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NEGOCIADO DE ENERGÍA DE PUERTO RICO

IN RE: REGLAMTENTO DE INTERCONEXIÓN	**NÚM.: NEPR-MI-2019-0009** **ASUNTO: MOCIÓN SOMETIENDO COMENTARIOS DE LA OFICINA INDEPENDIENTE DE PROTECCIÓN AL CONSUMIDOR (OIPC) AL BORRADOR PRELIMINAR REVISADO DEL REGLAMENTO DE INTERCONEXIÓN**

MOCIÓN SOMETIENDO COMENTARIOS DE LA OFICINA INDEPENDIENTE DE PROTECCIÓN AL CONSUMIDOR (OIPC) AL BORRADOR PRELIMINAR REVISADO DEL REGLAMENTO DE INTERCONEXIÓN

AL HONORABLE NEGOCIADO:

Comparece la Oficina Independiente de Protección al Consumidor de la Junta Reglamentadora de Servicio Público (en adelante, OIPC), por conducto de los abogados que suscriben, quienes con el debido respeto **EXPONEN, ALEGAN** y **SOLICITAN**:

1. El 13 de julio de 2026, el Negociado de Energía de la Junta Reglamentadora de Servicio Público (en adelante, "Negociado") emitió una *Resolución y Orden* en los casos consolidados NEPR-MI-2019-0009 y NEPR-MI-2018-0008, mediante la cual notificó la disponibilidad de un Borrador Preliminar Revisado del Reglamento de Interconexión.

2. Asimismo, el Negociado invitó a todas las partes interesadas y demás personas o grupos interesados a someter sus comentarios y recomendaciones sobre dicho borrador en o antes del 14 de agosto de 2026.

3. En cumplimiento con lo dispuesto por este Honorable Negociado y en el descargo de sus responsabilidades de representar y proteger los intereses de los consumidores del servicio

eléctrico, la OIPC somete ante este Foro sus Comentarios y Recomendaciones al Borrador Preliminar Revisado del Reglamento de Interconexión.

POR TODO LO CUAL, la OIPC respetuosamente solicita que este Honorable Negociado tome conocimiento de los comentarios vertidos por la OIPC y acoja sus recomendaciones como parte del proceso de revisión y adopción del Reglamento de Interconexión.

RESPETUOSAMENTE SOMETIDO, en San Juan, Puerto Rico a 14 de agosto de 2026.

CERTIFICO, haber enviado copia fiel y exacta de este escrito a mvalle@gmlex.net; alexis.rivera@prepa.pr.gov; rcruzfranqui@gmlex.net; nzayas@gmlex.net; RegulatoryPREBorders@lumapr.com; katiuska.bolanoslugo@us.dlapiper.com; Laura.rozas@us.dlapiper.com; agustin.irizarry@upr.edu; javrua@sesapr.org; aconer.pr@gmail.com; John.jordan@nationalpfg.com; pjcleanenergy@gmail.com; cfl@mcvpr.com; mqs@mcvpr.com; gcordero@crmjv.com; Steven.rymsha@sunrun.com; azayas@azeng.net; jberdner@enphaseenergy.com; rbelur@enphaseenergy.com; mrosenfeldt@enphaseenergy.com; gferrer@enphaseenergy.com; kkoch@tesla.com; Andrew.Cote@generac.com; rmoody@cleanpower.com; axel.vargas.montanez@gmail.com.

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COMMENTS AND RECOMMENDATIONS OF THE INDEPENDENT CONSUMER PROTECTION OFFICE TO THE REVISED PRELIMINARY DRAFT OF THE DISTRIBUTED GENERATION AND MICROGRID INTERCONNECTION REGULATION

GENERAL RECOMMENDATIONS:

1. **OIPC Comment:**

The proposed Regulation establishes that the deadlines applicable to processes conducted before the utility will be calculated in business days. This provision is contrary to the public policy set forth in the *Government of Puerto Rico Uniform Administrative Procedure Act*, Act No. 38-2017, as amended, which mandates that administrative procedures be carried out in a manner that is rapid, fair, and economical, and whose provisions must be interpreted liberally to ensure efficiency and procedural promptness.

The use of business days instead of calendar days has the practical effect of unnecessarily prolonging processes before the utility, particularly in stages where agility is essential for the orderly and efficient development of interconnection projects. This delay is especially concerning given that, in contrast, the Regulation itself provides that deadlines for processes conducted before the Bureau will be calculated in calendar days, demonstrating a lack of administrative uniformity and creating uncertainty for interconnection customers.

OIPC Recommendation:

To comply with the public policy of procedural promptness and economy established in Act 38-2017, it is recommended that the Regulation specify that all deadlines applicable to processes before the utility be calculated in calendar days, except in exceptional circumstances that are duly justified. This harmonization will promote a more efficient, predictable procedure aligned with the current legal framework.

2. **OIPC Comment:**

The draft Regulation establishes multiple consequences, obligations, and sanctions applicable to the Interconnection Customer in the event of noncompliance during the various stages of the interconnection process. However, the regulatory text does not include equivalent provisions that clearly define the consequences applicable to the Electric Power System Operator (EPS) in the event of noncompliance with its obligations, deadlines, and responsibilities established in the Regulation.

While we recognize that Article 7.00, Section 7.01(B) provides that the Energy Bureau may fine the EPS Operator one thousand dollars ($1,000) per day for failing to comply with the time frames and other requirements set forth in this Regulation, these sanctions do not provide the consumer with an immediate remedy within the interconnection process. The imposition of such fines would require the consumer to initiate an adjudicatory proceeding before the Energy Bureau and to prove the EPS's noncompliance, adding procedural burden to the applicant and delaying the availability of timely corrective measures. The absence of such provisions creates an inequality that affects the transparency, legal certainty, and fairness of the interconnection process.

OIPC Recommendation:

Based on the foregoing grounds, it is recommended that the Energy Bureau include in the final version of the Regulation a clear and enforceable framework of consequences and corrective measures applicable to the EPS for noncompliance with regulatory terms and obligations, ensuring equitable treatment of all parties and timely protection for consumers within the interconnection process.

SPECIFIC COMMENTS AND RECOMMENDATIONS

1. Section 1.11 – Definition No. 39, "Minor System Modifications"

OIPC Comment:

The definition provides that the System Operator "may also deem other more substantial work, including the upgrade of transformers, as Minor System Modifications at its discretion." The purpose of a regulation is to establish clear and predictable standards governing the subject matter being regulated. Allowing the System Operator, at its sole discretion, to characterize unspecified "more substantial work" as a Minor System Modification creates unnecessary ambiguity and grants the System Operator overly broad discretion. Moreover, the reference to "more substantial work" appears inherently inconsistent with its classification as a "Minor System Modification."

OIPC Recommendation:

OIPC recommends deleting the phrase allowing the System Operator to deem other "more substantial work" to be Minor System Modifications at its discretion. Alternatively, the Regulation should establish clear and objective criteria identifying the circumstances under which additional work, including transformer upgrades, may qualify as a Minor System Modification.

2. Section 1.11 – Definition No. 41

OIPC Comment:

The language currently identified as Definition No. 41 appears to be a continuation of Definition No. 40 rather than a separate defined term.

OIPC Recommendation:

OIPC recommends incorporating the language currently identified as Definition No. 41 into Definition No. 40 and renumbering the remaining definitions accordingly.

3. Section 1.11 – Definition No. 64, "Small Inverter-Based System"

OIPC Comment:

Definition No. 63, "Simplified Process," provides that eligibility for such process is limited to a *Small Inverter-Based System*. In turn, Definition No. 64 currently defines a *Small Inverter-Based System* as a system having a Nameplate Rating of 50 kW or less and an Export Capacity of 25 kW or less.

However, Act 114-2007, known as *Puerto Rico Net Metering Program Act,* limits the Simplified Process to distributed generation systems with a generating capacity of 25 kW or less. Accordingly, limiting only the system's Export Capacity to 25 kW does not appear to satisfy the statutory limitation. As currently drafted, Definitions Nos. 63 and 64 could allow a system with a generating capacity greater than 25 kW, and up to 50 kW, to qualify for the Simplified Process merely because its Export Capacity is limited to 25 kW or less.

OIPC Recommendation:

OIPC recommends amending Definition No. 64 so that a *Small Inverter-Based System*, for purposes of eligibility under the Simplified Process, is limited to a Nameplate Rating of 25 kW or less and an Export Capacity of 25 kW or less, consistent with the generating-capacity limitation established by Act 114.

4. Section 1.11 – Definitions

OIPC Comment:

Article 5 of the Regulation establishes the Study Process and separately addresses the different studies that may be required as part of that process. Specifically, Section 5.03 governs the Feasibility Study, Section 5.04 governs the System Impact Study, and Section 5.05 governs the Facilities Study. Notwithstanding the distinct purpose and treatment afforded to each of these studies throughout Article 5, none of these terms is defined in Section 1.11.

Because each study constitutes a separate stage of the interconnection review process and may involve different scopes of review, costs, timelines, and consequences for the Interconnection Customer, their meaning should not have to be inferred solely from the substantive provisions of Article 5.

OIPC Recommendation:

OIPC recommends adding separate definitions for “Feasibility Study,” “System Impact Study,” and “Facilities Study” to Section 1.11. Each definition should clearly identify the purpose and general scope of the respective study and should be consistent with Sections 5.03, 5.04, and 5.05 of the Regulation.

5. Section 1.14 – Cyber Portal and Forms

OIPC Comment:

Section 1.14 provides that the Energy Bureau, with the recommendation of the EPS Operator, shall establish the paper and electronic forms necessary to implement the interconnection procedures established by the Regulation. These forms, together with the Cyber Portal, constitute the principal means through which Interconnection Customers will interact with the EPS Operator throughout the interconnection process.

Accordingly, the content, design, accessibility, and functionality of these forms may not only directly affect a customer’s ability to understand and successfully navigate the interconnection process but may also affect the customer’s substantive and procedural rights and obligations, depending on the representations, certifications, acknowledgments, conditions, or other requirements incorporated into such forms.

Given OIPC's statutory role in representing and protecting the interests of residential and small commercial consumers, its participation should be incorporated into the process for developing and revising the forms and customer-facing components of the Cyber Portal. The EPS Operator should not be the sole entity providing recommendations to the Energy Bureau regarding the documents and mechanisms through which consumers will be required to exercise their rights and comply with their obligations under the Regulation.

OIPC Recommendation:

OIPC recommends that Section 1.14 expressly require the EPS Operator to provide OIPC with a meaningful opportunity to review and provide comments and recommendations on all proposed paper and electronic forms, as well as the customer-facing components and functionality of the Cyber Portal, before their submission to the Energy Bureau for approval. The EPS Operator's submission should include OIPC's comments and recommendations, together with the EPS Operator's response to any recommendations that were not incorporated.

6. <u>Section 2.02 – Pre-Application Report and Interconnection Application Filing Mechanisms</u>

OIPC Comment:

Section 2.02 provides that "Pre-Application Report requests are generally not applicable to Small Inverter-Based Systems." The use of the term "generally" introduces unnecessary ambiguity as to whether, and under what circumstances, a Pre-Application Report may nevertheless be applicable to a Small Inverter-Based System.

The Regulation should establish clear and predictable standards governing the interconnection process rather than leave customers to determine what exceptions may be encompassed by the term "generally." If there are specific circumstances in which a Pre-Application Report is applicable to a Small Inverter-Based System, those circumstances should be expressly identified in the Regulation.

OIPC Recommendation:

OIPC recommends eliminating the term "generally" and expressly stating whether Pre-Application Reports are applicable to Small Inverter-Based Systems. If the Energy Bureau determines that such reports may be applicable under certain circumstances, Section 2.02

should specifically identify the circumstances or objective criteria under which a Pre-Application Report may be requested or required for a Small Inverter-Based System.

7. Section 2.02 – Pre-Application Report and Interconnection Application Filing Mechanisms

OIPC Comment:

Section 2.02(C) provides that the Pre-Application Report issued by the EPS Operator is "non-binding and confers no rights." OIPC understands that a Pre-Application Report should not confer upon the requesting customer any right to interconnect, reserve capacity, establish a queue position, or guarantee the subsequent approval of an Interconnection Application. However, characterizing the report broadly as "non-binding" may unnecessarily diminish the value and reliability of the very information that the customer is paying the EPS Operator to obtain.

The purpose of the Pre-Application Report is to provide the prospective Interconnection Customer with information regarding the conditions of the electric system at or near the proposed Point of Common Coupling so that the customer may evaluate the feasibility of a proposed project before incurring the additional costs associated with pursuing an interconnection. Indeed, the customer is required to pay a **$300** fee to obtain this information. If the EPS Operator is not accountable for the accuracy and reasonable reliability of the information provided as of the date of the report, the report provides the customer with little certainty upon which to make an informed investment decision.

OIPC recognizes that system conditions may change between the issuance of the Pre-Application Report and the filing or review of a subsequent Interconnection Application. Nevertheless, that possibility should be distinguished from allowing the EPS Operator to disclaim responsibility altogether for the information contained in the report.

OIPC Recommendation:

OIPC recommends clarifying Section 2.02(C) to provide that a Pre-Application Report does not confer a right to interconnect, reserve capacity, establish queue priority, or guarantee approval of a subsequent Interconnection Application, but that the EPS Operator shall be responsible for providing information that is accurate and based on the best available system data as of the date the report is issued.

If information contained in the Pre-Application Report materially changes before the subsequent Interconnection Application is reviewed, the EPS Operator should identify the changed information and explain the system condition or other circumstance that caused the change.

8. <u>Section 2.02 – Pre-Application Report and Interconnection Application Filing Mechanisms</u>

OIPC Comment:

Section 2.02(H) provides that a Pre-Application Report need only include existing data and further provides that, if the EPS Operator cannot complete all or any portion of the report due to a lack of available data, it shall provide the Interconnection Customer with the data that is available and identify the additional data that was not provided.

Merely identifying the data that is unavailable is insufficient. The EPS Operator should also be required to state the reason why such data is unavailable. This information is particularly relevant because the Interconnection Customer is paying a fee to obtain the Pre-Application Report and should be able to understand why the EPS Operator is unable to provide any of the information that would otherwise form part of that report. Requiring an explanation would also provide transparency as to whether the missing information results from the nature of the requested data, the absence of measurements or records, limitations in the EPS Operator's systems, or other circumstances.

OIPC Recommendation:

OIPC recommends amending Section 2.02(H) to require that, whenever the EPS Operator is unable to provide any data that would otherwise be included in the Pre-Application Report, the EPS Operator shall identify the unavailable data and provide the specific reason or reasons why such data is unavailable.

9. <u>Section 2.04(C) – Communications</u>

OIPC Comment:

Section 2.04(C) provides that the EPS Operator "may have several Interconnection Coordinators assigned based on the geographical size of its electrical service territory and/or the amount of Interconnection Applications." The use of the term "may" leaves entirely to the EPS Operator's discretion whether to assign additional Interconnection

Coordinators, even when the geographic scope of its service territory or the volume of Interconnection Applications may warrant additional personnel.

The Regulation should ensure that the EPS Operator maintains a sufficient number of Interconnection Coordinators to effectively perform the responsibilities assigned to them and to adequately manage the volume of Interconnection Applications within the applicable regulatory timelines. The requirement should therefore be tied to objective staffing or workload parameters rather than left solely to the EPS Operator's discretion.

OIPC Recommendation:

OIPC recommends replacing "may have" with "shall have" or "shall assign" and establishing objective criteria or minimum parameters requiring the EPS Operator to assign a sufficient number of Interconnection Coordinators based on factors such as the number of pending and incoming Interconnection Applications, applicable processing timelines, workload per coordinator, and the geographic scope of the service territory. These parameters should ensure that staffing levels are adequate to timely and effectively perform the functions required of the Interconnection Coordinator under the Regulation.

10. <u>Section 2.06(B) – Modification of the Interconnection Application</u>

OIPC Comment:

Section 2.06(B) provides that, "within ten (10) Business Days of receipt of a proposed modification, the EPS Operator shall evaluate whether a proposed modification constitutes a Material Modification." However, the Regulation does not establish the consequence if the EPS Operator fails to make or notify the Interconnection Customer of that determination within the prescribed ten (10) Business Day period.

The absence of a consequence for the EPS Operator's failure to comply with this deadline creates uncertainty for the Interconnection Customer and could result in unnecessary delays in the interconnection process. If the Regulation imposes a specific period within which the EPS Operator must determine whether a proposed modification is material, it should also establish what occurs when the EPS Operator fails to act within that period.

OIPC Recommendation:

OIPC recommends amending Section 2.06(B) to provide that, if the EPS Operator fails to notify the Interconnection Customer within ten (10) Business Days that the proposed modification constitutes a Material Modification, the proposed modification shall be deemed not to constitute a Material Modification, and the Interconnection Application shall continue to be processed without loss of queue position or other procedural rights.

11. Section 2.06(C) – Modification of the Interconnection Application

OIPC Comment:

Section 2.06(C) provides that, if a proposed modification is determined to constitute a Material Modification, the EPS Operator shall notify the Interconnection Customer in writing that the customer may either withdraw the proposed modification or proceed with a new Interconnection Application for such modification. However, the provision does not clearly state the procedural consequences associated with each option.

In particular, the Regulation should expressly clarify that, if the Interconnection Customer elects to withdraw the proposed Material Modification, the original Interconnection Application remains unaffected and retains its existing queue position and priority. Without such clarification, an Interconnection Customer may be uncertain as to whether merely proposing a modification that is subsequently determined to be material could adversely affect the original application or its queue position.

OIPC Recommendation:

OIPC recommends amending Section 2.06(C) to expressly provide that, if the Interconnection Customer withdraws the proposed Material Modification, the original Interconnection Application shall continue to be processed without any change to its existing queue position, priority, or other procedural rights. The Regulation should also clearly state the consequences of electing to proceed with a new Interconnection Application for the Material Modification, including the applicable queue position and treatment of the original Interconnection Application.

12. Section 2.06(E) – Modification of the Interconnection Application.

OIPC Comment:

Section 2.06(E) provides that disputes regarding the EPS Operator's determination as to whether a proposed modification constitutes a Material Modification shall proceed pursuant to Article 10 of the Regulation. Without prejudice to OIPC's comments and recommendations regarding the dispute resolution process established under Article 10, OIPC considers that any notification of such determination should clearly advise the Interconnection Customer of the applicable procedure available to challenge or contest the EPS Operator's determination.

More generally, whenever the Regulation requires the EPS Operator to issue a determination that may adversely affect an Interconnection Customer's rights or ability to proceed with the interconnection process, the corresponding written notification should contain the appropriate legal notice regarding the customer's right to challenge such determination and the procedure available to do so.

OIPC Recommendation:

OIPC recommends amending Section 2.06(E) to require that the written notification of the EPS Operator's determination include the applicable legal notice advising the Interconnection Customer of its right to challenge the determination, the procedure established under the Regulation for doing so, and any applicable deadlines. This recommendation is without prejudice to OIPC's comments and recommendations regarding the dispute resolution procedure ultimately established under Article 10.

13. Section 2.06(F) – Modification of the Interconnection Application

OIPC Comment:

Section 2.06(F) provides that "any modification to an Interconnection Application not agreed to in writing by the EPS Operator and the Interconnection Customer may be deemed a withdrawal of the Interconnection Application and may require submission of a new Interconnection Application." As drafted, the provision creates uncertainty regarding both the EPS Operator's obligation to act upon a proposed modification and the consequences when a modification is not accepted.

First, the Regulation should expressly require the EPS Operator to notify the Interconnection Customer in writing whether a proposed modification is accepted or rejected. A customer should not be prejudiced by the EPS Operator's failure to act or respond. Accordingly, where the EPS Operator fails to issue its determination within the applicable regulatory period, any consequence resulting from such inaction should operate in favor of the Interconnection Customer rather than result in the withdrawal of the application.

Second, the provision appears to treat the failure to reach agreement on a proposed modification as a potential withdrawal of the entire Interconnection Application. The mere proposal of a modification should not place the customer's existing application, queue position, or procedural rights at risk. If a proposed modification is not accepted or agreed upon, it is the proposed modification, rather than the underlying Interconnection Application, that should be deemed withdrawn. The original Interconnection Application should continue to be processed as previously submitted.

OIPC Recommendation:

OIPC recommends amending Section 2.06(F) to:

a. require the EPS Operator to provide written notice of its acceptance or rejection of any proposed modification within the applicable regulatory period;

b. provide that, if the EPS Operator fails to issue such written determination within that period, the proposed modification shall be deemed accepted; and

c. clarify that, if a proposed modification is rejected or otherwise not agreed upon, only the proposed modification shall be deemed withdrawn, while the original Interconnection Application shall continue to be processed without loss or alteration of the customer's existing queue position, priority, or other procedural rights.

14. <u>Article 3 – Distributed Generation System Simplified Process</u>

Section 3 (A) – Eligibility

OIPC Comment:

Section 3(A)(2) provides that, to qualify for the Simplified Process, the proposed Distributed Generation System "must pass the following screens" and thereafter establishes the applicable screening criteria. However, the provision does not establish a specific timeframe within which the EPS Operator must perform the required screens and notify the Interconnection Customer of the results.

OIPC Recommendation:

OIPC recommends that the Regulation establish a specific and mandatory timeframe within which the EPS Operator must complete the screens required under Section 3.01(A)(2) and provide the Interconnection Customer with written notice of the results. The notification should also identify the results of each applicable screen and, if the system fails any screen, state the specific technical basis for such determination.

15. Article 3 – Distributed Generation System Simplified Process

Section 3.01(D)(2)(ii)

OIPC Comment:

Section 3.01(D)(2)(ii) provides that, if the Interconnection Customer disagrees with the "cost allocation determined by the EPS Operator," the Interconnection Customer may request administrative review by the Energy Bureau as provided in Section 13.02.

The right to administrative review is not limited to the allocation of costs, i.e., the determination of which party is responsible for paying a particular cost. The Interconnection Customer should also be entitled to challenge any determination regarding the costs themselves, including the amount, calculation, reasonableness, necessity, and allocation of any costs or charges determined by the EPS Operator in connection with the Supplemental Review or any required system modifications or improvements.

Consistent with OIPC's comment regarding Section 2.06(E), the written notification of any such cost determination should also contain adequate legal notice informing the Interconnection Customer of the procedure available to challenge the determination and any applicable deadlines.

This comment is without prejudice to OIPC's comments and recommendations regarding the administrative review procedures established under Article 13.

OIPC Recommendation:

OIPC recommends amending Section 3.01(D)(2)(ii) to expressly provide that an Interconnection Customer may seek administrative review of any determination by the EPS Operator concerning costs, including the amount, calculation, reasonableness, necessity, and allocation of such costs.

The Regulation should further require that any written notification containing a cost determination include adequate legal notice of the Interconnection Customer's right to challenge the determination, the applicable review procedure, and any applicable filing deadlines.

16. <u>Article 4 – Distribution System Fast Track Process</u>

Fast Track Processing Fee

OIPC Comment:

Unlike Article 3, which contains a specific provision addressing the fee applicable to the Simplified Process, Article 4 does not establish the amount of the processing fee applicable to an Interconnection Application submitted under the Fast Track Process.

Section 2.05(A) requires an Interconnection Customer to submit the applicable processing fee or deposit specified in the Interconnection Application. However, the Regulation itself does not appear to establish the amount of the Fast Track processing fee or the methodology by which such fee will be calculated. This omission creates uncertainty regarding a material cost that an Interconnection Customer must incur in order to access the Fast Track Process.

Accordingly, the applicable fee should not be left solely to an application form or other document outside the Regulation without clear standards governing its amount and subsequent modification.

OIPC Recommendation:

OIPC recommends that Article 4 include a specific Fees provision establishing the amount of the processing fee applicable to the Fast Track Process, or, alternatively, a clear methodology for determining such fee. Any subsequent modification to the Fast Track processing fee should be subject to Energy Bureau approval and should not be left to the unilateral determination of the EPS Operator.

17. Article 4 – Distribution System Fast Track Process

Section 4.02(B)(1) – Fast Track Screens

OIPC Comment:

Section 4.02(B)(1) provides that, for interconnection to a radial distribution circuit, the aggregated Export Capacity, including the proposed Distributed Generation System or Microgrid, shall not exceed fifteen percent (15%) of the line section annual peak load, as most recently measured at the substation.

The fifteen percent (15%) penetration threshold is not a new criterion. This threshold has historically been used as a technical screening mechanism to identify portions of the Distribution System that may require additional evaluation as distributed generation penetration increases. Indeed, the 15% threshold was previously associated with the determination of whether additional technical review, including supplemental studies, could be required.

However, incorporating the fifteen percent (15%) threshold as a fixed regulatory standard without first determining whether it continues to reflect current technical conditions, available technologies, system capabilities, and prevailing interconnection practices would prematurely convert a screening criterion into a rigid regulatory requirement. The fifteen percent (15%) threshold is not, by itself, an absolute technical limit on the amount of distributed generation that can be safely interconnected, but rather a screening mechanism intended to identify when additional technical evaluation may be warranted.

Moreover, the adequacy of the existing 15% threshold has previously been the subject of discussion, including the possibility of increasing the threshold, and the issue of whether the existing threshold should be modified is presently under consideration before the Energy Bureau. Under these circumstances, incorporating the 15% threshold into the new

Regulation without addressing that ongoing evaluation could prematurely establish as a fixed regulatory requirement a technical screening criterion that may subsequently be determined to require modification.

OIPC Recommendation:

OIPC recommends that the Energy Bureau reevaluate the fifteen percent (15%) threshold before incorporating it as a fixed screening criterion in the final Regulation, taking into consideration the existing record regarding the adequacy of the threshold, current system conditions, technological developments, and the proceedings presently addressing whether the threshold should be increased or otherwise modified.

18. <u>Article 4 – Distribution System Fast Track Process</u>

Section 4.02(C) – Notifications and Execution of Applicable Agreements

OIPC Comment:

Section 4.02(C) provides that, when a proposed interconnection fails one or more of the Fast Track screens, the EPS Operator may determine that the "proposed interconnection may nevertheless be interconnected consistent with safety, reliability, and power quality standards" and allow the project to proceed.

This provision grants the EPS Operator broad discretion to approve an interconnection notwithstanding the project's failure to satisfy the technical screening criteria expressly established by the Regulation. If failure of a particular screen does not necessarily preclude interconnection, the Regulation should establish the specific technical criteria, conditions, or additional analysis under which a project that fails that screen may nevertheless proceed.

As OIPC has noted in previous comments to the proposed Regulation, one of the principal purposes of establishing regulatory standards is to provide clear, objective, and predictable rules governing the interconnection process. Allowing the EPS Operator to depart from the established screening criteria based solely on its own determination, without identifying the standards governing that determination, introduces unnecessary uncertainty and creates the potential for inconsistent treatment of similarly situated Interconnection Customers.

This concern does not mean that failure of a Fast Track screen should automatically result in rejection of an Interconnection Application. Rather, if a failed screen may be overcome through further technical evaluation or the satisfaction of specified conditions, the Regulation itself should establish the criteria and procedure for doing so, rather than leaving that determination to the unrestricted discretion of the EPS Operator.

OIPC Recommendation:

OIPC recommends amending Section 4.02(C) to eliminate any provision granting the EPS Operator unstructured discretion to approve an interconnection that has failed an applicable Fast Track screen. The Regulation should instead identify the objective technical criteria, additional review, mitigating measures, or other conditions under which a proposed interconnection that fails a Fast Track screen may nevertheless proceed.

Any determination allowing a project to proceed notwithstanding a failed screen should be in writing and supported by the specific technical findings and data upon which the EPS Operator relied, thereby ensuring transparency, consistency, and equal treatment among Interconnection Customers.

19. <u>Article 4 – Distribution System Fast Track Process</u>

Section 4.02(C) – Notifications and Execution of Applicable Agreements

OIPC Comment:

Sections 4.02(C)(2) and (3) require the EPS Operator, as part of the Initial Review results, to notify the Interconnection Customer whether the proposed interconnection requires Minor System Modifications or more than Minor System Modifications. However, the Regulation does not establish the consequence if the EPS Operator fails to identify and timely notify the Interconnection Customer of such required modifications within the applicable Initial Review period.

As OIPC has noted in previous comments, establishing a mandatory timeframe for the EPS Operator to act provides little regulatory certainty if the Regulation does not also establish the consequences of the EPS Operator’s failure to comply with that timeframe. Once the Initial Review period expires and the EPS Operator has not identified any required system modifications, the Interconnection Customer should be entitled to rely upon the results of that review and proceed accordingly.

Otherwise, the EPS Operator could identify additional Minor System Modifications or more than Minor System Modifications after expiration of the regulatory period, potentially imposing additional costs, requirements, and delays upon the Interconnection Customer as a result of the EPS Operator's own failure to timely complete its review.

OIPC Recommendation:

OIPC recommends amending Sections 4.02(C)(2) and (3) to expressly establish the consequences of the EPS Operator's failure to timely identify required system modifications. Specifically, if the EPS Operator fails to identify and notify the Interconnection Customer of any required Minor System Modifications or more than Minor System Modifications within the applicable Initial Review period, the EPS Operator should be precluded from subsequently requiring such modifications based on information that was available, or reasonably should have been identified, during the Initial Review.

The Regulation should make clear that the consequences of the EPS Operator's failure to comply with a mandatory regulatory deadline shall not be borne by the Interconnection Customer.

20. <u>Section 4.03 – Customer Options Meeting</u>

Section 4.03(A)

OIPC Comment:

Section 4.03(A) provides that, when the EPS Operator determines that an Interconnection Application cannot be approved without a Supplemental Review or without incurring significant costs to address safety, reliability, or power quality problems, the EPS Operator "shall notify the Interconnection Customer of that determination and provide a detailed explanation supporting its conclusion."

However, the Regulation does not establish a specific timeframe within which the EPS Operator must issue this determination and provide the required notification. A mandatory notification requirement without a corresponding deadline leaves uncertainty as to how long an Interconnection Customer may be required to wait before being informed that additional review or significant costs may be necessary.

Furthermore, consistent with OIPC's previous comments regarding notices of EPS Operator determinations, this notification should contain the appropriate legal notice advising the Interconnection Customer of the procedure available to challenge the determination if the customer disagrees with it.

OIPC Recommendation:

OIPC recommends that Section 4.03(A) establish a specific and mandatory timeframe within which the EPS Operator must issue the determination and provide the detailed explanation required by this Section.

The notification should also include adequate legal notice of the Interconnection Customer's right to challenge the determination, the applicable procedure for doing so, and any applicable deadlines.

21. <u>Section 4.03 – Customer Options Meeting</u>

Section 4.03(B)

OIPC Comment:

Section 4.03(B) provides the Interconnection Customer with ten (10) Business Days following the EPS Operator's notification to request a Customer Options Meeting. However, while the Regulation establishes a specific deadline for the Interconnection Customer to request the meeting, it does not establish a corresponding timeframe within which the EPS Operator must actually convene the Customer Options Meeting after receiving the request.

This creates an imbalance in the procedural requirements. The Interconnection Customer is subject to a specific deadline to exercise its right to request the meeting, while the EPS Operator is not subject to a corresponding deadline to hold it. The absence of such a deadline could result in an indefinite delay in the Fast Track Process.

OIPC Recommendation:

OIPC recommends that Section 4.03(B) establish a specific and mandatory timeframe within which the EPS Operator must convene the Customer Options Meeting after receiving a timely request from the Interconnection Customer.

22. <u>Section 4.03 – Customer Options Meeting</u>

Section 4.03(D)

OIPC Comment:

Section 4.03(D) provides that, at the time the EPS Operator notifies the Interconnection Customer of its determination, or at the Customer Options Meeting, the EPS Operator shall offer to perform a Supplemental Review pursuant to Section 4.04 and provide a "non-binding good faith estimate of the costs of such review."

OIPC has two specific comments regarding this provision.

First, the Regulation should establish objective parameters governing the determination and calculation of the costs of a Supplemental Review. An Interconnection Customer should be able to determine what costs may properly be included, how those costs are calculated, and whether the amount quoted by the EPS Operator is reasonable. The Regulation should provide the opportunity through which the Interconnection Customer may challenge the amount or calculation of the estimated costs.

Second, characterizing the estimate as entirely 'non-binding' fails to provide the Interconnection Customer with sufficient cost certainty. The purpose of providing a cost estimate before the customer elects whether to proceed with a Supplemental Review is to allow the customer to make an informed decision regarding the financial consequences of proceeding. An estimate that places no limitation whatsoever on the ultimate amount that may be charged provides limited cost certainty to the Interconnection Customer.

OIPC recognizes that an estimate cannot necessarily guarantee the final cost of a technical study because circumstances discovered during the review may legitimately affect its cost. Nevertheless, the EPS Operator should not have unrestricted ability to exceed its own estimate.

OIPC Recommendation:

OIPC recommends that Section 4.03(D):

a. establish objective criteria and a transparent methodology for determining the costs that may be charged for a Supplemental Review;

b. require the EPS Operator to provide an itemized written estimate identifying the basis for the estimated costs;

c. require the EPS Operator to include in the notification of the estimated costs adequate legal notice of the Interconnection Customer's right to challenge the amount, calculation, or reasonableness of such estimated costs, including the applicable procedure and any applicable deadlines; and

d. replace the entirely "non-binding" estimate with a mechanism that provides meaningful cost certainty to the Interconnection Customer. The estimate should remain binding upon the EPS Operator for a specified period or within a defined reasonable variance, unless the EPS Operator identifies material circumstances that could not reasonably have been anticipated when the estimate was prepared, provides written justification for the additional costs, and obtains any approval required under the Regulation.

23. <u>Section 4.04 – Supplemental Review</u>

Section 4.04(A)

OIPC Comment:

Section 4.04(A) provides that, if the Interconnection Customer elects to proceed with a Supplemental Review, the Interconnection Customer must submit "a deposit for the estimated costs of the supplemental review." However, the Regulation does not establish the amount of the required deposit, the percentage of the estimated costs that must be deposited, or the methodology or criteria that the EPS Operator must use to calculate such deposit.

Without clear parameters, the amount of the deposit is effectively left to the EPS Operator's determination. Because payment of the deposit is a prerequisite for proceeding with the

Supplemental Review, the Regulation should provide the Interconnection Customer with certainty as to how that amount will be established and prevent inconsistent or arbitrary deposit requirements.

OIPC Recommendation:

OIPC recommends that Section 4.04(A) expressly establish the amount or percentage of the estimated Supplemental Review costs that may be required as a deposit, as well as the methodology and criteria for calculating such amount.

The EPS Operator's notice requiring the deposit should provide an itemized explanation of its calculation and, consistent with OIPC's previous comments, include adequate legal notice advising the Interconnection Customer of its right to challenge the amount, calculation, or reasonableness of the required deposit, the applicable procedure for doing so, and any applicable deadlines.

24. <u>Section 4.04 – Supplemental Review Results</u>

Section 4.04(D)

OIPC Comment:

Section 4.04(D) provides that, if the proposed interconnection passes the Supplemental Review screens, or fails one or more of those screens but the EPS Operator nevertheless determines that the proposed interconnection may be interconnected consistent with safety, reliability, and power quality standards, the interconnection may proceed.

As previously stated in OIPC's comment regarding Section 4.02(C), OIPC is concerned with provisions that allow the EPS Operator to approve an interconnection that has failed established screening criteria based upon a determination that is not governed by sufficiently specific and objective standards. If failure of a screen does not necessarily preclude interconnection, the Regulation should establish the technical criteria, conditions, mitigating measures, or additional analysis under which an interconnection that fails a screen may nevertheless proceed. The determination should not be left to the unrestricted discretion of the EPS Operator.

Section 4.04(D) raises an additional concern regarding the future consequences of allowing an interconnection that failed one or more Supplemental Review screens to nevertheless proceed. Such an interconnection becomes part of the existing conditions of the Distribution System and may affect the ability of subsequent Interconnection Customers to interconnect at the same circuit, feeder, or affected portion of the system.

If a subsequent Interconnection Customer is later informed that System Modifications or Upgrades are necessary to accommodate its proposed interconnection, the allocation of those costs should not be determined without considering whether the need for such modifications is attributable, in whole or in part, to previously interconnected projects that failed applicable screens but were nevertheless permitted to interconnect by the EPS Operator. Otherwise, a subsequent customer could be required to bear costs resulting, at least partially, from the EPS Operator's prior decision to permit another project to interconnect notwithstanding its failure to satisfy the applicable screening criteria.

OIPC Recommendation:

Consistent with OIPC's comment regarding Section 4.02(C), OIPC recommends that Section 4.04(D) establish objective technical criteria and documented findings that must be satisfied before the EPS Operator may permit a project that fails one or more Supplemental Review screens to interconnect.

In addition, whenever a project that failed an applicable screen is nevertheless permitted to interconnect, the EPS Operator should be required to document that determination and preserve the technical analysis supporting it.

If System Modifications or Upgrades are subsequently determined to be necessary for another Interconnection Customer seeking to interconnect to the same circuit, feeder, or affected portion of the Distribution System, the EPS Operator should be required to evaluate whether, and to what extent, the need for those modifications is attributable to previously interconnected projects, including projects that failed applicable screens but were nevertheless permitted to interconnect. Such costs should not automatically be assigned to the subsequent Interconnection Customer without that analysis.

25. <u>Section 4.04 – Supplemental Review</u>

Section 4.04(D)(1)

OIPC Comment:

Section 4.04(D)(1) provides, in part, that "if using the Simplified Process, the EPS Operator shall countersign the Simplified Interconnection Notification and Agreement and provide the fully executed Interconnection Agreement to the Interconnection Customer at the same time it provides the Supplemental Review results."

OIPC notes that Article 4 is expressly entitled "Distribution System Fast Track Process" and establishes the procedures applicable to interconnections proceeding under the Fast Track Process. The inclusion within Section 4.04(D)(1) of a requirement expressly applicable to an Interconnection Customer "using the Simplified Process" therefore creates uncertainty as to the scope and application of this provision.

OIPC recognizes that Article 3 incorporates certain provisions of Section 4.04 for purposes of conducting a Supplemental Review under the Simplified Process. Nevertheless, the Regulation should clearly distinguish between the procedures applicable to the Simplified Process under Article 3 and those applicable to the Fast Track Process under Article 4. As presently drafted, Section 4.04(D)(1) could create confusion as to whether the provision applies to Fast Track applications, Simplified Process applications referred to Section 4.04 for Supplemental Review, or both.

OIPC Recommendation:

OIPC recommends that the reference to the Simplified Process in Section 4.04(D)(1) be clarified or relocated to Article 3. If the intent is for Section 4.04(D)(1) to apply to Simplified Process applications that undergo a Supplemental Review pursuant to Article 3, the Regulation should expressly state that limited applicability and provide the appropriate cross-reference to Article 3.

Alternatively, the requirement regarding execution of the Simplified Interconnection Notification and Agreement should be incorporated directly into Article 3, thereby maintaining a clear separation between the Simplified Process governed by Article 3 and the Fast Track Process governed by Article 4.

26. <u>Section 4.04 – Supplemental Review</u>

Section 4.04(D)(2) and (3)

OIPC Comment:

Sections 4.04(D)(2) and (3) address the procedures applicable when the Supplemental Review determines that the proposed interconnection requires either Minor System Modifications or more than Minor System Modifications. Consistent with OIPC's comments regarding Sections 4.02(C)(2) and (3), OIPC reiterates its concern regarding the consequences of the EPS Operator's failure to timely identify and notify the Interconnection Customer of required system modifications.

In addition, Sections 4.04(D)(2) and (3) require the Interconnection Customer to first elect whether to continue with the proposed interconnection and only after the customer makes that election require the EPS Operator to provide the Interconnection Agreement, the cost estimate, and the construction schedule for the required upgrades.

This sequence problematic. The cost and scope of the required system modifications are material information that an Interconnection Customer would reasonably need before deciding whether to proceed. Requiring the customer to elect to continue without first knowing the anticipated cost of the required modifications undermines the customer's ability to make an informed decision and may effectively require the customer to commit to proceeding without knowing the financial consequences of that decision.

Moreover, consistent with OIPC's previous comments regarding cost estimates, the estimate provided by the EPS Operator should provide meaningful cost certainty and should not be characterized as entirely non-binding without appropriate limitations.

OIPC Recommendation:

OIPC recommends revising Sections 4.04(D)(2) and (3) so that, at the same time the EPS Operator notifies the Interconnection Customer that Minor System Modifications or more than Minor System Modifications are required, it must also provide the customer with the scope of the required modifications, an itemized cost estimate, and the anticipated construction schedule.

The Interconnection Customer's period to elect whether to proceed should begin only after receipt of that information, thereby allowing the customer to make an informed decision regarding whether to continue with the interconnection.

Consistent with OIPC's prior comments, the cost estimate should provide meaningful certainty to the Interconnection Customer and should be subject to appropriate limitations on subsequent increases, except where the EPS Operator demonstrates and documents material circumstances that could not reasonably have been anticipated when the estimate was prepared.

27. Section 4.04 – Supplemental Review

Section 4.04(E)

OIPC Comment:

Section 4.04(E) provides the Interconnection Customer with fifteen (15) Business Days to notify the EPS Operator if it wishes to proceed with the Study Process under Article 5. However, the Regulation does not establish a corresponding timeframe within which the EPS Operator must first notify the Interconnection Customer of the option to proceed to the Study Process.

As OIPC has noted in previous comments, the Regulation should establish clear and corresponding deadlines for actions required from both the Interconnection Customer and the EPS Operator. The EPS Operator's obligation to provide this option should not remain subject to an open-ended timeframe.

OIPC Recommendation:

OIPC recommends that Section 4.04(E) establish a specific and mandatory timeframe within which the EPS Operator must notify the Interconnection Customer of the option to proceed to the Study Process under Article 5. The Interconnection Customer's fifteen (15) Business Day period to make its election should commence upon receipt of such notification.

28. Article 5 – Study Process

OIPC Comment:

Section 2.01 (C) and 7.09(E) of the Regulation expressly refer to a "Transmission Study" as a distinct type of study. However, unlike the Feasibility Study, System Impact Study, and Facilities Study, which are specifically addressed in Sections 5.03, 5.04, and 5.05, respectively, Article 5 does not contain a corresponding provision establishing or describing a Transmission Study as part of the Study Process.

As currently drafted, an Interconnection Customer could therefore be required to undergo a Transmission Study without the Regulation clearly establishing its purpose, scope, applicable criteria, procedure, timeline, cost responsibility, or relationship to the other studies established under Article 5.

OIPC **Recommendation:**

OIPC recommends that the Regulation expressly incorporate and address the Transmission Study in Article 5 if such a study may be required as part of the interconnection process. The Regulation should specify, at a minimum, the circumstances under which a Transmission Study may be required, its purpose and scope, applicable timelines, cost responsibility, and its relationship to the Feasibility Study, System Impact Study, and Facilities Study. The term "Transmission Study" should also be separately defined in Section 1.11.

29. <u>Section 5.03 – Feasibility Study</u>

OIPC **Comment:**

Section 5.03(A) provides that a Feasibility Study "shall be conducted only upon the request of the Interconnection Customer." However, Section 5.03(B) subsequently provides that "if the EPS Operator determines a Feasibility Study is necessary, the EPS Operator shall perform a Feasibility Study."

These provisions create uncertainty as to who determines whether a Feasibility Study will be conducted. Section 5.03(A) appears to make the Feasibility Study entirely optional and subject exclusively to the Interconnection Customer's request, while Section 5.03(B) could be interpreted as independently authorizing the EPS Operator to determine that a Feasibility Study is necessary.

If the intent of Section 5.03(B) is that, after an Interconnection Customer requests a Feasibility Study pursuant to Section 5.03(A), the EPS Operator will determine whether such study is necessary, the Regulation should expressly state so. Alternatively, if the EPS Operator may independently require a Feasibility Study, Section 5.03(A) should not state that such study will be conducted "only" upon the request of the Interconnection Customer.

OIPC Recommendation:

OIPC recommends that Sections 5.03(A) and (B) be revised to clearly and consistently establish who may initiate a Feasibility Study and under what circumstances it may be required. If the EPS Operator's determination under Section 5.03(B) is intended to occur only after a request by the Interconnection Customer under Section 5.03(A), Section 5.03(B) should expressly state that limitation.

30. <u>Sections 5.03(H), 5.04(E), and 5.04(H) – Study Process</u>

OIPC Comment:

Sections 5.03(H), 5.04(E), and 5.04(H) establish specific mandatory deadlines for the EPS Operator to complete and transmit the studies required under Article 5. Specifically, Section 5.03(H) establishes forty (40) Business Days for the Feasibility Study Report; Section 5.04(E) establishes forty-five (45) Business Days for the System Impact Study; and Section 5.04(H) establishes thirty (30) Business Days for the Transmission System Impact Study.

However, none of these provisions establishes the consequences of the EPS Operator's failure to complete the applicable study within the prescribed regulatory timeframe or identifies the remedies available to the Interconnection Customer in the event of such noncompliance.

As OIPC has noted throughout its comments, the establishment of mandatory regulatory deadlines provides limited protection if the Regulation does not also establish what occurs when the EPS Operator fails to comply with those deadlines. This concern is particularly significant in the Study Process, where the Interconnection Customer may have paid substantial study costs and cannot proceed to subsequent stages of the interconnection process until the EPS Operator completes the required study.

OIPC Recommendation:

OIPC recommends that Sections 5.03(H), 5.04(E), and 5.04(H) expressly establish the consequences of the EPS Operator's failure to complete and transmit the applicable study within the prescribed timeframe and the remedies available to the Interconnection Customer as a result of such noncompliance.

Any delay attributable to the EPS Operator should not prejudice the Interconnection **Customer's queue position, priority, procedural rights, or ability to continue through the interconnection process**, and the Regulation should provide an effective mechanism for the customer to obtain timely relief when the EPS Operator fails to comply with the applicable study deadline.

31. Section 7.01(C) – Timeframes and Extensions

OIPC Comment:

Section 7.01(C) provides that, for any applicable timeframe established under the Regulation, the Interconnection Customer may request in writing one extension equivalent to one-half of the time originally allotted, and that no further extensions shall be granted absent a Force Majeure Event or similar extraordinary circumstance.

The same limitation should apply equally to the EPS Operator. Throughout the Regulation, both the Interconnection Customer and the EPS Operator are subject to specific deadlines that are intended to ensure the timely progression of the interconnection process. There is no basis for imposing a defined limitation on extensions available to the Interconnection Customer while allowing the EPS Operator greater or undefined flexibility to extend the deadlines applicable to its own obligations.

Applying the same standard to both parties would promote procedural fairness, accountability, and certainty regarding the maximum amount of time each stage of the interconnection process may take.

OIPC Recommendation:

OIPC recommends amending Section 7.01(C) so that its extension provisions apply equally to the Interconnection Customer and the EPS Operator. Each party should be permitted to request only one written extension equivalent to one-half of the originally allotted timeframe, with no further extensions permitted absent a Force Majeure Event or similar extraordinary circumstances.

Any extension requested by the EPS Operator should also be communicated in writing to the Interconnection Customer before expiration of the applicable deadline and state the specific reason for the requested extension and the new deadline.

32. <u>Section 7.04(B) – Authorization Required Prior to Parallel Operation</u>

OIPC Comment:

Article 7 is entitled "Provisions that Apply to All Interconnection Applications," which indicates that the provisions contained therein are intended to apply generally to all interconnection processes established under the Regulation. However, Section 7.04(B) provides that an Interconnection Customer "shall not operate its Distributed Generation System or Microgrid in parallel with the EPS without prior written authorization of the EPS Operator."

This requirement appears inconsistent with the Simplified Process established under Article 3, which contemplates a different interconnection procedure under which an eligible customer may install and commence operation of the system and thereafter submit the Simplified Interconnection Notification and Agreement to the EPS Operator. Accordingly, a requirement for prior written authorization from the EPS Operator cannot apply to the Simplified Process in the same manner as it applies to the other interconnection processes.

As presently drafted, the placement of Section 7.04(B) within an Article expressly applicable to all Interconnection Applications could create uncertainty as to whether customers utilizing the Simplified Process must nevertheless obtain prior written authorization before Parallel Operation, which would be inconsistent with the structure and purpose of that process.

OIPC Recommendation:

OIPC recommends amending Section 7.04(B) to expressly exclude Interconnection Customers proceeding under the Simplified Process from the requirement to obtain prior written authorization from the EPS Operator before Parallel Operation, to the extent that prior authorization is not required under Article 3.

Alternatively, Section 7.04(B) should expressly distinguish the authorization requirements applicable to each interconnection process so that it does not impose a prior-authorization requirement inconsistent with the Simplified Process.

33. <u>Section 7.06 – Insurance</u>

OIPC Comment:

Section 7.06(A) provides that the EPS Operator "may only require an Interconnection Customer to purchase General Public Liability Insurance covering damages to the EPS Operator or PREPA, and then only in the following amounts:" Section 7.06(B) then provides that coverage may be required "up to one million dollars ($1,000,000) per occurrence and up to one million dollars ($1,000,000) in the aggregate" when the Distributed Generation System or Microgrid has an Export Capacity greater than 300 kW, while Section 7.06(C) provides that no insurance is required for systems with an Export Capacity of 300 kW or less.

As drafted, Section 7.06(B) does not appear to establish an independent regulatory requirement, but rather completes the provision introduced in Section 7.06(A) by establishing the amount of insurance coverage that may be required. The use of a separate subsection for what is grammatically and substantively a continuation of Section 7.06(A) unnecessarily fragments the provision and may create ambiguity regarding its interpretation.

Additionally, the use of the term "may" in Section 7.06(A) should be clarified. Although Sections 7.06(B) and (C) establish the 300 kW threshold, it remains unclear whether every Interconnection Customer with Export Capacity greater than 300 kW will be required to obtain insurance, or whether the EPS Operator retains discretion to determine which customers above that threshold must obtain coverage. If discretion remains, the Regulation should establish objective criteria governing its exercise.

OIPC Recommendation:

OIPC recommends that current Sections 7.06(A) and (B) be consolidated into a single subsection, so that the insurance requirement and applicable coverage amount are stated together.

The Regulation should also clarify whether General Public Liability Insurance is required for all systems with Export Capacity greater than 300 kW or may be required only under specified circumstances. If the EPS Operator retains discretion to impose the insurance requirement on systems exceeding 300 kW, the Regulation should establish clear and objective criteria governing that determination.

34. Section 7.08 – Design, Procurement, Installation and Construction of Interconnection Facilities and Upgrades

OIPC Comment:

Article 7 is entitled “Provisions that Apply to All Interconnection Applications,” which suggests that Section 7.08 applies to all interconnection processes, including the Simplified Process. However, the requirements established in Section 7.08 appear primarily directed to projects requiring the design, procurement, installation, or construction of Interconnection Facilities, Distribution Upgrades, or Network Upgrades.

It is therefore unclear to what extent the requirements of Section 7.08 are intended to apply to Interconnection Customers proceeding under the Simplified Process, particularly where no such facilities or upgrades are required. The Regulation should clearly identify which provisions of Section 7.08 apply to each interconnection process and the circumstances that trigger their applicability.
In addition, the terminology used throughout Section 7.08 should be clarified. Sections 7.08(A) through (D) generally refer to “Interconnection Facilities,” “Distribution Upgrades,” and “Network Upgrades,” while subsequent provisions expressly refer to the “EPS Operator’s Interconnection Facilities and Upgrades.” The Regulation should clearly distinguish between facilities or equipment belonging to the Interconnection Customer and facilities or upgrades to be designed, procured, installed, or constructed by the EPS Operator, particularly because that distinction directly affects the Interconnection Customer’s cost and security obligations.

OIPC Recommendation:

OIPC recommends that Section 7.08 expressly identify the interconnection processes and circumstances to which each of its requirements applies, including whether and under what circumstances the Section applies to Interconnection Customers proceeding under the Simplified Process.

The Section should also consistently identify whose Interconnection Facilities and Upgrades are being addressed and clearly distinguish the EPS Operator’s facilities and system upgrades from facilities or equipment owned or installed by the Interconnection Customer.

35. <u>Section 8.01 – General Technical Requirements</u>

OIPC Comment:

Section 8.01 provides that the EPS Operator shall develop and maintain the Technical Interconnection Requirements ("TIR"), which must be submitted to the Energy Bureau for review and approval and shall not become effective unless approved by Resolution and Order of the Energy Bureau.

Because the TIR establishes technical requirements that directly affect the interconnection process, modifications to those requirements may have a significant impact on Interconnection Customers, including the technical conditions, costs, equipment, and procedures necessary to obtain or maintain an interconnection. Accordingly, the process for reviewing and approving the TIR, including any subsequent amendments, should not be limited to a submission by the EPS Operator followed solely by the Energy Bureau's review.

The Regulation itself should guarantee an opportunity for OIPC and interested stakeholders to participate in the Energy Bureau's review and approval process before a new or amended TIR becomes effective.

OIPC Recommendation:

OIPC recommends amending Section 8.01 to expressly require that, prior to the Energy Bureau's approval of the TIR or any subsequent amendment thereto, OIPC and interested stakeholders be provided notice and a reasonable opportunity to review and submit comments on the proposed TIR or amendment.

The Regulation should therefore establish stakeholder participation as part of the approval process rather than leaving such participation to be determined on a case-by-case basis by the Energy Bureau.

36. <u>Section 8.02 – Approval of Use of Certified Equipment</u>

OIPC Comment:

Section 8.02 does not clearly establish the respective authority and responsibilities of the Public Energy Policy Program ("PEPP"), of the Department of Economic Development and Commerce (“DEDC”) and the EPS Operator regarding the approval and use of certified equipment.

Section 8.02(A) appears to establish that equipment is approved through the Public Energy Policy Program. However, Section 8.02(B) provides that inverter-based equipment, generators, and other devices complying with applicable standards and codes “have to be evaluated and approved by the EPS Operator.” Section 8.02(C), in turn, contemplates that the EPS Operator will maintain a list of approved inverters, while Section 8.02(D) allows the EPS Operator to evaluate equipment that is not included on that list.

Read together, these provisions create uncertainty regarding which entity has the ultimate authority to approve equipment for use in interconnections. If equipment has already been evaluated and approved by the Energy Public Policy Program, it is unclear whether the EPS Operator may independently reject that equipment or require an additional approval before it may be used.

Similarly, it is unclear whether the EPS Operator’s list referenced in Section 8.02(C) is intended merely to reproduce or implement the list of equipment approved by the Energy Public Policy Program, or whether the EPS Operator is authorized to establish and maintain a separate list based upon its own evaluation and approval criteria.

OIPC recognizes that the EPS Operator may appropriately have a technical role in evaluating equipment, particularly equipment not previously included on an approved list. However, the Regulation should clearly distinguish between certification or general approval of equipment and the EPS Operator’s technical evaluation of whether particular equipment satisfies the requirements applicable to interconnection with the EPS.

OIPC Recommendation:

OIPC recommends revising Section 8.02 to clearly define the respective roles and authority of the Energy Public Policy Program and the EPS Operator in the certification, evaluation, approval, and listing of equipment.

The Regulation should specifically clarify:

a. whether equipment approved by the Energy Public Policy Program is automatically eligible for use in an interconnection, subject only to compliance with applicable interconnection requirements;

b. whether the EPS Operator may independently reject or require additional approval of equipment already approved by the Energy Public Policy Program and, if so, the specific technical grounds and procedure for doing so;

c. whether the approved-equipment list maintained by the EPS Operator under Section 8.02(C) is the same list approved by the Energy Public Policy Program or constitutes a separate list; and

d. the procedure applicable under Section 8.02(D) when equipment that is not already included on the approved list is submitted for evaluation.

The Regulation should avoid creating two separate and potentially conflicting equipment approval processes without clearly establishing their respective scope and which determination controls.

37. <u>Section 9.01(A) – Participation in Net Metering Programs</u>

OIPC Comment:

Section 9.01(A) establishes the eligibility requirements for a Distributed Generation System or Microgrid fueled by Renewable Energy Sources to participate in Net Metering. However, Sections 9.01(A)(1) and (2) identify commercial, governmental, industrial, agricultural, educational, and medical-hospital customers, but do not include residential customers among the customer categories eligible to participate.

This omission appears inconsistent with the applicability of Net Metering to residential customers and creates a significant ambiguity because Section 9.01(B) subsequently provides that an Interconnection Customer "that meets these requirements" may participate in the Basic, Aggregate, or Shared Net Metering Programs. As presently drafted, Section 9.01(A) could therefore be interpreted as excluding residential customers from eligibility.

OIPC Recommendation:

OIPC recommends revising Section 9.01(A) to expressly include residential customers and the applicable generating capacity limit for residential Net Metering systems.

The eligibility provisions should clearly and comprehensively identify all customer categories authorized to participate in Net Metering and their respective capacity limits.

38. <u>ARTICLE 10. DISPUTE RESOLUTION</u>

<u>OIPC Comment:</u>

The draft Regulation proposes a procedure for resolving disputes between the parties involved in the interconnection process. However, for the reasons detailed below, the OIPC opposes the procedure as it is currently designed.

First, the draft Regulation, in its Section (B), states that the party facing a dispute must notify the other party in writing through a *Notice of Dispute*, including the relevant facts, the specific nature of the dispute, the remedy requested, and an explicit statement that the procedures established in that section are being activated. However, the proposed text does not establish a deadline within which the disputing party must issue such notification.

On the other hand, the process establishes that the non-disputing party shall acknowledge the notice within three (3) business days of its receipt and identify a representative with the authority to decide for the non-disputing party regarding the dispute. However, this subsection does not clearly indicate the period the parties will have to reach an agreement between themselves. Although a reading of subsection (C) suggests that, if the parties do not reach an agreement within eight (8) business days, they must proceed with the process established therein, we understand that this period should be included explicitly in the text of subsection (B).

Secondly, subsection (C) provides that if the dispute pertains primarily to non-compliance with the timeframes established in the Regulation or in any applicable agreements, and the parties are unable to resolve the matter within eight (8) business days, they must refer the dispute to the Ombudsperson designated by the Bureau, thereby introducing the role of a mediator.

With respect to this matter, the OIPC has several concerns. First, the proposed mediation process constitutes a novel mechanism before the Bureau, one that lacks regulatory foundation in the draft Regulation, in Act 57-2014, or in Regulation 8543. This absence of a governing framework raises questions regarding the scope, procedure, and authority of the mediator's role. Second, it must be underscored that, contrary to what is suggested in the draft, Regulation 8543 already establishes an Administrative Review Process for utility determinations related to interconnection procedures and the Net Metering Program. Introducing an additional, unregulated mediation stage could therefore create overlap, procedural confusion, or inconsistency with existing, legally recognized mechanisms.

The Regulation also provides that, in case of disputes not related to non-compliance with established terms, the non-disputing party shall provide the disputing party with the relevant regulatory and/or technical information within ten (10) business days from the date of the Notice of Dispute. Furthermore, within twenty (20) business days from the date of the Notice of Dispute, the Parties' authorized representatives must meet and confer to resolve the dispute.

Subsection (E) provides that if the controversy is not resolved within thirty (30) business days, the Parties will have three alternatives: (1) extend negotiations for an additional twenty (20) days; (2) request mediation from the Ombudsperson (if both parties agree); and (3) request external mediation with shared costs (if both parties agree).

It is our position that the option of resorting to external mediation in disputes related to interconnection matters is contrary to law. Act 57-2014, as amended, in Article 6.4(a)(5), establishes that the Energy Bureau holds primary and exclusive jurisdiction to address cases and controversies related to interconnection with the transmission and distribution grid, as well as matters concerning any person who is, or seeks to be, connected to Puerto Rico's electric grid, or who has a direct or indirect interest in such electric energy services. Therefore, delegating the resolution of these controversies to a third party, even with the consent of the parties, contravenes the provisions of Act 57-2014 and undermines the existing regulatory framework.
On the other hand, subsection (F) provides that if the results of the mediation are not accepted by one or more Parties and disagreement persists, the dispute shall proceed to the Energy Bureau's reconsideration process in accordance with Article 13. Also, Subsection (G) provides that any time, either Party may request reconsideration by the PREB in accordance with Article 13.

However, it must be noted that the procedure referenced in Article 13 is contrary to law. As previously indicated, the mechanism for reviewing determinations issued by PREPA, or by LUMA as its authorized representative, is the Administrative Review process established in the Energy Bureau's Regulation No. 8543, specifically in Article 3, Section 3.04. The only reconsideration process recognized before the Bureau applies exclusively to determinations issued by the Bureau itself. Consequently, when dealing with determinations of the utility and/or any other electric service company, the proper procedure under the applicable regulatory framework is the review of such determinations, not reconsideration before the Energy Bureau.

OIPC Recommendation:

Based on the foregoing analysis, the OIPC recommends that the draft Regulation's dispute resolution procedure be substantially revised before adoption. As currently designed, the proposed framework presents multiple legal and procedural deficiencies that undermine both statutory requirements and established regulatory mechanisms.

Specifically, (1) the draft Regulation must establish clear and enforceable timelines for the initiation and handling of disputes, including a deadline for issuing the Notice of Dispute and a defined period for the parties' initial efforts to reach an agreement; (2) the mediation mechanism proposed, particularly the Ombudsperson's role and any provision for external mediation, requires reconsideration, as it lacks legal grounding in Act 57-2014 or Regulation 8543 and introduces procedural uncertainty. Any mediation stage must be expressly authorized in law, structured, and consistent with existing processes; (3) external mediation for interconnection-related disputes should be removed entirely, as it conflicts with the Energy Bureau's exclusive jurisdiction established by Act 57-2014; and, (4) sections referring to reconsideration under Article 13 should be corrected, ensuring alignment with the legally applicable mechanism of Administrative Review under Regulation 8543, which governs challenges to utility determinations.

Considering these issues, the OIPC recommends that the Bureau revise the dispute resolution provisions to align fully with Act 57-2014, Regulation 8543, and existing jurisdictional mandates, thereby ensuring procedural clarity, regulatory consistency, and compliance with governing law.

39. ARTICLE 13. RECONSIDERATION AND JUDICIAL REVIEW

Section 13.01. Reconsideration

OIPC Comment:

As previously stated, the procedure referenced in Article 13 is inconsistent with the applicable regulatory framework. The mechanism established under Energy Bureau Regulation No. 8543 for challenging determinations issued by PREPA, or by LUMA as its authorized representative, contemplates reconsideration before the utility, followed by

Administrative Review before the Energy Bureau. In contrast, reconsideration before the Energy Bureau applies to determinations issued by the Energy Bureau itself. Consequently, when challenging a determination issued by the utility or another electric service company, the applicable procedure is to seek reconsideration before the entity that issued the determination and, thereafter, seek Administrative Review before the Energy Bureau in accordance with Regulation No. 8543.

OIPC Recommendation:

OIPC recommends that Section 13.01 be revised to clearly distinguish between the reconsideration procedures applicable to determinations issued by the EPS Operator and those applicable to determinations issued by the Energy Bureau. Consistent with Regulation No. 8543, a party dissatisfied with a determination issued by PREPA, LUMA, or another electric service company should first seek reconsideration before the utility or entity that issued the determination and may thereafter seek Administrative Review before the Energy Bureau pursuant to the applicable regulatory provisions.

Accordingly, Section 13.01(A) should be amended to provide for reconsideration before the EPS Operator, rather than before the Energy Bureau, while Section 13.02 should govern the subsequent Administrative Review of the EPS Operator's determination before the Energy Bureau. Section 13.01(B) should remain applicable to requests for reconsideration of determinations issued by the Energy Bureau itself.

All references throughout the Regulation to reconsideration or review of EPS Operator determinations should be revised accordingly to ensure consistency with this procedural framework.

40. <u>ARTICLE 13. RECONSIDERATION AND JUDICIAL REVIEW</u>

Section 13.02. Administrative Review

OIPC Comment:

Section 13.02 provides that "[a]ny person who is not satisfied with a decision made by the EPS Operator under this Regulation may file, within the term of twenty (20) days from the date copy of the notice of such decision is issued and notified by the EPS Operator, a request for review before the Energy Bureau, pursuant to the provisions of Act 57-2014 and Regulation 8543."

However, this provision contradicts Article 3, Section 3.04 of the Energy Bureau's own Regulation No. 8543, commonly known as the *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Procedures* that provide the following:

> Every claim requesting the Commission review of (i) the invoices of PREPA or any other electric service company (ii) the decisions of PREPA regarding the process of interconnection, (iii) the decisions of PREPA regarding participation in the net mediation [*sic*] program or any other related program, or (iv) the decisions of any other company regarding the provision of electrical services to customers, shall be presented within a period of thirty (30) days, starting from the date on which PREPA or the electric service company issued its final decision on the matter. If PREPA or the electric service company has not issued a final decision, the abovementioned period shall start on the date the decision should have been issued.

It should be noted that Section 3.04 of Regulation 8543 covers the very instances that the Proposed Regulation seeks to address, namely, situations in which a party wishes to request review before the Energy Bureau of PREPA's determinations concerning interconnection processes, the Net Metering Program, and any other related program. However, unlike the twenty (20) day term proposed in the Draft Regulation currently under consideration, Regulation 8543 grants consumers a period of thirty (30) days, starting from the date on which PREPA or the corresponding electric service company issued its final decision on the matter.

OIPC Recommendation:

Therefore, the language proposed in Section 13.02 of the Proposed Regulation must be aligned with Article 3, Section 3.04 of Regulation No. 8543, to ensure that consumers are afforded the thirty (30) day timeframe established therein to file a request for Administrative Review before the Energy Bureau.