



February 4, 2014

www.mcvpr.com

ENERGY ALERT

Senate Bills 881-884: Governor Alejandro García's Proposal For Energy Reform

On January 15, 2014, Governor Alejandro García-Padilla, through the members of the Popular Democratic Party majority in the Senate, submitted a legislative package consisting of four (4) bills proposing to address various key energy-related matters ("Administration Bills"). The bills cover many of the same topics addressed in Senate Bills 837-843 authored by the Senate President, Eduardo Bhatia Gautier, subject of our Energy Alert of January 9, 2014. While there is common ground between the Administration Bills and Senate Bills 837-843, there are differences in the overall approaches being proposed.

Some of the more important differences between the Administration Bills and Senator Bhatia's Bills include:

- The proposed Energy and Telecommunications Commission (the "Commission"), the third party regulator of the energy grid, would also have jurisdiction over the telecommunications sector; and
- The Commission would act as a reviewer of proposed tariffs and charges. In other words, the Commission would generally not be required to authorize tariffs and charges in the first instance, but would rather act in response to a complaint filed before it.

Following is an overview of the Administration Bills.

I. Senate Bill 881 - To amend Act No. 83 of May 2 of 1941, known as PREPA's Enabling Act

Senate Bill 881 ("SB 881") proposes to amend Act No. 83 of May 2 of 1941, known as the Puerto Rico Electric Power Authority's ("PREPA") Enabling Act to, among other things, impose additional requirements and conditions upon PREPA's Governing Board and its Executive Director. SB 881 mandates PREPA to be more transparent and requires PREPA's Governing Board to broadcast, with certain exceptions, its regular and extraordinary meetings and make public the agendas of each of these meetings. The bill also requires PREPA to disclose and make public certain financial and operational information, data, projections, and statistics.

SB 881 establishes the functions and roles of PREPA's Governing Board and requires the adoption of a code of ethics to regulate the conduct of its members. SB 881 also establishes the circumstances under which a person would be unable to occupy the Executive Director position. In order to protect the reliability of the management of the grid, SB 881 also creates the Monacillos Energy Control Center ("MECC") Director position. The MECC and its director would have certain independence, separate from other PREPA components.

SB 881 would define key energy policies in Puerto Rico. Among others, the bill seeks to promote Puerto Rico's energy independence; guarantee the safety and reliability of the grid while integrating clean and efficient energy; ensure that PREPA's infrastructure is adequately maintained; reduce the use and consumption of energy sources that are not available in Puerto Rico; promote energy conservation and efficiency in all governmental and private sectors; and require an interconnection voltage of 13.2 kV from all new projects to be interconnected with PREPA's distribution grid.

SB 881 would also transfer to the Commission, an independent and separate agency from PREPA (See Senate Bill 882's description below), the review process of invoices issued by PREPA to its clients. The Commission would also review the rates imposed by PREPA. In its decision making process, the Commission would take into consideration whether such rates are fair, reasonable and affordable based on real costs, without interfering with PREPA's obligations to pay its debts or its ratemaking power. Under this bill, PREPA would also be required to include in the utility bill a breakdown of all categories of charges and the legal basis for each of them.

SB 881 authorizes PREPA to diversify its sources of income and provide other services to reduce its dependence on the sale of energy. In order to do so, PREPA must implement a business model to accomplish such endeavor, which includes seeking new energy markets in other Caribbean jurisdictions.

II. Senate Bill 882 - To create the Puerto Rico Energy and Telecommunications Commission; to create the State Energy Policy Office; and to repeal the Puerto Rico Telecommunications Act of 1996; among others.

Senate Bill 882 (SB 882) proposes to create the Puerto Rico Energy and Telecommunications Commission ("the Commission") whose main purposes concerning energy are to review the rates set by PREPA; oversee PREPA's modification of rates; regulate and address matters that impact electrical infrastructure, as well as authorize contracts between PREPA and independent energy providers and act as mediator in related disputes. The Commission would be the legal successor of the Puerto Rico Telecommunications Regulatory Board and would continue regulating telecommunications in Puerto Rico.

Moreover, the SB 882 proposes the creation of the State Energy Policy Office ("Office"), an entity attached to the Commission, whose principal responsibilities would be setting energy public policy and would be the legal successor of the Puerto Rico Energy Affairs Administration.

SB 882 lists principles of public policy on energy matters, which include, among others, offering electricity at a fair, reasonable and affordable price based on real costs; providing reliable, sustainable and environmentally sound service; not interfering with PREPA's obligations nor its power to set and revise rates; making development of renewable energy sources a priority; minimizing unnecessary consumption of energy by all government entities; identifying the maximum percentage of renewable energy that can be integrated into PREPA's infrastructure in a safe and reliable manner and at a reasonable cost; overseeing the implementation of strategies to offer electrical services at a competitive cost; establishing adequate controls regarding economic terms and conditions for the interconnection of systems of independent energy producers with PREPA's grid; ensuring PREPA purchases energy from independent energy producers at a reasonable price; setting appropriate controls regarding rates that may be charged by independent energy producers; and overseeing that rates set and charged by PREPA are reasonable and do not result from superfluous spending.

The bill enumerates the powers and duties of the Commission and provides that it shall require that prices in energy contracts, wheeling rates and interconnection charges are fair and reasonable. When regulating wheeling rates, the Commission must consider the contribution from independent energy producers to provide for maintenance of the electrical grid, among others.

As to the Commission's budget and charges it may impose, the bill requires any person profiting from the generation of electric power to pay a charge that would not exceed 0.25% of its annual gross income resulting from the rendering of said services. Also, a person may not challenge a charge imposed by the Commission unless said person pays a deposit.

SB 882 provides for the granting of certifications to energy and telecommunications services providers. The certifications would be issued pursuant to regulations to be adopted by the Commission and would not be denied arbitrarily or in a discriminatory manner. A certification would be deemed issued after 30 days from application, unless the Commission extends said term. A person already providing electric power generation services may continue rendering services before being certified by the Commission, provided it presents an application for certification within the first 30 days from approval of the Act, which certification will be automatically granted.

The bill also establishes that the Commission would have primary exclusive jurisdiction over the following cases and controversies: those related to rates set or charged by PREPA to its residential, commercial and industrial clients as well as those related to rates and charges of any independent energy producer; the review of bills issued by PREPA to its clients; instances of non-compliance with Puerto Rico's energy policy; claims brought against any electricity company regarding electricity services or the electrical grid, except for damages; wheeling or interconnection between PREPA or its subsidiaries and parties connected to the electrical grid or with any person with a direct or indirect interest in such electricity services; claims under contracts between PREPA and independent energy producers as well as between independent energy producers; and petitions to review rulings from the Office related to applications to increase electricity generating capacity in excess of 2 MW from non-renewable sources.

SB 882 provides for the review of rates set by PREPA and by independent energy producers, specifically requiring that PREPA and independent energy producers notify the Commission about their rates and charges. Particularly, the Commission would have the power to adjudicate complaints requesting the review of rates and charges set by PREPA or an independent energy producer alleging that such rates or charges are arbitrary or discriminatory or not based on energy policy or applicable laws or regulations. The Commission may require a deposit to cover any damages a defendant may suffer as a result of the proceeding.

The bill would institute a procedure for reviewing electricity bills and generally provides that any person wishing to object a bill issued by PREPA must first undergo an informal administrative procedure, which entails requesting within 30 days of issuance of a bill an investigation that would be conducted by PREPA, provided the client pays the average amount corresponding to non-challenged bills of the previous six months. PREPA must inform the results of the investigation to the client within 30 days from the filing of the objection.

Pursuant to SB 882, any person negotiating an agreement with PREPA or with an independent energy producer related to wheeling, capacity charges, interconnection, energy purchase contracts or any other subject regulated by the Commission may request the Commission, at any moment during such negotiation, to mediate in the resolution of differences. In the event that such mediation does not result in the satisfactory resolution of disputes, the parties may agree to submit to an arbitration proceeding before the Commission to resolve any issue, which agreement must be made in writing. The Commission would generally have 180 days from filing of the response to the initial arbitration petition to rule on the arbitration.

Under the bill, the Commission would authorize contracts between PREPA and independent energy producers. The Commission would oversee that rates, rights, rents or charges to be paid by PREPA to independent energy producers are fair, reasonable and protective of public funds. The Commission would also adopt regulations to establish guides and standards for the negotiation of energy contracts, standards for compliance of energy contracts, and terms and conditions that should be included in energy contracts and interconnection agreements, including reasonableness of costs-per-kilowatt-hour.

The bill also details the powers and responsibilities of the Office, which, among other duties related to the setting of energy public policy, gathering and divulging of energy-related information, and advising on energy efficiency matters in Puerto Rico, would identify the maximum percentage of renewable energy that can be integrated to the grid in a safe and reliable manner and at a fair cost. The Office would also fix the mandatory percentage of renewable energy that would be generated, distributed and transmitted in Puerto Rico. In addition, it would be the entity in charge of requiring importers, distributors, manufacturers, producers and exporters to submit periodic reports regarding importation, distribution, manufacture, production, elaboration, existence, transportation, use, consumption and exportation of fossil fuels and other fuels and energy resources. Further, it would have the power to file complaints before the Commission against persons who act contrary to energy policy.

Regarding telecommunications, the SB 882 proposes to extend the Commission's jurisdiction over internet protocol television ("IPTV") services and would grant the Commission the power to formulate public policy regarding broadband internet access as well as to regulate internet service providers and complaints against such providers. Additionally, the universal service fund program would be updated for purposes of focusing on providing high speed internet access island-wide.

III. Senate Bill 883 - To delegate to the Department of Transportation and Public Works the oversight of certain natural gas related activities

Senate Bill 883 ("SB 883") proposes to transfer from the Puerto Rico Public Service Commission to the Department of Transportation and Public Works ("DTOP", by its Spanish acronym) the authority to regulate the import, production, generation, transmission, delivery, and distribution of natural gas in Puerto Rico through the use of pipelines. Under SB 883, entities under DTOP's jurisdiction would be required to comply with the statutes and regulations administered by the U.S. Department of Transportation's ("USDOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Among these, SB 883 specifically mentions the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Public Law 112-90) and regulations promulgated under it. Under SB 883, DTOP is required to enforce said statutes and regulations.

SB 883 would transfer the Center for the Coordination of Excavations and Demolitions to DTOP (the "Center"). This Center had been created by way of Act 267-1998 for the purpose of complying with the initiatives of USDOT and the National Transportation Safety Board to promote programs that reduced accidents associated with underground facilities (e.g., pipelines) and promoted public safety. Under Act 267-1998, the Center had already been entrusted with the obligation of establishing a uniform program for the identification and delimitation of Puerto Rico's underground infrastructure, as well as enforcing compliance with PHMSA's Regulations for Pipeline Safety Programs.

IV. Senate Bill 884 - To exempt vehicles mostly powered by electricity from the payment of excise taxes

Senate Bill 884 ("SB 884") proposes to exempt "*vehicles mostly powered by electricity*" from the payment of excise taxes. These vehicles are defined as: (1) "*Plug-in Hybrids*" – vehicles that combine a conventional fuel engine with a regenerative electric motor that can be plugged-in to a conventional electric outlet or to a residential or commercial recharging station; or (2) "*Electric*" – vehicles that only use electric power and do not generate any type of emissions to the environment. Both of these types of vehicles would be one hundred percent (100%) exempted from the payment of excise taxes.

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 & Land Use Practice Group:

Carlos J. Fernández-Lugo	787.250.5669	cfl@mcvpr.com
Jorge J. García Díaz	787.250.5814	jig@mcvpr.com
Rosa Corrada-Colón	787.250.5651	rcc@mcvpr.com
Germán Novoa-Rodríguez	787.250.5603	gnr@mcvpr.com
Pedro F. Meléndez-Arreaga	787.250.5677	pfm@mcvpr.com
Hernán Marrero-Caldero	787.250.5600	hmc@mcvpr.com
Ignacio J. Vidal-Cerra	787.250.2612	ivc@mcvpr.com

The content of this McV Alert has been prepared for information purposes only. It is not intended as, and does not constitute, either legal advice or solicitation of any prospective client. An attorney-client relationship with McConnell Valdés LLC cannot be formed by reading or responding to this McV Alert. Such a relationship may be formed only by express agreement with McConnell Valdes LLC.