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SENATE OF PUERTO RICO

S. B. 837

November 20, 2013

Introduced by Mr. *Bhatia-Gautier*

Referred to the Commission on Energy Affairs and Water Resources

AN ACT

To create the Puerto Rico Energy Regulatory and Oversight Commission in order to establish, regulate, and ensure faithful compliance with the Commonwealth of Puerto Rico's public policy on energy; establish its functions and responsibilities; provide for its functioning and operation; repeal Act No. 128 of June 29, 1977, as amended, and Article 4, Section 1 of Act No. 73 of 2008, as amended, known as the "Economic Incentives Act for the Development of Puerto Rico"; and for other purposes.

STATEMENT OF MOTIVES

Puerto Rico's energy history shows that, in spite of the worldwide evolution to more efficient energy resources and systems, the development of our infrastructure for the generation, transmission, and distribution thereof has remained stagnant and excessively dependent on oil. Although other jurisdictions have managed to gradually move away from this resource, for being expensive and toxic, data published in 2011 by the U. S. Energy Information Administration

(EIA) shows that sixty-eight (68) percent of the energy generated in Puerto Rico still depends on oil, thus making the cost of electric power more expensive in the Island. Yet, energy costs not only increase due to our dependence on oil.

As the sole body in control of the generation, transmission, and distribution of energy in Puerto Rico, the Puerto Rico Electric Power Authority is a monopoly with countless operational, managerial, and administrative deficiencies whose cost, at the end of the day, is defrayed directly by consumers. The cost of energy at the end of the past fiscal year was approximately twenty-six (26) cents per kilowatt-hour (kWh), whereas the average cost per kilowatt-hour in the United States is approximately ten (10) cents. Consequently, Puerto Rico ranks second with respect to the highest energy costs among U.S. jurisdictions. For decades, the Puerto Rico Electric Power Authority has arbitrarily altered and adjusted the monthly rates of charged to their customers to cover their expenses and ensure that they meet their obligations with bondholders. The Puerto Rico Electric Power Authority itself regulates the rates it charges to its consumers. It controls all areas of the Island's energy sector, thus fostering an inefficient process that lacks transparency and results in high and unsustainable costs for the people of Puerto Rico.

This Legislative Assembly reasserts its commitment to the people of Puerto Rico through the creation and implementation of an Energy RELIEF Plan, whose purpose, in addition to reducing energy costs, is to reform the energy system in the Island and to turn it into a demonopolized and competitive system. The Puerto Rico Energy Regulatory and Oversight Commission created under this Act is the key component for the thorough and transparent execution of the Plan proposed by this Legislative Assembly. Such Commission shall be an independent entity in charge of establishing, regulating, overseeing, and enforcing compliance with the the Commonwealth of Puerto Rico's public policy on energy. The Commission shall establish and approve the energy rates of generators, transmitters, and

distributors of energy in the Island, as well as oversee all operations, processes, and mandates pertaining to the efficiency of our energy sector.

The Puerto Rico Energy Regulatory and Oversight Commission created herein shall be modeled following the structure of the public utility regulatory commissions established in different states of the United States. However, recognizing the thematic and operational differences that exist among the different public utilities that provide services to the people, the Commission created under this Act shall concentrate its efforts and regulatory and oversight functions exclusively on the energy services available in and for Puerto Rico. In its function of implementing and overseeing compliance with our Island's public policy on energy, said Commission shall partake in certain activities of the Puerto Rico Electric Power Authority. No measure or action taken by the Commission shall have the effect of allowing the Puerto Rico Electric Power Authority to disregard or fail to meet its contractual obligations with its bondholders.

The Commission created by this Act reflects the objectives of the Legislative Assembly to reduce energy costs and reform our energy system, and is therefore necessary to fully attain such objectives. The Puerto Rico Energy Regulatory and Oversight Commission shall henceforth be a key entity in the economic and competitive development of the Island.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1. – Title of the Act.–

This Act shall be known as the “Puerto Rico Energy Regulatory and Oversight Commission Act”.

Section 2. – Declaration of Public Policy.–

It is public policy of the Commonwealth of Puerto Rico that electric power generation and distribution services shall be regulated and overseen in a manner that allows for the achievement of an optimum level of efficiency, transparency,

and accountability in their operations, in fixing rates and collecting them from their customers, and in duly and fully implementing the Island's public policy on energy. The Puerto Rico Energy Regulatory and Oversight Commission created under this Act is an independent government entity empowered and designated to regulate electric power rates and electric power generation and distribution services provided to the people of Puerto Rico. Said Commission shall also promote and oversee the implementation of energy efficiency and conservation measures and initiatives and the generation of renewable energy sources that have been incorporated to the Island's public policy on energy.

Section 3. – Definitions.–

For purposes of this Act, the following terms shall have the meaning provided herein below:

(1) “Agency” means any of the bodies, entities, instrumentalities, or corporations of the Government of the Commonwealth of Puerto Rico.

(2) “Puerto Rico Electric Power Authority” or “PREPA” means the corporate entity created by virtue of Act No. 83 of May 2, 1941, as amended.

(3) “Renewable Energy Portfolio” means the mandatory percent of sustainable or alternative renewable energy required from every certified energy service provider.

(4) “Certification” means the certificate of public convenience and necessity issued by the Commission to an energy service provider.

(5) “Customer” means any natural or juridical person that consumes or uses electric power services.

(6) “Commission” means the Puerto Rico Energy Regulatory and Oversight Commission created by virtue of this Act.

(7) “U.S. Department of Energy” means the federal agency created by the “Department of Energy Organization Act of 1977,” Pub. L. 95-91, approved on August 4, 1977.

(8) “Energy Distribution” means the transmission of electric power generated through grids, cables, transformers, and all other infrastructure needed to distribute the same throughout the Island.

(9) “Renewable Energy Sources” means any alternative or sustainable renewable energy source, as defined in Act No. 83 of July 19, 2010, as amended, known as the “Green Energy Incentives Act of Puerto Rico.”

(10) “FERC” means the Federal Energy Regulatory Commission created by the “Department of Energy Organization Act of 1977,” Pub. L. 95-91, approved on August 4, 1977, in charge of regulating, overseeing, and investigating all sorts of energy issues at the Federal level.

(11) “Energy Generation” means the production of electric power using fuels such as oil and/or its derivatives, natural gas, renewable energy sources, and any other electric power generation method.

(12) “Public Interest Information” means all data, records, reports, and documents that serve to adequately inform all energy customers or consumers.

(13) “Facilities” means all plants, equipment, and offices of a qualified energy service provider, including tangible and intangible property, without being limited to property operated, leased, licensed, used, and/or controlled by, for, or with regards to the business of the qualified energy service provider.

(14) “Independent Energy Proposals Review Board” means the Board created under Section 19 of this Act.

(15) “Order” means any determination and/or authorization of the Commission, whether favorable or unfavorable, or by judicial mandate or ruling. The term includes the issuing of a certificate and the fixing of rates.

(16) “Person” means a natural or juridical person.

(17) “Procedure” means any process adopted or implemented by the Commission in order to duly exercise the functions entrusted thereto under this Act.

(18) “Bid Process” means the formal bid procedure whereby an energy service provider requests proposals for the purchase of energy, goods, or services.

(19) “Energy Service Provider” means any natural or juridical person engaged in the generation, production, distribution, and transmission of electric power, whether by using oil and/or its derivatives, gas, renewable energy sources, waste disposal, or any other energy resource as fuel.

(20) “Certified Energy Service Provider” means any natural or juridical person engaged in the generation, production, distribution, and transmission of electric power, whether by using oil and/or its derivatives, gas, renewable energy sources, waste disposal, or any other energy resource as fuel, and that is certified by the Commission as provided by this Act.

(21) “Rules” and “Regulations” means any standard or declaration of public policy of general application and general order that has force of law, including any amendment or repeal thereof, whose purpose is to enforce, construe, or detail the provisions of this Act.

(22) “Energy Services” means generation, production, distribution, and transmission of electric power, whether by using oil and/or its derivatives, gas, renewable energy sources, waste disposal, or any other energy resource as fuel.

(23) “Energy Rate” means any compensation, charge, fee, schedule, toll, rent, or rate collected by any certified energy service provider for any service or product offered to the public. This includes the charge for fuel, purchase of energy, operation and maintenance of facilities, administrative expenses, and payment of

debt, among other expenses charged by the certified energy service provider to its customers on a monthly basis.

Section 4. – Creation of the Puerto Rico Energy Regulatory and Oversight Commission.–

(a) The Puerto Rico Energy Regulatory and Oversight Commission is hereby created as an independent government entity in charge of regulating, overseeing, and ensuring compliance with the Commonwealth of Puerto Rico’s public policy on energy. All orders issued by the Commission shall be made on behalf of the “Puerto Rico Energy Regulatory and Oversight Commission,” and all procedures implemented by the Commission shall be on behalf of the Commonwealth of Puerto Rico.

(b) The Commission shall have an official seal with the words “Puerto Rico Energy Regulatory and Oversight Commission” and the design prescribed by said Commission.

Section 5. – Powers and Duties of the Commission.–

The Commission shall have the following powers and duties:

(1) Establish, develop, and ensure faithful compliance with the Commonwealth of Puerto Rico’s public policy on energy;

(2) Promote and ensure free competition, on equal terms, among energy service providers, if there were multiple providers;

(3) Formulate and implement strategies to achieve, either directly or indirectly, the objectives of this Act, including, but not limited to attaining the goal of reducing and stabilizing energy costs and controlling volatility in the price of electricity in Puerto Rico for the benefit of citizens in general;

(4) Develop, propose, and implement policies related to planning the generation, distribution, and best use of energy resources in Puerto Rico;

(5) Develop short and long term plans for energy conservation and efficiency in Puerto Rico, oversee the development and implementation thereof, and establish mechanisms to ensure that municipalities, government agencies, the Legislative Assembly, the Judicial Branch, and other public and private sectors faithfully comply with energy efficiency policies;

(6) Regulate and oversee the public policy established in Act No. 83 of May 2, 1941, as amended, known as the “Organic Act of the Puerto Rico Electric Power Authority”;

(7) Approve and, if applicable, fix and adopt rates, strategic plans, operational concepts, and other documents produced by PREPA as part of its powers and responsibilities according to Act No. 83 of May 2, 1941, as amended.

(8) Establish, fix, and approve the rates charged by energy service providers to their customers or consumers;

(9) Hold public hearings on the establishment of and/or changes in rates, complaints of connection with energy services, and other matters.

(10) Appoint, from time to time, an Independent Energy Proposals Review Board, pursuant to the terms established in this Act, to monitor bid processes for the purchase of energy conducted by PREPA or any other energy service providers in Puerto Rico;

(11) Ensure that the powers and duties exercised by the Commission over PREPA do not attempt to or actually make the latter disregard or fail to meet its contractual obligations to bondholders.

(12) Oversee and monitor PREPA’s debt issues and ensure that they do not violate applicable laws;

(13) Require that certified energy service providers in Puerto Rico keep, maintain, and regularly submit to the Commission those records, data, documents, and plans necessary to attain the objectives of this Act;

(14) Develop and direct the pertinent agencies, companies, public corporations, municipalities and businesses concerned to draft the necessary procedures to require energy assessment studies and energy efficiency plans and/or goals to encourage the adequate and optimum use of energy resources available in Puerto Rico, and assure compliance therewith;

(15) Take any action needed to ratify the imposition and/or oversee compliance with any mandatory goal under the Renewable Energy Portfolio imposed by Federal legislation or regulations;

(16) Gather any kind of appropriate and reliable information on the generation, distribution, use, and consumption of energy, whether by using oil and/or its derivatives, gas, renewable energy resources, waste disposal, or any other energy resource as fuel.

(17) Inspect and conduct audits on all types of records, inventories, documents, and physical facilities belonging to certified energy service providers in Puerto Rico;

(18) Conduct ongoing studies and investigations on the generation, distribution, use, and consumption of energy, whether by using oil and/or its derivatives, gas, renewable energy resources, waste disposal, or any other energy resource as fuel to determine the energy needs of Puerto Rico during any period of time;

(19) Establish real and measurable parameters to define the necessary generation capacity to be used by all certified energy service providers;

(20) Establish and develop statistical, economic, and planning programs needed to meet the purposes and duties of this Act, and draft and circulate publications of a statistical-economic nature on matters pertaining to the generation, distribution, use, and consumption of energy.

(21) Disclose all sorts of public interest information, and develop and implement a customer service policy with specific parameters, indicators, and procedures that ensure the rights of all customers and citizen participation in the processes of the Commission;

(22) Create an easily accessible and user-friendly website that contains public interest information, as well as data and information related to the purposes of this Act;

(23) Advise the Governor, Government agencies, public instrumentalities, political subdivisions institutions and the general public on the technological, scientific, socioeconomic, and legal aspects of energy generation, distribution, use, and consumption in Puerto Rico;

(24) Serve as liaison and coordinating agent with the U.S. Department of Energy, FERC, and/or any agency that deals with energy issues at the Federal level;

(25) Foster the creation and development of university training and specialization programs in fields related to the needs of the Commission;

(26) Identify and establish partnerships with local and international bodies or companies specializing in energy issues that are willing to collaborate with the Commission, the academia and local universities in the creation of pilot projects for renewable energy generation and intelligent and efficient energy transmission and distribution.

(27) Adopt and implement rules and procedures that ensure ongoing communication and exchange of information between the Commission and energy service providers in Puerto Rico.

(28) Enter into contracts and subcontracts for any legitimate purpose in order to comply with the public policy of this Act, and to carry out special tasks without forgoing its government function and responsibility, which includes

contracting the professional services of consultants, economists, and lawyers, among other professional services, to assist it in its government function;

(29) Sue and be sued in complaints or causes of action in its own name against any natural or juridical person that fails to meet or interferes with the requirements, purposes, and objectives of this Act before the Court of First Instance or any other administrative forum of the Commonwealth of Puerto Rico;

(30) Adopt the rules and regulations needed to carry out its duties and issue orders to comply with its powers granted by law, as well as for the implementation of this Act. These rules and regulations shall be adopted in accordance with Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act.”

(31) Promote and facilitate the development of nontraditional power generation initiatives, such as residential generators and energy generation through agricultural activities, among others, to increase the participation of individual or independent generators and energy availability in the system;

(32) Provide for any legal remedies needed to achieve the purposes of this Act and enforce the rules, regulations, orders, and determinations of the Commission; and

(33) Submit annual reports, on or before May 31, to the Governor and the Legislative Assembly on the adequate performance of the duties and functions set forth herein.

Section 6. – Organization of the Commission.–

(a) The Commission shall be composed of three (3) commissioners, one of which shall be its President, all of them appointed by the Governor with the advice and consent of the Senate. The compensation of the commissioners shall be that established for a Judge of the Court of Appeals of Puerto Rico.

(b) Two (2) commissioners shall constitute quorum at a plenary meeting. The decisions of the Commission shall be taken by a majority of its members and be subject to review by the Court of Appeals of Puerto Rico, except in those situations in which there is federal jurisdiction.

Section 7. – Members of the Board.–

(a) The commissioners shall possess a nationally or internationally recognized education, proven capability, and experience in the Energy or other professional fields such as Law, Finance, Medicine, Science, Engineering, and Economics, among others, and shall represent different sectors of society.

(b) In order to be appointed as commissioners, the latter and their relatives within the fourth degree of consanguinity and second of affinity shall not have any direct or indirect interest in nor contractual relation whatsoever with certified energy service providers subject to the jurisdiction of the Commission, nor with entities within or outside of Puerto Rico that are affiliated to or have interest in said providers. No commissioner shall, once his/her functions have ceased, represent a person or entity before said Commission in relation to any issue in which he/she participated while serving on the Commission, or with respect to any other issue within two (2) years after separation from office. The activities of the commissioners during and after the expiration of their terms of office shall be subject to the restrictions provided in Act No.1-2012, known as the “Government Ethics Act of 2011,” as amended.

(c) Not more than two (2) of the commissioners may be affiliated to the same political party.

(d) During the first six (6) years after the establishment of the Commission, one (1) of the three (3) commissioners shall be a former commissioner of any government energy regulatory entity at the national or international level.

(e) The first commissioners appointed by virtue of this Act shall hold office for the following terms: the President for six (6) years, one (1) commissioner for five (5) years, and the other commissioner for four (4) years. Their successors shall be appointed for a term of six (6) years. Any person designated to fill a vacancy shall be appointed for the remainder of the unexpired term of the commissioner being replaced. Upon the expiration of the term of office of any commissioner, he/she may continue carrying out his/her duties until his/her successor is appointed and takes office. Terms shall begin as of the expiration date of the preceding term. Commissioners shall only be removed by the Governor due to a just cause.

(f) The commissioners shall meet at least twice (2) a month and shall notify the dates of said meetings in advance. Said meetings may be listened to live on the Commission's website, and the minutes thereof may also be available in PDF format on the website.

(g) The commissioners shall promulgate those regulations needed to govern their internal operations, including the type and format of meetings, appointments, contracts, and compensation of personnel.

Section 8. – Powers and Duties of the Commissioners.–

The commissioners shall have the following powers and duties:

- (1) Act as the governing and administrative body of the Commission;
- (2) Establish the general policy of the Commission in order to attain the objectives of this Act;
- (3) Implement the public policy and objectives of the Commission pursuant to this Act;
- (4) Authorize and oversee the implementation and results of the Commission's annual work plan;

(5) Prepare and submit the Commission's operating budget for each fiscal year to the Office of Management and Budget for the consideration of the Legislative Assembly;

(6) Formulate, adopt, and amend rules and regulations that shall govern the internal operations and the execution of the powers and duties of the Commission;

(7) Keep complete records of all proceedings before its consideration and make them available to the public;

(8) Contract with public or private natural or juridical persons to establish a strong technical team with experience in energy issues to properly carry out the duties and responsibilities of the Commission.

(9) Establish, at its discretion, advisory groups to provide specialized technical advice to the Commission on energy regulation topics and provide for the operations thereof.

(10) Ensure the proper operation of all that pertains to human resources, equipment, facilities, and operating budget of the Commission;

(11) Impose administrative fines within the parameters established under this Act.

(12) Represent the Commission when communication is required with other heads of agencies of the Commonwealth of Puerto Rico; and

(13) Appear before judicial, legislative, and administrative forums in representation of the Commission.

Section 9. – Office of the Commission.–

(a) All offices and facilities of the Commission shall be separate from those of any certified energy service provider or any person subject to its jurisdiction.

Section 10. – Jurisdiction of the Commission.–

(a) The Commission shall have primary and exclusive jurisdiction over all certified energy service providers that render services within the Commonwealth of Puerto Rico and over any person with direct or indirect interest in those services. The Commission shall have specific jurisdiction over:

(1) Any person who violates the provisions of this Act or the regulations of the Commission, including any person or entity that exercises its control over the aforementioned energy services to commit said violation;

(2) Any person whose actions affect the provision of energy services, including any person or entity that exercises its control over energy services to affect the provision of said services.

(3) Any person who carries out any activity for which a certification, authorization, or endorsement of the Commission is required.

(4) Any person whose actions or omissions are detrimental to the activities, resources, or interests over which the Commission has power to regulate, monitor, or oversee, including any person who exercises his/her control over energy services in such a way as to result in said detriment.

(b) The Commission shall exercise its jurisdiction over anything that is not in conflict with federal statutes and regulations, especially those pertaining to the FERC and those preempted by federal standards.

Section 11. – Certification.–

(a) As of the date on which the regulations required by this Section are adopted by the Commission, all energy service providers shall obtain a valid certification from the Commission in order to provide energy services in Puerto Rico. The Commission shall not deny an application for certification to provide energy services for arbitrary or discriminatory reasons, or whose purpose is to prevent competition in the generation of electric power.

(b) As of the approval of this Act, the Commission shall adopt the necessary regulations to specify the form, content, and procedures to file applications for certification, which shall be applied uniformly in accordance with the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act.” Every energy service provider operating before the effective date of this Act may apply for certification within ninety (90) days after the adoption of the certification regulations drafted and implemented by the Commission. It shall not constitute a violation of this Act that the energy service provider continue providing the services:

(1) Before the adoption of the regulations required by this Act;

(2) Before the due date to file the application for certification as provided in this Section;

(3) Before the Commission acts on the application filed by said natural or juridical person to provide said services;

(c) The Commission, in accordance with the provisions of this Section, may modify, suspend, or revoke certifications issued due to a just cause after notice and opportunity for hearing.

(d) The Commission may charge a just and reasonable fee for the evaluation, processing, and issue of certifications to defray administrative expenses incurred in said processes.

Section 12. – General Obligations of Certified Energy Service Providers.–

(a) Every qualified energy service provider shall provide a reasonable, sufficient, adequate, and efficient service to any person who so requests;

(b) Any fee charged for any service provided or to be provided and every rule and regulation established by any certified energy service provider shall be just, reasonable, and nondiscriminatory.

(c) No certified energy service provider shall give unjust or unreasonable preference or advantage to any person; neither shall he/she subject any person to unjust or unreasonable prejudice or disadvantage in any aspect.

Section 13. – Amendment, Suspension, and Revocation of Decisions, Orders, and/or Certifications.–

(a) The Commission shall have thirty (30) days to notify and issue a final determination suspending, amending, or revoking any decision, order, or certification. The notification shall be provided in writing and state the reasons on which said determination is based.

(b) The Commission may revoke any decision, order, or certification on the following grounds:

(1) Knowingly making false statements on the application or any written statement of facts filed in connection with such application;

(2) If any person under the jurisdiction of the Commission:

(i) has substantially, willingly, and repeatedly failed to exploit the service in the manner specified in the decision, order, or certification;

(ii) has violated or failed to comply with any of the provisions of this Act;

(iii) has violated or failed to comply with any of the rules of the Commission; or

(iv) has refused to provide services to any person for reason of race, color, sex, sexual orientation, birth, origin, social condition, physical or mental disability, political or religious beliefs, for being a soldier or a veteran, for being a victim or perceived to be a victim of domestic violence, sexual abuse, or stalking. The Commission may order said person to cease and desist said conduct.

(c) Prior to revoking a decision, order, or certification pursuant to the provisions of subsection (a) of this Section, or issuing an order to cease and desist pursuant to the provisions of this subsection, the Commission shall notify the grounds for its decision to the affected party through an order to show cause of the reasons for which said decision, order, or certification should not be revoked. The order to show cause shall require the affected party to appear before the Commission on the date and place indicated thereon to present evidence on the issue specified in the order. The date fixed for the appearance shall not be less than ten (10) days from the date of the notification, except in situations in which there may be risks to life and property, in which case the order shall provide a shorter term. After the appearance of the affected party before the Commission, if the latter determines that a revocation order or an order to cease and desist should be issued, it shall do so along with a detailed account of its findings and grounds for the issue thereof and specify its effective date. Said order shall be notified to the affected party.

Section 14. – Information to be Submitted Before the Commission.–

(a) Every certified energy service provider shall regularly submit the following updated information to the Commission for its evaluation:

(1) resource plans that establish the parameters and goals of the provider to meet the electricity needs of the Commonwealth of Puerto Rico within a reasonable period of time;

(2) future operating budgets during a reasonable period of time;

(3) studies on service costs that show the relation between the current costs of the provider and the income earned on account of rates;

(4) energy demand, efficiency, and/or conservation management plans and goals; load management programs and technologies; gas emission reduction; resource diversification; and use of renewable energy sources;

- (5) reliability reports on the system's average frequency, frequency of power outages, and average duration of power outages;
- (6) reports describing applications for wheeling and the results of the applications; and
- (7) any other information, document, or report that the Commission may deem necessary in the exercise of its duties.

Section 15. – Power to Investigate.–

(a) The Commission shall visit the facilities of the certified energy service providers from time to time and investigate the necessary documents to verify compliance with orders, rules, and regulations established by the Commission. The Commission may enter said facilities during reasonable hours to conduct tests and audits, and may install and use in said facilities any device needed to carry out its duties.

(b) The Commission may examine, under oath or otherwise, all officials and employees of a certified energy service provider, and may require the presentation of documents and the appearance of witnesses to obtain the information needed to enforce the provisions of this Act.

(c) The Commission may investigate and determine the value of useful property in the facilities of all certified energy service providers. To conduct this evaluation, it shall take into account the original cost of the property, the depreciation thereof, and any other valuation factor that the Commission may deem has a relation to said value.

Section 16. – Regulation of Electricity Ratemaking.–

(a) The Commission shall be in charge of establishing, fixing, evaluating, and approving the rates that all certified energy service providers shall charge their customers for the use and/or consumption of electricity on a monthly basis.

(b) No rates, fees, rents, or charges of a variable nature that may change without the Commission having passed judgment on the same shall be approved, including but not limited to the Adjustment for the Purchase of Energy, the Adjustment for the Purchase of Fuel or any other rate, fee, rent, or charge of a similar nature for energy services. As of the approval of this Act, Adjustment for the Purchase of Energy, the Adjustment for the Purchase of Fuel that PREPA charges to its customers is hereby repealed.

(c) For the fixing of the rates, the Commission shall take into consideration and provide for the payment of the principal and interest of PREPA's bonds, and for compliance with the terms and provisions of the agreement with or in benefit of buyers and holders of any bonds of PREPA.

(d) The Commission shall take into consideration the following data and information when establishing, fixing, evaluating, and approving rates:

(1) the efficiency, capacity, and suitability of the facilities and service of the energy service provider;

(2) the cost of the service provided;

(3) the value of the service provided to its customers;

(4) the capacity of the energy service provider to improve the service provided and its facilities;

(5) the conservation of energy and the efficient use of alternative energy resources; and

(6) the economic development of the Commonwealth of Puerto Rico.

(e) Every certified energy service provider shall file with the Commission within a specific period of time established by regulations all the rates charged and/or to be charged for any service provided. The Commission shall file and publish said information.

(f) Every month, all certified energy service providers shall file the proposals for any change in rates with the Commission. The provider shall publish a notice of the proposed change in accordance with the rules and regulations established by the Commission.

(g) Any change in rate proposed by a certified energy service provider, whether to increase or decrease the rate, shall undergo a public hearing process to be held by the Commission to determine if the proposed change is just, reasonable, and nondiscriminatory.

(h) The Commission may establish temporary rates that shall take effect sixty (60) days after of the presentation of the change in rate proposed by the provider. Said temporary rate shall remain in effect during the period of time needed by the Commission to evaluate the change in rate proposed by the provider and to issue a final order on said change.

(i) If after the public hearing process, the Commission determines that the proposed change in rate is just and reasonable, the energy service provider may begin to charge said rate sixty (60) days after the Commission thus orders it. If the Commission determines that the proposed change in rate is unjust and unreasonable and/or in violation of this Act, it shall issue an order establishing and notifying the rate that the provider shall charge to its customers for the service. The rate set forth in the order shall take effect sixty (60) days after the Commission issues said order.

(j) After ordering the change in rate, the Commission shall require the energy service provider to refund or credit on the customer bill any discrepancy between the original rate and the change in rate charged.

(k) During the change in rates procedure, burden of proof shall fall on the energy service provider to demonstrate that the proposed change in rate is just, reasonable and nondiscriminatory, as provided in subsection (a) of this Section.

Section 17. – Customer Service.–

(a) The Commission shall adopt a customer service policy to oversee their rights and ensure effective communication with and the participation of all citizens that resort to the same. The following initiatives shall be part of this policy:

(1) The Commission shall ensure public dissemination of all sorts of changes in Puerto Rico’s electricity market through the disclosure on its website of all public interest information it may have. Said Commission shall develop and implement a customer education and orientation program regarding the contents of the information so disclosed.

(2) The Commission shall develop and use viable internal parameters to assess the effectiveness of the service it provides to customers. It shall render an annual report to the Legislative Assembly with the results of the customer service policy implemented and shall publish said results on its website.

(b) The Commission shall regulate and monitor services rendered to customers by certified energy service providers. Said providers shall submit proposals to the Commission with the following components:

(1) Just and reasonable norms or practices that the energy service provider shall follow when rendering a service;

(2) Just and reasonable norms or practices to assess the service of a energy service provider;

(3) Just and reasonable norms or practices to guarantee the accuracy of the equipment used by the energy service provider to render its services;

(4) Just and reasonable norms or practices to protect the health and safety of the energy service provider's employees and the general public, including adequate installation, use, maintenance, and operation of security equipment and other devices.

Section 18. – Energy Efficiency and Conservation.–

The Commission shall be in charge of implementing and overseeing compliance with any plan, initiative, incentive or energy efficiency and/or conservation standard established for agencies, certified energy service providers, public corporations, municipalities, businesses, among other public or private entities. The following are among the laws applicable to this Section:

(1) Act No. 69-1979, as amended, known as the “Government Energy Conservation Act.”

(2) Act No. 114-2007, as amended, which establishes the Net Metering Program.

(3) The “wheeling” provisions of Act No. 73-2008, as amended, known as the “Economic Incentives Act for the Development of Puerto Rico.”

(4) Act No. 82-2010, as amended, known as the “Public Policy on Energy Diversification by means of Sustainable and Alternative Renewable Energy in Puerto Rico Act.”

(5) Act No. 83-2010, as amended, known as the “Puerto Rico Green Energy Incentives Act.”

(6) Act No. 19-2012, as amended, known as “Energy Savings Performance Contract Act.”

(7) Any other applicable law on energy efficiency and/or conservation.

Section 19. – Regulation of Power Purchase Agreements.–

(a) The Commission shall approve every agreement signed by a certified energy service provider to: (i) buy electricity for resale to customers, and (ii) sell electricity to other energy service providers for resale.

(b) The Commission shall conduct an annual review of the agreements and contracting practices for the purchase of electricity.

(c) The Commission may determine whether the contracting practices of energy service providers are being conducted and have been conducted in a nondiscriminatory and competitive manner and on equal conditions.

(d) The Commission shall appoint an Independent Energy Proposals Review Board (“Board”) composed of five (5) members with more than seven (7) years of experience in bidding processes and/or purchase agreements and/or sale of electricity to monitor in an independent, technical and transparent manner any bid process, including RFPs (Request for Proposals), conducted by PREPA or any certified energy service provider in Puerto Rico. The designation of the Board shall be made in such a way that the Board is constituted and ready to perform its duties throughout the entire bidding process. The Board shall have the following powers and duties:

(1) Monitor and ensure that the RFP process is conducted in an expedite and transparent manner in compliance with the applicable laws;

(2) Evaluate the decisions made by PREPA or the certified energy service provider during said process; and

(3) File a report within twenty (20) days of the conclusion of the bidding process to PREPA or to the certified energy service provider and to the Commission explaining the bidding process for the purchase and/or sale of electricity conducted and giving favorable or unfavorable recommendations regarding the decisions made in said process. The favorable or unfavorable

recommendations of the Board shall be binding in determining the results of the bid.

(e) The Commission shall appoint the members of the Board on the basis of merit and in accordance with their academic and professional background. The Board shall be created specifically for PREPA or any certified energy service provider's the RFP bidding process in Puerto Rico. Once the process has concluded and the duties of the Board have been carried out, said Board shall be dissolved. The Commission may create and appoint a new Board every time PREPA or any qualified energy service provider in Puerto Rico conducts a bidding process to purchase electricity.

(f) The members of the Board shall be entitled to receive a per diem for every meeting they attend, as established by regulations.

(g) The Commission shall promulgate the regulations needed to establish the procedure for the creation and dissolution of the Board and to ensure compliance with the powers herein granted to the same.

Section 20. – Construction and Extension of Facilities.–

(a) No person or energy service provider shall initiate the construction of any electricity generation or distribution facility whose cost exceeds five million dollars (\$5,000,000) without having initially obtained a certification from the Commission stating that said facility is necessary and adequate for providing energy services.

(b) The person or energy service provider that wishes to build or extend its facilities shall file an application for certification with the Commission in accordance with the norms and regulations established by the Commission. The Commission shall reply to an application for certification within ninety (90) days after the filing thereof.

(c) Facilities shall be built, operated, and maintained as provided in the certification.

Section 21. – Transfers and Mergers of Energy Service Providers.–

(a) The sale, merger, combination, or transfer of any certified energy service provider or of the facilities thereof, whose value exceeds one hundred thousand dollars (\$100,000) shall be carried out by purchasing the securities of such provider or facilities. Said sale, merger, combination, or transfer shall be applied for and approved by the Commission before carrying it out.

(b) The Commission shall approve the sale, merger, combination, or transfer if it is in the public interest.

(c) The Commission shall issue an order within ninety (90) days after the filing of the application resolving the same.

(d) The above provided shall not apply to the regular operations of securities listed in recognized markets.

Section 22. – Customer Complaints.–

(a) Ninety (90) days after the approval of the applicable regulations or as part of the certification process, all certified energy service providers shall file with the Commission their conflict resolution process. The Commission shall approve such processes within thirty (30) days after the filing thereof.

(b) Once approved, the certified energy service provider shall notify all of its customers of the procedure adopted and of their right to file a request for review with the Commission regarding the adjudication by the provider of a complaint.

(c) The Commission shall have primary jurisdiction to review the adjudications made by a certified energy service provider with respect to the complaints of its customers. The Commission shall not address consumer complaints that have not been initially filed with the certified energy service provider as part of the complaints process.

(d) All requests for review of complaints under the preceding subsection shall be filed with the Commission within a term, that cannot be extended, of thirty (30) days from the date of the notice to the consumer of the determination of the certified energy service provider.

(e) The Commission shall create a new record in addition to that produced by the certified energy service provider during the consideration of the complaint.

Section 23. – Appeals Procedure.–

In the event that a certified energy service provider is adversely affected by a decision made by the Commission, the following procedure shall be adopted:

(a) Request for Reconsideration – The certified energy service provider may request reconsideration of a determination to an examining officer of the Commission within ten (10) days from the date on which the determination was notified. Said request shall be submitted in writing with the examining officer who issued the determination whose reconsideration is requested and shall state the grounds on which the request for reconsideration is based.

(b) Formal Adjudication Procedure – The examining officer with whom the application for reconsideration is filed shall consider the same and notify his/her final determination to the affected certified energy service provider in writing within twenty (20) days from the date of its filing. If the provider disagrees with said final determination, he/she shall have ten (10) days from the date of the notice of the final determination to file a petition or request with the whole Commission to elucidate the controversy. Upon conclusion of the administrative processes before the Commission, any party may resort to the Court of Appeals of Puerto Rico to appeal or request review of the determination. This request for judicial review shall be filed within twenty (20) days from the notice of the decision of the Committee.

Section 24. – Penalties for Noncompliance.–

(a) The Commission shall impose administrative fines for violations of this Act, regulations, and orders issued thereunder committed by any person or energy service provider subject to its jurisdiction, of up to a maximum of fifty thousand dollars (\$50,000) per day. Said fines shall in no event exceed five percent (5%) of the gross sales, fifteen percent (15%) of the net income, or ten percent (10%) of the net worth of the sanctioned person or energy service provider. The greater of the aforementioned amounts corresponding to the most recent taxable year shall be the amount of the fine.

(b) If the person or energy service provider commits a subsequent violation of this Act, the Commission may impose penalties of up to a maximum of fifty thousand dollars (\$50,000) per day. In such case and by unanimous determination of the Commission, it may impose fines up to twice the limitations on the basis of sales, income or assets set forth in subsection (a) of this Section and up to five hundred thousand dollars (\$500,000).

(c) Any claim or cause of action authorized by law filed by any person with standing shall not affect the powers granted under this Section to impose administrative sanctions.

(d) Any person who intentionally violates any provision of this Act, omits, disregards or refuses to obey, observe and comply with any rule or decision of the Commission shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a term that shall not be less than six (6) months nor exceed one (1) year or by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) or both penalties at the discretion of the Court. In the event of recurrence, the penalty established shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand

dollars (\$20,000) or imprisonment for a term of not less than two (2) years or both penalties at the discretion of the Court.

Section 25. – Budget.–

The sum of five million dollars (\$5,000,000) originating from the resources of the General Fund is hereby appropriated for the initial organization, functioning, and operating expenses of the Puerto Rico Energy Regulatory and Oversight Commission for fiscal year 2013-2014. For subsequent fiscal years, the funds of the Puerto Rico Energy Regulatory and Oversight Commission shall be consigned as part of the operating budget of the Government of the Commonwealth of Puerto Rico, provided that the appropriation shall not be less than five million dollars (\$5,000,000) per year.

Section 26. – Annual Reports.–

Before January thirty-first (31st) of each year, the Commission shall file detailed reports to the Governor and the Legislative Assembly of the Commonwealth of Puerto Rico containing the following information:

- (1) Status of energy affairs of the Island and projections of future energy needs in the short and long terms;
 - (2) recommendations on possible measures to be taken by the Government to ensure the adequate supply of energy resources and the efficiency of the overall system;
 - (3) updated data and statistical projections on the generation, distribution, use, and consumption of energy in Puerto Rico;
 - (4) itemized monthly rate of energy consumption and the process used to fix such rates;
 - (5) annual work plan of the Commission and the results of its execution;
- and

(6) any other information deemed pertinent and necessary.

Section 27. – Principles of Access to and Disclosure of Information.–

Any information, data, statistics, reports, plans, and documents received and/or disclosed by the Commission pursuant to the provisions of this Act, shall be subject to the following principles of transparency:

- (1) The information shall be complete;
- (2) The disclosure of the information shall be timely;
- (3) The data shall be in a raw and detailed form, not in aggregate or modified forms;
- (4) The information shall not be subject to broad confidentiality standards or other limitations;
- (5) The data must be machine-processed.
- (6) Access to information shall be non-discriminatory. That is, the availability of the information shall be open to any user without the need to register;
- (7) The data shall not be subject to any copyright, patents, trademarks, or trade secret. Reasonable restrictions based on doctrines of privacy, security, and evidentiary privileges may apply; and
- (8) Such data must be available in nonproprietary format; that is to say, no one shall have exclusive control over it.

Section 28. – Applicability of this Act to Energy Service Providers.–

No agreement, certification, permit, order, service area, or preexisting rate of existing energy service providers, such as PREPA, shall be cancelled until the same have been modified by the Commission pursuant to the provisions of this Act.

Section 29. – Interpretation of this Act.–

The provisions of this Act shall be construed liberally in order to achieve their purposes, and whenever a specific power or authority is granted to the Commission, the same shall not be construed as to exclude or impair any other power or authority otherwise conferred to it.

Section 30. – Repealing Clause.–

(a) Act No. 128 of June 29, 1977, as amended, which created the Puerto Rico Energy Office and that was subsequently denominated Energy Affairs Administration is hereby repealed. Article 4, Section 1 of Act No. 73 of 2008, as amended, known as the “Economic Incentives for the Development of Puerto Rico Act,” which attached the Energy Affairs Administration to the Department of Economic Development and Commerce, is also repealed.

(b) Any provision of law or regulation that is inconsistent with the provisions of this Act is hereby repealed to the extent of the inconsistency.

Section 31. – Transitory Clause.–

As of the approval of this Act, any duty or responsibility assigned by any law to the Energy Affairs Administration shall be deemed to be transferred to the Puerto Rico Energy Regulatory and Oversight Commission.

Section 32. – Separability.–

If any clause, paragraph, subparagraph, article, provision, section, or part of this Act were held to be null or unconstitutional, the holding to such effect shall not affect, impair, nor invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, or part thereof held to be null or unconstitutional.

Section 33. – Applicability.–

This Act shall take effect immediately after its approval.