

UNOFFICIAL TRANSLATION

COMMONWEALTH OF PUERTO RICO

17th Legislative
Assembly

1st Special
Session

SENATE OF PUERTO RICO

S.B. 840

November 20, 2013

Introduced by Mr. *Bhatia-Gautier*

Referred to the Committee on Energy Affairs and Water Resources

AN ACT

To amend Section 7 and add new Sections 10, 11, 12, and 13 to Act 114-2007, as amended, in order to establish the public policy of the Commonwealth of Puerto Rico that shall govern the interconnection of generating facilities participating in the Net Metering Program set forth by Act No. 114-2007, as amended; direct the Puerto Rico Electric Power Authority to promulgate the Net Metering Regulations for the Net Metering Program, which shall be consistent with the public policy set forth for the interconnection of generating facilities participating in the Net Metering Program established by Act No. 114-2007, as amended; establish the regulations and amendments process for the promulgation and subsequent amendments to the Net Metering Program Interconnection Regulations; create the figure of a representative of the industry who shall participate in the evaluation committee during the regulatory processes of the Net Metering Program Interconnection Regulations; establish an appeals procedure and an alternative dispute resolution procedure for the Net Metering Program, which may also be employed in the event of disputes arising from the evaluation of interconnection requests and from additional technical requirements and/or improvements to the electric power system of the Puerto Rico Electric Power Authority required for the interconnection of a generating facility; and for other related purposes.

STATEMENT OF MOTIVES

The Net Metering Program was created by Act No. 114-2007, as amended, approved on August 16, 2007, which provides for the interconnection of residential, commercial, and industrial customers that use renewable energy generation systems to the electric distribution, sub-transmission, and transmission grid of the Puerto Rico Electric Power Authority (PREPA) and the supply to said grid of excess electric power not consumed by such customers. At that time, the Legislative Assembly stated that Act No. 114-2007 resulted, among other things, from the need to incentivize the generation of electric power through renewable energy sources due to our excessive dependence on fossil fuels and its well-known polluting effect on the environment; the high costs reflected on electricity bills; the questionable charges on account of fuel cost and purchase of energy; and the frequent outages caused by a greater demand for electric power *vis-à-vis* a stagnant generating capacity. As a result of Act No. 114-2007 and Section 111 of the “Public Utility Regulatory Policies Act” (PURPA), as approved in Subtitle E of the “Energy Policy Act” of 2005 (EPAAct 2005), on August 5, 2008, PREPA approved the Regulations Governing the Interconnection of Generators with the Electric Distribution System, Department of State Regulation No. 7544 (“Regulation 7544”). Said regulations establish the requirements and procedures for the installation and operation of generating facilities connected to the PREPA power distribution system. Subsequently, on October 7, 2008, PREPA approved the Regulations for the Establishment of the Net Metering Program, Department of State Regulation No. 7579 (“Regulation 7579”), which establish the interconnection request process and the requirements to participate in the Net Metering Program for those customers that have their own renewable energy power generation systems connected to PREPA’s electric power system.

Four (4) years after the approval of Act No. 114-2007, this Legislative Assembly recognized the need to amend said Act to temper it with the reality of commercial and industrial customers with greater energy needs that are interconnected to sub-transmission and transmission voltage. Consequently, Act No. 103-2012, which amended Sections 2, 5, and 7, was unanimously approved on June 2, 2012, to increase to five megawatts (5 MW) the maximum qualified generating capacity of commercial and industrial customers that are interconnected to the PREPA sub-transmission and transmission system, and for other related purposes. In what concerns us, Act No. 103-2012 amended Section 7 of Act No. 114-2007, to read, in part, as follows: *“The Puerto Rico Electric Power Authority and the Energy Affairs Administration are hereby authorized to adopt the regulations needed for the faithful compliance of this Act...”*

More than a year after the legislative mandate contained in Act No. 103-2012 was issued, on July 9, 2013, PREPA approved the Regulations Governing the Interconnection of Generators with the Electric Sub-transmission and Transmission System for the Net Metering Program, Department of State Regulation No. 8374 (“Regulation 8374”). Said regulations establish the requirements and procedures for the interconnection of renewable energy generating facilities with a generating capacity between 1MW and 5MW that wish to participate in the Net Metering Program to PREPA’s electric power transmission and sub-transmission system. The purpose of Regulation 8374 was to contribute to the strategy of promoting the efficient use of energy and the development of renewable energy alternatives while ensuring the safety of the employees, customers, and equipment of PREPA.

This Legislative Assembly is aware that the promulgation of Regulation 8374 by PREPA sought to comply with the purposes of Act No. 114-2007, as amended, and with the legislative mandate contained in Act No. 103-2012.

However, during the public comment process of the draft of Regulation 8374, the regulated community expressed that said Regulation had several technical, procedural, and legal defects which, rather than supporting the development of renewable energy alternatives, had the practical effect of impairing their development and was, therefore, contrary to the legislative mandate issued in Act No. 114-2007, as amended. Some of the defects found at present in Regulation 8374 – and which were brought to the attention of PREPA during the public comment process – are: (1) the signing of the agreement with PREPA takes place once the project has been built and acceptance testing has been conducted, which could have the effect of hindering the financing needed for the construction of such projects; (2) it requires that all generators regulated under Regulation 8374 meet additional technical requirements or ATRs, and allows PREPA to amend the requirements applicable to a generator if it deems that the proposed project shall have an “impact” on the system, even though Regulation 8374 does not define said term nor contain objective parameters to establish what actually constitutes an “impact” on the system; (3) it arbitrarily exempts the first generating systems with a capacity ranging from 1MW to 5MW for a total installed capacity of 20MW AC from complying with ATRs, but does not provide the technical reasons therefor or transparency regarding how those 20MW are calculated; (4) it fails to provide clear guidelines to allow a generator to once again interconnect with the system after having been disconnected for “reducing the PREPA system’s electric power quality,” action that is not objectively defined in said Regulation; and (5) the Interconnection Agreement format, provided in Attachment B of Regulation 8374, impairs the financing of the projects promoted under Act No. 114-2007, as amended, since its terms and conditions are unacceptable in the industry.

All these defects have the practical effect of severely limiting the investments and development related to the projects covered under Regulation 8374 that otherwise would have helped to achieve the purposes that prompted the approval of Act No. 114-2007. This is so because the current process for assessing and approving interconnection requests is subjective, thus causing uncertainty when it comes to investing in this type of project. Furthermore, requiring ATRs without objective guidelines regarding when such ARTs are necessary to protect the safety and reliability of the PREPA system excessively increases the cost of such systems, nullifies the economic benefits of the initiatives and, thus, practically renders Puerto Rico a non-competitive market for this type of investment.

An example of this is the format of the Interconnection Agreement included in Regulation 8374. The construction of most projects contemplated in said regulation needs financing. The term of financing agreements for these types of projects typically ranges from ten (10) to twenty-five (25) years, which allows for the recovery of the investment. The format of the Interconnection Agreement included in Regulation 8374 only provides for five year term agreements, subject to renewal, but which can be terminated by PREPA at its convenience at any time. This means that any project wishing to participate in PREPA's Net Metering Program could, at any time, be subject to the cancellation of its interconnection authorization. It is extremely difficult, if not impossible, to obtain the financing needed for the development of these projects when the recovery of the investment depends on the right to remain interconnected to the system. At the same time, PREPA has unilateral power to terminate said right at its convenience.

Puerto Rico has a compelling need to establish reasonable technical procedures and legal standards that, in addition to protecting the reliability of the system, enable the financing and development of renewable energy projects that shall participate in the Net Metering Program. For this reason, this Legislative

Assembly is committed to eradicate any defect or obstacle existing in our present code of laws that hinders the development of renewable energy projects that shall participate in the Net Metering Program and, at the same time, to reduce the energy costs of residential, commercial, and industrial customers.

A study of the history of the interconnection and integration of small generating facilities in the United States will reveal that the situation Puerto Rico is undergoing is similar to that which existed in said jurisdiction. The establishment of uniform standards enabled the financing and development of projects at economically feasible costs and within acceptable timeframes for the industry.

In 2004, the Institute of Electrical and Electronic Engineers (IEEE) published its IEEE standard 1547 (The Standard for Interconnecting Distributed Resources with the Electric Power System). Such standard provides requirements relevant to the performance, operation, testing, safety considerations, and maintenance of generating facilities interconnected with electric power systems. It specifically provides general requirements, response to abnormal conditions, power quality, islanding, and the specifications and requirements for design, production, installation evaluation, commissioning, and periodic tests. IEEE standard 1547 was developed after an extensive consensus process with interested parties and, since its adoption and subsequent amendments, has been broadly accepted by the different sectors. As a result, IEEE standard 1547 has become part of the technical requirements of several Federal and State policies and regulations that govern the interconnection of generating facilities in U.S. jurisdictions.

A year after IEEE standard 1547 was published, the Federal Energy Regulatory Commission (FERC) issued Order No. 2003 (Standardization of Generator Interconnection Agreements and Procedures), whereby FERC required public utilities under its jurisdiction to approve the tariffs, procedures, and necessary agreements that would enable the interconnection of electric generating

facilities having a capacity of more than 20MW. Said FERC order did not establish the procedures and agreements needed to standardize the interconnection of electric power generating facilities having a capacity of less than 20MW.

However, the first versions of Order No. 2003 provided for special treatment regarding the interconnection of small generating facilities. Due to this, and as a result of the regulatory process carried out for Order No. 2003, several sectors of the industry that were participating in said Order's comment process urged FERC to initiate a separate procedure to develop uniform standards for processing interconnection requests and interconnection agreements that would address the aspects that apply specifically to the interconnection of small generating facilities. Industry claims were due to a lack of uniform standards for processing requests and interconnection agreements related to these small generating facilities. This had the effect of increasing costs and the amount of time devoted to the evaluation of small generating facilities' interconnection requests, given the common use of non-applicable standards or standards for use only in connection with large-scale project evaluation.

After a long comment process and the collaboration of the regulated community and associations with interest in this issue, which lasted for several years, and in order to correct and eliminate the existing obstacles for the interconnection of small generating facilities, FERC issued Order No. 2006 (Standardization of Small Generator Interconnection Agreements and Procedures) on May 2005. Said order requires all public utility companies under its jurisdiction to adopt standard rules for interconnecting new sources of electricity with a capacity of no more than 20 MW. The purpose and the results of Order 2006 were reducing the time and costs associated with the evaluation and approval of interconnection requests, preserving the reliability of the electric power grids to which they were interconnected, increasing energy supply, lowering wholesale

prices for customers by increasing the number and types of new sources of electricity that will compete in the wholesale electricity market, facilitating the development of non-polluting alternative energy sources, and helping remedy undue discrimination against some small generating facilities in the markets regulated by FERC. At present, a large number of U.S. jurisdictions that have approved regulations to govern the interconnection process and the signing of interconnection agreements used FERC Order No. 2006 as a model.

In summary, FERC Order No. 2006 provides Small Generator Interconnection Procedures (SGIP) and Small Generators Interconnection Agreement (SGIA), which must be adopted and followed by entities that evaluate and approve the interconnection of small generators to their electric power transmission grids.

The SGIP contains the technical procedures to be followed when evaluating an application for the interconnection of a small generating facility to an electrical grid in order to ensure that the proposed interconnection does not jeopardize the safety and reliability of the electrical grid to which such small generating facility shall be interconnected.

On its part, the SGIA contains contractual provisions appropriate for the interconnection of small generating facilities, including provisions for the payment for modifications that could be necessary as the result of the interconnection of small generating facilities. The interconnection agreement is signed by the parties after they successfully completed the evaluation of a proposed interconnection under the standard study process or fast track process. The SGIA does not apply to those interconnection requests submitted under the process applicable to 10KW certified inverters. In this case, a simplified, all-in-one application/form/procedure/terms and conditions document is used by the parties for purposes of authorizing the interconnection of small generating facilities.

In August 2005, several months after the initial approval of Order No. 2006, the United States Congress promulgated EAct 2005, whose Section 1254 addresses the aspect of generator interconnection to electric power grids:

“Each electric utility shall make available, upon request, interconnection services to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “interconnection service” means service to an electric consumer under which an on-site generating facility on the consumer’s premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronic Engineers: IEEE Standards 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.”
(Emphasis supplied)

The obligation imposed under Section 1254 of EAct 2005 applies to Puerto Rico; thus, Regulation 7544 and Regulation 8374 were approved thereunder. Although said Regulations make reference to IEEE standard 1547, among others, they fail to integrate the best practices in the industry into the evaluation and approval of generating facilities’ interconnection requests. This Legislative Assembly has decided that the adoption of the SGIP and SGIA models provided in FERC Order No. 2006, as amended, constitutes the appropriate mechanism to promote the public policy that should be set forth in the Commonwealth of Puerto Rico regarding interconnection procedures for the Net Metering Program. The adoption of the SGIP and SGIA models enables the Commonwealth of Puerto Rico to have the technical procedures and legal standards to reduce costs and time spent in the evaluation of interconnection requests under Regulation 7544 and

Regulation 8374. At the same time, the adoption of the SGIP and SGIA shall standardize the processes adopted in the Island with those established for these cases in a large number of U.S. jurisdictions.

For such purpose, this Legislative Assembly directs PREPA to: (i) adopt new generating facilities interconnection regulations that shall be part of the PREPA Net Metering Program (Net Metering Program Interconnection Regulations), whereby Regulation 7544 and Regulation 8374 shall be repealed within a term of one hundred eighty (180) days after the approval of this Act, which term cannot be extended; (ii) faithfully adjust the interconnection procedures and agreements to be included in the Net Metering Program Interconnection Regulations to the terms and conditions set forth in the SGIP and SGIA models found in FERC Order No. 2006, as amended; (iii) establish that the Net Metering Program Interconnection Regulations shall apply to all generating facilities with a generating capacity equal to or less than 5MW participating in the Net Metering Program.

This Legislative Assembly is aware that, as part of the regulatory process to be conducted by PREPA, it shall be necessary to modify certain provisions contained in the SGIP and SGIA models in order to adjust them to the reality of our electric power system. However, we are also aware that the adequacy and functionality of the technical procedures and legal standards set forth in the SGIP and SGIA models of FERC Order No. 2006, as amended, have been proven successful in many U.S. jurisdictions. Therefore, any modification to said technical procedures and legal standards to be included in the Net Metering Program Interconnection Regulations shall be detailed and justified on the basis of the safety and reliability considerations of PREPA's system. At the same time, they shall be supported in a technical memorandum to be included with the draft of the Regulations for comments during the public comment process. Any variation,

deviation, or modification of the technical procedures and legal standards to be included in the Net Metering Program Interconnection Regulations that is not documented in the technical memorandum shall not be considered as supported in the administrative record and, by virtue of this Act, shall not be approved. In said cases, the technical procedures and legal standards set forth in the SGIP and SGIA models of FERC Order No. 2006, as amended, shall govern. In the event that PREPA fails to comply with the legislative mandate to approve the Net Metering Program Interconnection Regulations within one hundred eighty (180) days — which term includes the comment process, public hearings, and the filing of such Regulations with the Department of State — the process for the evaluation and approval of requests for the interconnection of generating facilities to the Net Metering Program shall be governed by the technical procedures and legal standards contained in the SGIP and SGIA models of FERC Order No. 2006, as amended. Likewise, in said cases, no PREPA official may prevent an interconnection customer from filing — nor may such official refuse to evaluate — an interconnection request using the technical procedures and legal standards contained in the SGIP and SGIA models of FERC Order No. 2006, as amended.

On the other hand, this Legislative Assembly needs to overcome one of the greatest obstacles to achieve the interconnection of generating facilities to the Net Metering Program. That is, requiring generating facilities wishing to participate in the Net Metering Program to meet ATRs, even though such requirements do not include an analysis supporting the need therefor based on considerations regarding the safety and reliability of PREPA's electric power system. This Legislative Assembly does not intend to prevent specific requirements from being established or improvements to PREPA's electric power system from being required if warranted to protect the integrity and reliability of the system. However, we deem that requiring ATRs and/or improvements to PREPA's electric power system is

something that cannot be done automatically, if there are no actual safety or reliability reasons that justify the same. Therefore, an interconnection study process shall be conducted if the capacity or technical characteristics of the generating facility to be connected so warrants. Such study shall determine whether said generating facility shall meet the ATRs or whether PREPA's electrical system shall undergo improvements to make the interconnection feasible. Thus, if it is determined that the generating facility needs to meet the ATRs and/or that PREPA's electric power system needs to be improved, the study containing said determination shall be duly supported with technical reasons and the conditions of PREPA's electric power system warranting that the generating facility shall meet the ATRs and/or that PREPA's electric power system shall be improved.

For all the foregoing, this Act provides a mechanism so that interconnection customers may challenge PREPA's determinations regarding interconnection requests. Specifically, this Act provides that an interconnection customer, whose distributed generation system is required to meet the ATRs and/or improvements to the PREPA electric power system, shall have the right to question the validity of the study that provides the justifications requiring the generating facility to meet the ATRs and/or improvements to the PREPA electric power system. The challenge process may be conducted pursuant to the Regulations Governing the Adjudication Procedures for Complaints of PREPA, adopted by virtue of Act No. 170-1988, as amended, known as the "Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico." Otherwise, any of the parties may choose to use the alternative dispute resolution process contained in this Act.

The Act approved today pursues the same goals that prompted the approval of Act No. 114-2007, as amended, and which, to this day, have not been achieved in a satisfactory manner. Puerto Rico has the resources needed to be on an equal

footing with other jurisdictions that promote the integration of energy sources to reduce energy costs and, at the same time, promote investments and economic activity. The interconnection process is a key element in the integration of said energy sources.

The public policy set forth today through the adoption of the technical procedures and legal standards included in the SGIP and SGIA models of FERC Order No. 2006 seeks to eliminate the obstacles currently found in our interconnection processes; provides a reliable and safe interconnection process; makes Puerto Rico an attractive place to do business; increases economic activity in the Island through the reduction of energy costs; reduces the costs of PREPA associated with the purchase of energy and fuel; and enables Puerto Rico to continue its mission to achieve the goals established in Act No. 82-2010, better known as the “Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act.”

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.— Section 7 of Act No. 114-2007, as amended, is hereby amended to read as follows:

“Section 7.— **[Regulations and]** Education.—

The Puerto Rico Electric Power Authority and the Energy Affairs Administration **[are hereby authorized]** *or the regulatory entity established by law to regulate all that pertains to energy affairs* **[, to jointly adopt the necessary regulations for the faithful compliance with this chapter. Likewise]** they shall also regularly develop and implement educational campaigns directed to informing consumers of the benefits of net metering and of the different technologies available in the market for the generation of energy from renewable sources.

In addition to these educational campaigns, the Puerto Rico Electric Power Authority shall incorporate the following message in the bill sent to customers:

“The installation of equipment to generate energy from renewable sources may help reduce your electric bill, and PREPA, through its commercial office or the Internet, shall provide you with information on how to enroll in this program. Furthermore, tax benefits are available to incentivize the purchase of these equipments. Additional information about this equipment is available at the Energy Affairs Administration *or the regulatory entity established by law to regulate all that pertains to energy affairs.*”

The electric bill shall include this message at least two inches from where the total amount of the bill appears, and shall be written in a font which is the same size as the largest font used in any text appearing in the bill.

[Regulations shall be promulgated not later than twelve (12) months after the approval of this Act.]

Section 2.— A new Section 10 is hereby added to Act No. 114-2007, as amended, to read as follows:

“Section 10.— Public Policy on Interconnection.—

It shall be the public policy of the Commonwealth of Puerto Rico to ensure that the procedures for the interconnection of generating facilities to the electric power system of the Puerto Rico Electric Power Authority are effective in terms of costs and processing time, in order to promote the development of these types of projects and incentivize economic activity through the reduction of energy costs in the residential, commercial, and industrial sector. For such reason, it is hereby established that in order to participate in the Net Metering Program, the interconnection procedures for generating facilities shall be consistent with the Small Generators Interconnection Procedures (SGIP) and the Small Generators Interconnection Agreement (SGIA), provided in Order No. 2006 of the Federal Energy Regulatory Commission (FERC), as amended, and any other future

amendments thereto. The use of the SGIP and SGIA assures that widely recognized and accepted standards in the industry, known for providing an effective, efficient, and safe procedure for the interconnection of generating facilities to our electrical grid are enforced in Puerto Rico.

Pursuant to the provisions of the SGIP and Section 10 of this Act, the Puerto Rico Electric Power Authority shall approve a fast track process for those generating facilities that have a generating capacity less than or equal to two megawatts (2MW). The Puerto Rico Electric Power Authority shall only require that interconnection for generating facilities with a capacity greater than two megawatts (2MW) be evaluated through an interconnection study process when the technical characteristics of the generating facility to be interconnected and the existing conditions of the electrical grid thus require it due to technical and/or safety and reliability considerations of the electric power system. Those interconnection requests for generating facilities with a net capacity greater than two megawatts (2MW), but less than or equal to five megawatts (5MW), shall be evaluated by the Puerto Rico Electric Power Authority through the study process provided in the SGIP.

In those cases in which the Puerto Rico Electric Power Authority refuses to evaluate or determines that it is not possible to evaluate an interconnection request through the fast track process, or when as part of the interconnection study process, or during the negotiation of a study and/or interconnection agreement, PREPA determines that it is necessary to implement additional technical requirements and/or improvements to the electric power system of the Puerto Rico Electric Power Authority, the customer shall have the right to question said determination or finding through any of the procedures provided in Section 13 of this Act.”

Section 3.— A new Section 11 is hereby added to Act No. 114-2007, as amended, to read as follows:

“Section 11.— Regulations.—

The Puerto Rico Electric Power Authority and the Energy Affairs Administration or the regulatory entity established by law to regulate all matters pertaining to energy affairs are hereby directed to adopt the regulations needed for faithful compliance with this Act.

Except as otherwise provided in this Section, for purposes of the regulations to be promulgated by the Puerto Rico Electric Power Authority for the interconnection of generating facilities that shall participate in the Net Metering Program, the Puerto Rico Electric Power Authority and the Energy Affairs Administration or the regulatory entity established by law shall adopt the regulations needed for faithful compliance with this chapter not later than six (6) months as of the approval of this Act.

With respect to the interconnection of the generating facilities that shall participate in the Net Metering Program, the Puerto Rico Electric Power Authority shall be required to promulgate regulations for the interconnection of these generating facilities in accordance with the public policy on interconnection set forth in Section 10 of this Act. Such regulations shall be known as the Net Metering Program Interconnection Regulations and promulgated within a term of one hundred eighty (180) days after the effective date of this Act, which term shall not be extended. The Net Metering Program Interconnection Regulations shall regulate the interconnection of all generating facilities that shall participate in the Net Metering Program and have a generating capacity less than or equal to five megawatts (5MW). Concurrently with the promulgation of the Net Metering Program Interconnection Regulations, the Puerto Rico Electric Power Authority shall repeal any other regulations it has previously promulgated to regulate the

interconnection of any generating facilities that shall participate in the Net Metering Program. Furthermore, PREPA shall amend any other regulations in effect that govern or are related to the Net Metering Program in order for the same to be consistent with the provisions of this Act and with the terms and procedures to be included in the Net Metering Program Interconnection Regulations.

In the event that the Puerto Rico Electric Power Authority fails to promulgate the Net Metering Program Interconnection Regulations on or before one hundred eighty (180) days after the approval of this Act, any generating facility interested in participating in the Net Metering Program shall submit its interconnection request and the Puerto Rico Electric Power Authority shall be required to evaluate the same pursuant to the technical procedures and legal standards contained in the SGIP and SGIA models of FERC Order No. 2006, as amended. Any variation to the technical procedures and legal standards contained in the Net Metering Program Interconnection Regulations to be promulgated that is inconsistent with the SGIP and SGIA models contained in FERC Order No. 2006, shall be justified in a technical memorandum prepared by an independent and qualified entity such as the National Energy Technology Laboratory of the U.S. Department of Energy or any other entity of similar recognition, wherein all technical and/or safety considerations that warrant a variation to the SGIP and/or SGIA models shall be detailed. Any variation to the technical procedures and legal standards contained in the SGIP and/or SGIA that is not part of the aforementioned technical memorandum shall not be included in the Net Metering Program Interconnection Regulations to be promulgated, since it is not supported in the administrative record pursuant to which the regulations process was conducted. Should said variation be included in the promulgated Net Metering Program Interconnection Regulations, it shall lack validity, in which case the

technical procedures and legal standards contained in the SGIP and SGIA models of FERC Order No. 2006, as amended, shall govern.

The Puerto Rico Electric Power Authority shall amend the Net Metering Program Interconnection Regulations in accordance with the amendments to the SGIP and SGIA models of FERC Order No. 2006, as amended, that are approved from time to time. Such amendment shall be approved within a term that shall not exceed one hundred eighty (180) days after the approval of the amendments to SGIP and/or SGIA models contained in FERC Order No. 2006, as amended. In the event that the Puerto Rico Electric Power Authority fails to promulgate said amendment within the term established herein, any generating facility interested in participating in the Net Metering Program shall submit its interconnection request pursuant to the amended technical procedure and legal standards of the SGIP and/or SGIA models contained in FERC Order No. 2006, as amended. Any variation to the technical procedures and legal standards contained in an amendment to the SGIP and/or SGIA models of FERC Order No. 2006, to be included in an amendment to the Net Metering Program Interconnection Regulations shall comply with and be subject to the provisions of the preceding paragraph regarding variations to the technical procedures and legal standards contained in the SGIP and SGIA models of FERC Order No. 2006, as amended.

Any proposed amendment to the Net Metering Program Interconnection Regulations that does not arise from an amendment to the SGIP and/or SGIA models of FERC Order No. 2006, shall be accompanied by a technical memorandum prepared by an independent and qualified entity such as the National Energy Technology Laboratory of the U.S. Department of Energy or any other entity of similar recognition, wherein all technical and/or safety considerations that warrant a variation to the SGIP and/or SGIA models shall be detailed. The technical memorandum shall be part of the proposed amendment to

the Net Metering Program Interconnection Regulations to be published for public comment.

It shall be necessary for the Puerto Rico Electric Power Authority to hold public hearings prior to the approval of any amendment to the Net Metering Program Interconnection Regulations, which shall not be held less than thirty (30) days after publishing the public notice of the proposed amendment to the Net Metering Program Interconnection Regulations. The public hearing shall be directed by an evaluation committee which shall be composed of a representative of the Puerto Rico Electric Power Authority, an advisor on Energy Affairs of the Governor of the Commonwealth of Puerto Rico, and a representative of the renewable energy industry selected by the Energy Affairs Administration or by a regulatory entity established by law to regulate all that pertains to energy affairs pursuant to Section 12 of this Act. Thirty (30) days after the public hearing process, the evaluation committee shall render a joint report whereby it shall unanimously endorse or not each one of the proposed amendments and include the recommendations of each of the representatives that constitute the evaluation committee. Should said evaluation committee deem that the text of one or more of the proposed amendments should be amended, it may propose such modifications to the proposed amendments that have been unanimously agreed on. Once the report of the evaluation committee has been rendered, the Puerto Rico Electric Power Authority shall amend the Net Metering Program Interconnection Regulations, in accordance with those amendments unanimously adopted by the evaluation committee. Any amendment proposed by the Puerto Rico Electric Power Authority that is not approved by a majority of the evaluation committee shall not be included in the amended Net Metering Program Interconnection Regulations.”

Section 4.— A new Section 12 is hereby added to Act No. 114-2007, as amended, to read as follows:

“Section 12.— Representative of the Industry – Evaluation Committee.—

Within thirty (30) days after the approval of this Act, the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall publish a public notice in two (2) newspapers of general circulation in Puerto Rico, directed to all those persons, entities or associations, among others, engaged in or representing persons or entities engaged in the development, interconnection, and/or operation of generating facilities participating in the Net Metering Program. Such notice shall inform that anyone who wishes to be considered in the selection process for the representative of the industry who shall be part of the evaluation committee described in Section 11 of this Act, shall submit his/her qualifications to the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs on or before thirty (30) days of the publication of the notice. The Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall publish said notice each year on the anniversary of the approval of this Act.

The Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall evaluate the qualifications submitted by those interested in being considered to represent the private industry in the evaluation committee and shall select said representative on or before thirty (30) days after the qualification submittal period concludes. Once selected, the Energy Affairs Administration or regulatory entity established by law to regulate all that pertains to energy affairs shall notify said selection by means of a courtesy copy to the Puerto Rico Electric Power Authority, the person, entity or association selected, and to all persons, entities or associations that have submitted their

credentials for consideration. The selection of said representative shall not be reviewed before any administrative and/or judicial forums.

During the evaluation and selection process, the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall give special consideration to those associations that group or represent several persons or entities in matters related to the development, interconnection, and/or operation of generating facilities to be interconnected to the Puerto Rico Electric Power Authority's electrical grid, so as to participate in the Net Metering Program. In its notice, the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall note the foregoing and shall encourage all those interested in being considered to form consortiums and to jointly submit those persons, entities, or associations they have selected to the consideration of the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs.

Those persons, entities, or associations selected to participate in the evaluation committee shall not be entitled to request monetary compensation for the duties to be periodically performed as part of the evaluation committee.”

Section 5.— A new Section 13 is hereby added to Act No. 114-2007, as amended, to read as follows:

“Section 13.— Appeals Procedure and Alternative Dispute Resolution Procedures.—

(a) Petition for Reconsideration – A party adversely affected by a determination of the Puerto Rico Electric Power Authority based on the provisions of any regulations promulgated pursuant to this Act may petition a reconsideration of said determination within ten (10) days from the date such determination was notified. Said petition shall be filed in writing with the official who issued the

determination whose reconsideration is requested and shall state the grounds on which said petition for reconsideration is based.

(b) Formal Adjudication Procedure – The official with whom a petition for reconsideration is filed shall consider the same and notify its final determination in writing to the affected party within a term of thirty (30) days as of the filing date. If the affected party is not satisfied with the final determination, it shall have ten (10) days from the date the final determination was notified to file a request or petition before the Office of the Secretary of Adjudicative Procedures of the Puerto Rico Electric Power Authority in order for the dispute to be decided according to the formal adjudication procedure provided in the Regulations Governing the Adjudication Procedure for Complaints of the Puerto Rico Electric Power Authority, adopted by virtue of Act No. 170-1988, as amended, known as the Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.

(c) Alternative Dispute Resolution Procedures – In those cases in which there is a dispute or controversy on the determination of the technical procedures and/or legal standards applicable to an interconnection request and/or negotiation of a study and/or interconnection agreement between the Puerto Rico Electric Power Authority and the interconnection customer, said customer may resort to the following dispute resolution procedure, without the need to first resort to the procedures contained in subsections (a) and (b) of this Section:

(1) A customer who has filed an interconnection request to participate in the Net Metering Program may request the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs to act as arbitrator in any dispute or controversy that arises during the evaluation of an interconnection request for a generating facility or that arises during the negotiation of a study and/or interconnection agreement with the Puerto Rico Electric Power Authority. Once the Energy Affairs

Administration or the regulatory entity established by law to regulate all that pertains to energy affairs has been requested to act as arbitrator in the dispute, the Puerto Rico Electric Power Authority shall assign an arbitrator with experience in energy issues and generating facility interconnection to address the dispute. By petition of a party duly grounded on the technical reasons that warrant the same, the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall assign an arbitrator experienced in the issues in controversy from the National Energy Panel of the American Arbitration Association.

(2) *Those petitions for arbitration that arise from a dispute regarding a study or interconnection agreement shall contain the following:*

- i. A statement specifying the unresolved disputes;*
- ii. A description of the positions of both parties on the unresolved disputes; and*
- iii. The agreement proposed to address all issues previously agreed upon by the parties and those that are still in controversy.*

(3) *Those petitions for arbitration that arise from a dispute regarding procedural and technical issues on an interconnection request, which shall include but are not limited to the findings and determinations contained in an interconnection study process or from a request for additional technical requirements and/or improvements to the electric power system of the Puerto Rico Electric Power Authority to allow the interconnection of a generating facility shall contain:*

- i. A statement specifying the unresolved disputes;*
- ii. A description of the positions of both parties on the unresolved disputes; and*
- iii. The solution proposed for the issues in controversy.*

(4) *The Puerto Rico Electric Power Authority shall reply to the allegations made in the petition for arbitration on or before thirty (30) days after notice of the petition for arbitration has been provided. In its reply, the Puerto Rico Electric Power Authority shall:*

i. Address and, as applicable, provide technical evidence addressing each one of the unresolved disputes;

ii. Submit its position on the unresolved disputes; and

iii. Submit any additional issue that the Puerto Rico Electric Power Authority deems must be resolved and is related to the disputes brought by the customer.

(5) *The filing of a petition for arbitration shall not affect the queue position assigned to the generating facility interconnection request in accordance with the date and time in which said interconnection request was filed.*

(6) *The arbitration process shall be conducted in a manner similar to that of an adjudication procedure and the arbitrator shall have the same powers of an examining officer under the formal adjudication procedure set forth in the Regulations Governing the Adjudication Procedure for Complaints of the Puerto Rico Electric Power Authority adopted by virtue of Act No. 170-1988, as amended, known as the 'Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.' However, the arbitration process shall be expedited. The arbitrator shall hold an initial conference between the parties to discuss the manner the processes shall be conducted. The arbitrator shall establish the calendar for the proceedings and determine if an oral hearing is needed. If an oral hearing or other processes (comments turns) are conducted, each party shall submit its final proposal on the agreements or its final alternative for the resolution of the issues*

in controversy regarding the interconnection. The arbitrator shall decide between the two (2) final alternatives proposed. If none of these alternatives is consistent with the statutes, regulations, and/or technical standards applicable, the arbitrator shall then make a final determination that complies with the statutes, regulations, and/or technical standards applicable to the dispute between the parties.

(7) The arbitrator may allow the discovery and the scope thereof, but only in those cases in which the arbitrator deems it necessary to address the dispute brought. The parties shall be required to make good faith efforts for the exchange of information relevant to the dispute, provided in an informal and voluntary manner without unnecessary delays.

(8) Disputes regarding requests for discovery shall be resolved by the arbitrator upon the parties' petition. The arbitrator shall direct the party to whom the discovery is required to provide the information if the arbitrator determines that the requesting party has a reasonable need to obtain the information and that said request for information does not result in an unreasonable burden for the other party when compared to the benefit said information shall provide to the requesting party.

(9) The Puerto Rico Electric Power Authority and the customer shall be the only parties to be considered in the arbitration process. The intervention of third parties shall not be allowed.

(10) Notwithstanding the preceding clause, the arbitrator may request the certification of a question to the Energy Affairs Administration or to the regulatory entity established by law to regulate all that pertains to energy affairs, if the arbitrator deems it necessary.

(11) In order to ensure the flexibility of the process, the arbitrator may use different procedures, provided that they are fair, treat the parties equally, and substantially follow the procedures herein provided.

(12) *The arbitrator shall issue its decision and notify the same to the Energy Affairs Administration or to the regulatory entity established by law to regulate all that pertains to energy affairs, to the Puerto Rico Electric Power Authority, and to the interconnection customer within a term which shall not exceed one hundred twenty (120) days after filing the petition for arbitration. The parties shall be entitled to submit their comments on the determination of the arbitrator to the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs within ten (10) days after the notification thereof.*

(13) *Within thirty (30) days after the determination of the arbitrator was notified to the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs, it shall accept, deny, or modify the decision resulting from arbitration, and shall notify its determination to the Puerto Rico Electric Power Authority and the interconnection customer. The Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall only deny or modify a decision resulting from arbitration when the same is not supported by the information contained in the record and/or is inconsistent with the statutes, regulations, or standards applicable to the dispute.*

(14) *Within fifteen (15) days after the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs notifies its decision accepting or modifying the determination issued as a result of the arbitration process, the Puerto Rico Electric Power Authority shall draft a study and/or interconnection agreement consistent with the decision of the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs, and shall forward the same to the*

interconnection customer. The customer shall sign the agreement provided within a term of ten (10) days or submit its objections to the agreement to the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs. If the interconnection customer submits objections, he/she shall state to the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs how the provided agreement fails to comply with the decision of the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs, and shall provide the language that complies with the decision of the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs.

(15) In those cases in which the disputes elucidated and resolved in the arbitration process are related to the design of the project, the implementation of additional technical requirements or the required improvements to the electric power system, the Puerto Rico Electric Power Authority shall notify the interconnection customer if the project shall be approved such as it was presented or if any modifications shall be made to the project or to the electric power system of the Puerto Rico Electric Power Authority to allow the interconnection thereof, pursuant to the provisions of the decision of the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs, within fifteen (15) days after the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs has notified its decision accepting or modifying the decision issued as a result of the arbitration process. As it may apply, and within thirty (30) days of receiving the notification issued by the Puerto Rico Electric Power Authority, the interconnection customer shall file its amended design or notify the Puerto Rico Electric Power Authority, in writing, of its commitment to meet the requirements

set forth in the notice issued by the Puerto Rico Electric Power Authority. If the interconnection customer does not agree with the notice of the Puerto Rico Electric Power Authority, the former shall submit its objections to the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs within ten (10) days from receiving the notice from the Puerto Rico Electric Power Authority. If the interconnection customer submits objections, it shall indicate to the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs how the requirements of the notice of the Puerto Rico Electric Power Authority fail to comply with the decision of the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs, and shall provide such information that complies with the decision of the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs.

(16) If the Puerto Rico Electric Power Authority, without the written authorization of the interconnection customer, fails to meet the requirements of clauses (14) or (15) of this Section within the specified timeframe, the interconnection customer may file a writ of mandamus with the Court of First Instance to order the Puerto Rico Electric Power Authority to fulfill the obligations imposed under this Act. Likewise, if the interconnection customer fails to meet the requirements of clauses (14) or (15) of this Section within the specified timeframe, the Puerto Rico Electric Power Authority may file a motion with the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs to petition the dismissal of the request for arbitration with prejudice. The Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs may grant the petition in the motion if noncompliance of the interconnection customer with the

provisions of clauses (14) or (15) of this Section is the result of his/her gross negligence.

(17) In the event that objections have been filed under the preceding clauses (14) or (15) of this Section, the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs shall approve or deny the agreement or the technical information filed within thirty (30) days after such filing, or it shall otherwise be deemed approved, and the Puerto Rico Electric Power Authority and the interconnection customer shall proceed in accordance with the same.

(d) The party that does not prevail in the arbitration process under subsection (c) of this Section shall defray one hundred percent (100%) of the arbitration costs, including the legal and technical costs resulting from the arbitration process incurred by the prevailing party.”

Section 6.– Rulemaking Authority.–

The Puerto Rico Electric Power Authority and the Energy Affairs Administration or the regulatory entity established by law to regulate all that pertains to energy affairs are hereby empowered to adopt the necessary regulations pursuant to the provisions of Act No. 170-1988, as amended, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico,” to enforce compliance with this Act.

Section 7.– Separability.–

If any clause, paragraph, subparagraph, article, provision, section, or part of this Act were held to be null or unconstitutional, the holding to such effect shall not affect, impair or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, or part thereof held to be null or unconstitutional.

Section 8.– Effectiveness.–

This Act shall take effect immediately after its approval.