

Environmental Law, Energy & Land Use Practice Group

January 25, 2018

NOTICE TO CLIENTS AND FRIENDS

Puerto Rico Developments: Policy Statement issued by the Puerto Rico Energy Commission regarding approval of PREPA's Fiscal Plan

On January 23, 2018, the Puerto Rico Energy Commission (“EC”) issued a resolution a Policy Statement on the sharing of oversight responsibilities between the EC and the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) related to the Puerto Rico Electric Power Authority (“PREPA”).

As per the EC, the Policy Statement was issued in anticipation of PREPA’s proposed fiscal plan and its purpose is to provide clarity with regards to the EC’s position on the aforementioned plan. In the Policy Statement, the EC reached the following conclusions upon its evaluation and analysis of the Puerto Rico Oversight, Management, and Economic Stability Act’s (“PROMESA”) provisions:

1. The Oversight Board has no legal authority to impose substantive electricity obligations on PREPA or Puerto Rico. The Oversight Board 's powers are of a fiscal nature and not substantive.
2. The Oversight Board’s certification of PREPA's Fiscal Plan can bind PREPA on fiscal matters only. The Oversight Board has no power over areas such as:
 - a. Market transformation (*e.g.*, market structures, providers, assets)
 - b. Resource mix (*e.g.*, power supply, mix of types of energy)
 - c. Electricity rates (*e.g.*, adjustments, demand)
 - d. Operations (*e.g.*, maintenance and restoration plans, hiring process and sources)
3. Whenever the Oversight Board's fiscal powers overlap with the EC's power, PROMESA preserves the EC's powers unless inconsistency is unavoidable.

4. The Oversight Board's only logical path is to review a PREPA Fiscal Plan approved by the EC.

**Puerto Rico Development: Regulation for Review of Invoices Issued by PREPA during
Emergency Situations**

On January 24, 2018, pursuant to the provisions of Act 3-2018, the EC adopted the *Regulation of the Procedure for the Review of Invoices Issued by the Puerto Rico Electric Power Authority during Emergency Situations* (“Regulation”).

The Regulation entered into effect immediately while the EC proceeds with the ordinary rule making procedure required under the Act 38-2017, known as the Uniform Administrative Procedure Act of the Government of Puerto Rico. The Regulation governs the procedures and mechanisms that the PREPA must follow to address objections to invoices in which PREPA is charging for energy metered but not generated by PREPA (*e.g.*, produced by an emergency generator or other mechanisms) while PREPA’s service was interrupted due to emergency situations.

PREPA has 15 days after the filing of the objection to commence the investigation and has 30 days from the day the investigation was commenced to complete it and notify in writing the determination to the client. Noncompliance with the foregoing will be deemed as an acceptance (granting) of the objection and PREPA must proceed with the corresponding adjustments within the next 15 days from the expiration of the investigation period.

Note that PREPA clients must exhaust the informal administrative before PREPA prior to seeking remedy from the Commission.

This document has been prepared for information purposes only and is not intended as, and should not be relied upon as legal advice. Should you have any questions about the foregoing or wish to obtain more information on its potential impacts on policy or operational matters, please feel free to contact us at your convenience.

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