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www.mcvpr.com**ENERGY ALERT*****Puerto Rico Energy Commission Promulgates Regulation on Certifications, Annual Fees and Operational Plans for Electrical Service Companies***

On July 10, 2015, the Puerto Rico Energy Commission (the "Commission") promulgated the Regulation on Certifications, Annual Fees and Operational Plans for Electrical Service Companies (the "Regulation"), requiring Electrical Service Companies to comply with certain certification, reporting and fee payment requirements. The Regulation applies to all Electrical Service Companies, as defined in the Regulation, including the Puerto Rico Electric Power Authority ("PREPA").

Under the Regulation, an "Electrical Service Company" is (a) PREPA; (b) any natural or legal person or entity that offers services of generation, storage, invoicing or resale of electric power; (c) any natural or legal person or entity having an electric power generation facility for the purpose of selling energy, including distributed generators with an aggregated capacity greater than 1 MW, regardless of whether they or their clients participate in PREPA's Net Metering Program; (d) any person dedicated to the installation and maintenance of distributed generators with an aggregated capacity greater than 1 MW, as well as to the invoicing of the electric power generated by such systems; and (e) any natural or legal person or entity that is an "eligible business," pursuant to Act 73-2008, to perform wheeling.

The Regulation requires Electrical Service Companies already in operation in Puerto Rico to submit certain information within 30 days of the Regulation's effective date, accompanied with a \$100 submission fee. Such information includes the company's state or country of organization; address; authorized representative; resident agent; partners, directors, board members and officers, among others.

The Regulation also requires Electrical Service Companies to submit an Operational Report within 90 days of the Regulation's effective date and once every three (3) years following the first submission. Each submission must be accompanied with a \$2,000 fee. The Operational Report is a detailed technical document that must include information on: the Electrical Service Company's operational plan; the Electrical Service Company's budget for the current fiscal year; the Electrical Service Company's most recent financial statement (prepared by a CPA); and any study that the Electrical Service Company has commissioned or performed regarding the cost of the electric services it provides, also demonstrating the relation between the company's current costs and revenues received from rates or charges; among other studies and requirements.

The Regulation further requires Electrical Service Companies to obtain a Certification from the Commission before commencing operations. Electrical Service Companies already in operation are required to apply for a Certification within 90 days of the Regulation's effective date. The application must include the following information: the types of electrical services that the Electrical Service Company proposes to offer; the sources of energy that the Electrical Service Company will use to provide its services; the physical and postal addresses of the facilities where the services will be provided; a description including the specifications, nominal nameplate capacity, capacity and net capacity (or net use) of each of the units, plants or technologies that will be used to provide service; an estimate and breakdown of the cost of the investment to be made or already made by the Electrical Service Company to operate or offer its services in Puerto Rico; and a declaration stating that the Electrical Service Company has sufficient human resources (technical, professional and administrative) to operate and provide the proposed services in Puerto Rico, among others.

The fee for the Certification application will depend on the service to be offered – generation, storage, invoicing or resale of energy – and the Company's aggregated capacity or annual energy sales. For example, for Electrical Service Companies dedicated to generation or storage of energy, fees range from \$2,500 to \$25,000.

Certification applications filed with all required information shall be deemed granted thirty (30) days after submittal, unless before such term the Commission orders the submission of additional information.

Moreover, the Regulation requires Electrical Service Companies to pay an Annual Fee equivalent to 0.25% of its gross income, which must be reported yearly by Electrical Service Companies.

The Regulation establishes a procedure for imposing penalties, issuing cease and desist orders and modifying or revoking a Certification if an Electrical Service Company has submitted information fraudulently; if an Electrical Service Company consistently defaults on Commission's orders, regulations or the Puerto Rico Energy Transformation and RELIEF Act; when an Electrical Service Company's operation threatens the safety and reliability of electric infrastructure; or when an Electrical Service Company has not complied with the terms of its Certification; among others. The Commission may impose penalties jointly or as an alternative to modification or revocation of an Electrical Service Company's Certification.

Should the Commission find that the acts of an Electrical Service Company may lead to a modification or revocation of its Certification, the Commission may issue an order to show cause in which it shall, among others, inform respondent of the purported violations and sanctions, and schedule a hearing at which the Electrical Service Company may appear and present its defenses or, in case the proposed penalty is less than \$5,000, provide an Electrical Service Company the opportunity to submit its arguments in writing. Resolutions resulting from such proceedings must contain findings of fact and conclusions of law, and advise parties of their right to seek reconsideration or judicial review.

In circumstances that imminently and gravely threaten the lives and safety of people or the integrity and safety of property, the Commission may commence proceedings to summarily suspend an Electrical Service Company's Certification or issue summary compliance orders. The Commission must immediately notify the summary order, which shall be valid for 10 days, within which term a hearing must be held for the Electrical Service Company to appear and present its defenses. As before, the Commission's resolution of the matter must contain findings of fact and conclusions of law, and advise parties of their right to seek reconsideration or judicial review.

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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