't apply, and therefore eliminating or lowering the REC value to \$1 per MWh has the same effect as if there was no demand for RECs.<sup>35</sup> Windmar contends that the price of RECs should have a "rational basis" and recommends the Energy Bureau consider its previous recommendations in this proceeding, as different generation plants have different emissions factors, and thus have different societal costs per MWh of electricity generated.<sup>36</sup>

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<sup>26</sup> Act 82-2010. Section 2.8: "The minimum value of each REC shall be the value established by the Bureau when conducting any legal business with the same, without impairment to any vested right held by the parties prior to the approval of the Puerto Rico Energy Public Policy Act."

<sup>27</sup> LUMA June 2024 Comments, p 4.

<sup>28</sup> Luma June 2024 Comments p 5.

<sup>29</sup> LUMA June 2024 Comments, p. 5

<sup>30</sup> SESA Aug. 2021 Comments, pp. 6-7.

<sup>31</sup> SESA June 2024 Comments, p 1-2.

<sup>32</sup> SESA June 2024 Comments, p 4-7.

<sup>33</sup> SESA June 2024 Comments, p 5.

<sup>34</sup> Windmar June 2024 Comments, p 6.

<sup>35</sup> Windmar June 2024 Comments, p. 15.

<sup>36</sup> *Id.* p. 6.



OPIC recommends the Energy Bureau specify the factors considered to determine the minimum price.<sup>37</sup>

b) Discussion

The Energy Bureau disagrees with SESA and Windmar's argument that the minimum price should be based on the SCC. The Energy Bureau emphasizes that the regulation sets a minimum REC price. This price does not preclude the renewable energy providers from charging a higher price to potential buyers, that the market can bear, for the RECs they have generated or will generate.

Given the current energy and renewable market conditions in Puerto Rico,<sup>38</sup> setting a high minimum REC value is not needed to further facilitate the development of new renewables and would likely increase the cost of renewable electricity to customers, as discussed in LUMA's June 2024 comments. Maintaining the conditions to determine an increase in the cost of electricity for customers remains one of the pillars of the public policy and energy laws in Puerto Rico. Therefore, the minimum REC price set by regulation shall be one cent (\$0.01) per MWh.

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*Jim* The Energy Bureau views the issues of fines for non-compliance and the minimum REC price to be distinct issues. Act 82-2010 establishes the *minimum* financial penalty for noncompliance. While the minimum fine for noncompliance may, in some instances, be determined by the minimum REC price, the Energy Bureau has authority to impose higher fines. Section 4.06.b3 of the Proposed Regulation states [emphasis added] "The minimum fine will be equal to two times the multiplication of the level of non-compliance with the Renewable Energy Portfolio, as calculated in paragraph (2) above, and the minimum value of the RECs in force during the calendar year under review."

**2. REC Pricing**

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*ABM* Section 2.01 of the Revised Proposed Regulation establishes that contracts for the sale of renewable energy between PREPA or the T&D Operator and a Utility-Scale Renewable Power Producer or Virtual Power Plant will include the RECs generated in the price of the purchased energy. The Revised Proposed Regulation further states that existing contracts with clauses specifying the price of the REC is separated from the price of energy will maintain such clauses until renegotiation or renewal, on which the price of purchased energy will include the REC.

a) Stakeholder Comments

*ADN* Windmar argues against grouping or bundling of energy and RECs, noting that the Bureau does not have the authority to "decapitate" RECs as an independent asset, thus eliminating its value and legal existence.<sup>39</sup> Windmar argues that if PREPA is not required to purchase RECs there doesn't exist a buyer in the jurisdiction for RECS at their market value,<sup>40</sup> and further argues that requiring RECs to be included in the price of energy purchased is de facto setting the RECs price to \$0 per MWh. Windmar also provided comments against bundling on previous drafts of the regulation and emphasizes the importance of clear, transparent prices for creating a RECs market. Windmar argues that including the environmental and social attributes of RECs in the price of electricity creates confusion.

<sup>37</sup> OPIC June 2024 Comments, p. 3.

<sup>38</sup> The development of renewable generating capacity is facilitated by PREPA's renewable tranche procurement process as mandated by the Integrated Resource Plan (IRP) and the Modified Action Plan. Over the course of six procurement tranches, PREPA is expected to seek proposals to develop, operate, and maintain renewable energy projects totaling 3,750 MWs.

<sup>39</sup> Windmar June 2024 comments, p. 3.

<sup>40</sup> Windmar June 2024 comments, p. 9.



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SESA requests that the Bureau explain who establishes the "pre-established rate indexed to a pre-established long term," how indexing happens, and what the length is of a pre-established term, among other questions relating to Renewable Energy Purchase Agreements; SESA also recommends that such items would be best determined through interactive stakeholder participation.<sup>41</sup> SESA further argues that requiring the price of energy purchased to include the value of RECs goes against the "nature of what a REC is: a mechanism to incentivize renewables deployment," and asserts that defining the minimum value of a REC as \$0 would make the RPS "de facto unenforceable."<sup>42</sup> SESA has previously commented that there is a difference between the price of power and the RECs environmental attributes and that bundling RECs and the price of power devalues RECs to zero and is thus "contrary to the will of the legislature and the nature of what a REC is, as a mechanism to incentivize renewables deployment."<sup>43</sup>

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Coqui Power argues that bundled RECs may not result in the most optimal project financing, thus resulting in higher costs to ratepayers, because RECs "improve the marketability of tax attributes, effectively reducing the cost of tax-equity capital, and thus reducing the energy cost achievable for a given project."<sup>44</sup> It further states that renewable energy developers typically bid projects assuming transferability of RECs to tax equity partners and recommends the Energy Bureau allow renewable energy producers to maintain the RECs in order to obtain the lowest-cost capital for building projects.<sup>45</sup> In addition, it argues that including RECs in price of energy is the same as setting the REC price at \$0.<sup>46</sup>

b) Discussion

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As discussed in Section 1.03 of the Revised Proposed Regulation, the goals of the REC regulation are to create "a stable and predictable regulatory framework capable of promoting and making renewable energy generation activity viable" and to enforce compliance by Retail Energy Providers with the RPS. Act 82-2010 establishes that it is the Energy Bureau's responsibility to "draft and implement strategies designed to achieve, whether directly or indirectly, the objectives of [Act 82-2010], including achieving the goal of reducing and stabilizing energy costs and control electricity price volatility in Puerto Rico."<sup>47</sup>

The Energy Bureau finds it is unnecessary to separate the REC price from the price of power in Renewable Energy Purchase Agreements. The regulation does not limit the form of contracts between generators and other potential purchasers of energy and/or RECs. The Energy Bureau does not agree with Windmar that bundling reduces the value of RECs to \$0. Rather, the regulation requires that the price of the RECs be embedded in the total contract price. The Energy Bureau does not agree with SESA's argument that including the REC price in the price of purchased power is contrary to the idea of a REC as a mechanism to incentivize renewable development. As LUMA discusses in its June 2024 comments, because of the economics of the Puerto Rico electricity system, the relative price of new renewable energy projects, and the IRP efforts overseen by the Energy Bureau, additional financial incentive is not needed to promote renewable development. Additionally, the RPS sets a requirement for renewable energy procurement, which is sufficient to incentivize contracting for these resources. Further, bundling the price of energy and RECs is a common practice in other jurisdictions.

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<sup>41</sup> SESA June 2024 Comments, p. 4.

<sup>42</sup> SESA June 2024 Comments, p. 5.

<sup>43</sup> SESA Nov. 2021 Comments, pp. 7-8.

<sup>44</sup> Coqui Power. June 2024 Comments, p. 1.

<sup>45</sup> *Id.* p.2

<sup>46</sup> *Id.* p.1.

<sup>47</sup> 82-2010 Section 2.4e



Coqui Power's arguments for the transference of RECs to tax equity partners contradicts the objective of the RPS. Transference of RECs outside of Puerto Rico means the energy generated cannot count towards RPS goals. For renewable energy generation to count towards fulfillment of the RPS, the RECs associated with the renewable energy generation under contract to PREPA must be transferred to PREPA and then retired.

Similarly, regarding compliance reporting and non-compliance justification, the Energy Bureau does not find it necessary to disaggregate the price of RECs from the price of purchased power to comply with the reporting requirements in Section 3.06 of the Proposed Regulation. Retail Energy Providers must break out the price of purchased energy and purchased RECs only if the RECs are purchased separately from the energy.

### 3. Distributed Renewable Energy RECs

Section 2.02c of the Revised Proposed Regulation states that Distributed Renewable Energy is eligible to be registered with the Renewables Registry and specifies that generation from systems less than or equal to 100 kW<sub>DC</sub> shall be measured using built-in measurement systems.


#### a) Stakeholder Comments

SESA interprets Section 2.02c to mean that systems larger than 100kW are not required to be metered and argues that the best practice for implementing REC valuation for small systems is to estimate production using tools such as the National Renewable Energy Laboratory's PV Watts calculator, and to purchase future production up front.<sup>48</sup>

SESA recommends the Bureau require utilities to purchase 10 years of production from systems under 25kW in size, thus providing the customer with an up-front rebate and the utility with the predictability of having RECs for future compliance years.<sup>49</sup>


 OIPC recommends that the regulation clearly lay out the process for accreditation and for energy providers to pay prosumers for their RECs.<sup>50</sup>


#### b) Discussion

 The North American Registry provides the requirements for the registration of RECs from customer sited generation. Section 2.02.c is **UPDATED** thus, "The Distributed Renewable Energy generated by Prosumers or by Producers of Distributed Renewable Energy can be registered with the North American Renewables Registry according to the current NAR operating procedures."<sup>51</sup>

### 4. Treatment of Previously Generated RECs

#### a) Stakeholder Comments


 Windmar argues that RECs produced before this regulation should be grandfathered since the absence of a market and regulation impeded the REC owners from selling RECs during the time that the RPS law was in place.<sup>52</sup>

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48 SESA June 2024 Comments, p. 6.

49 *Ibid.*

 50 OIPC June 2024 Comments, p 3.

51 Regulation of Renewable Energy Certificates and Compliance with the Renewable Energy Portfolio of Puerto Rico ("RPS Regulation"), Sec. 2.02.c.

52 Windmar June 2024 Comments, p. 14.



b) Discussion

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Grandfathering of previously generated RECs is not in the ratepayer interest; nor does it serve the primary purpose of the RPS mandate, which is to create a market and compliance mechanism to increase the amount of renewable energy in Puerto Rico up to the annual targets in each year. The creation and use of RECs from renewable energy generated in past years for Puerto Rico RPS compliance does not align with public policy to promote and accurately account for the generation of renewable energy to meet these compliance requirements. RECs generated before compliance requirements begin for the Puerto Rico RPS can be sold to any willing buyer, so this approach does not limit the rights of producers to sell RECs. Further, the treatment of previously generated RECs as discussed in the Revised Proposed Regulation is consistent with Act 82-2010, Section 2.11d. Therefore, the Energy Bureau determines that it is consistent with the public interest to maintain the language regarding the treatment of previously generated RECs.

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As clarified in Section 1, the Energy Bureau expects the first compliance period regarding this regulation to be calendar year 2025. All RECs generated in 2025 are likely to be eligible for use for compliance with this regulation.

**D. Compliance with Renewable Energy Portfolio Standard**

**1. Renewable Energy Portfolio**

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Section 3.01 of the regulation determines the percentage of Sustainable Renewable Energy or Alternative Renewable Energy applicable to each Retail Energy Provider.

a) Discussion

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This Section 3.01 of the regulation was updated in accordance with the RPS Statute amendments as of March 19, 2025.

**2. Distributed Generation Allowance Credit**

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The regulation creates a Distributed Generation Allowance Credit (DGAC) that accounts for the contribution of distributed renewable generation to the total amount of renewable energy generated in Puerto Rico that would otherwise not be counted. The DGAC does this by adjusting PREPA's RPS obligations to account for renewable energy generated by distributed generation, if the associated RECs have not been registered.

a) Stakeholder Comments

LUMA interprets the regulation as the intention of the Energy Bureau to not allow renewable distributed generation to generate RECs.<sup>53</sup>

Windmar argues that the DGAC takes RECs from consumers and gives them to LUMA. Windmar states the Energy Bureau lacks the authority to change the law, which clearly states RECs belong to whoever generated them.<sup>54</sup> Windmar further notes that there are grid and economic benefits from prosumers with distributed generation (including photovoltaic solar and battery energy storage systems) and an adequate REC price would constitute an incentive for even more prosumers to connect to the grid;<sup>55</sup> Windmar argues that prosumers should be paid \$35 per REC.<sup>56</sup>

<sup>53</sup> LUMA June 2024 Comments, p. 6.

<sup>54</sup> Windmar June 2024 Comments, p.3.

<sup>55</sup> Windmar June 2024 Comments, p.11-12.

<sup>56</sup> Windmar June 2024 Comments, p.12.



b) Discussion

The Energy Bureau notes that all renewable generation from a prosumer should be eligible to generate RECs, whether or not it is directly consumed by the household or building or exported to the grid. Therefore, the Energy Bureau **CLARIFIES** all energy generated that meets the definition of renewable energy is eligible to produce RECs.

Further, the Energy Bureau **CLARIFIES** that the DGAC is consistent with the principle that RECs belong to whoever generated them, unless the producer chooses to sell or otherwise transfer them. The creation of the DGAC does not impact the rights of prosumers to the environmental and social attributes of their generation. Rather, the DGAC allows for the accounting of distributed renewable energy that was generated in Puerto Rico and was not registered in the Renewable Registry. The purpose of this is to accurately account for renewable generation that has not been registered in the Renewables Registry. If a prosumer registers their generation in the Renewables Registry, this generation will be excluded from the DGAC. The DGAC protects the rights of prosumers while providing a method to account for the contribution of distributed renewable generation to the achievement of renewable energy goals in Puerto Rico.

The DGAC is used to calculate the total amount of Renewable Energy required from PREPA in a given year. The DGAC is calculated by subtracting the RECs associated with distributed renewable energy generation in Puerto Rico from the total MWh of distributed renewable energy, which is estimated by T&D Operator on an annual basis, then multiplying the total by a factor equal to one hundred percent (100%) minus the Renewable Energy Portfolio obligation for the given year. Notably, the total estimated distributed renewable energy includes both energy exported to the grid and energy consumed behind the meter, as measured by the solar facility's existing inverter or meter.

The DGAC allows PREPA's RPS obligations to account for distributed renewable energy that was generated and reduce its renewable energy requirement accordingly. PREPA can only do so when prosumers do not choose to register their RECs. Should a prosumer register the RECs associated with their generation in the Renewable Registry, PREPA will not be able to include these RECs in its calculation of the DGAC and would need to purchase the RECs in order to meet its (larger) REC obligation.

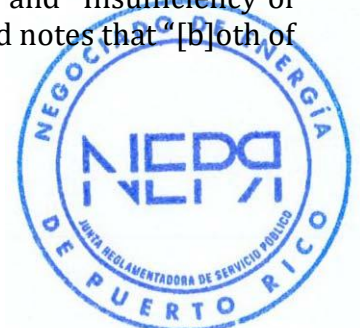
The Energy Bureau notes that the DGAC is separate from the Renewable Energy Acquisition Report as discussed in Section 3.04 of the Revised Proposed Regulation. Whereas the Renewable Energy Acquisition Report must include proof that Retail Energy Provider has acquired the rights to all the Environmental and Social Attributes of the energy, in contrast, the DGAC does not include the transfer of the right to the Environmental and Social attributes. The DGAC is not a compliance method but is instead used in calculating the amount of renewable energy required from PREPA in a given year.

3. **Justifications for Non-Compliance**

Section 4.04 of the Revised Proposed Regulation discusses justifications for non-compliance and states that 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." The Revised Proposed Regulation lists eight (8) justifications, including force majeure and availability of renewable energy capacity.

a) Stakeholder Comments

SESA recommends that the list of justifications for non-compliance be revisited. SESA recommends revisiting "Insufficiency of Renewable Energy Sources" and "Insufficiency of Renewable Energy Providers" as justifications for non-compliance, and notes that "[b]oth of



these would be the result of a utility not trying to procure renewable energy in the first place.”<sup>57</sup>

b) Discussion

The Energy Bureau elects not to accept SESA’s recommendation to exclude “Insufficiency of Renewable Energy Sources” and “Insufficiency of Renewable Energy Providers” from the list of justifications for non-compliance and affirms the language of Section 4.04.e and Section 4.04.f. Retail Energy Providers must make a good-faith effort to comply with the RPS, including issuing bids for the development of renewable resources. However, the development of these projects takes time and current renewable energy generation is relatively low.

Both reasons are listed on Act 82-2010, Article 2.14, 12 LPRA § 8133, as valid justification for non-compliance with the RPS. Moreover, Article 2.14(d), grants the Energy Bureau the authority to establish additional justifications through regulation

c) Excessive Cost Definition

Section 4.04(B) of the Revised Proposed Regulation shall read as follows:

- B. For the purposes of this Section, 'excessive cost' refers to a cost that imposes an unreasonable burden on the Retail Energy Provider relative to the prevailing circumstances at the time the justification is invoked. The determination of whether a cost is excessive shall be made based on factors such as the concurrent REC market conditions and broader economic conditions in Puerto Rico.*

A reasonable standard for the analysis of the justifications for non-compliance that allows the consideration of circumstances which may deem a price excessively high is needed. The definition of “excessive cost” provided allows any retail energy provider to have the opportunity to effectively defend the justification. In turn, the Energy Bureau would be able to reach a determination with a more thorough and fair analysis.

**4. Fines for Non-compliance**

As discussed in Section 4.05 of the revised proposed regulation, the Energy Bureau will evaluate the response to the Initial Notice of Non-Compliance and issue a Final Resolution. If the Energy Bureau finds that the Retail Energy Provider did not provide adequate justification for non-compliance, Section 4.06a establishes a “fine to be imposed on the Retail Energy Provider.” As discussed earlier in this Resolution and Order, the minimum fine will be equal to two times the multiplication of the level of non-compliance and the minimum value of the RECs in force during the calendar year in review.

a) Stakeholder Comments

SESA argues for the importance of “clearly established financial amounts for noncompliance” and argues that a minimum REC price of \$0 or \$1 per MWh would effectively convert Puerto Rico’s mandatory RPS to a voluntary RPS, based on the premise that two times the minimum REC price is the only legal financial penalty for noncompliance.<sup>58</sup> SESA notes that since the law is silent on how any fines collected for non-compliance should be used, it must be clarified that any fines collected are to be invested in renewable energy development.<sup>59</sup>

<sup>57</sup> SESA June 2024 Comments, p. 7-8.

<sup>58</sup> SESA June 2024 Comments, pp. 2-3.

<sup>59</sup> *Id.* p 8.



b) Discussion

Consistent with Act 84-2010, the Energy Bureau maintains broad regulatory powers, including those “necessary and convenient” to comply with the requirements of the Act. The Energy Bureau may levy fines or penalties or take other regulatory action to promote RPS compliance. If the Energy Bureau does collect such fines, it will determine how to best use the funds to enhance compliance with the RPS or other public purpose.

**E. Alternate Renewable Energy Definition**

Section 1.08 (B) (1) of the Regulation defines the term Alternative Renewable Energy.


**1. Discussion**

Section 1.08(B)(1) of the Regulation defines the term Alternative Renewable Energy. This provision was amended to incorporate the amendments introduced by Act 92-2025, which modified Article 1.4 of Act 82-2010. Specifically, subsection (13) of Article 1.4 of Act 82-2010 was amended to add a new subparagraph (d), which recognizes as Alternative Renewable Energy the combustion of hydrogen that is not derived from fossil fuels, commonly referred to as green hydrogen.

**F. Interim Informational Reporting Prior to 2050**


The Energy Bureau notes that, as revised, Section 3.01 of the Regulation establishes a Renewable Energy Portfolio goal of one hundred percent (100%) renewable energy by the year 2050, without establishing intermediate annual percentage targets. In light of the absence of such interim targets between the effective date of this Regulation and the year 2050, the Energy Bureau determined that the reporting and compliance framework originally designed to certify annual compliance with specific Renewable Energy Portfolio percentages would not be applicable during this interim period. Accordingly, the Energy Bureau has added Section 3.10, titled “*Interim Informational Reporting Prior to 2050*,” to clarify that Retail Energy Providers are not required to submit the Annual Compliance Report or the Renewable Energy Acquisition Report for purposes of demonstrating annual compliance prior to 2050. Instead, Section 3.10 establishes an informational reporting mechanism intended solely to allow the Energy Bureau to monitor the progress made in the integration of renewable energy resources and the advancement toward the Renewable Energy Portfolio goal established for 2050.

Be it notified and published.



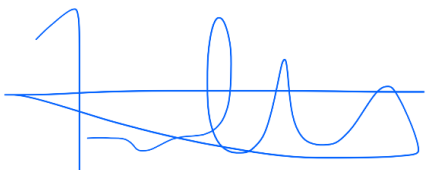
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Edison Avilés Deliz  
Chairman



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Lillian Mateo Santos  
Associate Commissioner



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Ferdinand A. Ramos Soegaard  
Associate Commissioner



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Sylvia B. Ugarte Araujo  
Associate Commissioner



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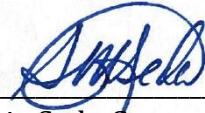
Antonio Torres Miranda  
Associate Commissioner



## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 1st, 2026. I also certify that on May 1st, 2026, I have proceeded with the filing of the Resolution and Order and a copy of this Resolution and Order was notified by electronic mail to dan@energytransitioncapital.com; karen.ortiz@aes.com; hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; laura.rozas@us.dlapiper.com; info@sesapr.org; victorluisgonzalez@yahoo.com; regulatory@genera-pr.com; alexis.rivera@prepa.pr.gov.

For the record, I sign this in San Juan, Puerto Rico, today May 1st, 2026.



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Sonia Seda Gaztambide  
Clerk

