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Introduced by Mr. *Bhatia-Gautier*

Referred to the Committee on Energy Affairs and Water Resources

AN ACT

To amend subsection (d) of Section 2, subsection (b) of Section 3, the first paragraph and subsections (l) and (w) of Section 6; create and add a new Section 6A; and add new Sections 28 and 29 to Act No. 83 of May 2, 1941, as amended, better known as the “Puerto Rico Electric Power Authority Act,” in order to transform the Puerto Rico Electric Power Authority and adjust such Act to the Energy RELIEF Plan; and for other purposes.

STATEMENT OF MOTIVES

This measure amends Act No. 83 of May 2, 1941, as amended, better known as the “Puerto Rico Electric Power Authority Act,” in order to adjust it to the advances and mandates adopted as part of the Energy RELIEF Plan and the creation of the Energy Regulatory and Oversight Commission. The amendments to this Act include: issuing a new mandate for the Puerto Rico Electric Power Authority (hereinafter, “PREPA”), clarifying the role of PREPA in fixing electricity rates and billing, and ensuring the transparency and accountability of such public corporation.

Puerto Rico's energy history shows that this sector has remained stagnant, inefficient, and excessively dependent on oil in spite of the worldwide evolution to cleaner and more efficient energy sources. While other jurisdictions have gradually departed from the use of oil for being an expensive and toxic resource, data published by the U.S. Energy Information Administration (EIA) shows that, in 2011, Puerto Rico generated sixty-eight percent (68%) of its energy from oil. Consequently, energy in Puerto Rico has become more expensive, the environment and our health have been adversely affected, and we have become more vulnerable to the fluctuations in the price of oil. Such inefficiency has a direct impact on the customers' electric bill.

PREPA's serious financial difficulties also contribute to the current energy crisis in the Island. PREPA's audited financial statements for the fiscal year ending on June 30, 2012, show a \$515.7 million deficit net worth, whereas the fiscal year ending on June 30, 2011, showed a \$169.5 million deficit. This means that such deficit increased by \$346.2 million after only one year. The items that reflect the most drastic changes in connection with such deficit can be found in the 2011 and 2012 audited statements, where fuel cost increased from \$2.3 billion to \$2.9 billion, respectively, and contributions in lieu of taxes increased from \$246.8 million to \$283.1 million, respectively. Moreover, PREPA's net book value as of June 30, 2012, was \$6.8 billion, whereas its liabilities amounted to \$8.9 billion. This last amount includes \$985 million in current liabilities due this fiscal year, and \$7.95 billion in long-term debt. In June 2013, PREPA issued an additional debt of approximately \$700 million to finance a portion of its Capital Improvements Plan, which adds up to nearly \$10 billion in PREPA bonds. This data suggests that, if immediate action is not taken, the future holds a slow and steady fall that will ultimately bring about the PREPA's demise.

This Legislative Assembly has made a careful and critical analysis of Puerto Rico's current electric power situation in light of the needs of our residents and the economic recession that we, as a people, are undergoing. Through this analysis, we have learned that reductions in the cost of electricity and the subsequent progress towards becoming a more competitive jurisdiction require the diversification of the means to generate energy by restructuring the operations of said public corporation. These efforts are intended to safeguard the existence of PREPA and guarantee its public character by fixing lower rates for subscribers. Likewise, PREPA shall return to its former position of agent of our socio-economic transformation as it was back in the 1940s when it was entrusted with electrifying Puerto Rico, a task it successfully completed.

Among the statutes that have shaped and continue to shape the Island's public policy on energy is Act No. 83 of May 2, 1941, as amended, better known as the "Puerto Rico Electric Power Authority Act". Puerto Rico's historical, social, and economic context back in 1941 was dramatically different from the one we live in now. Hence, the Act that governs PREPA must be adjusted to our current situation. PREPA has certainly made significant contributions to our history, from the establishment of the necessary infrastructure and the successful development of Operation Bootstrap, to the accomplishment of its mission to provide electric power service to the People of Puerto Rico. This has allowed us to carry out daily activities as simple as turning on the lights in our homes. PREPA has made even more important economic and social contributions, such as lighting our schools, hospitals, businesses, and manufacturing plants. However, the Authority has failed to stay abreast of global technological advances regarding energy generation as required to address the Island's economic development needs. The People claim their right to be provided with cleaner, more affordable and environmentally-friendly electric power.

As currently drafted, the enabling Act of PREPA does not provide for the maximization of technological advances or respond to global energy transformations. Today's issues cannot be addressed with last century's solutions. Thus, it is necessary to amend Act No. 83 of May 2, 1941, to give way to great global technological and energy advances in Puerto Rico, such as the transformation of power generation plants, the creation of new high-efficiency plants that use less expensive energy sources, and the maximization of energy generation using renewable energy sources. It is necessary to temper the 1941 law with 21st century demands by drafting a new statute for PREPA. This measure also ensures that we meet the Federal standards established in the Mercury and Toxic Air Standards (M.A.T.S.), which shall take effect in April 2015 and be monitored by the United States Environmental Protection Agency (EPA).

All of the foregoing may be possible by transforming PREPA into a public corporation accountable to the People through the implementation of an open government policy, whose principles have been adopted at the Federal level by the Administration of President Barack Obama. Likewise, this Act gives standing to customers affected by PREPA's actions or omissions, resorting to a judicial forum and requiring compliance from such agency or any other energy generator that fails to comply with the mandate issued herein. The Legislative Assembly believes this to be a momentous step towards guaranteeing PREPA's true accountability to its stakeholders: the People of Puerto Rico. This cause of action is mostly employed in connection with Federal environmental laws that allow affected parties to file citizen suits requiring compliance with laws such as the Clean Air Act of 1970 and the Resource Conservation and Recovery Act.

The measures taken herein are necessary to achieve the public purpose of reducing the cost of electricity and to boost the economic development of Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

1 Section 1.- Subsection (d) of Section 2 of Act No. 83 of May 2, 1999,
2 is hereby amended to read as follows:

3 “Section 2.- Definitions.-

4 ...

5 (a) ...

6 (d) Undertaking. - Shall mean any one or a combination of two or more of
7 the following to continue the development of [**the water and energy resources of**
8 **Puerto Rico,**] energy generation, namely: works, facilities, structures, [**plants or**
9 **sewer systems**] irrigation, electricity, heat, light, power or equipment works,
10 together with all parts thereof and appurtenances thereto, and lands, rights thereon,
11 [**water rights**], rights and privileges in connection therewith and any and all other
12 property or services that the Authority may deem necessary, proper, incidental or
13 convenient in connection with its activities including, but not limited to, irrigation
14 and hydroelectric supply and distribution systems, power plants that generate
15 electricity *in a centralized and distributed manner* by water power or by any other
16 means, including steam *and renewable energy sources*, and stations, wetlands,
17 dams, canals, tunnels, conduits, transmission and distribution lines, and other
18 facilities and appurtenances necessary, useful, or customarily used and employed
19 in the generation, diversion, collection, storage, conservation, utilization,
20 transportation, distribution, sale, exchange, delivery, or other disposition of
21 [**water**], electric power, electric equipment, supplies, services and other activities
22 in which the Authority shall engage or wishes to engage to achieve its purposes.

23 (e) ...

24 ...”

25 Section 2.- Subsection (b) of Section 3 of Act No. 83 of May 2, 1941,
26 as amended, is hereby amended to read as follows:

1 “Section 3.- Creation and Composition.-

2 (a) ...

3 (b) The Authority hereby created is and shall be a governmental
4 instrumentality subject, as provided herein, to the control of its governing board,
5 but it is a corporation having legal existence and personality separate and apart
6 from that of the Government. *Notwithstanding the foregoing, the Authority and its*
7 *Governing Board shall be subject to the supervision, regulation, and oversight of*
8 *the Energy Regulatory and Oversight Commission created by law.* The debts,
9 obligations, contracts, bonds, notes, debentures, receipts, expenditures, accounts,
10 funds, undertakings, and property of the Authority, its officers, agents, or
11 employees shall be deemed to be those of said government-controlled corporation
12 and not to be those of the Commonwealth Government or any office, bureau,
13 department, commission, dependency, municipality, branch, agent, officer, or
14 employee thereof. *However, since it is a government entity, the Legislative*
15 *Assembly may also act as a representative of its stakeholders, the People of Puerto*
16 *Rico, and protect their interests by requiring the Authority to periodically file with*
17 *the Legislative Assembly, as provided, as well as publish and make readily*
18 *accessible on its website the following information:*

19 (i) *Any document related to revenues, sales, expenditures,*
20 *disbursements, assets, liabilities, accounts receivable, and any other financial*
21 *information of the Authority;*

22 (ii) *The price per barrel by fuel type, the average rate per kilowatt-*
23 *hour for each client sector, the cost of generation per kilowatt-hour, all operating*
24 *expenses, distributed energy generation by technology type, and any other*
25 *information about the operations of the Authority;*

26 (iii) *A breakdown of the daily electricity demand projected and*
27 *determined by the Authority;*

1 (iv) *Data related to the Authority’s present energy generation*
2 *capacity and overcapacity; and*

3 (v) *Any other information deemed necessary by the Legislative*
4 *Assembly.”*

5 Section 3.- The first paragraph, subsection (l), and subsection (w) of Section
6 6 of Act No. 83 of May 22, 1941, as amended, are hereby amended to read as
7 follows:

8 “Section 6.- Powers.-

9 The Authority **[is hereby created for the purpose of conserving,**
10 **developing, and utilizing, and aiding in the conservation, development and**
11 **utilization of water and energy resources of Puerto Rico, for the purpose of**
12 **making available to the inhabitants of the Commonwealth,]** *shall be*
13 *responsible for guaranteeing the safety of the electric infrastructure, as a*
14 *component of the economic development of Puerto Rico, through the generation,*
15 *transmission, and distribution of clean and efficient energy. The Authority shall*
16 *rise to energy and environmental challenges by promptly using scientific and*
17 *technological advances, thus promoting more savings as well as the highest*
18 *possible standards of efficiency. It shall be the priority of the Authority to make*
19 *the transformation of existing power plants feasible in the best interest of*
20 *customers and to achieve the objective of expediting the process of reducing the*
21 *cost of electricity. **[in the widest economic manner, the benefits thereof, and by***
22 **this means to promote the general welfare and increase commerce and**
23 **prosperity; and]** *The Authority shall also be responsible for implementing Puerto*
24 *Rico’s public policy on energy in compliance with the rules of the Energy*
25 *Regulatory and Oversight Commission created by law, to govern all that pertains*
26 *to such public policy on energy, fixing electric power generation, transmission,*
27 *and distribution rates, as well as customer rates, among other matters. The*

1 Authority is hereby granted and shall have and may exercise all rights and powers
2 necessary or convenient to carry out the aforesaid purposes, including (but without
3 limiting the generality of the foregoing) the following:

4 (a) ...

5 (b) ...

6 (1) **[To determine, fix, alter, charge, and collect]** *File with the*
7 *Energy Regulatory and Oversight Commission for its approval, subject to the rules*
8 *and conditions established by such Commission, all the rates charged and/or to be*
9 *charged. The Authority shall be responsible for charging rates that have been fixed*
10 *and approved by the Commission* **[reasonable rates, fees, rentals, and other**
11 **charges]** on account of the use of the facilities of the Authority, or for electric
12 power services, or other commodities sold, rented, or furnished by the Authority,
13 *which shall be sufficient* **[for the payment of the expenses of the Authority**
14 **incurred in the conservation, development, improvement, extension, repair,**
15 **maintenance, and operation of its facilities and properties,]** for the payment of
16 the principal and interest on its bonds, and for fulfilling the terms and provisions of
17 such covenants made with or for the benefit of the purchasers or holders of any
18 bonds of the Authority. **[Provided, further, that upon fixing rates, fees, rentals,**
19 **and other charges for electric power, the Authority shall take into**
20 **consideration those factors that promote the broadest and most economically**
21 **possible diversified use of electric power.]**

22 The Authority shall have a maximum term of one hundred and twenty (120)
23 days from date of issue of the invoice for electric power service consumption to
24 notify clients of errors in calculation. Once said term concludes, the Authority may
25 not claim retroactive charges for said errors, such as those of an administrative or
26 operational nature, or for an erroneous reading of electric power service
27 consumption meters. This shall only apply to residential clients; it shall not apply

1 to commercial, industrial, institutional clients, or otherwise. In those cases in which
2 clients keep the meters out of our readers' visual reach, or when for force majeure,
3 such as hurricanes, among others, the meters cannot be read, this measure shall not
4 apply to invoices issued based on consumption estimates. Likewise, it is hereby
5 prohibited to report delinquent accounts from residential clients to credit bureaus,
6 except in the case of uncontested accounts from clients not committed to a
7 payment plan, of which the amount and whose recurrence of nonpayment, after
8 multiple requirements for payment have been conducted and all collection
9 mechanisms exhausted, imply that there is the intent to defraud the Authority.

10 **[Before changes in the general rate structure for the sale of electric**
11 **power service are made, or in cases in which the Board decides to make**
12 **changes and deems the immediate effectiveness thereof to be necessary, then,**
13 **within a reasonable term after such changes are made, a public hearing shall**
14 **be held with respect to said changes before the Board of the Authority, or**
15 **before such officer or officers that the Board may designate for such a**
16 **purpose, pursuant to the powers, duties and obligations conferred to it by**
17 **Sections 191 to 217 of this title. Once said hearing is held, the Board may**
18 **alter, suspend or revoke such changes.]**

19 (m) ...

20 ...

21 (w) Not later than May 31 of each year, the Executive Director of the
22 Electric Power Authority shall submit a report to the Governor, *the Energy*
23 *Regulatory and Oversight Commission created by law*, and both Houses of the
24 Legislative Assembly of the Commonwealth of Puerto Rico, stating the measures
25 taken by the Authority during the preceding calendar year to address the
26 emergencies that may arise with respect to the upcoming hurricane season and
27 other atmospheric disturbances, including floods that may affect the electrical

1 system of the Island. Likewise, said report shall present the plans or protocols
2 adopted to be followed in the case of fires in facilities or establishments of the
3 Authority. It shall include further any measure identified for the prevention and
4 conservation of the electrical lines in case of an earthquake. The report shall
5 include, without it being understood as a limitation, the following information:

6 (1) Improvements to the Electric Power Authority's Revised
7 Operating Plan for Emergencies due to Atmospheric Disturbances.

8 ...”

9 Section 4.- A new Section 6A is hereby created and added to Act No. 83 of
10 May 2, 1941, as amended, to read as follows:

11 *“Section 6A.- Responsibilities.-*

12 *In addition to the powers, authorities, and functions conferred under this*
13 *Act, the Authority shall have the following obligations, under the supervision of the*
14 *Energy Regulatory and Oversight Commission created by law.*

15 (a) *Efficiency.- It shall carry out an internal and/or external process to*
16 *meet the parameters provided by law in connection with the energy generation in*
17 *Puerto Rico.*

18 (b) *Overcapacity.- It shall comply with all the provisions of law in*
19 *connection with electricity generation capacity.*

20 (c) *Renewable Energy.- It shall maximize the use of renewable energy, in*
21 *compliance with the applicable Commonwealth and Federal laws, ensuring its*
22 *integration into the electrical grid and guaranteeing the stability of the Island's*
23 *energy transmission and distribution network. The Authority shall oversee that the*
24 *integration of renewable energy meets the requirements set forth in Act No.*
25 *82-2010 and take the necessary measures to ensure compliance therewith.*

26 (d) *It shall submit to the Energy Regulatory and Oversight Commission*
27 *an Energy RELIEF Action Plan, as provided by law.*

1 (e) *It shall submit to the Energy Regulatory and Oversight Commission*
2 *an Innovative Concept of Operations, as provided by law.*

3 (f) *It shall design and submit to the Energy Regulatory and Oversight*
4 *Commission created by law, and pursuant to the rules established in the applicable*
5 *legislation, a new electric bill for each client sector of the Authority, stating the*
6 *different types of charges in detail, including, among others, administrative*
7 *expenses, transmission cost, distribution cost, and consumption cost. The new*
8 *electric bill shall be approved by the Energy Regulatory and Oversight*
9 *Commission subject to compliance with the rules established by the same.*

10 (g) *It shall comply with all the applicable provisions of law, including,*
11 *among others, those imposed under the Energy RELIEF Plan.*

12 (h) *It shall comply with any directive, rule, request, and penalty*
13 *established by the Energy Regulatory and Oversight Commission created by law in*
14 *the exercise of its duty to regulate and oversee the Authority.”*

15 Section 5.- A new Section 28 is hereby created and added to Act No. 83
16 of May 2, 1941, as amended, to read as follows:

17 “Section 28.- Principles of the Authority and Open Governing Board.-

18 (a) *Any information, data, statistics, reports, plans, records, and*
19 *documents received and/or disclosed by the Authority and/or the Governing Board*
20 *under this Act shall be subject to the following principles of transparency:*

21 (i) *The information shall be complete;*

22 (ii) *The information shall be disclosed in a timely fashion;*

23 (iii) *The data shall be in a raw and detailed form, not in aggregate*
24 *or modified forms;*

25 (iv) *The information shall not be subject to broad confidentiality*
26 *standards or other limitations;*

27 (v) *The data must be machine processable;*

1 (vi) *Access to the information shall be non-discriminatory. That is,*
2 *the availability of the information shall be open to any user without the need to*
3 *register;*

4 (vii) *The data shall not be subject to any copyrights, patents,*
5 *trademarks, or trade secrets. Reasonable restrictions based on doctrines of*
6 *privacy, security, and evidentiary privileges may apply; and*

7 (viii) *Such data must be available in nonproprietary format; that is,*
8 *no one shall have exclusive control over it.*

9 (b) *The Authority shall designate an official to assist and respond to any*
10 *queries from data users, and another person to address claims regarding*
11 *violations of these principles of transparency.”*

12 Section 6.- A new Section 29 is hereby created and added to Act No. 83 of
13 May 2, 1941, as amended, to read as follows:

14 “Section 29.- *Citizen Suits.-*

15 (a) *All citizens shall have standing to initiate civil actions on their behalf*
16 *before any judicial forum of the Commonwealth of Puerto Rico against the*
17 *Authority to require compliance as a result of any action or omission of the*
18 *Authority with respect to any of the obligations established in Section 6A of this*
19 *Act. For purposes of this Section, ‘citizen’ means any natural or juridical person*
20 *adversely affected, or that could be adversely affected, by an alleged violation of*
21 *the provisions of this Act, or a mandate or order issued or adopted hereunder.*

22 (b) *The causes of action initiated under this Act may be filed with any*
23 *courtroom of the Court of First Instance regardless of the place of residence of the*
24 *parties thereto, the place where the facts took place, or the location of the real*
25 *property subject to the claim.”*

26 Section 7.- *Severability.-*

1 If any clause, paragraph, subparagraph, article, provision, section, or part of
2 this Act were held to be null or unconstitutional, the holding to such effect shall
3 not affect, impair, or invalidate the remainder of this Act. The effect of such
4 holding shall be limited to the clause, paragraph, subparagraph, article, provision,
5 section, or part of this Act held to be null or unconstitutional.

6 Section 8.- Effectiveness.-

7 This Act shall take effect immediately after its approval. However, Sections
8 3 and 4 shall take effect once the Energy Regulatory and Oversight Commission is
9 duly constituted.