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September 25, 2015

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 for Electrical Service Companies
Department of State Regulation No. 8618

Dear Mr. Carbó-Lugo:

We make reference to the Order issued by the Puerto Rico Energy Commission (the "Commission") on September 4, 2015, in case CEPR-MI-2015-0006. Said Order extended the period during which the public may submit written comments regarding the Regulation on Certifications, Annual Fees and Operational Plans for Electric Service Companies in Puerto Rico, Department of State Regulation No. 8618 (the "Regulation"). Specifically, the Commission requested the public to address the issues listed in the Appendix of the Order, along with any other matters commenters may wish to address.

Pursuant to the Order, interested persons may submit comments by September 25, 2015. 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 residential solar systems in Puerto Rico and in other jurisdictions throughout the United States.

As noted in Sunnova's August 10, 2015 comments, the Regulation imposes burdensome and costly requirements, better suited to utilities and centralized generators with a limited number of high capacity generation units than to companies that own numerous, smaller capacity distributed generation systems. Sunnova is not presently aware of any other jurisdiction where owners of distributed generation systems are regulated in the manner the Regulation proposes to regulate such companies in Puerto Rico.

Sunnova and other similar companies are not traditional utilities and are not equipped with the infrastructure or human resources required to comply with many of the requirements imposed by the Regulation, as they are currently drafted. Moreover, the Regulation would require the submission of confidential business information, the disclosure of which would threaten the competitive position of such companies. For the benefit of the emerging distributed generation market, Sunnova respectfully reiterates its request to the Energy Commission to avoid or lessen the regulatory burden of the Regulation by exercising its regulatory discretion, revising the scope or redrafting the Regulation's requirements.

Below, we reference certain Sections of the Appendix of the Order and provide comments or suggestions regarding each Section.

A. Entities Covered by the Regulation

1. As of today, the following types of companies providing electricity services in Puerto Rico may be listed as: (a) the Puerto Rico Electric Power Authority (PREPA); (b) independent power producers that sell at wholesale to PREPA, including utility scale renewable generation companies; (c) companies that own distributed generation (DG) facilities and sell to commercial or industrial customers; (d) companies that own DG facilities and sell only to residential customers; and (e) companies that do not own generation facilities but that buy and resell electric power, at wholesale and retail. In what ways should the Regulation differentiate among these categories? Within each of these categories, should the Commission distinguish based on system capacity, based on utility scale vs. distributed generation, or based on some other criteria (e.g. generation connected at transmission, sub-transmission, distribution)? How should the Commission establish these distinctions?

Sunnova's comment:

Sunnova is of the opinion that differentiation within the distributed generation market should be based on individual system capacity and type of installation. Aggregate system capacity is not appropriate for differentiation purposes because, among others, the applicability of the

Regulation may be avoided by limiting ownership of systems so as to not exceed the threshold capacity.

Sunnova would recommend the Commission establish requirements that correspond with the type of facility at issue and its capacity. It is respectfully submitted that there should be a 2 MW threshold system capacity below which systems should be exempted from these regulatory requirements.

We also suggest that the Commission ensure that companies that are dedicated to the installation and maintenance of distributed generators not be included in the definition of “Electrical Service Company.” As noted in Sunnova’s August 10, 2015 comments, the statutory definition of “electrical service company” does not include installation or maintenance. Sunnova’s suggestion is in keeping with prevailing practice in other US jurisdictions.

Commission’s request:

2. If the Commission establishes a capacity limit, below which certification is not required, should the criterion be: company revenues; total capacity installed by that company in Puerto Rico; the typical capacity of a single generating unit, owned by such company; or some other factor?

Sunnova’s comment:

Please see the foregoing comment. Sunnova suggests that the Commission choose whether or not to regulate companies based on individual, not aggregate, system capacity. For distributed generation, we suggest that the Commission exercise its regulatory discretion and decline to regulate companies with individual (not aggregate) system capacities of less than 2 MW.

Commission’s request:

3. Section 1.3(j) of Act 57 defines “electric power service company” to include, among others, any person or entity engaged in the “billing” of electric power. How should the Commission interpret and apply this term for purposes of the regulation on certification?

Sunnova’s comment:

Sunnova suggests that the Commission regulate companies that are engaged in the “billing” of electric power for more than 50,000 Puerto Rico customers. For reference, PREPA serves approximately 1,500,000 customers.

4. Should certification be required of companies that merely install, operate or maintain facilities, but do not own them, sell power from them or provide billing for electric service? If so, what type of certification is appropriate? Does your answer change if such companies (i.e., those that install, operate or maintain facilities) also bill for the electric power consumed?

- a. In this context, how would you define “to operate a facility”?**
- b. In this context, how would you define “to maintain a facility”?**
- c. In this context, how would you define “billing”?**
- d. In this context, how would you define “selling”?**

Sunnova’s comment:

As stated in Sunnova’s August 10, 2015 comments, including electrical contractors under the definition of “electrical service company” would discourage such contractors from accepting solar installation or maintenance work out of fear of being subject to requirements unrelated to their commercial purposes. If such companies do partake in the billing of electric power, then they should be required to obtain a certification from the Commission provided they have the required number of customers, as suggested in the preceding comment.

Commission’s request:

B. Types of Information Required

1. Section 6.13(c) of Act 57 requires each applicant for certification to provide evidence of “his/her moral probity, financial solvency, and technical experience in the field for which a certification is requested.” For each of these three factors, what information requirements can most efficiently and expeditiously fulfill this requirement for every type of company listed in paragraph (A)(1)?

Sunnova’s comment:

If the company is not subject to certification requirements, as Sunnova believes residential solar companies should not be, then the requirement to provide evidence of “moral probity, financial solvency, and technical experience in the field” would be inapplicable.

In the case of companies subject to certification requirements, the following documents may address statutory requirements:

- *Good standing certificate – compliance with corporate formalities*
- *Financial statements (not audited), subject to confidential treatment – financial solvency*
- *Curriculum vitae of management and technical team – technical expertise*

Commission’s request:

2. Section 6.22 of Act 57 requires that each “electric power service company” submit to the Commission information concerning “plans that establish the parameters and goals of the company to meet the electricity needs of the Commonwealth”; “future operating budgets”; “studies on service costs”; plans and goals relating to “energy demand, efficiency, and/or conservation management”; “gas emission or environmental pollutants reduction; resource diversification; and use of renewable energy sources, as applicable”; reliability reports; and reports relating to wheeling applications.

a. Although Section 6.22 does not refer specifically to certification, please specify which, if any, of the listed information should be required from each type of company as part of a request for certification?

Sunnova’s comment:

The list of requirements under Section 6.22 seems particularly suited to the operations of a utility such as PREPA, not any of the other types of companies identified by the Commission as providing electricity services in Puerto Rico.

If the information requirements applied to residential solar companies, which Sunnova respectfully submits they should not, only the information on use of renewable energy resources appears relevant. Information on the plans of the company to meet the electricity needs of the Commonwealth would clearly be out of the scope of the business of relatively smaller companies such as Sunnova. Information on energy demand, energy efficiency, conservation management, reduction of emissions, resource diversification, reliability and wheeling also appear unrelated to the company’s business.

For their part, the requirements concerning information about operating budgets and studies on service costs would be (a) onerous and costly to provide and/or (b) would put companies at a

competitive disadvantage, if the information was made public. In addition, as stated in its August 10, 2015 comments, Sunnova respectfully submits that the requirements regarding studies and reports included in the Regulation 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. To the extent that the Commission would require any such studies, they should be limited to externally commissioned studies

Commission's request:

b. Which of the listed information should be required from each type of company listed in paragraph (A)(I), when submitting the operational report?

Sunnova's comment:

See comment regarding 2(a) above.

c. Section 6.22 of Act 57 requires all electric power service companies to submit information on plans, operating budgets, service cost studies, and other reports. i. How can the Commission best define these requirements for different categories of companies, so as to advance the goals of Act 57, while also respecting the confidentiality of business operations and minimizing cost to the companies? ii. Under what terms do you recommend the Commission to require the information listed in Section 6.22 from each type of company?

Sunnova's comment:

See comment regarding 2(a) above.

Commission's request:

3. The Commission needs to know which individuals are responsible for decisions that affect the public, so that it can assign appropriate consequences to those who fail to comply with the Commission's regulations. What information should the Commission require about such individuals?

Sunnova's comment:

Sunnova suggests that companies subject to the Commission's jurisdiction should register with the Commission and provide the names and contact information for the 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 of the company serves no discernible purpose and is not typically required in other jurisdictions.

Commission's request:

4. As part of the regulatory process, the Commission must analyze supply-side resources and electric power demand in order to meet the electricity needs of the Commonwealth of Puerto Rico within a reasonable time. What information should the Commission request – in addition to the required information of the operational reports as provided in Regulation 8618 – to properly address this mandate?

Sunnova's comment:

Sunnova has no particular comment to address this question.

Commission's request:

5. What obligations should a certified entity have to notify the Commission of changes in the conditions that originally supported the company's certification?

Sunnova's comment:

See Sunnova's August 10, 2015 comments at page 8.

Commission's request:

6. One of the commenters suggested that the certification process should focus not on the company providing service, but on the physical facility where the service is provided. Please comment.

As stated previously, Sunnova respectfully suggests that the Commission should regulate companies based on the size of individual facilities, not total installed capacity. Sunnova has proposed that distributed generation systems below 2 MW should be exempt from regulation.

It is also important to note that requiring information about specific facilities served by a residential solar company would entail the disclosure of private information concerning the company's customers and create additional administrative burden for the Commission with no readily identifiable benefit.

Commission's request:

C. Miscellaneous

1. Section 6.13(f) of Act 57 allows the Commission to “charge a just and reasonable fee for the evaluation, processing, and issue of certifications to defray administrative expenses incurred in said processes.” What methods for designing this fee the commenters propose? Should the method differ for each type of certified entities?

Sunnova's comment:

Sunnova reiterates its statements on page 9 of its August 10, 2015 comments.

Commission's request:

2. If the Commission learns of facts indicating that a company's certification should be modified, suspended or revoked, in the commenter's opinion, what procedures should the Commission follow?

Sunnova's comment:

Sunnova has no particular comment to address this question.

Commission's request:

3. In the commenter's opinion, what are useful examples of certification criteria and procedures used in other jurisdictions that could be applied to the Puerto Rico energy market?

Sunnova's comment:

Sunnova reiterates its statements on pages 9-10 of its August 10, 2015 comments.

Conclusion

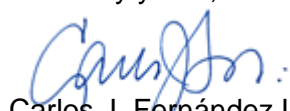
As stated above, Sunnova is not aware of any jurisdiction where companies that own distributed generation systems are regulated in the manner and extent proposed under the Regulation. The states that have considered regulating companies such as Sunnova have either exempted such companies from regulation or have focused on consumer protection and ensuring fair competition. See Sunnova's August 10, 2015 comments at pages 9-10.

Onerous regulations discourage investment and place barriers on emerging businesses such as the distributed generation market. Regulations requiring the filing of confidential information likewise inhibit companies from competing in the market and could deter them from participating.

Sunnova respectfully submits that regulation, if any, should be consistent with a company's size and activities: a company that owns distributed generation systems and has limited operations should not be required to submit as much information as the state utility. Moreover, the Commission is subject to constraints in terms of time, budget and personnel, and evaluating the filings of distributed generation companies would stretch such minimal resources even further.

Sunnova appreciates the opportunity to present further comments to the Regulation and reiterates its availability to offer any clarifications or suggestions at the Commission's request.

Sincerely yours,



Carlos J. Fernández Lugo