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ENERGY ALERT

Puerto Rico's Energy Policy Comprehensively Restructured

On May 14, 2013, Governor Alejandro García-Padilla signed Executive Orders OE-2013-038, OE-2013-039 and OE-2013-040, which result in a comprehensive restructuring of Puerto Rico's energy policy by addressing the permitting aspects of renewable energy projects and the integration of those projects to Puerto Rico's electrical system, while taking into consideration the Commonwealth's public policies on sustainable development, compliance with federal environmental regulations, the reliability of its electrical system and the future energy needs of the Island.

The following is a brief overview of the Executive Orders' highlights:

Executive Order OE-2013-038

- Repeals several executive orders issued by former Governor Luis G. Fortuño which declared Puerto Rico's electrical infrastructure in a state of emergency and called for the expedited permitting of energy projects.
- Any pending permit applications filed on or before December 31, 2012 under the expedited permitting procedures will be transferred to the Office of Permits Management and will be evaluated under the ordinary permitting process provided by Act No. 169-2009.
- Permitting agencies to ensure that energy projects under their evaluation: (i) are compatible with the protection of Puerto Rico's agricultural lands and sensitive natural areas; and (ii) will be integrated into Puerto Rico's electrical system without affecting its reliability.

Executive Order OE-2013-039

- Creates the Energy Autonomy Council (the "Council"), which must address the following matters concerning Puerto Rico's energy sector: (i) energy efficiency and conservation; (ii) support of the local energy industry; (iii) integration of technologies and practices that maximize Puerto Rico's solar resource; (iv) sustainable alternatives for transportation; (v) fuel sources; and (vi) the Puerto Rico Electric Power Authority's ("PREPA") reform.

- The Council will be composed of nine members: the Principal Advisor to the Governor on Energy Affairs, who will be the Council's President; the President of the Puerto Rico Planning Board ("PRPB"); the Secretary of the Department of Natural and Environmental Resources ("DNER"); the Secretary of the Department of Transportation and Public Works ("DTOP", by its Spanish acronym); the Executive Director of PREPA; the Executive Director of the Energy Affairs Administration ("EAA"); and three (3) private citizens who will be designated by the Governor.
- Within forty-five days of being constituted, the Council will submit its first report to Governor García-Padilla, which will include an initial assessment of Puerto Rico's energy sector and a specific work plan to address the Council's concerns. The Council will also provide progress reports to the Governor every four months.
- Every nine months, the Council will either have a meeting open to the public or accept written comments.
- The Council will cease its functions once: (i) all reports have been prepared and filed; (ii) all obligations contained in the executive order have been fulfilled; (iii) all new statutes, regulations or required amendments thereto have been approved; (iv) and a new Advisory Committee on Energy, as previously required under Act No. 128-1977, has been named and has begun operating.

Executive Order OE-2013-040

- Creates the Council on Electric Reliability (the "CER"), which will address and evaluate the necessary measures to ensure the safety and reliability of Puerto Rico's electrical infrastructure. Among other tasks, the CER will:
 - Determine reliability and safety impacts by evaluating the expected operation of large scale renewable energy projects for which power purchase agreements were signed by PREPA between the year 2009 and 2012.
 - Provide recommendations to Governor García-Padilla regarding the creation of Puerto Rico's Electrical Reliability Council ("CCEPR", by its Spanish acronym), which will be charged with establishing the minimum reliability parameters for Puerto Rico's electrical infrastructure. The CCEPR will set such parameters based on the reliability criteria adopted by similar entities around the world.
- The CER will be composed of five members: the PRPB's President; the EAA's Executive Director; the Governor's Principal Advisor on Energy Matters; and two private citizens appointed by the Governor. These two private citizens must have a Doctorate in electrical engineering and must have experience regarding the activities to be performed by the CER. The CER will be presided by the Governor's Principal Advisor on Energy Matters.
- Within forty-five days of being constituted, the CER will submit its first report to Governor García-Padilla. Among others, this report will include an initial assessment regarding the integration of renewable energy projects into PREPA's electrical system and a specific work plan to address the CER's concerns. This first report will also include an initial characterization of PREPA's generation units for purposes of evaluating how critical each of these units are.
- Within three months of its constitution, the CER must complete the evaluation of those reliability impacts to PREPA's electrical system that would revert from the integration of renewable energy projects.
- The CER will have at least one meeting open to the public to receive comments and recommendations about concerns regarding the reliability of Puerto Rico's electrical system.

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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