

TRANSFORMATION AND ENERGY RELIEF ACT

CORPORATE GROUP LEGAL ALERT

June 2014

Act No. 57 of May 27, 2014

On May 27, 2014, the Governor of Puerto Rico signed into law, Act No. 57 of 2014, known as the *Transformation and Energy Relief Act* (the “Energy Reform Act” or the “Act”). The Act transforms the regulatory framework of the electric system and energy industry by encouraging a more efficient energy system and the establishment and maintenance of fair and reasonable electricity costs.

The most critical aspect of the Energy Reform Act is that it aims to end the Puerto Rico Electric Power Authority’s (“PREPA”) grip as a self-regulating utility by creating the Energy Commission of Puerto Rico (the “Commission”) to oversee PREPA’s functions, particularly the adoption of energy rates, energy generation and interconnection, compliance with the renewable portfolio standard adopted by Act 82-2010, among others. The Commission will also regulate and certify all *energy companies* (defined as persons offering generation, invoicing, or re-selling of electrical energy) rendering services in Puerto Rico, as explained below.

The Act requires PREPA to present to the Commission short and long-term plans setting forth PREPA’s strategies to achieve the statute’s goals, including a comprehensive energy relief plan and an integrated resources plan after giving broad citizen participation. Moreover, the Act requires PREPA to, within 3 years beginning on 7/1/14, ensure that a minimum of 60% of the fossil fuel generated electricity be generated in a “highly efficient” manner.

The Act orders PREPA to establish an expedited process for the interconnection of distributed generators with a generating capacity of less than 1 MW. It also requires that interconnection procedures for distributed generators with generating capacity between 1 to 5 MWs participating in PREPA’s Net Metering Program, shall follow the parameters and guideless of the Federal Energy Regulatory Commission’s Small Generator Interconnection Procedures and Small Generator Interconnection Agreements. To expedite the development of the distributed generation industry, PREPA is also required to adopt within 180 days of the Act, all regulations needed to interconnect systems up to 5 MW of generating capacity.

Government agencies are required under the Act to implement energy efficiency and conservation plans aimed to reduce energy consumption by 40% during the next 8 years. To comply with this requirement, government agencies may engage qualified energy service providers and enter into energy savings performance contracts pursuant Act 19-2012. The Act also reduces the energy consumption subsidies currently awarded to municipalities from 11% to 9%.

Energy Commission of Puerto Rico

The Commission will be an independent body responsible for regulating, supervising and enforcing the public policy of electricity services of Puerto Rico. The Commission has jurisdiction over and will review and approve all energy rates for PREPA and energy companies. The Commission will ensure that PREPA complies with the standards and deadlines established by the Act for energy efficiency, the permanent reduction and stabilization of energy costs and integration of renewable energy. *The Act expressly provides that the Commission is required to carry out its regulatory functions in a way that does not promote PREPA’s non-compliance with its contractual obligations to bondholders.*

With respect to energy companies, the Commission will have the power to approve the policies for efficiency standards and integration of energy resources into the grid, revise and approve energy rates or charges, prices in power purchase agreements and wheeling rates ensuring that the same be fair and reasonable, revise and approve minimum technical requirements, set standards for facilities or plants to guarantee efficiency and reliability of electric service and oversee compliance with such standards. The Commission will also mediate controversies between PREPA and energy companies.

The Energy Commission of Puerto Rico is created as an independent regulatory board to oversee PREPA and energy companies doing business in Puerto Rico.

Energy companies need to be registered with the Energy Commission and will be subject to the payment of annual charges.

Energy companies need to be certified with the Commission. Also they will be subject to a new special annual charge payable to the Commission based on a fee not to exceed .25% of their annual gross income. Audited financial reports are required from eligible companies within 180 days of the Act to determine the applicable charges. The Commission will also establish by regulation client-service standards and client resolution procedures applicable to energy companies.

Independent Consumer Protection Office

An Independent Office of Consumer Protection is created as a new government agency with the faculty to represent, file claims and defend the interest of energy consumers before PREPA or the Commission regarding electricity bills, energy rates, compliance with the energy public policy, among other matters affecting consumers. This Office will also coordinate public participation during the energy rate revision procedures before PREPA and the Commission.

State Office of Energy Public Policy

The Act also created the State Office of Energy Public Policy (“OEPPE” for its Spanish acronym), as a successor entity of the Puerto Rico Energy Affairs Administration. The OEPPE will be the entity responsible for developing and enacting the energy public policy of Puerto Rico. Among its multiple responsibilities, the OEEPE shall compile and share all types of information, studies, and evaluations related to the generation, distribution, use and consumption of electricity in Puerto Rico generated from renewable sources or from fossil fuels. The OEEPE will also develop and enforce the regulations necessary to carry out the energy public policy and will serve as the local liaison will federal energy regulatory agencies such as the Department of Energy and FERC, among others. It will also establish through regulation the energy efficiency requirements that new construction works have to comply with. It will also identify the maximum level of renewable energy that the current infrastructure can withstand, including the locations where such interconnection is more suitable.

Puerto Rico Energy Administration

The Puerto Rico Energy Administration is created as a new government entity to provide administrative and operational support to the Commission, the Consumer Protection Office and the OEPPE.

Note: *This Newsletter contains only a general summary of certain aspects of Act 57 of 2014 and is not intended to be a comprehensive summary of such statute. Because of the general nature and informative purpose of this newsletter, nothing herein should be considered as legal advice or a legal opinion or that it establishes in any way whatsoever an attorney-client relation or engagement for legal services with any reader. For further information, please contact our corporate lawyers.*

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