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ENERGY ALERT

Senate Bills 837-840:

If Approved, the Bills would Transform Puerto Rico's Energy Sector

On November 20, 2013, the President of the Senate, Hon. Eduardo Bhatia Gautier, presented a package of bills and resolutions intended to transform the energy sector in Puerto Rico. Beginning mid January 2014, the Senate will hold public hearings to discuss the energy bills and resolutions, a summary of which follows. With the exception of Senate Resolution 601, the entire package of bills and resolutions has been referred to the Senate Energy Affairs and Water Resources Committee.

In general, if approved, the bills would:

- End the Puerto Rico Electric Power Authority's ("PREPA") monopoly over the energy grid;
- Open the electric system to competition;
- Create an independent third party regulator which would authorize energy service providers, electric rates, power purchase agreements, construction and transfer of energy facilities, among others;
- Improve transparency and access to information;
- Require increased efficiency from PREPA's generating fleet;
- Provide for the enforcement of PREPA's duties through citizen suits;
- Require PREPA to adopt procedures for interconnection of net metering projects which follow those established by the Federal Energy Regulatory Commission; and
- Require the Legislature, governmental agencies and municipalities to develop and implement strategies to reduce their consumption of energy over time in accordance with a specific calendar.

The resolutions, in turn, seek to investigate:

- The feasibility of segregating PREPA into separate energy generation, transmission and distribution components;
- Short, medium and long term alternatives to lower energy costs; and
- The repayment of PREPA's debt.

I. Senate Bill 837 - To create the Puerto Rico Energy Regulatory and Enforcement Commission

Senate Bill 837 proposes to create the Puerto Rico Energy Regulatory and Enforcement Commission ("the Commission"), a new and independent governmental entity, whose main responsibilities include the regulation of electric power rates, generation and distribution of electricity and implementation of energy efficiency initiatives.

Among others, the Commission would have the following powers: reduce and stabilize energy costs; promote and ensure free competition among energy service providers; oversee the policies set by PREPA and approve its rates and plans; appoint an Independent Energy Proposal Review Board to monitor competitive procurement of energy contracts by PREPA or any other energy service provider; oversee the issuance of bonds by PREPA; require from agencies, municipalities, companies and others energy impact studies, plans and energy efficiency studies to stimulate optimal and adequate use of available energy resources; provide information of interest to the public and implement a client service policy to protect the rights of citizens and public participation in the Commission's proceedings; and promote non-traditional initiatives for generating electricity, such as generation of electricity in residences and agricultural activities.

The Commission's meetings would be available live via internet and its minutes would be published in PDF format in the agency's webpage.

The Commission would have primary and exclusive jurisdiction over all certified energy service providers rendering services in Puerto Rico and over any other person having a direct or indirect interest in such services.

The bill would require energy service providers to obtain a certificate to provide such services pursuant to regulations that would be adopted by the Commission.

A certified energy service provider would be obligated to provide reasonable, sufficient, adequate and efficient service to all persons who request it and rates would be fair, reasonable and non-discriminatory. An application for energy service certificate would not be denied for arbitrary or discriminatory reasons or to avoid competition.

The bill sets forth the information required to apply for an application for an energy service provider certificate, which would include: (1) resources plan setting the parameters and goals of the provider to comply with Puerto Rico's electric power needs within a reasonable time period; (2) future operational budgets; (3) service cost studies showing the relation between current provider costs and revenues received by concept of rates; (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; (5) reliability reports regarding average system frequency, client interruption frequency and average duration of system interruption; (6) reports describing wheeling requests and results of such requests; and (7) any other information, document or report the Commission deems necessary.

Energy rates would be regulated. The Commission would (1) be in charge of setting, evaluating and approving the rates that all certified energy service providers would charge to their clients on a monthly basis; (2) prohibit variable charges, thus repealing the pass-through charges for purchasing energy and fuel currently in effect by PREPA; (3) consider and provide for payment of the principal and interest on PREPA's bonds in establishing rates and comply with agreements made with or for benefit of buyers or bearers of bonds issued by PREPA; (4) consider the following data and information when setting, evaluating and approving rates: (i) efficiency, sufficiency and adequacy of facilities and service from energy providers; (ii) cost of service; (iii) value of service to clients; (iv) capacity of energy service provider to improve service and its facilities; (v) energy conservation and efficient use of alternative energy resources; and (vi) economic development of Puerto Rico; (5) file and publish all rates charged and collected by certified energy service providers for any public service, which rates must be filed by energy service providers; (6) publish changes to rates proposed by energy service providers, which proposals must be filed by energy service providers; (7) conduct public hearings required to approve proposed changes in rates to determine whether proposed changes are fair, reasonable and non-discriminatory; (8) set temporary rates in effect for the evaluation period; and (9) order an energy service provider to reimburse clients or to credit their bills for the difference between the original rate and the new rate.

The Commission's duties regarding client service include: (1) ensuring the disclosure on the Commission's webpage of all information in its possession that is of public interest regarding the energy market in Puerto Rico; and (2) regulating services provided by certified energy service providers, who must in turn submit proposals to the Commission regarding: (i) fair and reasonable practices that an energy service provider should follow, (ii) fair and reasonable practices for the measurement of service provided by an energy service provider; (iii) fair and reasonable practices to guarantee the precision of equipment used by the energy service provider; and (iv) practices for the protection of the health and safety of an energy service provider's employees and the general public, including adequate installation, use, maintenance and operation of security devices and other equipment.

The Commission would implement and enforce energy-related laws and provisions, such as the Government Conservation Energy Act, the Net Metering Program Act (Act 114-2007), the Puerto Rico Alternative and Renewable Sustainable Energy Diversification Public Policy Act (Act 82-2010), and the Puerto Rico Green Energy Incentives Act (Act 83-2010), among others. Of note, the bill would eliminate the Energy Affairs Administration.

As to the regulation of energy contracts, the bill provides that the Commission: (1) shall approve each contract signed by a certified energy service provider for the purchase of energy for reselling to its clients and for the sale of energy to other energy service providers for resale; (2) shall annually review contracts and procurement practices for the purchase of energy; (3) may determine whether practices for engagement with energy service providers are being followed in a non-discriminatory and competitive manner; and (4) appoint a five-member Independent Energy Proposal Review Board for the independent review of any procurement proceeding, including requests for proposals by PREPA or by any other certified energy service provider.

The bill would require an energy service provider certification for the construction of facilities for the generation or transmission of electric power costing more than \$5,000,000. This certification would indicate whether the facility is necessary and adequate for the rendering of energy service and would contain conditions for the construction, operation and maintenance of such facility. Transfers of energy facilities with value of over \$100,000 would require approval of the Commission, which would consider whether the transfer is consistent with the public interest.

Energy service providers must establish grievance procedures for their clients. The procedures would first have to be approved by the Commission, which in turn would not consider complaints filed by clients unless first filed before the energy service provider. The decisions of the Commission upon complaints filed by consumers may be subject to reconsideration or appeal. The Commission would be authorized to impose stiff per-day penalties for violations of the Act, its implementing regulations and the Commission's orders. Intentional violations are considered a misdemeanor and may be punishable by imprisonment for a period of not less than six months and not greater than one year.

Finally, the bill provides that no contracts, certificates, permits, orders, service areas or rates of existing energy service providers such as PREPA would be cancelled until they are modified by the Commission pursuant to the Act.

II. Senate Bill 838 - To modify PREPA's Enabling Act

Senate Bill 838 proposes to amend Act No. 83 of May 2 of 1941, known as PREPA's Enabling Act to, among other things, subject PREPA to the supervision, regulatory and enforcement powers of the Commission (see Senate Bill 837's description above). Seeking more transparency, Senate Bill 838 also requires PREPA to disclose and make public certain financial and operational information, data, projections, and statistics.

Under the bill, PREPA would no longer be in charge of the entire ratemaking process and would be required to submit, for the approval of the Commission, the energy rates to be charged to consumers. It also mandates PREPA to prepare a new utility bill/invoice which would break down all categories of charges, including administrative costs, transmission costs, distribution costs and operational costs. This new utility bill/invoice model must also be approved by the Commission.

Senate Bill 838 also incorporates a new section to PREPA's Enabling Act, which allows for citizen suits to be filed by individuals or legal entities demanding PREPA's compliance with the duties imposed by the bill.

III. Senate Bill 839 - The Energy Relief Act

Senate Bill 839 proposes to adopt what would become Puerto Rico's Energy Relief Act. The bill would require PREPA to achieve, within two (2) years from its enactment, a greater efficiency in the energy it generates from its power plants throughout Puerto Rico so that sixty percent (60%) of the plants achieve an energy efficiency measure (*i.e., heat rate*) equal to 7,500 British Thermal Units ("BTUs") per kilowatt-hour (kWh) produced. Further, the bill would require that one hundred percent (100%) of PREPA's power plants achieve a *heat rate* equal to the 7,500 BTUs/kWh threshold within five (5) years of enactment.

The bill would also limit to two (2) cents per kWh the maximum profit a co-generator can earn from the energy sold to PREPA under the Power Purchase Agreements executed after enactment. Senate Bill 839 does not define the term "co-generator".

Additionally, the bill would require PREPA to further the development of renewable and/or alternative energy sources with the purpose of complying with Puerto Rico's Act 82-2010 Renewable Portfolio Standards; require PREPA to limit its generating capacity to a range of fifteen to twenty percent (15% - 20%) of Puerto Rico's peak energy demands through the use of innovative and efficient technologies (*e.g.*, smart grid); and would allow the filing of citizen suits by affected consumers to question PREPA's and/or an energy producer's compliance with the Bill's provisions. As in the case of the term "co-generator", Senate Bill 839 does not define the term "energy producer".

The bill's provisions would be enforced by the Commission (see Senate Bill 837's description above).

IV. Senate Bill 840 - To amend the Puerto Rico Net Metering Program Act

Senate Bill 840 would amend the act that created Puerto Rico's Net Metering Program, Act 114-2007, as amended, to require PREPA to adopt industry-recognized procedures for the evaluation of interconnection applications filed by distributed generators that will be participating in the Net Metering Program and have a maximum generating capacity of five (5) MW.

This bill would establish Puerto Rico's public policy concerning the interconnection of distributed generators to PREPA's electrical grid, so that the evaluation and consideration of interconnection applications and agreements would follow the applicable procedures comprised in the Small Generator Interconnection Procedures ("SGIP") and the Small Generator Interconnection Agreement ("SGIA") provided by the Federal Energy Regulatory Commission's ("FERC") Order No. 206, as may be amended from time to time.

The adoption of the applicable SGIP and SGIA standards would be made through the promulgation by PREPA of a new Net Metering Program Interconnection Regulation ("Interconnection Regulation") within one hundred eighty (180) days of Senate Bill 840 becoming law. If PREPA fails to promulgate the Interconnection Regulation within the established timeframe, interconnection applications from distributed generators that will be participating in the Net Metering Program will automatically have to be evaluated and approved by PREPA following the applicable procedures contained in the SGIP and the SGIA.

Furthermore, Senate Bill 840 contemplates a streamlined process for the evaluation and approval of interconnection applications for distributed generators with a capacity equal or less than two megawatts (2MW); and provides for an alternative dispute resolution process through which distributed generators may challenge PREPA's determination to request additional technical requirements before allowing the interconnection of distributed generators. The prevailing party in the alternative dispute resolution process will be entitled to recover one hundred percent (100%) of the legal and technical costs associated with the arbitration process.

V. Senate Bill 841 - The Municipal Energy Efficiency Act

Senate Bill 841 would require the seventy-eight (78) municipalities in Puerto Rico to adopt energy efficiency measures that would reduce the energy they consume. If enacted, Senate Bill 841 would be known as the Municipal Energy Efficiency Act.

The bill would establish an Energy Consumption Base Amount based on the population of each municipality per the 2010 Census performed by the U.S. Census Bureau, multiplied by a subsidy equal to \$57.00 for the first (1st) year following its enactment and gradually reduced to \$50.00 in the eighth (8th) year. If a municipality consumes less energy than that established per the Energy Consumption Base Amount, the municipality would be entitled to an Energy Savings Credit, which may be granted by the municipality to industries and institutions located within its jurisdiction or within the jurisdiction of a consortium the municipality belongs to. Likewise, if a municipality consumed more energy than that established by the Energy Consumption Base Amount, the municipality would be required to pay PREPA the dollar amount equal to such excess, which is defined in the bill as the Consumption Rate Deficiency.

Enforcement of the Act would be assigned to the Office of the Commissioner on Municipal Affairs, which would be required to promulgate the necessary regulations within one hundred eighty (180) days from the date on which Senate Bill 841 becomes law.

VI. Senate Bill 842 - The Government Energy Efficiency Act

Senate Bill 842 proposes to establish strategies intended to reduce energy consumption in facilities under the jurisdiction of government agencies and instrumentalities, including facilities administered by the judiciary ("Government Instrumentalities").

Under Senate Bill 842, Government Instrumentalities must implement measures and initiatives to reduce annually their energy consumption. The bill would require reducing energy consumption at a rate of 3% per year until year 2028, year in which the Government Instrumentality must have reached a total reduction of 45% when compared with year 2011-2012. Government Instrumentalities must continue reducing their energy consumption, and in year 2040 the total reduction should be of 75%. Under Senate Bill 842, Governmental Instrumentalities shall execute Energy Savings Performance Contracts with qualified energy service providers to reduce their energy costs pursuant to Act 19-2012, known as the Energy Performance Contracts Act.

Government Instrumentalities must submit bi-annual reports to the Commission created under Senate Bill 837. For its part, the Commission must submit to the Senate an annual report, which shall include the information submitted by the Governmental Instrumentalities in their bi-annual reports and recommendations to continue increasing energy efficiency in the government.

Under Senate Bill 842, any Governmental Instrumentality that is not complying with the required annual reduction rate of 3% shall be responsible for the payment of the difference between the expected reduction and the actual energy consumed by the instrumentality. The Treasury Department may deduct said amount, owed to PREPA, from the monetary budget assigned to the instrumentality.

VII. Senate Bill 843 - The Puerto Rico Legislature Energy Efficiency Act

Similar to Senate Bill 842, Senate Bill 843 proposes to establish strategies intended to reduce energy consumption in facilities under the jurisdiction of the Puerto Rico Legislature.

Under Senate Bill 843, the Puerto Rico Legislature must implement measures and initiatives to reduce annually its energy consumption. The bill would require reducing energy consumption at a rate of 2% per year for the first three (3) years, 5% during the fourth, fifth and sixth years, and beginning the seventh year the reduction rate must reach 7%. If the Puerto Rico Legislature does not comply with the required annual reduction rate, it shall be responsible for the payment of the difference between the expected reduction and the actual energy consumed.

VIII. Senate Resolution 599 – Investigation regarding the feasibility of segregating in separate entities the generation, transmission and distribution components of PREPA

Senate Resolution 599 orders the Senate Energy Affairs and Water Resources Committee to conduct a comprehensive investigation regarding the feasibility of segregating in separate entities the energy generation, transmission and distribution components of PREPA. Its intention is to create a free and competitive market for generators of energy.

The Committee would be required to submit a report containing findings and recommendations no later than ninety (90) days from the approval of the resolution.

IX. Senate Resolution 600 - Investigation regarding alternatives to reduce energy costs

Senate Resolution 600 orders the Senate Energy Affairs and Water Resources Committee to undertake an exhaustive investigation relating to energy alternatives available in the market with potential to reduce energy costs in the short, medium and long term, which include, without limitation, an analysis of the operation of PREPA as well as an assessment of facilities related to the Island's energy grid. The Commission would be required to submit its report containing findings, conclusions and recommendations no later than ninety (90) days from approval of the resolution.

X. Senate Resolution 601 - Investigation regarding the payment of PREPA's debt

Senate Resolution 601 orders the Senate Treasury and Public Finance Committee to carry out a comprehensive investigation related to the payment of PREPA's debt, to evaluate financial alternatives available to increase PREPA's payment capacity, and identify and develop any financial mechanism to implement these alternatives.

The Committee would be required to submit a report containing findings and recommendations no later than one hundred and eighty (180) days from the approval of the resolution.

The Senate Energy Affairs and Water Resources Committee has established the following public hearings' calendar to address the bills discussed herein:

Senate Bill(s)	Date	Time	Location
837	January 14, 2014	9:00 A.M.	Leopoldo Figueroa
838/839	January 15, 2014	9:00 A.M.	Leopoldo Figueroa
841/842/843	January 22, 2014	9:00 A.M.	Leopoldo Figueroa
840	January 24, 2014	9:00 A.M.	Leopoldo Figueroa

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