

PR Governor Signs Electric System Transformation Act

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An McV Energy Alert

June 25, 2018

Further to our Alerts dated January 23, 2018, and March 13, 2018, the Governor of Puerto Rico signed the Puerto Rico Electric System Transformation Act (“Act”) on June 20, 2018. The Act will govern the establishment of public-private partnerships (“P3”) with respect to assets, services, and facilities of the Puerto Rico Electric Power Authority (“PREPA”), and the sale of its generation assets.

The Act grants the Public-Private Partnerships Authority (“Authority”) the power to determine which services or facilities will be the subject of P3s, and which PREPA generation assets will be sold or transferred. A Partnerships Committee created by the Authority will evaluate and select proposals for such P3s and transfer transactions, which will be considered priority projects. The Act requires a request for proposals for each PREPA generation asset to be transferred. The Act sets forth the criteria to be considered in connection with such proposals, including a proponent’s financial capacity and the terms it is willing to accept in the agreement, among others.

Prior to the execution of a P3 or transfer agreement, the Puerto Rico Energy Commission (“Commission”) will have fifteen (15) business days to certify that such transaction complies with the energy policy and the regulatory framework – to be established by subsequent legislation, discussed below – or deny the issuance of such certificate. However, if no action is taken by the Commission within fifteen (15) business days, a preliminary P3 or transfer agreement will be deemed compliant.

The sale of PREPA assets will be subject to ratification by both Chambers of the Puerto Rico Legislature within a period of 45 days. If said period elapses without the Legislature taking affirmative action, such transaction will be deemed approved. The Act prohibits (1) the sale of the entirety of PREPA’s generation assets to a single contracting party and (2) the subsequent transfer of generation assets purchased by a contracting party to another private party without the consent of the Puerto Rico Legislature.

Before the final approval of P3 or transfer agreements, the Act requires such agreements to include sworn statements from the selected proponent attesting that no commissions or bonuses have been paid or will be paid to any public officers, public employees, or former public employees who participated in

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negotiations, and sworn statements from consultants engaged by the Partnerships Committee detailing the names of all persons who have received or will receive compensation for any concept in connection with the transaction. .

Upon execution of a P3 or transfer agreement, the Authority and the Commission will have the power to supervise the performance and compliance of the contracting party, though they will not have the power to alter or amend agreements or interfere with operational or contractual matters. A work plan will be jointly prepared by the Authority, the Commission, and PREPA to oversee each agreement.

Furthermore, a contracting party will be considered a certified energy company pursuant to the Puerto Rico Energy Transformation and Relief Act, for which an application for certification before the Commission must be filed within ninety (90) days of execution of the P3 or transfer agreement. Such application will be automatically approved. The Commission will have jurisdiction over such certified energy companies in regard to matters governed by the Puerto Rico Energy Transformation and Relief Act, such as the charging of rates.

A Working Group whose members will be appointed by the Governor and the legislative Presidents will be formed to recommend the public policy and regulatory framework that will govern the Act's procedures, which policy and framework should be approved by the Puerto Rico Legislature within 180 days of the promulgation of the Act.

Moreover, the number of members of the Commission is increased from three (3) commissioners to five (5) commissioners.

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