

Government Proposes Legal Framework for PREPA Privatization

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On March 6, 2018, the Governor of Puerto Rico filed before both chambers of the Legislature Senate Bill No. 860 and House Bill No. 1481 (“Bills”). The proposed “Act to Transform the Electrical System of Puerto Rico” (“Proposed Transformation Act”) provides the legal framework for the sale or transfer of assets, operations, functions and services of the Puerto Rico Electric Power Authority (“PREPA”) to interested private parties.

If enacted, PREPA would be authorized to execute contracts to sell or transfer its assets or to transfer or delegate, temporarily or permanently, operations, functions, or services to a specific proponent. Assets shall consist of real or personal property (tangible and intangible), facilities (including generation and electricity metering systems), and proprietary interests, among others. Such asset transactions, considered as priority projects, shall be made according to the public private partnership (“P3”) mechanism under Act 29-2009, known as the Public-Private Partnerships Act, as amended (“Act 29-2009”).

Any transfer of PREPA assets under the Proposed Transformation Act would be exempt from requirements, approvals, or review by the Puerto Rico Energy Commission (“Energy Commission”), as well as from compliance with the Integrated Resource Plan adopted by said Commission. However, after the contract is executed, the Energy Commission would have the power to oversee performance and compliance by the contracting party, and to review and approve applicable rates, except as the agreement may otherwise provide. The Energy Commission would not have the power to amend or alter any P3 contract entered under the purview of the Proposed Transformation Act. P3 contracts may exempt the subject transaction from other provisions of the Puerto Rico Electric Power Authority Enabling Act, the Puerto Rico Energy Transformation and Relief Act, and the Puerto Rico Public Service Act. Also, PREPA would have the power to initiate competitive bidding for proposals or P3 contracts in accordance with Act 29-2009.

Due to the nature and importance of the electrical system, it is expected that these Bills will be discussed in public hearings and legislative committee meetings, which will likely result in amendments being introduced throughout

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the legislative process.

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