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ENERGY ALERT

Puerto Rico Energy Commission Promulgates Regulation for Adjudicative Procedures, Non-Compliance Notices, Investigations and Rates Review

On December 18, 2014, the Puerto Rico Energy Commission (the "Commission") adopted Regulation No. 8543, known as the Regulation for Adjudicative Procedures, Non-Compliance Notices, Investigations and Rate Review (the "Regulation"), under the authority of the Puerto Rico Energy Transformation and Relief Act, Act 57- 2014, as amended (the "Act").

The Regulation sets forth the rules that will govern the rate review process, non-compliance notices, investigations and adjudicative procedures before the Commission, together with the Uniform Administrative Procedure Act of Puerto Rico.

Under the Regulation, an Electric Service Company ("ESC") is defined as: (i) the Puerto Rico Electric Power Authority ("PREPA"); (ii) any person who offers services of generation, storage, billing or re-sale of energy; (iii) any person who has an energy generation facility in Puerto Rico, including distributed generators with capacities above 1 MW; and (iv) any person constituting an "eligible business" to engage in wheeling as provided by the Economic Incentives Act for the Development of Puerto Rico, Act 73-2008.

The Regulation allows any party with standing to file a complaint or a petition before the Commission for the review of: (i) PREPA's or other ESC's invoices for energy service; (ii) PREPA's decisions regarding interconnection procedures; (iii) PREPA's decisions regarding participation in the net metering program or in any program related thereto; or (iv) any other decision of an ESC in connection with energy services provided to a customer. Any such complaint or petition for review must be filed within thirty (30) days of the ESC's issuance of its final decision on the matter.

Furthermore, the Regulation provides an adjudicative process to petition the review of PREPA's rates. In this regard, PREPA, the Independent Consumer Protection Office, the Commonwealth Energy Public Policy Office and any other person may file a petition to review PREPA's rates before the Commission. If the petition is filed by PREPA, the matter shall be conducted as an ex-parte process but would allow for the participation of intervening parties and amicus curiae. PREPA shall have the burden of proof to demonstrate, as the case might be, that: (i) the rate that it proposes is just and reasonable and thus should be approved; or (ii) that the existing rate is just and reasonable and therefore, the request for review shall be denied. The Commission may grant any of the following remedies: (i) the modification of the rate as requested by the petitioner; (ii) the modification and approval of a rate that the Commission deems just and reasonable; or (iii) the dismissal of the petition and an order directing the existing rate to remain in effect.

Moreover, the Commission or its designee can initiate by its own initiative or upon request by any party, investigations or inspections to secure compliance with the Commonwealth's energy public policy and related regulations, as well as to obtain information regarding issues associated with the industry, the electric service or any other matter under its jurisdiction. Under its investigative authority, the Commission is empowered to issue requests for production of documents, requests for admissions and interrogatories among others, and can also conduct tests with specialized equipment or measuring instruments. Pursuant to the Regulation, parties that do not cooperate with an ongoing investigation may be subject to sanctions. However, the Regulation also allows the party under investigation to object to the mechanisms being used by the Commission.

Upon information that any person has violated or is in violation of the Commonwealth's energy public policy, the Act or any regulation under its jurisdiction, the Commission may issue a notice of non-compliance stating the relevant facts as well as the alleged violation. The notice may also require the non-compliant party to present its defenses regarding the alleged violation within a specified time period or be subject to the fines, sanctions or the orders contained in the notice. The Commission may impose any applicable remedy, including issuance of cease and desist orders and to-do-orders in compliance with the provisions of the Act. It also has the authority to impose fines of up to \$25,000 per day subject to certain limitations in the Regulation.

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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