



May 30, 2014

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ENERGY ALERT

Act for the Transformation and Energy Relief of Puerto Rico signed into law

On May 27, 2014, Governor Alejandro García-Padilla signed into law Act 57 (“the Act”), known as the “Act for the Transformation and Energy Relief of Puerto Rico.”

The Act effects the most dramatic changes in the energy sector in Puerto Rico since the creation of the Puerto Rico Electric Power Authority (“PREPA”) in 1941. A summary of some of the most noteworthy provisions of the Act follows.

The Act requires PREPA to adopt Puerto Rico’s Energy RELIEF Plan, which would require PREPA to ensure that, within three (3) years from July 1, 2014, at least sixty percent (60%) of the electricity generated in Puerto Rico from fossil fuels (gas, coal, petroleum and others) is generated in a highly efficient manner, as defined by the Energy Commission, an independent regulatory body created by the Act.

PREPA is required to present to the Energy Commission the Energy RELIEF Plan within sixty days from the Commission’s approval of its regulations. If PREPA does not comply with said requirement, the Energy Commission will instead prepare said RELIEF Plan within a period of ninety (90) days.

PREPA is also required, within one (1) year from July 1, 2014 (to be revised every three years thereafter), to submit to the Energy Commission for its approval an Integrated Resources Plan setting a long-term strategy (20 years) for meeting energy demands based on current and attainable infrastructure and technologies, combined with conservation and diversification efforts. The Plan will include performance parameters such as revenues per kilowatt-hour; operational and maintenance costs per kilowatt-hour; operational and maintenance costs of the distribution system per client; costs in client service per client; general and administrative costs per client; energy sustainability; emissions; and total yearly use of energy in Puerto Rico, among others.

Setting of rates by PREPA will henceforth be reviewed by the Energy Commission before becoming effective. Such process will require public hearings, which will be conducted by the Independent Consumer Protection Office, another new agency created by the Act.

An initial review of rates is mandated within 180 days from approval of the Act. The Energy Commission will review the following evidence in considering whether rates are fair and reasonable: (1) efficiency, sufficiency and suitability of facilities and service; (2) costs related to the payment of debt by PREPA; (3) direct and indirect generation, transmission and distribution costs, including marginal costs, stranded costs and costs attributed to loss of energy by theft or inefficiency; (4) all charges and costs included in the fuel purchase adjustment and energy purchase adjustment charges categories as of the date of approval of the Act; (5) PREPA's capacity to improve its service and facilities; (6) energy conservation and efficient use of alternative energy sources; (7) data related to effects of special legislation, subsidies and contributions; and (8) any other data or information deemed necessary.

The approved rate will be invoiced in the manner prescribed by the Act (discussed below). The breakdown of the approved rate or change of rate will be posted on the Energy Commission's website. It is worth noting that if the Energy Commission does not undertake any action after 180 days of filing of a petition for review of rates, the rate will become final and the Energy Commission may not review it.

The Energy Commission will approve under the categories "fuel purchase adjustment" and "energy purchase adjustment" only those costs directly related to the purchase of fuel and the purchase of energy. No other cost or charge will be included under such categories, and under no circumstances the payment of lines of credit (including interest) may be included as costs directly related to the purchase of fuel and the purchase of energy.

A new electricity invoice will be designed and submitted by PREPA for the Energy Commission's approval. Such invoice will include a breakdown detailing the following: fuel purchase adjustment; adjustment of energy purchased from co-generators and renewable energy producers; costs associated with the Renewable Energy Certificates; account service and maintenance charges; consumption charges; operational expenses; energy theft; electrical losses; payment of issued debt; accounts payable by the public sector; accounts payable by the private sector; special laws; and any other charge related to residential and commercial clients' utility bill/invoice. The invoice will not include costs or charges under the category "fuel purchase" or "energy purchase" that are not approved by the Energy Commission.

The Act also incorporates a new section to PREPA's Enabling Act, which will allow for citizen suits to be filed by individuals or legal entities before the Energy Commission demanding PREPA's compliance with rate-making duties under the Act. Final decisions issued by the Energy Commission will be reviewable by the Puerto Rico Court of Appeals.

The Act defines "energy companies" as any person or entity offering generation, invoicing, or re-selling of electrical energy. The term includes PREPA.

The Energy Commission will also have the power to: (1) regulate energy companies and approve and revise rates or charges charged by such companies for any matter directly or indirectly related to the rendering of electrical services; (2) ensure prices in power purchase agreements, wheeling rates and interconnection charges are fair and reasonable; (3) regulate wheeling of energy; (4) revise and approve minimum technical requirements and additional technical requirements for the interconnection of distributed generators and oversee compliance with the same; and (5) set standards for facilities or plants of generating electric companies to guarantee efficiency and reliability of electric service in accordance with industry best practices and oversee compliance with such standards.

The Energy Commission will certify energy companies to render services in Puerto Rico. Energy companies operating in Puerto Rico as of the date of enactment of the Act are required to request a certification within 90 days after adoption of the regulation governing the certification process by the Energy Commission. Once the application is completed, the certification will be automatically granted. Generally, new applicants will be granted certifications if the Energy Commission does not request additional information from the applicant within thirty (30) days from filing. The Energy Commission may charge reasonable fees to process such applications.

Energy companies are required to submit to the Energy Commission to following information: (1) resources plan setting the parameters and goals of the company to comply with Puerto Rico's electric power needs within a reasonable time period; (2) future operational budgets during the period determined by the Energy Commission via regulation; (3) service cost studies showing the relation between current company costs and revenues received by concept of rates or charges; (4) management goals and plans as to energy demand, efficiency and conservation, load management programs and technologies, emissions reduction, resource diversification and use of renewable energy sources, as applicable; (5) reliability reports regarding average system frequency; (6) reports describing wheeling requests presented before PREPA and results of such requests; and (7) any other information, document or report the Commission deems necessary.

The Energy Commission may limit access to confidential information and documents that may be required, if requested by the applicant.

To defray operational and administrative costs, the Energy Commission will set an annual charge proportional to the gross income of persons under its jurisdiction resulting from rendering of electric services or transportation of electricity. Also, any person or energy company earning income from the generation of electricity will pay charges to the Commission that will not exceed 0.25% of its annual gross income resulting from the rendering of such services. Persons under the jurisdiction of the Energy Commission will be required to file with said Commission audited financial statements within 180 days of the approval of the Act for the purpose of determining the applicable amount that will be charged.

The Energy Commission will approve the conflict resolution procedures that energy companies propose to implement with their clients. Also, a client who wishes to challenge an invoice must first file its objections, request an investigation before such electrical service company and generally exhaust remedies before requesting a review before the Energy Commission, which will consider the energy company's decision *de novo*. Challenging an invoice will not exempt clients from their obligation to pay future invoices.

The Energy Commission is required to adopt regulations establishing client-service standards for energy companies. Moreover, the Energy Commission will approve the following information submitted by energy companies pertaining to client service: (1) fair and reasonable practices for providing services, (2) fair and reasonable practices for measuring services; (3) fair and reasonable practices for guaranteeing the precision of equipment used to provide service; (4) fair and reasonable practices to guarantee the reliability and continuity of provided service; (5) practices for the protection of the health and safety of employees and the general public, including adequate installation, use, maintenance and operation of security devices and other equipment; (6) client service terms and conditions; and (7) any other standards and regulations related to services provides by certified energy companies deemed necessary.

Certified energy companies, including PREPA, are required to comply with the Energy Commission's approved efficiency standards and other any other industry parameters and submit for approval of the Energy Commission their strategic plans to comply with efficiency standards.

The Energy Commission, along with PREPA, will establish requirements for the publication of requests for proposals (“RFPs”) for the purchase of energy or for the modernization of generating plants and facilities. The Energy Commission will receive and evaluate proposals and recommend a decision to PREPA in a period of ninety (90) days, after which the selected proponent will negotiate and execute the corresponding agreement within a period of sixty (60) days. The contract would be subject to the approval of the Energy Commission.

The Energy Commission will evaluate and approve all energy contracts between PREPA and any electric service company before such contracts are executed.

The Energy Commission will certify any sale, purchase or merger of energy companies or their facilities as in accordance with the Energy RELIEF Plan, the integrated resources plan and the public’s best interest. Such certification procedures will be established by the Energy Commission pursuant to regulations. Factors to be considered include size and generating capacity of a facility, and impact of the proposed transaction upon the electrical industry and clients. The Energy Commission must render a decision regarding the proposed transaction within 180 days from the filing of the request.

The Puerto Rico Energy Administration

The Puerto Rico Energy Administration (“the Energy Administration”) is created as an independent government entity to provide administrative and operational support to the Energy Commission, the State Energy Public Policy Office and the Independent Consumer Protection Office.

The Energy Administration will create an online filing system through which persons under the jurisdiction of the Energy Commission will submit documents to initiate cases before such Commission.

The Independent Consumer Protection Office

The Act creates the Independent Consumer Protection Office to educate, guide, assist and represent clients of electrical service in Puerto Rico, specifically having the powers, among others: (1) to make independent recommendations to the Energy Commission regarding electricity bills/invoices, energy public policy and any other matter affecting electricity consumers; (2) represent consumers and file complaints before the such Commission regarding rates, bills/invoices, energy public policy, the environment and any other matter affecting such clients; and (3) participate in the adoption and modification of rates proposed by PREPA (see above).

The State Energy Public Policy

The Act creates the State Energy Public Policy Office, which will be in charge of developing and adopting energy public policy in Puerto Rico. The State Energy Public Policy Office will have the power to identify the maximum percentage of renewable energy to be integrated into Puerto Rico’s grid, and identify adequate technologies and sites for such integration. The State Energy Public Policy Office will also regulate, in conjunction with the Permits Management Office, requirements for the construction works to promote energy efficiency, among others.

The State Energy Public Policy Office will be the legal successor of the Puerto Rico Energy Affairs Administration.

Government Energy Efficiency

Government agencies and public corporations will be required to implement measures and initiatives to annually reduce the total consumption of electricity to achieve minimum average savings of forty percent (40%) during the next eight (8) years after approval of the Act.

The Energy Commission will have primary and exclusive jurisdiction to hear cases and controversies relating to non-compliance of energy initiatives by the Executive Branch. Cases and controversies relating to non-compliance of energy efficiency of the Judicial Branch will be heard before the Puerto Rico courts.

The Puerto Rico Legislature, in turn, would be required to reduce energy consumption at a rate of two percent (2%) in the first year; three percent (3%) in the second year; five percent (5%) in the third year; seven percent (7%) in the fourth year; eight percent (8%) in the fifth year; ten percent (10%) in the sixth year; and twelve percent (12%) from the seventh year onwards. Base energy consumption to be reduced would be the consumption corresponding to the 2012-2013 fiscal year.

Cases or controversies relating to the non-compliance of energy efficiency requirements by the Puerto Rico Legislature will be heard before the Puerto Rico courts.

Municipalities will be subject to an energy consumption limit and will be required to reduce such limit by five percent (5%) annually during the first three years after approval of the Act until reaching a reduction of at least fifteen percent (15%). Municipalities whose energy consumption exceeds their cap will be required to pay PREPA the amount corresponding to such excess.

The Energy Commission will have primary exclusive jurisdiction to hear cases and controversies relating to non-compliance of energy initiatives of municipalities.

Net Metering

The Act requires PREPA to model its interconnection procedures for distributed generators with a generating capacity of up to 5 MW interested in participating in the Net Metering Program based on the Federal Energy Regulatory Commission's Small Generator Interconnection Procedures ("SGIP") and the Small Generator Interconnection Agreement ("SGIA").

An expedited process will be established by PREPA for distributed generators with a generating capacity of less than 1 MW, but the Energy Commission may require reliability studies for the interconnection of generators with a generating capacity greater than 500 kW but less than 1 MW.

PREPA is required to adopt regulations for the interconnection of distributed generators with a generating capacity of less than one (1) MW, as well as regulations for the interconnection of distributed generators with a generating capacity between 1 MW and 5 MW, consistent with the mandates of the Act. The regulations must be adopted within 180 days of the enactment of the Act.

The Act delegates to the Energy Commission the adoption of regulations for the review of PREPA's decisions relating to the interconnection of distributed generators. Such review procedures will be conducted by the Energy Commission. Proposals to amend regulations for the interconnection of distributed generators will be consulted with the Energy Commission and approved by such Commission before the public hearing process begins.

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:

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