

## Puerto Rico Energy Public Policy Act Signed into Law

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### PRACTICE AREAS

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### An McV Energy Practice Team Alert

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On April 11, 2019, the Governor of Puerto Rico signed into law the **“Puerto Rico Energy Public Policy Act”** (“Energy Public Policy Act” or “Act”). Further to our **October 2018 Energy Alert**, we offer updated information on the Act.

The Energy Public Policy Act updates and unifies policy initiatives pursuant to the Puerto Rico Electric Power Enabling Act, the Puerto Rico Electrical System Transformation Act, the Puerto Rico Energy Transformation and Relief Act, the Puerto Rico Public Policy Act on Energy Diversification Through Alternative and Sustainable Renewable Energy, and the Net Metering Act, among others. A summary of some of the key provisions of the Act follows.

### Public Policy

The Energy Public Policy Act formally declares the end of PREPA’s monopoly, providing that PREPA shall not longer have the exclusive right to produce, transmit, distribute and commercialize electric energy supply in Puerto Rico. It would provide for the integration of prosumers, or consumers which generate energy and have the possibility of sharing excess energy with other users of the grid.

The Act establishes key guiding principles for the electric grid based on efficiency, quality, continuity, adaptability, impartiality, solidarity and equity. It also formulates the energy public policy on various aspects including:

- Universal access to electric service at costs that are fair, reasonable and not unduly discriminatory, establishing an aspirational goal of rates not surpassing 20¢ per kilowatt-hour.
- Ensuring availability of energy supply.
- Establishing penal consequences for the failure to comply with directives issued to electric service companies
- The development and integration of solar communities, energy wheeling, community microgrids, and electric cooperatives, among others.
- Transitioning from a centralized system to a distributed generation system based on renewable energy.

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- Conversion of central generation sources to dual fuel.
- Establishing demand response and energy efficiency programs.
- Efficient and responsible use of energy by government agencies and instrumentalities.
- Conversion of public lighting to LED.
- Designing and constructing a robust and resilient electric system that will survive severe weather events.

### **Energy Goals In General**

Among the initial objectives of the Energy Public Policy Act are the following:

- Eliminate use of coal-based energy companies by no later than January 1, 2028.
- Provide for the integration of prosumers through mechanisms such as net metering or tariff designs which promote behind the meter generation.
- Reaching 40% compliance with the Renewable Portfolio Standard by the year 2025; 60% compliance by the year 2040; and 100% compliance by the year 2050, considering the amount distributed energy generated by prosumers.
- Promote energy storage technologies across consumer classes to facilitate integration of renewables and capitalize distributed energy resources.
- Reach 30% energy efficiency by 2040, for which regulation will be adopted by the Puerto Rico Energy Bureau.

### **Transfer of Operations or Assets**

- By December 31, 2019, the Puerto Rico Electric Power Authority (“PREPA”) must have delegated or transferred the operation, administration, and/or maintenance of the energy transmission and distribution system to a private Concessionaire by way of a public-private partnership agreement.
- The Concessionaire must commit to make the capital investments to modernize and optimize the grid.
- The Puerto Rico Energy Bureau would have thirty (30) days to issue or deny a Certificate of Compliance to preliminary agreements presented by the Partnership Committee.
- The Energy Bureau would approve the tariffs or charges of electric service companies or the Concessionaire.

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### **Unbundling and Transformation of the Electric System**

- The Energy Public Policy Act would not permit the electric system to be a vertically integrated monopoly. A horizontal monopoly based on the generation function would not be permitted either.
- PREPA or the future Concessionaire shall be required to allow the interconnection of electric service companies, distributed generation systems and microgrids upon conditions that are not unduly discriminatory, when technically feasible, in accordance with the provisions of the Integrated Resource Plan (“IRP”) and the regulations of the Energy Bureau.

### **Long Term Planning of the Electric System**

- The long-term planning of the electric system would be based on the IRP, which would be prepared by PREPA or the Concessionaire and approved by the Energy Bureau. The IRP would describe the combination of supply and conservation and resources which would satisfy short, medium- and long-term energy needs at the least reasonable cost. The IRP would be prepared for a planning horizon of 20 years but would be revised every 3 years.

### **Generation**

- All non-renewable-based generation plants (new or existing) must be able to operate on two (2) or more fuels.
- Starting on the year 2028, no permits or licenses will be issued, and no contracts will be executed, for the establishment or operation of coal-based energy companies, which will be prohibited from that time onward.
- A minimum 60% of fossil fuel-based energy (gas or petroleum-derived) must be generated in a highly efficient manner.
- Parties to sale or partnership agreements who acquire or come to operate PREPA generation assets shall modernize the plants or substitute them for highly efficient plants within five (5) years.
- Power purchase agreements between PREPA, the Concessionaire and any independent power producer would be subject to the requirements of Act 57-2014 and the regulations adopted by the Energy Bureau. However, when the power purchase agreement is part of a transaction involving PREPA's assets pursuant to Act 120-2018, only a Certificate of Energy Compliance would be required.

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- The Energy Bureau would establish parameters for pricing, adjustments, escalation and profit margins for power purchase agreements.

### **Microgrids and Distributed Energy Resources**

- PREPA and the Concessionaire shall maximize the use of renewable energy resources, while ensuring the stability and reliability of the electric system by, for example, providing for alternative operation methods or allowing the installation of equipment and technology that mitigates the effects of such sources, as provided for in the IRP. Such integration shall comply with the requirements of the Integrated Resources Plan.
- PREPA and the Concessionaire shall establish expedited procedures for the interconnection of small residential and commercial solar rooftop systems of less than 25 kW of capacity.
- Generally, interconnection applications shall be evaluated by PREPA or the Concessionaire within ninety (90) days of filing. Non-compliance with the public policy requirements related to the interconnection of distributed generator or microgrids will be subject to fines of \$1,000 per day, to be imposed by the Energy Bureau.
- However, photovoltaic systems covered under Executive Order OE-2017-064 shall be deemed automatically approved, provided such systems comply with said Order.
- The Act would require the establishment of expedited and uniform procedures for the interconnection of microgrids of up to 5 MW of capacity. Microgrids with capacities greater than 5 MW will be subject to an approval process before the Energy Bureau which will involve public participation.

### **Reconstruction Requirements**

- The Energy Public Policy Act establishes specific requirements and priorities for reconstructing electric system infrastructure, including:
  - Replacing temporary transmission structures with monopoles designed to resist sustained winds of 150 mph.
  - Replacing and maintain anchoring systems.
  - Establish corrosion mitigation programs.
  - Diversifying black-start capable generating units.

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- Evaluating the installation of underground transmission and distribution systems in urban centers and essential service facilities.
- Relocating substations located in flood prone zones.

### **Future Electric Market**

- The Energy Public Policy Act would require the Energy Bureau to conduct a study regarding the viability and convenience of establishing an open, free market, electric system which shall be submitted to the Governor and the Legislative Assembly on or before June 30, 2025.

### **PREPA Governance**

- The Energy Public Policy Act changes the composition of PREPA's Board to require three (3) of seven (7) members to be appointed by the Governor, with the advice and consent of the Senate, from lists prepared by a recognized executive talent search firm. Three (3) members shall be appointed by the Governor in his sole discretion. The remaining member shall be a representative of all consumers and shall be elected by special election.

### **Electric Service Companies**

- The Energy Public Policy Act prohibits electric service companies from controlling more than 50% of generation capacity assets, except where PREPA controls its own legacy assets.
- On or before December 31, 2019, the Puerto Rico Energy Bureau must adopt regulation with the purpose of incentivizing investment by electric service companies on infrastructure, technologies, distributed generation integration, renewable sources, and services. Such regulation would also provide for the imposition of penalties based on performance of electric service companies in relation to the foregoing. Example criteria are set in the Energy Public Policy Act.
- The Puerto Rico Energy Bureau shall, within 180 days, adopt guidance for electric service companies to establish demand response programs or demand side management programs.
- Proposals of such programs or plans are to be submitted by electrical service companies before the Puerto Rico Energy Bureau within six (6) months.

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### **Availability of Information**

- PREPA is required to publish and make available to its clients on the internet information on electric infrastructure (including information on public and private generators); copies of all contracts and board resolutions; documents regarding financial information such as income, sales, expenses, assets, debts, accounts receivable, and others; costs such as the price per barrel or equivalent, average kilowatt per hour costs per client class, costs of production of electricity, and breakdown of operational costs, among others; breakdown of projected energy demand; among others.

### **Energy Storage**

- On or before December 31, 2019, the Puerto Rico Energy Bureau must perform a study to determine energy storage goals with the purpose of integrating renewable energy to the grid and complying with the Renewable Portfolio Standard.
- The Bureau must present such study to the Legislature and shall establish through regulation specific energy storage goals which must be met within certain deadlines by regulated entities.

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