

ENERGY ALERT

April 30, 2010

Renewable Energy Reform Legislation

On April 20, 2010, the Governor of Puerto Rico filed renewable energy reform legislation in the form of two bills designed to promote and facilitate the development of renewable energy. The first bill, titled “Renewable and Alternate Renewable Energy Diversification Public Policy Act,” has been filed as House Bill 2611 and Senate Bill 1519 (“H.B. 2611”). The second bill, titled “Puerto Rico Green Energy Incentives Act,” has been filed as House Bill 2610 (the Senate Bill citation is currently unavailable) (“H.B. 2610”). If approved, both H.B. 2611 and H.B. 2610 are expected to have a profound influence on the future development of energy generation sources in Puerto Rico.

H.B. 2611

Via H.B. 2611, the Government of Puerto Rico proposes to establish a public policy to increase and diversify energy generation by requiring the purchase and sale of renewable and alternate renewable energy (collectively termed “green energy”) on the island. In doing so, the bill is also expected to create hundreds of “green jobs” and highly benefit the local economy. In order to accomplish the desired degree of energy diversification, H.B. 2611 proposes to establish a “renewable portfolio standard” that imposes green energy transmission percentage requirements on the Puerto Rico Electric Power Authority (“PREPA”), as well as any other retail energy providers on the island, over the next quarter of a century. These portfolio standards are designed to achieve a goal of twelve percent (12%) by 2015, followed by a fifteen percent (15%) green energy transmission goal between 2020 and 2035.

The main mechanism offered to achieve these renewable and alternate renewable energy transmission goals involves the creation of “Renewable Energy Certificates” (“RECs”). An individual REC represents the equivalent of one megawatt hour (1 MW/hr) of electricity generated by a renewable or alternate renewable energy source together with its environmental and social attributes. In addition to solar and wind energy sources, other energy source classifications are outlined by the bill, which also allows developers the opportunity to consult proposed energy projects with the Energy Affairs Administration and receive a certification that

a proposed energy project will qualify as either a renewable or alternate renewable energy source.

H.B. 2611 proposes that RECs generated by renewable and alternate renewable sources will be traded in an open market. The bill encourages renewable and alternate renewable energy providers to register themselves in the North American Renewable Registry to facilitate the RECs market. Retail energy providers are expected to demonstrate compliance with the applicable portfolio requirement mandated by H.B. 2611 by purchasing RECs or, in limited circumstances, demonstrating that they sold “green energy” for which no RECs could feasibly be issued. To a certain extent, RECs generated can also be “banked” to demonstrate compliance with the standard applicable in a future year.

Compliance with the portfolio standards, as well as general management of RECs, is a task assigned to the Renewable Energy Commission of Puerto Rico (“Commission”). The Commission is attached to and will rely on the resources of the existing Energy Affairs Administration (“EAA”) to ensure compliance with the portfolio standards. The Commission will be comprised by the Executive Director of EAA, the Secretary of the Department of Economic Development and Commerce (“DDEC”), the President of the Government Development Bank (“GDB”), the Secretary of the Department of Treasury (“Treasury”), and the President of the Puerto Rico Planning Board. RECs surrendered to demonstrate compliance with the portfolio standards will be retired and canceled by the Commission.

H.B. 2610

H.B. 2610 also encourages the generation of renewable and alternate renewable energy on the island through the use of a series of short, medium, and long-term economic incentives. H.B. 2610 would give the EAA the power to directly encourage, through the use funding mechanisms, the development of renewable and alternate renewable energy sources in Puerto Rico. The EAA will also have the authority to create measures aimed at stimulating the development of sustainable energy systems that promote more efficient energy use on the island. These incentives will be funded by a “Green Energy Fund” (“Fund”) which, consistent with the objectives of the government’s new energy policy, unifies previously existing incentives relating to the creation and/or use of renewable and alternate renewable energy sources in Puerto Rico.

Pursuant to H.B. 2610, the Fund would be established by Treasury as a special fund, separate from all other government funds, and would be fed by various sources including, most significantly, collections derived from existing vehicle taxes and fines levied by the Commission for noncompliance with H.B. 2611. The EAA, in conjunction with the Evaluation Committee (“Committee”) (composed by the Secretary of DDEC, the President of GDB, and the Secretary

of Treasury), will be in charge of managing the availability of funds and promoting the construction of various green energy generation projects based on a "tiered" system.

Under the first tier, the Committee would receive and review the periodic reports sent by participating financial institutions and cooperatives which are authorized provide refunds to small scale green energy projects. Small scale green energy projects are projects that can produce up to one hundred kilowatts (100 kW). The second tier would apply to medium scale green energy projects with the capacity to produce between one hundred kilowatts (100 KW) and one megawatt (1 MW). The second tier would involve a quarterly auction process whereby competitive bids for project grants are evaluated by the Committee and awarded to developers based on various criteria including cost effectiveness and efficiency of the project, and the perceived ability and reputation of the developer, among others. Projects in the third tier are large scale projects with the capacity to produce more than one megawatt (1 MW). Under H.B. 2610, these larger projects would be eligible to receive special tax treatment, via grants of tax exemption and, depending on the project specifics, may also be able to use RECs as part of the funding mechanism. The referenced exemptions are generally used to grant holders preferential tax rates for income, real and personal property, municipal license taxes, and others. Additionally, H.B. 2610 would establish that the cost of acquiring RECs necessary to comply with H.B. 2611 are deductible expenses, and provides several other tax benefits to the owners of real estate where green energy producing units are to be located.

If you have any questions or comments, or wish additional information regarding this matter, please contact any of the attorneys listed below, members of our Environmental, Energy and Land Use Practice Group.

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