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Mr. Agustín F. Carbó-Lugo
President
Puerto Rico Energy Commission
268 Muñoz Rivera Ave.
World Plaza Suite 400
San Juan, P.R. 00918

RE: Comments to Puerto Rico Energy Commission's Regulation on
Certifications, Annual Fees and Operational Plans of Electrical Service Companies
Department of State Regulation No. 8618

Dear Mr. Carbó-Lugo:

We make reference to the Regulation on Certifications, Annual Fees and Operational Plans of Electrical Service Companies in Puerto Rico, Department of State Regulation No. 8618, promulgated by the Puerto Rico Energy Commission (the "Commission") on July 10, 2015 and filed before the Puerto Rico Department of State on July 14, 2015 (the "Regulation").

Pursuant to the "Notice Concerning the Publication of a Regulation" which appeared on page 36 of the July 11, 2015 edition of the Primera Hora newspaper, interested persons may submit comments in connection with the Regulation within thirty (30) days of publication of said Notice. Within the allotted period, we respectfully submit comments regarding the Regulation on behalf of our clients Sunnova Energy Company, a leading private residential solar company, and its subsidiaries Sunnova Lease Vehicle 3, LLC, Sunnova Asset Portfolio 4, LLC and Sunnova Asset Portfolio 5, LLC (jointly, "Sunnova"). Sunnova owns solar photovoltaic systems on several thousand residential rooftops in Puerto Rico with an aggregate capacity of over 15 megawatts. Sunnova also owns residential solar systems in other jurisdictions throughout the United States.

Below we reference specific Subsections of the Regulation, provide comments or suggestions on each Section, and request the Commission to further clarify or take other action regarding such provisions.

At the outset, the Regulation imposes burdensome and costly requirements on companies, contractors and distributed generators with limited operations in Puerto Rico. Some of the requirements in the Regulation seem more suitable for utilities and centralized generators that would operate a smaller amount of facilities. Sunnova, as well as other similarly situated companies, are not traditional utilities and, as such, do not have the resources, personnel or infrastructure to address many of the requirements that would be imposed by the Regulation. In addition, the Regulation requires the submission of detailed information which, if disclosed, would threaten the competitive position of the applicant. We respectfully submit that requirements of the foregoing nature should generally be avoided or lessened for the benefit of the emerging distributed generation market. Requirements that would be more tailored to Electrical Service Companies such as Sunnova are suggested below.

Section 1.07(A)(4), definition of “Electrical Service Company”

The term “Electrical Service Company” includes certain defined categories, including “distributed generators with an **aggregated capacity greater than one megawatt (1 MW)**” offering energy for sale in Puerto Rico (see Subsection 1.07(A)(4)(c)). However, the definition also includes “any natural or legal person or entity that offers services of generation, storage, invoicing or resale of electric power,” (see Subsection 1.07(A)(4)(b)) **without reference to any capacity**. As a result, Subsection 1.07(A)(4)(b) renders the definition in Subsection 1.07(A)(4)(c) superfluous. That is, the language in Subsection 1.07(A)(4)(b) encompasses all entities providing generation services, **regardless of the capacity of their facilities**, thus bringing all such entities within the purview of the Regulation. Therefore, Sunnova respectfully requests the Commission to clarify Subsection 1.07(A)(4)(b) to specify its application to entities with one (1) megawatt (MW) capacity or greater.

In addition, Subsection 1.07(A)(4)(d) includes in the definition of “Electrical Service Company” “[a]ny person dedicated to the installation and maintenance of distributed generators with an aggregated capacity greater than one megawatt (1 MW), as well as to the invoicing of the electric power generated by such systems.” The foregoing provision could subject to regulation as an Electrical Service Company electrical contractors installing or providing maintenance to solar systems once they reach the 1 MW milestone. It is not clear from the Regulation how would such milestone would be accounted for, on what basis (i.e., over the life of the entity, on an annual basis, or other?) or what purpose would be accomplished. Regulating electrical contractors in this manner could have the unwanted effect of dissuading such contractors from

accepting solar installation or maintenance work out of fear of being regulated and therefore saddled with burdensome requirements. Moreover, the statutory definition of the term “electrical service company” does not include installation or maintenance. Such term only includes generation, storage, invoicing or resale of electric power. See Puerto Rico Energy Transformation and RELIEF Act, Act 57 of May 27, 2014, as amended (“Act 57-2014”), Art. 1.3(j). Sunnova respectfully submits that the definition Subsection 1.07(A)(4)(d) is overly broad and is not supported by the statutory text. Accordingly, companies dedicated solely to the installation or maintenance of systems should be excluded from the definition of “Electrical Service Company.”

Section 2.01, Personal Information

Subsection 2.01(A)(7) of the Regulation requires the submission of the “[n]ame, physical and postal addresses and cellular telephone number, work or office telephone number and electronic mail address of each of the partners, directors or members of the directive body and of the officers of the electrical service company.” On the other hand, Subsections 2.01(A)(5) and (6) require information concerning the Electrical Service Company’s authorized representative and resident agent.

Sunnova respectfully submits that the information regarding the Electrical Service Company’s authorized representative and resident agent should be sufficient for the Commission’s purposes. The Electrical Service Company has distinct legal personality. The Energy Commission can exercise its jurisdiction over the Electrical Service Company through the latter’s authorized representative and resident agent. Requiring personal information concerning the individual officers and members of the directive body serves no discernible purpose. Consequently, Sunnova respectfully requests the Commission to eliminate the requirements of Subsection 2.01(A)(7) and renumber the following Subsections.

Section 2.02, Operational Report

Section 2.02 regarding the Operational Report requirements imposes undue burden on entities engaging in the sale of energy from distributed generation systems in Puerto Rico. It also requires the submission of confidential and proprietary information, the disclosure of which would adversely affect an Electrical Service Company’s competitive position. The foregoing includes the following Subsections:

- Subsection 2.02(A)(3): The Electrical Service Company’s “operational budget for the current fiscal year.”

- Subsection 2.02(A)(5): “Foreseen, planned or discernible changes in [an Electrical Service Company’s] operational budget in the next five years.”

Furthermore, as regards Subsections 2.02(A)(3) and (5), Sunnova operates in multiple jurisdictions. It would be overly burdensome to segregate budget materials corresponding to Puerto Rico from the budget corresponding to other jurisdictions in which Sunnova operates. Also, such information is competitively sensitive information. Therefore, Sunnova respectfully petitions that Electrical Service Companies engaging in the sale of energy from distributed generation systems be exempted from the requirements of Subsections 2.02(A)(5) and (6).

Sunnova is also concerned with the Commission’s requiring Electrical Service Companies engaged in the sale of energy from distributed generation systems to submit the following:

- Subsection 2.02(A)(6): “Any study that [the Electrical Service Company] has or has performed regarding the cost of the electric services it provides, and that also demonstrates the relation between the company’s current costs and revenues received from rates or charges;”
- Subsection 2.02(A)(8): “Any report that the Electrical Service Company has or has performed regarding the operation and maintenance, programmed or not programmed, of the equipment required and used to generate electric power during the three (3) fiscal years before the presentation of the Operational Report;”
- Subsection 2.02(A)(9): “Any report that the Electrical Service Company has or has performed regarding number of electric service interruptions, programmed or not programmed, occurred in the company’s electrical equipment during the three (3) fiscal years before the presentation of the Operational Report;” and

As regards Subsections 2.02(A)(6), 2.02(A)(8) and 2.02(A)(9), the information contained in such studies or reports would be highly confidential and competitively sensitive, and could reveal valuable trade secrets. The disclosure of such information would place Sunnova and similarly situated companies at a competitive disadvantage.

Also, the provisions of the referenced Subsections 2.02(A)(6), 2.02(A)(8) and 2.02(A)(9) are vague inasmuch as they do not specify whether the Commission requires internal studies or analyses performed by an Electrical Service Company, externally commissioned studies, or both. If the Commission intends to require the submission of both, Sunnova respectfully requests that internal analyses be eliminated, as such may be performed frequently and

informally. Hence, it would be very burdensome to identify, gather and produce such ordinary, day-to-day analyses to the Commission. It may be also highly burdensome on the Commission and its staff if such provisions are interpreted too broadly.

Another requirement under Section 2.02 that would be unduly cumbersome is the following:

- Section 2.02(A)(11) requires the submission of “copy of all information an Electrical Service Company has filed before any federal or state agency or entity or before any United States public entity of state or local jurisdiction in relation to the electrical service being provided by the Electrical Service Company in Puerto Rico.”

The foregoing could conceivably include the submission of documents filed before the Puerto Rico Electric Power Authority (“PREPA”) related to all of Sunnova’s clients in Puerto Rico, which would include information and documents on thousands of clients. Such filing would be onerous as well as duplicative. Sunnova respectfully requests the Commission to clarify and narrow down the scope of the information sought by the agency. Alternatively, Sunnova requests to permit the filing of summary documents instead of actual copies of documents.

Section 3.02, Certification

Section 3.02 sets forth excessively burdensome requirements or which would force Electrical Service Companies to provide information about its clients that is entitled to protection. These include the following:

- Subsection 3.03(A)(3) of the Regulation requires the submission of the physical and postal addresses of facilities where services will be provided.

The foregoing requirement could conceivably include the physical and postal addresses of all Sunnova’s customers in Puerto Rico. Satisfying this requirement would entail the disclosure of private information on thousands of Sunnova’s clients.

Sunnova respectfully requests that the above requirement be eliminated or restricted to numbers of facilities by PREPA region. PREPA has the information on the location of each of Sunnova’s systems and PREPA is tasked with controlling and maintaining the electrical grid. Hence, Subsection 3.03(A)(3) would be duplicative and burdensome both on Electrical Service Companies as well as the Commission, since the Commission would have to review the facilities’ addresses when such addresses are on file with PREPA.

- Subsection 3.03(A)(3) further requires that, in case facilities will be of new construction, or in case the facilities are existing but will be or are being renovated, the Electrical Service Company must also file a certification accrediting it has the financial capacity to finance the construction and operation of the facilities, as well as a certification that it has obtained all permits from the corresponding public entities for the execution of the works.

The foregoing Subsection is not clear on how an Electrical Service Company in the distributed generation market would determine that it has the financial capacity to construct and operate new or renovated facilities. Sunnova assumes that this requirement is related to Subsection 3.03(A)(9) regarding a statement by a Certified Public Accountant (“CPA”) – which Sunnova submits would be far too costly – but Subsection 3.03(A)(3) does not establish a link between the two provisions. Moreover, as Sunnova’s facilities would be located in numerous municipalities, it would be virtually impossible to certify that all permits – namely PREPA’s various authorizations obtained in the interconnection process – have been obtained for all facilities, as this would be very much a work in progress where new authorizations would be obtained every week. Once again, it is important to emphasize that Sunnova and similarly situated entities are not utilities building and operating traditional generation units. Given the foregoing, Sunnova respectfully requests the Energy Commission to exempt Electrical Service Companies selling energy from distributed generation systems from these requirements or, at a minimum, specify the requirements for filing a certification that an Electrical Service Company has the financial capacity to finance the construction and operation of facilities in Puerto Rico, in general, and not with respect to individual facilities.

- Subsection 3.03(A)(4) requires Electrical Service Companies to submit a description of specifications, nominal capacity, capacity and net capacity of each of the units, plants or technologies that will be used to provide service.

Again, the above could include the specifications and capacity for all of Sunnova’s systems installed in Puerto Rico, which would in turn entail supplying technical details on thousands of potentially different facilities. This would likewise represent a burden upon Sunnova and other entities like it. Sunnova recommends that Electrical Service Companies engaging in the sale of energy from distributed generation systems to be exempted from this requirement, or instead be required to submit a summary description of the specifications of the equipment used in Puerto Rico and a range of their nameplate capacities.

- Subsection 3.03(A)(8) requires the filing of an estimation and breakdown of investment made and to be made in Puerto Rico by an Electrical Service Company for operation and offering of its services.

The disclosure of investments and future investment plans would affect an Electrical Service Company's competitive position and would require such Company to disclose confidential and/or proprietary information. Further, for companies engaged in the distributed generation business, investment plans are subject to frequent changes depending on the market. This contrasts to large, centralized generation companies, which make limited numbers of large investments in major generation projects. Therefore, Sunnova respectfully requests Subsection 3.02(A)(8) to be modified accordingly.

- Subsection 3.03(A)(9) requires a certified statement from an authorized Puerto Rico CPA accrediting that the Electrical Service Company has the minimum financial resources to operate and provide the services it proposes to render, for the replacement of any existing asset and for any future investment to be made for the operation or offering of services in Puerto Rico. Such statement must be prepared in accordance with the guidelines of the American Institute of CPAs regarding attestation engagements and must include a description of the method used to identify the financial resources that the Electrical Service Company possesses.

Subsection 3.03(A)(9) provides a cumbersome and costly requirement, potentially duplicative or related to the requirement under Subsection 3.03(A)(3) noted above. Sunnova estimates that the cost to engage a CPA to provide the required statement in compliance with the standards of the American Institute of CPAs will be several thousands of dollars. Moreover, this does not appear to be a standard or routine request from an accounting standpoint, and the basis for such an accounting determination is unclear. Sunnova respectfully requests that Electrical Service Companies engaging in the sale of energy from distributed generation systems be exempted from this requirement. In the alternative, standard financial statements should provide sufficient information for the Commission's purposes.

- Under Subsection 3.02(A)(11), all permits required by local or federal laws or regulations, as well as permits issued by federal and local public entities, for the operation of an Electrical Service Company and the functioning of its units, plants or facilities must be identified.

Subsection 3.02(A)(11) could be read to require all permits related to individual residential systems in addition to permits issued to the Electrical Service Company itself. If so, this would create another overly burdensome requirement for companies such as Sunnova operating a substantial number of residential systems. Sunnova respectfully suggests that this requirement be substituted with a list of the permits required from the Electrical Service Company to be able

to operate as a business and the categories or types of permits required in connection with residential systems in general, but not a list of the individual permits for each specific system. Therefore, Sunnova requests the Commission to clarify this requirement consistent with the foregoing comments.

- Pursuant to Section 3.02(B), the application for Certification must be accompanied by every document, certificate or permit accrediting or supporting the information provided with the Certification application.

Sunnova respectfully submits that complying with Section 3.02(B) would be unmanageable if Certification requirements are applicable to individual residential systems. Section 3.02(B) should be modified consistent with the proposed modifications to Subsections 3.03(A)(4) and 3.02(A)(11) above. In the alternative, it is requested that the Commission specify or list which information should be supported by documentation, whose production should not be unreasonable or inexpedient for applicant Companies.

- In compliance with Subsection 3.03(D), generally, the Certification must be amended if there are changes in the information an Electrical Service Company has submitted. Specifically, Subsection 3.03(D)(1) requires the filing of an amended application specifying information that has changed if such change has occurred within the 30-day period the Commission has to issue or deny a Certification. Subsection 3.03(D)(2) also requires the filing of an amended application containing the information that has changed if the Commission has already issued a Certification, which application shall be evaluated as a new application.

Once again, Sunnova is concerned that to the extent the Commission requires Sunnova to include information concerning individual systems in its application for Certification, the requirements of Subsection 3.03(D) would be extremely burdensome. Sunnova's experience to date has been that the number of systems and clients change on weekly, even daily, basis. Modifying the application for Certification based on these changes would be unmanageable for distributed generation companies. We suggest that Subsection 3.03(D) be modified consistent with earlier comments, or in the alternative to spell out which changed circumstances should be informed, whose production should not be unreasonable or inexpedient for applicant Companies. Otherwise, Subsection 3.03(D) would establish an unreasonable and never ending application process, considering the rapidly changing industry conditions.

Section 4.03, Amount of Annual Fee

Pursuant to Section 4.03(A), annual fees are set at 0.25% of an Electrical Service Company's gross income generated during each fiscal year. Such percentage mirrors the maximum amount provided under Section 6.16(d) of Act 57-2014.

In so doing, the Commission established a single formula to determine annual fees for Electrical Service Companies, without regard to the specific circumstances of each Company. Sunnova respectfully submits that annual fees computed in this manner will be very high. Instead, such annual fees should be based on a sliding scale, similar to the Certification fees set in Section 3.07(A), which are based on the relative size or footprint of the operations of Electrical Services Company or the kind of services it offers.

Conclusion

We conclude by reiterating that, in many respects, the Regulation will impose very burdensome requirements on solar companies such as Sunnova that are not traditional utilities or even centralized generation companies and do not have their resources, personnel or infrastructure. As an illustrative comparison, Washington seems to be the only State that has considered regulating solar companies such as Sunnova through a state public utility commission or equivalent. In an interpretive statement issued in 2014, the Washington Utilities and Transportation Commission found that it had the authority to perform the same consumer protection services for customers of solar companies as it does for customers of regulated electrical companies, such as receiving consumer complaints, investigating the issues raised, helping resolve disputes, and taking enforcement action against companies when appropriate. These are all powers the Commission has. However, the Washington Utilities and Transportation Commission determined it would not be appropriate to require the same level of regulation of solar companies that applies to utilities. Instead, the Commission thought unwise "to employ full economic regulation or to exclude explicitly certain companies from [the third-party owner] emerging market. Instead, we believe our primary focus should be on consumer protection and ensuring that the proper conditions are established for fair competition." See <http://www.utc.wa.gov/aboutUs/Lists/News/DispForm.aspx?ID=263>, attached Exhibit 1.¹

We urge the Commission to take on a similar approach: focus on protecting consumers rather than imposing cumbersome and costly requirements on an emerging market, which does not

¹ Other States, such as Colorado, New Mexico and California, have determined that third-party owned systems are not utilities or electrical corporations subject to public utility regulations. Nevada and Oregon have excluded third-party owned renewable energy systems from the definition of a public utility. See <http://www.nrel.gov/docs/fy10osti/46723.pdf>, attached as Exhibit 2, at pages v-vi.

further the purposes of energy diversification of Act 57-2014. Obstacles on such an emerging market could also deter interested companies from investing in Puerto Rico and from competing in the energy space, thereby limiting both competition and options for consumers. Regulation of third-party owners should be consistent with the emerging companies' size, footprint and the services provided. Sunnova has presented suggestions in this letter to such effects.

Moreover, considering personnel and time limitations, it will be difficult for the Commission to evaluate the extensive amount of information and documentation that would be developed pursuant to the Regulation and would potentially detract from the Commission's numerous duties. This would also undermine the purposes of Act 57-2014 of opening the energy market, promoting competition and facilitating energy diversification.

Sunnova appreciates the opportunity to present the foregoing comments and is available to offer any clarifications or further suggestions at the Commission's request.

Sincerely yours,



Carlos J. Fernández Lugo

Enclosures