

WHITE PAPER:
PUERTO RICO ELECTRICITY SECTOR REGULATORY FRAMEWORK

As of February 1, 2019

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WHITE PAPER

PUERTO RICO ELECTRICITY SECTOR REGULATORY FRAMEWORK

This White Paper provides an overview of the electricity sector regulatory framework relevant to the proposed public-private partnership (“PPP”) for a private party or consortium (the “T&D contractor”) to manage, maintain, rehabilitate, repair, refurbish, replace, improve, expand and finance, as needed, Puerto Rico’s electric power transmission and distribution system (the “T&D Project”) pursuant to a long-term contract (the “T&D Contract”).

1. INTRODUCTION

1.1. Overview of the T&D Project

The Puerto Rico Public-Private Partnerships Authority (the “P3 Authority”), in collaboration with the Puerto Rico Electric Power Authority (“PREPA”), has issued or intends to issue a Request for Proposals (the “RFP”) for the T&D Project. The RFP invites Qualified Respondents (as defined therein) to prepare and submit proposals for the T&D Project and includes a term sheet summarizing the terms and conditions contemplated for the T&D Contract.

1.2. Scope of Review

The principal laws and regulations applicable to the electricity sector in Puerto Rico are listed in Annex A. Among others, the principal laws include:

- Puerto Rico Electric Power Authority Enabling Act, Act No. 83-1941, as amended (the “PREPA Organic Act”);
- Public-Private Partnerships Authority Act, Act No. 29-2009, as amended (the “PPP Act”);
- Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014, as amended (the “2014 Transformation Act”);
- Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended (“Act 120”);
- Act for the Implementation of the Puerto Rico Public Service Regulatory Board Reorganization Plan, Act 211-2018, as amended; and
- Senate Bill No. 1121, dated October 17, 2018 (“SB 1121” or “Senate Bill 1121”) proposing the “Puerto Rico Energy Policy Act” (“Energy Policy Act”).

This White Paper is prepared on the assumption that the Energy Policy Act is enacted in substantially the form proposed in SB 1121.

The purpose of this White Paper is to describe the existing PPP and electric utility regulatory framework (including certain proposed draft legislation) relevant to the T&D Project. This White Paper does not examine the suitability of the current regulatory framework to a potential T&D contractor and may not be construed as giving legal advice. Any statement made within this White Paper may not be used against PREPA, the P3 Authority, the Government of Puerto Rico’s Central Office of Recovery, Reconstruction, and Resilience, any other agency or instrumentality of the Government of Puerto Rico and/or the authors. Further, this White Paper does not cover matters related to PREPA’s voluntary bankruptcy process under Title III of PROMESA, potential

Federal government funding, labor or environmental considerations, all of which are covered by separate White Papers.

1.3. Disclaimer

This White Paper is subject in its entirety to the disclaimer and limitations on claims set forth in Section 5.8 and Section 5.10 of the RFP. Respondents should undertake their own independent review of Puerto Rico and U.S. laws and regulations relevant to the T&D Project and make their own conclusions as to the subject matter of this White Paper and such laws and regulations.

1.4. Certain Defined Terms; Language

For consistency and ease of reading, this White Paper uses a single term for concepts that have interchangeable or similar definitions in various legislative provisions. For example, where the context permits, a reference in this White Paper to:

- the “T&D contractor” includes a reference to a “proponent” or a “contractor” under the PPP Act or Act 120, or to a “concessionaire” under SB 1121;
- the “T&D Contract” includes a reference to a “partnership contract” under the PPP Act, Act 120 or SB 1121; and
- a “PPP” in the context of PREPA includes a reference to a “PREPA Transaction” under Act 120 or SB 1121.

The laws and regulations listed herein refer to the conformed English versions, as translated from Spanish, or as enacted in English. Most laws enacted by the legislative assembly are solely enacted in Spanish, with English translations made after the approval of the law. In these cases, the Spanish version prevails. If the law was enacted in Spanish and in English, the law usually specifies which language prevails.

2. OVERVIEW

2.1. Legal Status of Puerto Rico and Applicability of Federal Electricity Laws

- ***Puerto Rico is a territory of the United States.*** As a U.S. territory, Puerto Rico is generally subject to U.S. federal law in addition to the laws of Puerto Rico.¹ Puerto Rico is also subject to the jurisdiction of certain U.S. regulatory authorities, such as the U.S. Environmental Protection Agency and the U.S. Department of Energy (“DOE”).² The U.S. Federal Deposit Insurance Corporation insures banks operating in Puerto Rico and the U.S. Securities and Exchange Commission regulates all publicly traded securities and commodities.
- ***FERC requirements generally do not apply in Puerto Rico.*** A significant portion of the electric utility industry in the U.S. mainland has evolved from a regulated monopoly business to a regulated competitive industry. The Federal Energy Regulatory Commission (the “FERC”) implemented open access for transmission facilities owned by utilities that engage in interstate commerce that are subject to FERC jurisdiction to promote competition in wholesale power supply. Many states have enacted laws and regulations that are designed to

¹ See 48 U.S.C. § 734 (2012).

² See Memorandum of the President, 57 Fed. Reg. 57,093 (Nov. 30, 1992). For example, pursuant to DOE’s regulations, companies in Puerto Rico are required to provide certain energy information to the U.S. Energy Information Administration, such as regarding sales of electricity and associated revenue. See 10 C.F.R. Pt. 207 (2018); U.S. Energy Information Administration, Form EIA-861M (formerly EIA-826), Monthly Electric Industry Power Report, <https://www.eia.gov/electricity/data/eia861m/>.

support open access transmission to promote wholesale power supply competition, and phase in retail competition. The requirements of FERC are generally not applicable to PREPA because it is not engaged in transactions in interstate commerce. However, to the extent public lands (national forests, military reservations and other lands owned by the United States) would be used to provide certain services, a licensing process would apply.³ For example, licenses need to be obtained from FERC to construct, operate, or maintain dams or transmission lines on U.S. public lands.⁴ When issuing licenses, FERC considers whether the project is in the public interest and may propose measures to protect water quality, fisheries, wildlife and cultural resources at the project.⁵ PREPA currently has a license from FERC for the Río Blanco Hydroelectric Project, which is located on property administered by the U.S. Forest Service.⁶

- ***PREPA has mandatory purchase obligations under PURPA.*** As an electric utility that sells electric energy, PREPA is subject to the mandatory purchase obligation and other legal requirements in the Public Utility Regulatory Policies Act of 1978 (“**PURPA**”), which requires the purchase of energy from certain generators at the electric utility’s avoided cost. Effectively, “avoided cost” is the cost to the electric utility of electric energy that, but for the mandatory purchase, would cost the electric utility to generate or purchase from another source. PURPA also provides for interconnection of such generation. PREPA purchases power from two co-generators pursuant to this PURPA requirement.

2.2. Legal Framework for Electricity Sector PPPs

- ***Puerto Rico has an existing legal framework for PPPs.*** Puerto Rico has an established PPP regime. Since the PPP Act was enacted in 2009, it has been utilized to successfully execute PPPs for the lease of Puerto Rico’s international airport and the concession of highways PR-22 and PR-5. The PPP Act (as modified by specific legislation relevant to the electricity sector) will apply to the T&D Project.
- ***Puerto Rico has enacted specific legislation for electricity sector PPPs.*** On June 21, 2018, the Government of Puerto Rico enacted Act 120, which provides a framework for PREPA to enter into partnership and/or sales contracts pursuant to a modified PPP Act process. Pursuant to Act 120, this process will be administered by the P3 Authority. Any preliminary transaction contract for the T&D Project (*i.e.*, the preliminary T&D Contract) will be subject to approval by the Puerto Rico Energy Bureau (the “**Energy Bureau**,” formerly the Energy Commission), the boards of the P3 Authority and PREPA and the Governor of Puerto Rico. In broad terms, Act 120, together with the PPP Act and the PREPA Organic Act (as proposed to be amended by SB 1121), form the core legislative framework that authorizes the T&D Project and the sale of PREPA’s generation assets. Any such transactions will be subject to additional regulatory approvals as described in this White Paper (including, in the case of a sale of PREPA’s generation assets, legislative approval). In similarly broad terms, the 2014 Transformation Act (as proposed to be amended by SB 1121) is the principal legislation that confers regulatory jurisdiction on the Energy Bureau and that governs the regulation of electric power service companies in Puerto Rico (including any T&D contractor) and their rates.
- ***Puerto Rico is in the process of enacting a new Energy Policy Act.*** Act 120 set in motion the development of a new regulatory framework for the electricity sector. A working group was created under Act 120 to develop a new energy public policy and regulatory framework,

³ 16 U.S.C. § 797(e) (2012).

⁴ *See id.*

⁵ *See, e.g., Wells Rural Electric Co.*, 165 FERC ¶ 62,057 at PP 15, 57 (2018).

⁶ The license expiration date is August 20, 2021; PREPA is in the process of re-licensing the project. *See* Notice of Intent to File Application for New License, FERC Docket No. P-663-000 (filed Aug. 11, 2016).

in consultation with the Southern States Energy Board and DOE, among others. Proposed legislation to establish this new framework was filed in the Puerto Rico legislature on October 17, 2018. SB 1121 is expected to be reviewed and refined by the legislature in the coming months. Among other matters, SB 1121 affirms the framework for PREPA to enter into PPPs and sets out wide ranging goals and requirements for Puerto Rico’s energy sector.

2.3. Relevant PPP and Energy Sector Governmental Agencies

- ***The P3 Authority implements PPPs and the Energy Bureau regulates the energy sector.*** Briefly, the P3 Authority is the sole Puerto Rico government agency responsible for implementing public policy on PPPs. The Energy Bureau oversees Puerto Rico’s energy policy, with regulatory authority over electric power service companies (such as a T&D contractor) and their rates. Alongside the Energy Bureau, the Puerto Rico Energy Administration (the “PREA”) provides administrative and operational support to the Energy Bureau;⁷ the Independent Consumer Protection Office (the “ICPO”) represents consumers before the Energy Bureau and makes independent recommendations on rates and other matters; and the Energy Public Policy Program (formerly the Commonwealth Energy Public Policy Office or the “CEPPO”) develops and adopts energy public policy in Puerto Rico. Annex B contains a brief overview of these agencies and their principal functions.

3. PPP AND ELECTRICITY SECTOR TRANSFORMATION LEGAL FRAMEWORK

3.1. Public-Private Partnership Authority Act, Act No. 29-2009, as amended

- ***Puerto Rico has an existing PPP framework.*** Since 2009, Puerto Rico government entities have been expressly authorized by the PPP Act to establish partnerships and execute partnership contracts in connection with any function, service or facility for which they are responsible under their respective organic acts. To fulfill the objectives of the PPP Act, the P3 Authority was established. The P3 Authority is the sole Puerto Rico government entity responsible for implementing public policy on PPPs and for determining the functions, services or facilities for which PPPs are to be established.
- ***Brief overview of the PPP Act and PPP Regulations.*** The PPP Act provides for:
 - the establishment of partnership committees for each PPP;
 - procedures for selection of proponents, award of partnerships, and negotiation and approval of partnership contracts, including judicial review;
 - certain contract terms that must be included in partnership contracts (described below);
 - certain tax exemptions and benefits (described below);
 - authority for the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAE,” for its acronym in Spanish) to implement mechanisms to assure performance by the partnering governmental entity of its obligations under a partnership contract;
 - limitations on how funds received by a partnering governmental entity pursuant to a partnership contract are to be employed;
 - permitted assignments of and liens over partnership contracts (described below);

⁷ SB 1121 proposes that PREA be eliminated.

- exemptions from designated Puerto Rico laws (including certain antitrust requirements and certain government contracting requirements); and
- judicial review procedures for PPPs.

In 2017, the P3 Authority promulgated the regulations under the PPP Act (the “PPP Regulation”). The PPP Regulation specifies, among other things, procedures for: forming and administering partnership committees; soliciting PPPs and evaluating and selecting PPP proponents; and awarding PPP contracts. Under the PPP Regulation, all agreements related to or necessary for the performance of a partnership contract or the implementation of a PPP must be approved by the P3 Authority and form part of the public record.

In 2018, Act 120 was enacted to provide a more specific framework for PREPA to enter into partnership contracts (such as the T&D Contract) and/or sales contracts pursuant to a modified PPP Act process. Accordingly, the general provisions of the PPP Act summarized in this paragraph 3.1 must be read together with the more specific provisions of Act 120, which are summarized in paragraph 3.2 below.

- ***The PPP Act prescribes certain contract terms.***⁸ The PPP Act lists certain terms that must be included in a partnership contract “insofar as [are] applicable.” Such terms include:
 - a description of the subject services, function or facility;
 - the term of the PPP (which must not exceed a term of 50 years and, if extensions are approved by legislation, not allow for extensions beyond a further 25 years);⁹
 - mechanisms for imposing rates, fees and charges, and for resolving controversies (as a general matter, PPP contractors are empowered to assess rates and charges pursuant to a partnership contract, and are exempted from certain other legal restrictions on raising or lowering rates);
 - indemnification provisions for acts or omissions; and
 - a requirement that each partnership contract be governed by Puerto Rico law.
- ***PPP contractors are entitled to certain tax benefits.***¹⁰ Under the PPP Act, the partnership contract may establish tax exemptions for certain real or personal property. A PPP contractor may establish with municipal authorities payment agreements or exemptions for municipal license fees, excise taxes or municipal taxes. PPP contractors are subject to a fixed income tax rate of 20% over the net income derived from the operations in lieu of any other income tax. Shareholders, partners or members of the counterparty are not subject to income tax on distributions of dividends or benefits from utilities and benefits arising from the net income derived from the operations. A PPP contractor may not receive tax benefits provided for under the Economic Incentives Act for the Development of Puerto Rico (Act 73-2008).
- ***PPP contractors may assign partnership contracts.***¹¹ The PPP Act expressly authorizes the contractor to assign a PPP contract subject to conditions to be agreed by the partnership committee. A contractor may also pledge its rights and receivables under a partnership contract for financing purposes. A contractor’s financiers may foreclose and, subject to the

⁸ Act No. 29-2009 § 10(a)-(b).

⁹ Act No. 29-2009 § 10(e). The restriction on contract term is not applicable to the sale of PREPA’s generation assets.

¹⁰ Act No. 29-2009 § 12.

¹¹ Act No. 29-2009 § 18.

consent of the government entity, designate a new contractor to assume the partnership contract. The PPP Act also allows the partnering government entity to enter into a consent agreement with the contractor's financiers. The partnership contract may set restrictions on a contractor's right to assign the contract or pledge rights and receivables under a contract.

- ***In general terms, PPPs must be approved by the P3 Authority, the partnering authority and the Governor of Puerto Rico.*** Upon completion of negotiations, the PPP Act requires the partnership committee to prepare a report. Such report must be submitted to the board of directors of the P3 Authority and the partnering authority (in this case, the board of PREPA) within 30 days after negotiations are completed. When the preliminary contract is final, the report must also be filed with the Secretary of the Senate and the Clerk of the House of Representatives and published online.¹² Once approved by P3 Authority and the partnering authority, the report must be submitted to the Governor (or his delegate) for his approval, together with a favorable recommendation by AAFAF. The Governor has 30 days to approve or deny the partnership contract.¹³ If no approval is issued, the contract is deemed denied. If approved, the contract is deemed to have been perfected when signed by the parties.¹⁴ In the case of PPPs involving PREPA's assets, functions or services, Act 120 interposes an additional requirement for Energy Bureau approval early in the process, before the transaction is approved by the P3 Authority and PREPA (see below). Legislative approval is also required for certain transactions involving the sale of PREPA's generation assets.

3.2. Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended

- ***Act 120 provides a legal framework for PPP-based "PREPA transactions."*** On June 21, 2018, the Government of Puerto Rico enacted Act 120, with the stated goal of transforming Puerto Rico's energy system into a modern, sustainable, reliable, efficient, cost-effective and resilient system. Among other things, Act 120 provides the legal framework through which the P3 Authority will determine the PREPA services and facilities that will be subject to PPPs and the PREPA generation assets that may be sold, transferred or assigned to PPPs.
- ***PREPA is authorized to enter into partnerships and sales contracts.***¹⁵ Act 120 expressly authorizes PREPA to enter into PPP-based partnerships and/or sales contracts carried out in accordance with the PPP Act. Specifically, PREPA is authorized to sell generation assets in connection with such transactions notwithstanding other provisions of Puerto Rico law, but subject to obtaining legislative approval, as further discussed below, while transactions related to other assets and functions are subject to partnership contracts. Such transactions are designated as "priority projects," bringing them within the scope of the PPP Act.
- ***The P3 Authority is the sole implementing authority.***¹⁶ The P3 Authority is designed as the sole authority responsible for implementing public policy for the proposed transactions and for determining the assets and functions to be subject to partnership and/or sales contracts. The Energy Bureau is required to provide implementation assistance and regulatory supervision and is expressly required not to interfere in operational or contract matters, except for specific matters (including rate setting).¹⁷ The partnership committee may also direct other governmental agencies to provide information. The P3 Authority may also promulgate additional regulations for PREPA transactions.¹⁸

¹² Act No. 29-2009 § 9(g)(ii).

¹³ Act No. 29-2009 § 9(g)(iv)-(v).

¹⁴ Act No. 29-2009 § 9(g)(v).

¹⁵ Act No. 120-2018 § 5.

¹⁶ Act No. 120-2018 § 5(b).

¹⁷ Act No. 120-2018 § 8.

¹⁸ Act No. 120-2018 § 5(d).

- ***The P3 Authority must establish a partnership committee.*** Consistent with the general PPP framework, Act 120 required the P3 Authority to establish a partnership committee to negotiate the partnership and sales contracts. In evaluating proposals for sales of generation assets, the partnership committee must consider certain listed factors.¹⁹ As noted above, the PPP Regulation provides additional procedural guidance and requirements.
- ***Contracts and any amendments require Energy Bureau approval.*** Once negotiations are concluded, the partnership committee is required by the PPP Act to prepare a report that describes the negotiation and evaluation conducted (see paragraph 3.1 above). Pursuant to Act 120, such report shall then be presented to the Energy Bureau before it is submitted to the boards of directors of the P3 Authority and PREPA.²⁰ The Energy Bureau shall evaluate the committee’s report and the preliminary contract, and issue an energy compliance certificate if both comply with energy public policy and the regulatory framework.²¹ The Energy Bureau has 15 business days to issue an energy compliance certificate, or to deny the issuance thereof.²² SB 1121 proposes to extend this period to 30 days.²³ SB 1121 further proposes that contracts executed in connection with any PREPA transaction may also provide exemptions or alternative procedures to any requirement of the Integrated Resource Plan (the “IRP”) (as described below) and “any statutory provision applicable to PREPA” where the Partnership Committee has the authorization of the Energy Bureau through the Energy Compliance Certificate.²⁴ If the compliance certificate is not issued within the prescribed period, the PREPA transaction is deemed approved and a compliance certificate is deemed issued. Amendments to the preliminary contract require the issuance of a new compliance certificate. Once issued, reviews of energy compliance certificates may be filed with the court of appeals within 15 days. The procedure for Energy Bureau review and approval, together with the general procedure for approval of PPPs under the PPP Act, is outlined in the diagram in Annex C.²⁵
- ***The Energy Bureau has continuing jurisdiction to regulate fees.***²⁶ Under Act 120, the contractor under a partnership or sales contract is expressly authorized to collect duties, rents, rates and other types of fees for applicable services and functions pursuant to the partnership contract.²⁷ However, notwithstanding general provisions of the PPP Act that exempt a PPP contractor from regulation of rates, Act 120 specifically states that the Energy Bureau will continue to have jurisdiction to revise and approve any modifications to rates not contemplated by the partnership contract.²⁸ The T&D contractor will also need to comply with the requirements of the 2014 Transformation Act or other applicable law to increase or reduce rates.²⁹ The Energy Bureau is required to ensure that any such modification is “*just and reasonable, and consistent with good fiscal and operating practices that provide for reliable services at the lowest cost possible.*”³⁰ No partnership or sales contract may include language that impairs the powers and duties of the Energy Bureau.³¹ Partnership and sales contracts must include a clause mandating full compliance with the energy policy and

¹⁹ Act No. 120-2018 § 5(c), (e).

²⁰ Act No. 120-2018 § 5(g).

²¹ 22 L.P.R.A. § 1054ii(a); Act No. 120-2018 § 5(g).

²² Act No. 120-2018 § 5(g).

²³ Senate Bill 1121, art. 6.2.

²⁴ Senate Bill 1121, art. 6.3.

²⁵ Act 120 deems a contractor under a partnership or sales contract to be a “Certified Electric Power Company” under the 2014 Transformation Act. The contractor must file an application for certification as a CEPC under the 2014 Act, which application is deemed approved upon filing.

²⁶ Act No. 120-2018 § 8.

²⁷ Act No. 120-2018 § 8(f).

²⁸ Act No. 120-2018 § 8(f).

²⁹ Act No. 120-2018 § 8(f).

³⁰ Act No. 120-2018 § 8(f).

³¹ Act No. 120-2018 § 8(d).

regulatory framework, except those specifically excluded by Act 120 or the Legislative Assembly.³²

- ***Cross-ownership of generation is prohibited.***³³ Generation assets must be sold separately. Acquisitions by generation contractors of additional generation assets require Legislative Assembly approval. A T&D contractor may not be a contractor under a partnership or sales contract for generation assets.
- ***A special task force is required to develop a new energy regulatory framework.*** Act 120 required that a special task force develop an energy public policy and regulatory framework for approval by the Legislative Assembly. The currently proposed framework (yet to be approved by the Legislative Assembly) is set out in SB 1121 (described in paragraph 4.3 below).
- ***Partnership Committee may grant certain exceptions.*** To the extent deemed reasonable by the partnership committee, transaction contracts may include express exemptions to the Puerto Rico Public Service Act or, after receiving advice from the Energy Bureau, Section 6B of the PREPA Organic Act (which requires PREPA to file and comply with a RELIEF plan and modernize its generation facilities, among other things).³⁴ As discussed above, SB 1121 proposes to allow the Partnership Committee to grant further exceptions to PREPA transaction contracts where the Energy Bureau has issued the Energy Compliance Certificate.³⁵

4. ELECTRIC UTILITY REGULATORY FRAMEWORK

4.1. Puerto Rico Electric Power Authority Enabling Act, Act No. 83 of May 2, 1941, as amended

- ***PREPA is a regulated vertically integrated utility.*** The PREPA Organic Act establishes PREPA (a) as a corporation, which has legal existence and personality separate and apart from that of the Government of Puerto Rico, and (b) as a governmental instrumentality, which is subject to the control of its Governing Board. PREPA and its Governing Board are regulated by the Energy Bureau. PREPA's debts, contracts, and other assets are considered as the corporation's, and not of the Government of Puerto Rico.³⁶
- Under the PREPA Organic Act, PREPA is responsible for providing electric power and for contributing to the general welfare and sustainable development of Puerto Rico. PREPA's responsibilities include using available scientific and technological advances to overcome energy challenges, incorporating best energy practices from other jurisdictions, and facilitating the interconnection of renewable energy producers to the electric grid.³⁷ PREPA has the power to adopt bylaws and regulations, acquire and sell property, execute contracts, collect reasonable rates, borrow money, and issue and sell bonds.³⁸ ***PREPA's Governing Board determines its strategic management.*** PREPA's Governing Board defines PREPA's top priorities, assigning each with performance benchmarks and objectives, and oversees compliance with these priorities. The Board delegates the administrative duties and works of the public corporation to the Executive Director, and other duties to executive officers as necessary.³⁹ The Board, with the Executive Director's advice, appoints a Director of

³² Act No. 120-2018 § 5(f).

³³ Act No. 120-2018 § 8(g)-(h).

³⁴ Act No. 120-2018 § 6(d); 22 L.P.R.A. § 196(c). Note that SB 1121 proposes to substantially widen this flexibility to grant exemptions. See Senate Bill 1121, art. 6.3.

³⁵ Senate Bill 1121, art. 6.3

³⁶ 22 L.P.R.A. § 193.

³⁷ 22 L.P.R.A. § 196.

³⁸ 22 L.P.R.A. §§ 196, 206.

³⁹ 22 L.P.R.A. §§ 194(d), 195.

PREPA's energy control center. The purpose of the energy control center is to protect the reliability in the management of the electric power grid.⁴⁰

- ***PREPA may request acquisition of property by eminent domain.*** To acquire an interest in property necessary or convenient for its purposes, PREPA may request the Governor of Puerto Rico or the Secretary of Transportation and Public Works to exercise the power of eminent domain or use any other legal means.⁴¹ PREPA may also request that municipalities or political subdivisions of Puerto Rico grant and convey any property interest necessary or convenient for PREPA's purposes.⁴²
- ***PREPA's rates must be just and reasonable and provide for reliable service at the lowest reasonable cost.*** Prior to taking effect, PREPA's rate proposals must be reviewed by the Energy Bureau. Before filing a rate review proposal, PREPA must hold hearings and provide notice of the hearings to the public and the ICPO. After the hearing, the Energy Bureau may issue an order approving the new rate and the new rate will take effect 60 days after the order. PREPA must also propose charges to recover variable costs in the purchase of fuel and energy. At least every three years, PREPA must approve a mitigation plan to ensure that costs are adjusted to industry's standards. In emergency circumstances, PREPA may request that the Energy Bureau approve temporary emergency rates.⁴³ Modification to these requirements would likely be required for them to apply to the T&D contractor post-transformation. As discussed in paragraph 4.2 below, the Energy Bureau reviews PREPA's rates to determine whether they are fair and reasonable. The Energy Bureau's review will also apply to the T&D contractor post-transformation.
- ***PREPA is required to publish certain information on its website.*** Information PREPA must post includes, but is not limited to: regular and special meetings of the Governing Board; electric infrastructure, including information on public and private generators; copies of all contracts and board resolutions; documents regarding financial information such as income, sales, expenses, assets, debts, accounts receivable, and others; costs such as the price per barrel or equivalent, average kilowatt per hour costs per client class, costs of production of electricity, and breakdown of operational costs, among others; and breakdown of projected energy demand.⁴⁴
- ***PREPA is exempt from certain taxes.*** PREPA is not required to pay municipal or Commonwealth taxes, assessments on any real or personal property, or on the income derived from any of its activities. Counterparties to contracts with PREPA are not subject to government tax on contracts imposed by §§ 30011 of Title 13, the Puerto Rico Internal Revenue Code of 2011.
- ***PREPA provides contributions in lieu of taxes to municipalities.*** The PREPA Organic Act contains detailed provisions (introduced by the Electric Power Authority Revitalization Act (Act No. 4-2016)) relating to contributions in lieu of taxes (or the "CILT") provided to municipalities, including: caps per municipality; mechanisms for sharing of cost savings after deducting the costs of municipalities who exceed their cap; and review by CEPPPO of baseline energy consumption by municipalities, and mechanisms for setting of caps based on regulations prescribed by the Energy Bureau.⁴⁵

⁴⁰ 22 L.P.R.A. § 195a.

⁴¹ 22 L.P.R.A. § 203.

⁴² 22 L.P.R.A. § 204.

⁴³ 22 L.P.R.A. § 196a.

⁴⁴ 22 L.P.R.A. § 194(b).

⁴⁵ 22 L.P.R.A. § 212. As noted, SB 1121 proposes a study into the effectiveness and reasonableness of the CILT system.

- ***Special requirements apply to PREPA invoices.*** The 2014 Transformation Act amends the PREPA Organic Act to require PREPA to design for the Energy Bureau’s approval a detailed form of customer invoice. Such invoice should include: fuel purchase adjustment; adjustment of energy purchased from co-generators and renewable energy producers; costs associated with the renewable energy certificates; account service and maintenance charges; consumption charges; operational expenses; energy theft; electrical losses; payment of issued debt; accounts payable by the public sector; accounts payable by the private sector; special laws; and any other charge related to residential and commercial clients’ utility bill/invoice. The invoice will not include costs or charges under the category “fuel purchase” or “energy purchase” that are not approved by the Energy Bureau. If the T&D contractor is responsible for generating invoices, it will need to comply with these requirements, unless the T&D Contract allows for an exception.

4.2. Transformation and Energy Relief Act, Act No. 57-2014, as amended

- ***The 2014 Transformation Act confers regulatory jurisdiction and powers on the Energy Bureau and establishes several other energy sector authorities.*** Broadly, the 2014 Transformation Act establishes the Energy Bureau as an independent regulatory entity in charge of Puerto Rico’s energy policy, with regulatory authority to ensure that energy costs are just and reasonable by overseeing and reviewing the rates of PREPA and any other electric power service company.⁴⁶ Formerly known as the Energy Commission, the Energy Bureau was created in 2018 by the Reorganization Plan of the Puerto Rico Public Service Regulatory Board. The Energy Bureau is composed of one Chair and four associate commissioners, all of whom are appointed by the Governor with the advice and consent of the Senate of Puerto Rico and all of whom can only be removed for just cause.⁴⁷ The commissioners must have an engineering license, a law license, or a masters or doctoral degree in their professional field with at least 10 years of experience in that field, including at least five years of experience in energy-related matters.⁴⁸ The Chair and commissioners each serve six-year terms.⁴⁹ Energy Bureau decisions are made by majority vote of the commissioners.⁵⁰
- The 2014 Transformation Act also establishes: the PREA, to provide administrative and operational support to the Energy Bureau;⁵¹ the ICPO, to represent consumers before the Energy Bureau and make independent recommendations on rates and other matters; and the Energy Public Policy Office (formerly the CEPPO), to develop and adopt energy public policy in Puerto Rico.

The 2014 Transformation Act defines electric power companies as any person or entity engaged in the generation, billing, or resale of electric power, and in the case of PREPA, it includes transmission and distribution.⁵² SB 1121 seeks to amend the definition of “electric power company” to “*any natural or legal person or energy cooperative, engaged in generation services, transmission and distributions services, billing wheeling of energy, grid services, energy storage, resale of electric power, as well as any other electric service*” as defined by the Energy Bureau.⁵³

⁴⁶ 22 L.P.R.A. §§ 1051(r), 1051a(j), 1054(a)

⁴⁷ 22 L.P.R.A. § 1054d(a).

⁴⁸ 22 L.P.R.A. § 1054e(a).

⁴⁹ 22 L.P.R.A. § 1054e(d).

⁵⁰ 22 L.P.R.A. § 1054d(c).

⁵¹ As noted, SB 1121 proposes that PREA be eliminated.

⁵² 22 L.P.R.A. § 1051a(l).

⁵³ Senate Bill 1121, art. 5.2.

- ***The Energy Bureau reviews PREPA’s setting of electricity rates.*** As discussed in paragraph 4.1, PREPA’s setting of rates is reviewed by the Energy Bureau in a process that requires public hearings.⁵⁴ The Energy Bureau reviews the following in considering whether rates are fair and reasonable:
 - efficiency, capacity, and suitability of facilities and service;
 - costs related to PREPA’s payment of debt;
 - direct and indirect generation, transmission, and distribution costs, including marginal costs, stranded costs and costs attributed to loss of energy by theft or inefficiency;
 - all charges and costs included in the “fuel adjustment” and “energy purchase adjustment” charges, which are only those costs directly related to the purchase of fuel and energy (and cannot include, for example, lines of credit, including interest),⁵⁵
 - PREPA’s capacity to improve its service and facilities;
 - energy conservation and efficient use of alternative energy sources;
 - data related to effects of special legislation, subsidies and contributions;
 - any other data or information deemed necessary; and
 - citizen participation in the rate review process before PREPA.⁵⁶

SB 1121 proposes to direct the Energy Bureau to issue regulations this year that create incentives and penalties encouraging energy companies to invest cost effectively in infrastructure, technology, incorporation of distributed generation, renewable energy sources, and services that result in better benefits for the electric system and consumers.⁵⁷ In developing these incentives and penalties, the Energy Bureau must consider reliability, economic incentives, infrastructure maintenance, the volatility and affordability of electric service fees, consumer access to information, and compliance with the Renewable Energy Portfolio, among others.⁵⁸

- ***The Energy Bureau regulates energy companies, PPAs and interconnection.*** The 2014 Transformation Act gives the Energy Bureau broad regulatory power over the energy sector, including powers to: regulate energy companies and approve and revise rates charged by them for any matter directly or indirectly related to the rendering of electrical services;⁵⁹ ensure prices in power purchase agreements, wheeling rates and interconnection charges are just and reasonable;⁶⁰ regulate wheeling of energy;⁶¹ revise, approve and oversee compliance with technical requirements for interconnection of distributed generators;⁶² and set and oversee compliance with standards for facilities or plants of generating electric companies to

⁵⁴ 22 L.P.R.A. § 1054x(c).

⁵⁵ 22 L.P.R.A. § 1054x(b).

⁵⁶ 22 L.P.R.A. § 1054x(b).

⁵⁷ Senate Bill 1121, art. 5.21.

⁵⁸ Senate Bill 1121, art. 5.21.

⁵⁹ 22 L.P.R.A. § 1054b(k).

⁶⁰ 22 L.P.R.A. § 1054b(f).

⁶¹ 22 L.P.R.A. § 1054b(g), (cc).

⁶² 22 L.P.R.A. § 1054b(t).

guarantee efficiency and reliability of electric service in accordance with industry best practices.⁶³

- ***Electric power companies must file reports with the Energy Bureau.*** Electric power companies are required to submit the following to the Energy Bureau: plans that establish the parameters and goals of the company to meet Puerto Rico's electricity needs within a reasonable time period; future operational budgets during the period determined by the Energy Bureau via regulation; service cost studies showing the relation between current company costs and income earned on account of rates or charges; management goals and plans as to energy demand, efficiency and conservation, load management programs and technologies, emissions reduction, resource diversification and use of renewable energy sources, as applicable; reliability reports regarding average system frequency; reports describing wheeling applications filed with PREPA and the results of such applications; and any other information the Energy Bureau deems necessary.⁶⁴ The Energy Bureau may limit access to confidential information and documents that may be required, if requested by the applicant.⁶⁵ The Energy Bureau also has investigative powers⁶⁶ and the power to impose penalties for non-compliance of up to US\$25,000 per day (capped at the higher of 5% of gross sales, 15% of net income and 10% of net worth), with higher fines for subsequent violations.
- ***The Energy Bureau certifies energy companies to render services in Puerto Rico.***⁶⁷ Energy companies operating in Puerto Rico are required to request a certification within 90 days after adoption of the regulation governing the certification process by the Energy Bureau.⁶⁸ Generally, new applicants will be granted certifications if the Energy Bureau does not request additional information from the applicant within 30 days from filing.⁶⁹ Certified electric power companies, including PREPA, are required to comply with the Energy Bureau's approved efficiency standards and any other industry parameters and submit for approval to the Energy Bureau their strategic plans to comply with efficiency standards.⁷⁰
- ***The Energy Bureau sets annual charges.*** To defray operational and administrative costs, the Energy Bureau will set an annual charge proportional to the gross income of persons under its jurisdiction resulting from the rendering of electric services or transportation of electricity. Any person or energy company earning income from the generation of electricity will pay charges to the Energy Bureau that will not exceed 0.25% of its annual gross income resulting from the rendering of such services.⁷¹
- ***The Energy Bureau oversees client service.*** The following information pertaining to client service must be submitted by energy companies to the Energy Bureau, for its review and approval: just and reasonable practices for providing and measuring services and for guaranteeing reliability; practices for the protection of the health and safety of employees and the general public, including adequate installation, use, maintenance and operation of security devices and other equipment; client service terms and conditions; and other standards and regulations related to services provided by certified energy companies deemed necessary.⁷²

⁶³ 22 L.P.R.A. § 1054b(u).

⁶⁴ 22 L.P.R.A. § 1054u(a).

⁶⁵ 22 L.P.R.A. § 1054n.

⁶⁶ 22 L.P.R.A. § 1054w.

⁶⁷ 22 L.P.R.A. § 1054(a).

⁶⁸ 22 L.P.R.A. § 1054l(d).

⁶⁹ 22 L.P.R.A. § 1054l(b).

⁷⁰ 22 L.P.R.A. § 1054bb(b).

⁷¹ 22 L.P.R.A. § 1054o(d).

⁷² 22 L.P.R.A. § 1054aa(b).

- ***The 2014 Transformation Act required PREPA to adopt Puerto Rico’s Energy RELIEF Plan and create an Integrated Resource Plan.*** Under the 2014 Transformation Act, PREPA must ensure by July 1, 2019 (with the possibility of a one-year extension) that at least 60% of the electricity generated in Puerto Rico from fossil fuels (*e.g.*, gas, coal and petroleum) is generated in a highly efficient manner, as defined by the Energy Bureau.⁷³ The Act also requires PREPA to present to the Energy Bureau the Energy RELIEF Plan,⁷⁴ plus an IRP (to be revised every three years) that sets short, medium and long-term strategies for meeting energy demands based on current and attainable infrastructure and technologies, combined with conservation and diversification efforts.⁷⁵ SB 1121 proposes to expand the time horizon of the IRP, and requires the IRP to consider all reasonable resources to satisfy the demand for electric power services during the period it covers (20 years), including resources related to energy demand, such as energy conservation and efficiency or demand response and localized energy generation by the customer.⁷⁶ The IRP will be subject to rules established by the Energy Bureau and devised with broad participation from citizens and other interested groups.
- ***The Energy Bureau has approval authority over PREPA contracts and mergers of energy companies.*** The Energy Bureau evaluates and approves all energy contracts between PREPA and any electric service company, including the proposed agreement with the T&D contractor, before such contracts are executed.⁷⁷ In addition, no sale or merger of an electric power company or its facilities is permitted unless the Energy Bureau has certified that the transaction is in accordance with the Energy RELIEF Plan, the IRP, and the public’s best interest, and does not create a monopoly or “the capture or control of electric power services” by any electric power service company.⁷⁸ Factors to be considered include the size and generating capacity of a facility and impact of the proposed transaction upon the electrical industry and clients.⁷⁹ SB 1121 proposes to amend the Energy Bureau’s review to ensure that no electric power company may control more than 50% of the capacity of generation assets (or such lesser percentage determined by the Energy Bureau), with the exception of PREPA in the case of legacy generation assets.⁸⁰ With respect to the initial award of a PREPA transaction and signing of a T&D contractor pursuant to Act 120, presumably the more specific requirements of Act 120 would control and supersede the more general provisions of the 2014 Transformation Act. Subsequent contracts or sales involving the T&D contractor would, however, continue to be covered by the 2014 Transformation Act. This could be clarified in SB 1121 or, alternatively, by the Energy Bureau.

4.3. Puerto Rico Senate Bill No. 1121 dated October 17, 2018 proposing the “Puerto Rico Energy Policy Act”

- ***SB 1121 introduced the Energy Policy Act.*** On October 17, 2018, SB 1121 was filed in the Puerto Rico Senate, proposing the enactment of the Energy Policy Act. The Puerto Rico Senate approved SB 1121 in November 2018, while the Puerto Rico House of Representatives approved SB 1121, with amendments to the version approved by the Senate, in January 2019. A conference committee is expected to be called to reconcile the versions approved by the Senate and the House of Representatives. The Energy Policy Act seeks to update and unify policy initiatives pursuant to relevant legislation, including the PREPA Organic Act, Act 120, the 2014 Transformation Act, the Puerto Rico Public Policy Act on Energy Diversification

⁷³ 22 L.P.R.A. §§ 1054bb, 1054ee.

⁷⁴ 22 L.P.R.A. § 1051a(mm).

⁷⁵ 22 L.P.R.A. §§ 1051a(ll), 1054v(a)-(d).

⁷⁶ Senate Bill 1121, art. 5.2.

⁷⁷ 22 L.P.R.A. § 1054ii(a).

⁷⁸ 22 L.P.R.A. § 1054ii(a).

⁷⁹ 22 L.P.R.A. § 1054ii(c).

⁸⁰ Senate Bill 1121, art. 5.31.

Through Alternative and Sustainable Renewable Energy, and the Net Metering Act, among others.

- ***The Energy Policy Act provides a broad statement of Puerto Rico’s energy policy through 2040.*** The proposed Energy Policy Act lists seven guiding principles for the Puerto Rico electric system (efficiency, quality, continuity, adaptability, impartiality, solidarity and equity) and formulates Puerto Rico’s energy policy through 2040 on a wide range of matters, including: universal access to electric service at costs that are fair, reasonable and not unduly discriminatory; efficiency; ensuring availability of energy supply; establishing consequences (at a personal and corporate level) for failure to comply with directives issued to electric service companies; transitioning to an electric service model which reduces barriers to entry for producers and prosumers (users or consumers that generate energy, and who could potentially share excess energy with other users); development and integration of solar communities, community microgrids, and electric cooperatives, including compliance requirements for PREPA and other electric service companies, among others.

The proposed Energy Policy Act also confirms the role of the Energy Bureau as the independent entity in charge of (a) regulating Puerto Rico’s energy market with powers and duties to ensure fair, affordable and reasonable costs through oversight and review of rates (including through alternatives to service cost-based regulation and through incentives and penalties) and (b) supervising and enforcing energy policy.

A key initial objective of the proposed Energy Policy Act is promoting the reconstruction and modernization of the T&D system to maximize available state and federal resources. Other objectives include (a) promoting smaller scale plants, distributed generation and energy storage, as well as (b) transitioning away from fossil fuels: reaching 20% compliance with the renewable portfolio standard by 2025, 50% compliance by 2040 and 100% compliance by 2050.⁸¹

- ***SB 1121 reinforces the role of the Energy Bureau as an independent regulator.*** SB 1121 proposes to expand the Energy Bureau’s authority to include oversight and review of PREPA’s (or its successor’s) and any electric service company’s tariffs.⁸² It further directs the Energy Bureau to “*exercise a high level of scrutiny on the maintenance of the electricity network*” and to “*establish mechanisms of incentives and penalties based on performance.*”⁸³ SB 1121 also gives the Energy Bureau more financial independence by establishing its budget as independent of any entity, including the Government of Puerto Rico, any agency or public corporation.⁸⁴ The Energy Bureau, however, would be required to publish its budget on its website and respond to requests from any agency or the Legislative Assembly for more information.⁸⁵ Moreover, SB 1121 expressly prohibits the Energy Bureau’s commissioners from engaging in political activities.
- ***PREPA will retain ownership of T&D assets but delegate operations to a concessionaire.***⁸⁶ The Government of Puerto Rico will retain ownership of and title to all T&D assets and expects to grant the T&D contractor all other rights and responsibilities associated with the T&D system, including, but not limited to, managing, operating, maintaining, rehabilitating, repairing, refurbishing, replacing, improving, expanding and financing, as needed, the T&D system. PREPA will also be the subrecipient of the Federal Emergency Management Agency

⁸¹ Senate Bill 1121, art. 1.6.

⁸² Senate Bill 1121, art. 5.1.

⁸³ Senate Bill 1121, art. 5.1.

⁸⁴ Senate Bill 1121, art. 5.16.

⁸⁵ Senate Bill 1121, art. 5.16.

⁸⁶ Senate Bill 1121, art. 1.7.

(“FEMA”) Disaster funds.⁸⁷ PREPA is required to delegate or transfer the operation, administration and/or maintenance of the T&D system and generation through PPPs under the PPP Act and Act 120. The Government of Puerto Rico will retain control over system planning through the Energy Bureau, the Energy Policy Program and the IRP. The proposed Energy Policy Act sets a target of December 31, 2019 for PREPA to enter into PPPs for its T&D assets, its generation assets, and for the operation of the energy control center. Through the partnership contract, the T&D contractor must commit to make the necessary capital investments to modernize the grid and allow compliance with renewable energy portfolio requirements.

- ***Puerto Rico will transition to an unbundled electric system.*** The proposed Energy Policy Act would not permit vertically integrated monopolies or horizontal monopolies in generation.⁸⁸ No electric service company or affiliate may control more than 50% of generation capacity assets, except where PREPA controls its own legacy assets. PREPA or the T&D contractor would be required to allow the interconnection of electric service companies, distributed generation systems and microgrids upon conditions that are not unduly discriminatory, when technically feasible, in accordance with the provisions of the IRP and the regulations of the Energy Bureau.⁸⁹
- ***Electric service companies (including the T&D contractor) must comply with the IRP and other listed requirements.***⁹⁰ The long-term planning of the electric system would be based on the IRP, which would be prepared by PREPA or the T&D contractor and approved by the Energy Bureau. The IRP would describe the combination of supply and conservation and resources which would satisfy short, medium and long-term energy needs at the least reasonable cost, and include the information listed in the proposed Energy Policy Act. The IRP would be prepared for a planning horizon of 20 years but would be revised every three years. When the T&D contractor assumes operation of the system *or* 60% or more of electric generation is in private hands, the IRP would be prepared by the Energy Bureau with broad public and stakeholder participation. Each energy service company must comply with the IRP.⁹¹

Electric service companies must comply with other listed duties, such as to: fully comply with Energy Bureau rules and requests; facilitate connection of distributed renewable energy producers; provide power in a reliable, clean, efficient and resilient manner; promote universal electric power service; comply with all applicable environmental laws and regulations; provide information requested by clients (with exceptions for confidential and other information); establish an electricity bill for each type of client, which bill is transparent and approved by the Energy Bureau; offer reasonable payment plans for non-payment; and maintain an Internet portal with free access, among others.⁹² PREPA or the T&D contractor must also submit to the Energy Bureau a comprehensive vegetation management plan.⁹³

- ***The partnership committee and the Energy Bureau may exempt the T&D contractor from certain IRP, Green Incentives Act and other statutory requirements.*** Contracts entered into for PREPA transactions under Act 120 may provide statutory exemptions or alternative procedures that the partnership committee deems reasonable to ensure feasibility of the PREPA transactions. Such exemptions include exemptions under the Puerto Rico Public Service Act (Act 109-1962) and, if approved by the Energy Bureau, requirements of the IRP

⁸⁷ See “Federal Funding Overview” White Paper (dated January 30, 2019) in the Data Room for more information.

⁸⁸ Senate Bill 1121, art. 1.8.

⁸⁹ Senate Bill 1121, arts. 1.6, 1.8.

⁹⁰ Senate Bill 1121, art. 1.9.

⁹¹ Senate Bill 1121, art. 1.10(l).

⁹² Senate Bill 1121, art. 1.10.

⁹³ Senate Bill 1121, art. 1.16.

or other statutory requirements applicable to PREPA, including under the Green Incentives Act (Act 82-2010).⁹⁴

- ***Fossil fuel generators must modernize.*** All non-renewable-based generation plants (new or existing) must be able to operate on two or more fuels, one of which must be natural gas.⁹⁵ No permits or licenses will be issued for the establishment or continuation of coal-based energy generation, which will be eliminated by December 2027.⁹⁶ A minimum 60% of fossil fuel-based energy (gas or petroleum-derived) must be generated in a highly efficient manner.⁹⁷ Parties to sale or partnership agreements who acquire or come to operate PREPA generation assets shall modernize the plants or substitute them for highly efficient plants within five years.⁹⁸
- ***The Energy Bureau will retain regulatory authority over PPAs with Independent Power Producers.*** Power purchase agreements between PREPA, or the T&D contractor, and any independent power producer, would be subject to the requirements of the 2014 Transformation Act and the regulations adopted by the Energy Bureau. However, when the power purchase agreement is part of a PPP transaction under Act 120, only a certificate of energy compliance would be required. The Energy Bureau would establish parameters for pricing, adjustments, escalation and profit margins for power purchase agreements. Energy companies are prohibited from earning a mark-up on fuel sales.⁹⁹
- ***PREPA or the T&D contractor will set the reserve margin.*** PREPA or the T&D contractor would establish (subject to the review and approval of the Energy Bureau) the optimum reserve margin for Puerto Rico and shall work to maintain such reserve for the continuity and reliability of electric service.¹⁰⁰
- ***PREPA and the T&D contractor must accommodate renewable energy, distributed generation and microgrids.*** PREPA and the T&D contractor shall maximize the use of renewable energy resources, while ensuring the stability and reliability of the electric system by, for example, providing for alternative operation methods or allowing the installation of equipment and technology that mitigates the effects of such sources, as provided for in the IRP. Such integration shall comply with the requirements of the renewable portfolio standard.¹⁰¹ PREPA and the T&D contractor shall establish expedited procedures for the interconnection of small residential and commercial solar rooftop systems of less than 25 kW of capacity. The Energy Policy Act would also require the establishment of expedited and uniform procedures for the interconnection of microgrids of up to 5 MW of capacity. Microgrids with capacities greater than 5 MW will be subject to an approval process before the Energy Bureau, which will involve public participation.¹⁰² Failure of PREPA or the T&D contractor to comply with policies relating to distributed generation or microgrids will carry a fine of US\$1,000 per day, to be paid into a newly established Green Energy Fund.
- ***The proposed Energy Policy Act sets reconstruction priorities for PREPA and the T&D contractor.*** Listed priorities include: replacing temporary transmission structures with monopoles designed to resist sustained winds of 150 mph; implementing corrosion mitigation programs; strengthening substation assets and control equipment; maintaining compatibility

⁹⁴ Senate Bill 1121, art. 5.10.

⁹⁵ Senate Bill 1121, art. 1.11(a).

⁹⁶ Senate Bill 1121, art. 1.6(3).

⁹⁷ Senate Bill 1121, art. 1.11(a).

⁹⁸ Senate Bill 1121, art. 1.11(a).

⁹⁹ Senate Bill 1121, art. 1.11(b).

¹⁰⁰ Senate Bill 1121, art. 1.11(c).

¹⁰¹ Senate Bill 1121, art. 1.11(d).

¹⁰² Senate Bill 1121, art. 1.12.

of T&D voltage; diversifying black-start capable generating units; modernizing the generation assets and allowing for natural gas; and integrating microgrids, among others.¹⁰³

- ***The proposed Energy Policy Act contemplates near-term regulations, plans and studies for demand response, the CILT program, net metering and energy storage, plus a long-dated study into a possible future competitive electricity market.*** Within 180 days after SB 1121 is approved, the Energy Bureau shall adopt guidance for electric service companies to establish demand response programs or demand side management programs, with electric service companies submitting their proposals for such programs to the Energy Bureau within a further period of six months.¹⁰⁴ By December 31, 2019, the Energy Bureau will undertake a study into the CILT program (described in paragraph 4.1 above) for presentation to the legislative assembly,¹⁰⁵ a study into the net metering program (to be revised every three years),¹⁰⁶ and a study into energy storage systems.¹⁰⁷ On or before December 31, 2019, the Energy Bureau must adopt regulations with the purpose of incentivizing investment by electric service companies on infrastructure, technologies, distributed generation integration, renewable sources and services. The regulations would also provide for the imposition of penalties based on performance of electric service companies in relation to the foregoing. Example criteria to develop the incentives and penalties based on performance are set out in the proposed Energy Policy Act.¹⁰⁸ By June 30, 2025, the Energy Bureau will conduct a study on the possible future establishment of an electricity market based on free competition.¹⁰⁹
- ***The proposed Energy Policy Act updates net metering rules.*** The proposed Energy Policy Act would update Puerto Rico’s net metering rules, including a ban on PREPA or the T&D contractor charging additional fees or increasing the consumption rate for net metering customers,¹¹⁰ and a new policy on interconnection.¹¹¹
- ***PREPA is required to publish certain information.*** PREPA is required to publish and make available to its clients on the internet: information on electric infrastructure (including information on public and private generators); copies of all contracts and board resolutions; documents regarding financial information such as income, sales, expenses, assets, debts, accounts receivable, and others; costs such as the price per barrel or equivalent, average kW/hour costs per client class, costs of production of electricity, and breakdown of operational costs, among others; and breakdown of projected energy demand, among others.¹¹²

4.4. Selected Additional Laws and Regulations

- ***Net Metering Program, Act No. 114-2007, as amended (the “Net Metering Act”).*** To attract solar and wind investment, the Puerto Rico Government enacted the Net Metering Act to establish a program requiring interconnection and net metering of PREPA with those customers that install sources of renewable energy. The Net Metering Act requires PREPA to model its interconnection procedures for distributed generators who have a generating capacity of up to 5 MW and are interested in participating in the program based on FERC’s Small Generator Interconnection Procedures and the Small Generator Interconnection Agreement.¹¹³ The Net Metering Act further directs PREPA to adopt an expedited process

¹⁰³ Senate Bill 1121, art. 1.15.

¹⁰⁴ Senate Bill 1121, art. 5.24.

¹⁰⁵ Senate Bill 1121, art. 1.18.

¹⁰⁶ Senate Bill 1121, art. 3.4.

¹⁰⁷ Senate Bill 1121, art. 4.10.

¹⁰⁸ Senate Bill 1121, art. 5.21.

¹⁰⁹ Senate Bill 1121, art. 1.19.

¹¹⁰ Senate Bill 1121, art. 3.4.

¹¹¹ Senate Bill 1121, art. 3.9.

¹¹² Senate Bill 1121, art. 2.8.

¹¹³ 22 L.P.R.A. § 1019.

for distributed generators with a capacity of less than 1 MW, but the Energy Bureau may require reliability studies for the interconnection of generators with a capacity between 500 kW and 1 MW. PREPA is required to adopt regulations for the interconnection of distributed generators with a capacity of less than 1 MW, as well as regulations for the interconnection of distributed generators with a capacity between 1 MW and 5 MW.¹¹⁴ As discussed in paragraph 4.3, SB 1121 would update Puerto Rico’s net metering rules, including a ban on PREPA or the T&D contractor charging additional fees or increasing the consumption rate for net metering customers,¹¹⁵ and include a new policy on interconnection.¹¹⁶

- ***Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act, Act No. 82-2010, as amended (“Act 82”).*** To achieve its stated public policy to diversify energy sources and energy technology infrastructure, the Government of Puerto Rico adopted the renewable portfolio standard. The renewable portfolio standard contains a staggered compliance table to reduce dependency on fossil fuels, reduce and stabilize energy costs, and control electricity price volatility in the country. Act 82 also established the market for renewable energy certificates to facilitate compliance with the renewable portfolio standard. Failure to comply with the renewable portfolio standard may lead to the Energy Bureau imposing a “reasonable corrective action plan” for the retail electricity supplier to comply with the standard in subsequent calendar years, as well as fines.¹¹⁷ The fine or penalty to be imposed cannot be less than the potential cost for the retail electricity supplier to comply with the renewable portfolio standard through the purchase of renewable energy certificates, multiplied by two.¹¹⁸

Act 82 also gave the Energy Bureau the power to quantify and oversee the energy production of all sustainable and alternative energy sources in Puerto Rico, as well as the compliance of each retail electricity supplier with the renewable portfolio standard.

SB 1121 would give the Energy Bureau power to establish regulations to create a market for renewable energy certificates, including auction mechanisms and mechanisms to ensure compliance by PREPA, a T&D contractor or retail energy providers.¹¹⁹ It proposes that T&D partnership contracts under Act 120 may provide statutory exemptions or alternative procedures for compliance with the Act 82.¹²⁰

- ***Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings (December 18, 2014).*** In conjunction with the Uniform Administrative Procedure Act, which sets out procedures for motions for reconsideration and judicial review, this regulation establishes the rules and procedures that govern the Energy Bureau’s adjudicative proceedings, including the review of PREPA’s rates,¹²¹ notices of noncompliance; and investigations and inspections. The regulation allows any person to file a claim requesting the Energy Bureau’s review of an electric service company’s decision, such as PREPA’s invoices or PREPA’s decisions on interconnection, within 30 days of the issuance of a final decision.¹²² The regulation also provides the Energy Bureau with certain remedies when issuing a decision, including the ability to impose an administrative fine of up to US\$25,000 per day for violating the Energy Bureau’s orders and regulations.¹²³ To ensure compliance with the Energy Bureau’s orders and regulations, the Energy Bureau may also

¹¹⁴ 22 L.P.R.A. § 1019. The applicable regulations can be found at P.R. Regs. AEE REG. 7579.

¹¹⁵ Senate Bill 1121, art 3.4.

¹¹⁶ Senate Bill 1121, art. 3.9.

¹¹⁷ 12 L.P.R.A. § 8133(e)(3).

¹¹⁸ 12 L.P.R.A. § 8133(f).

¹¹⁹ Senate Bill 1121, art. 4.3.

¹²⁰ Senate Bill 1121, art. 6.3.

¹²¹ Puerto Rico Energy Comm’n, Regulation No. 8543, ch. III (2014).

¹²² Puerto Rico Energy Comm’n, Regulation No. 8543, § 3.04 (2014).

¹²³ Puerto Rico Energy Comm’n, Regulation No. 8543, § 10.01 (2014).

issue a notice of noncompliance, which describes the alleged breach and requires the party to present its defenses within a certain amount of time, or conduct investigations.¹²⁴

- ***Regulation on Mediation and Arbitration Procedures of PREC (July 24, 2015)***. This regulation establishes the rules that govern the Energy Bureau’s mediation and arbitration procedures. In addition to these rules, the parties involved in an arbitration before the Energy Bureau may agree to select—or, if the parties do not come to an agreement, the arbitrator will select—rules by the American Arbitration Association or the International Chamber of Commerce.¹²⁵
- ***Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies (February 5, 2016)***. As prescribed by the 2014 Transformation Act (see paragraph 4.2), the Energy Bureau issued regulations regarding the certification that electric power companies must obtain. The regulations also address the annual fees that the Energy Bureau levies upon electric service companies that generate revenue from the provision of services in Puerto Rico equal to 0.25% of gross revenue,¹²⁶ which may not be added to rates or fees.¹²⁷ The revenue generated defrays the Energy Bureau’s annual operating costs.¹²⁸

The regulation also outlines other obligations for electric service companies, including filing reporting obligations¹²⁹ and procedures for requesting certification.¹³⁰

The Energy Bureau shall have the power to issue a cease and desist order, or revoke or annul the certification of an electric service company for certain instances, including repeated failure to comply with the Energy Bureau’s orders, regulations or the 2014 Transformation Act.¹³¹

As noted in footnote 25, Act 120 would deem a T&D contractor to be certified under the 2014 Transformation Act upon submission of an application for certification. See paragraph 5.8 below for additional details.

- ***Regulation on Microgrid Development (May 18, 2018) and order on the Regulation on the Interconnection of Microgrids (May 16, 2018)***. In 2017, the Energy Bureau issued regulations on microgrid development after identifying installation of distrusted generation, energy storage and microgrid systems as viable alternatives to speed up electric service restoration in Puerto Rico following Hurricane Maria and reduce dependence on centralized sources of generation. Penalties for noncompliance may result in the revocation of the status as a registered microgrid system, as well as any other applicable administrative sanctions or penalties deemed appropriate by the Energy Bureau.¹³²

5. **KEY LEGAL ISSUES**

This section (i) highlights a number of legal issues, but is not intended to prioritize legal issues; (ii) does not seek to include all legal issues within the scope of each paragraph or more broadly;

¹²⁴ Puerto Rico Energy Comm’n, Regulation No. 8543, chs. IV-V (2014).

¹²⁵ Puerto Rico Energy Comm’n, Regulation No. 8558, § 9.03 (2015).

¹²⁶ Puerto Rico Energy Comm’n, Regulation No. 8701, § 4.03(A) (2016).

¹²⁷ Puerto Rico Energy Comm’n, Regulation No. 8701, § 4.03(C) (2016).

¹²⁸ Puerto Rico Energy Comm’n, Regulation No. 8701, § 1.03 (2016).

¹²⁹ Puerto Rico Energy Comm’n, Regulation No. 8701, §§ 2.01, 2.02 (A)(5), 2.02(E), 4.02(A) (2016).

¹³⁰ Puerto Rico Energy Comm’n, Regulation No. 8701, § 3.03 (2016).

¹³¹ Puerto Rico Energy Comm’n, Regulation No. 8701, § 3.05 (2016).

¹³² Puerto Rico Energy Comm’n, Regulation No. 9028, § 1.16 (2018).

and (iii) should not, as reflected in paragraph 1.3, be a substitute for a respondent's independent review and conclusions.

5.1. Jurisdiction and Authority of PREPA to Enter into a PPP for the T&D Project

Pursuant to the PPP Act, Puerto Rico government entities are expressly authorized to establish PPPs and enter into partnership contracts. More specifically, Act 120 expressly authorizes PREPA to enter into PPP partnerships and/or sales contracts carried out in accordance with the PPP Act, subject to a specified approvals process, including the issuance of an energy compliance certificate by the Energy Bureau. SB 1121 further proposes to amend the PREPA Organic Act to authorize PREPA to participate in PPPs in accordance with the PPP Act and Act 120. The approval process under the PPP Act and Act 120 for PREPA to enter into a partnership contract for its T&D assets is summarized in Annex C.

The Energy Policy Act reaffirms the intent of Act 120 and states that partnership contracts entered into for PREPA transactions will be protected by the maximum consideration of Puerto Rico's constitutional order related to the enjoyment of property, due process of law and prohibition against enacting laws that impair legally binding contractual obligations. The Act further states that nothing in the Act or other Puerto Rico law shall be interpreted or applied to limit or modify contractual rights under a partnership contract which comply with current energy policy. Moreover, the Energy Bureau must act in accordance with the principles in its organic act and may not act arbitrarily or capriciously.¹³³

5.2. Governor's Approval of Concessions under the Puerto Rico Constitution

Article VI, Section 13 of the Constitution of Puerto Rico provides that "[t]he procedure for granting franchises, rights, privileges and concessions of a public or quasi-public nature shall be determined by law, but every concession of this kind to a person or private entity must be approved by the Governor or by the executive official whom he designates." The PPP Act and Act 120 are the laws that establish such procedure with respect to a concession of PREPA's transmission and distribution system. Article 9(g)(iv) of the PPP Act provides that, once the partnership report and the partnership agreement have been approved by the board of directors of the P3 Authority and the participating government entity (in this case, PREPA), they must be submitted to the Governor or his designee for final review and approval. Therefore, such procedure satisfies the constitutional requirement that concessions of a public or quasi-public nature to a private person or entity be approved by the Governor or his designee.

5.3. Ownership and Control of Electricity Infrastructure

Under Act 120 and SB 1121, the Government of Puerto Rico, through PREPA or an affiliate, will retain ownership of T&D assets. However, PREPA is required to delegate or transfer the operation, administration and/or maintenance of the T&D system and generation through PPPs under the PPP Act and Act 120 by a target date of December 31, 2019. PREPA will also be the subrecipient of the FEMA Disaster funds.¹³⁴

¹³³ Senate Bill 1121, art. 8.3.

¹³⁴ See "Federal Funding Overview" White Paper (dated January 30, 2019) in the Data Room for more information.

5.4. Operation and Maintenance Legal Powers

As noted above, Act 120 expressly authorizes a PPP for PREPA's T&D assets. The Government of Puerto Rico will retain ownership of and title to all T&D assets and expects to grant the T&D contractor all other rights and responsibilities associated with the T&D system, including, but not limited to, managing, operating, maintaining, rehabilitating, repairing, refurbishing, replacing, improving, expanding and financing, as needed, the T&D system.

5.5. Rate Regulation Framework applicable to the T&D Contractor

PREPA currently has the right to charge for electricity services and owns the revenues that are collected from those services. Those revenues are deposited in accounts controlled by the utility and may be used to subsidize other PREPA services, including certain irrigation systems that are currently operated by PREPA. Certain rules apply to the disposition of the revenues, including, but not limited to, restrictions on the use of PREPA's revenues under the 1974 Trust Agreement (as amended). If current costs exceed revenues in any year, PREPA is responsible for covering the shortfall. In the past, PREPA has covered such shortfalls through the issuance of debt. Since it lost access to the capital markets, PREPA has been handling such shortfall by, among other things, not paying its debts and delaying payments to suppliers. PREPA currently issues bills to customers and may also disconnect them. PREPA may also set tariffs for electricity services, with the Energy Bureau's approval.

In 2016, the Energy Bureau issued rate filing regulations to (a) review and approve PREPA's proposed rates, and (b) guarantee that the rates are not only just and reasonable, but consistent with sound fiscal and operational practices that result in low cost, reliable service and take into account the results of the restructuring negotiations.¹³⁵ Under these regulations, PREPA cannot refuse to provide required information to the Energy Bureau on the grounds that PREPA believes the information is confidential or has not yet received the confidential designation it desires.¹³⁶ The regulations also address (y) the information and procedural requirements with which PREPA must comply if it is to request the approval of a provisional rate, and (z) provide the mechanism for the proposal of base rate design to be evaluated by the Energy Bureau as part of the rate case.¹³⁷ The rate filing regulations specify the information required in a formal rate application, including information for test year original cost rate base elements, pro forma adjustments to the rate base, and working capital data.¹³⁸

As discussed in paragraph 3.2, Act 120 ensures that the Energy Bureau may revise and approve any modifications to rates.¹³⁹ The Energy Bureau must ensure that any such modification is "*just and reasonable, and consistent with good fiscal and operating practices that provide for reliable services at the lowest cost possible.*"¹⁴⁰ The Energy Bureau has broad authority to approve and revise rates or charges charged by electric power service companies for any matter directly or indirectly related to the rendering of electrical services,¹⁴¹ including ensuring that wheeling rates and interconnection charges are just and reasonable (see paragraph 4.1 above).¹⁴² For example, for PREPA, the first rate review process begins no later than 180 days after the Energy Bureau determines that PREPA's proposed rate review application is complete.¹⁴³ The rate then remains in effect during three-year rate review cycles, except for any periodic adjustments authorized by the Energy Bureau as part of the approved rate and unless the Energy Bureau decides to conduct

¹³⁵ Puerto Rico Energy Comm'n, Regulation No. 8720, § 1.03 (2016).

¹³⁶ Puerto Rico Energy Comm'n, Regulation No. 8720, §§ 1.03, 4.02 (2016).

¹³⁷ Puerto Rico Energy Comm'n, Regulation No. 8720, § 2.02 (2016).

¹³⁸ Puerto Rico Energy Comm'n, Regulation No. 8720, § 2.04 (2016).

¹³⁹ Act No. 120-2018 § 8.

¹⁴⁰ Act No. 120-2018 § 8(f).

¹⁴¹ 22 L.P.R.A. § 1054b(k).

¹⁴² 22 L.P.R.A. § 1054b(f).

¹⁴³ 22 L.P.R.A. § 1054x(b).

its own review.¹⁴⁴ During the rate review process and every three years after, or more frequently, the Energy Bureau may deem it necessary to establish a mitigation plan to ensure that the costs it deems to be inconsistent with industry practices such as energy theft, account receivables, and losses attributable to the inefficiency of the electrical system are adjusted to the industry's standards.¹⁴⁵

Currently, Article 1.8(b) of SB 1121 provides that contracts in respect of transmission, distribution, sales of electric power, operation of the energy control center and the activities related to these functions should be transferred by December 31, 2019. The details of the interaction between these functions and details of the post-transformation rate regulation framework are yet to be finalized, including with respect to the rate structure that would apply with respect to a T&D contractor.

5.6. PURPA Mandatory Purchase Obligation

As noted above, PREPA is subject to the mandatory purchase obligation and other legal requirements of PURPA. The application of PURPA in the context of the T&D Project is a potential issue to be considered with respect to the mandatory purchase option, the determination of "avoided cost," interconnection, and the other legal obligations under PURPA. Potential issues for the T&D contractor may range from applicability to cost-recovery.

5.7. IRP Preparation and Approval Process

The Energy Bureau issued IRP regulations governing the elaboration, presentation, evaluation, and approval of PREPA's IRP in compliance with the mandates of the PREPA Organic Act and the 2014 Transformation Act (see paragraphs 4.1 and 4.2 above). The IRP must consider all reasonable resources to satisfy the demand for electricity services during a 20-year planning period,¹⁴⁶ which plan takes into account both supply and demand-side resources.¹⁴⁷ In broad terms, the IRP will address the planning environment, a detailed study of a range of future load forecasts, present generation resources, present demand resources, current investments in electricity conservation technologies, existing transmission and distribution facilities, and the relevant forecast and scenario analyses in support of PREPA's selected resource plan.¹⁴⁸ PREPA must submit any new or updated IRP for Energy Bureau approval,¹⁴⁹ but PREPA is required to update the IRP at least once every three years.¹⁵⁰

The IRP regulations provide for transmission and distribution planning in the IRP.¹⁵¹ Among others, the IRP must describe the existing T&D system (identifying transmission constraints and critical contingencies), identify where advanced grid technologies have been installed, describe any planned development of the T&D system or its facilities scheduled in the next 10 years, and provide a detailed T&D system analysis that addresses system stability and any reliability issues.¹⁵² The Energy Bureau must review the proposed IRP within 30 days of filing. It may determine that the IRP is deficient and require PREPA to provide additional information, as needed, or it may deem the IRP complete.¹⁵³ After the Energy Bureau determines that the IRP is complete, any person may file a petition to intervene in the IRP proceeding within 30 days.¹⁵⁴ No less than

¹⁴⁴ 22 L.P.R.A. § 1054x(b).

¹⁴⁵ 22 L.P.R.A. § 1054x(b).

¹⁴⁶ Puerto Rico Energy Comm'n, Regulation No. 9021, § 2.01(A) (2018).

¹⁴⁷ Puerto Rico Energy Comm'n, Regulation No. 9021, § 1.03 (2018).

¹⁴⁸ Puerto Rico Energy Comm'n, Regulation No. 9021, §§ 2.02-2.03 (2018).

¹⁴⁹ Puerto Rico Energy Comm'n, Regulation No. 9021, §2.01(c) (2018).

¹⁵⁰ Puerto Rico Energy Comm'n, Regulation No. 9021, §2.04(A) (2018).

¹⁵¹ Puerto Rico Energy Comm'n, Regulation No. 9021, §2.04(j) (2018).

¹⁵² Puerto Rico Energy Comm'n, Regulation No. 9021, §2.04(j)(1) (2018).

¹⁵³ Puerto Rico Energy Comm'n, Regulation No. 9021, §3.02 (2018).

¹⁵⁴ Puerto Rico Energy Comm'n, Regulation No. 9021, §3.03(A) (2018).

two years after the approval of the most recent IRP, the Energy Bureau may also schedule technical conferences to gather information regarding PREPA’s methodology and the contents of its IRP.¹⁵⁵

When the T&D contractor assumes operation of the system *or* 60% or more of electric generation is in private hands, the IRP would be prepared by the Energy Bureau with broad public and stakeholder participation. Each energy service company must comply with the IRP.¹⁵⁶

A new draft IRP is currently being prepared.¹⁵⁷

5.8. Principal Electric Sector Permits that the T&D Contractor must Obtain¹⁵⁸

<i>Permit</i>	<i>Requirements</i>
Energy Compliance Certificate	Pursuant to Act 120, the grant of the T&D Contract to the T&D contractor is subject to the Energy Bureau issuing an energy compliance certificate pursuant to Act 120. See paragraph 3.2 above.
Certification as an Electric Power Company	<p>Pursuant to Act 120, upon signing of the T&D Contract, the T&D contractor will be deemed to be a Certified Electric Power Company (as defined in the 2014 Transformation Act).</p> <p>The T&D contractor must fill out and file with the Energy Bureau an application for an Electric Power Company certification within 90 days after the T&D Contract is executed.</p> <p>Once the application is filled and filed with the Energy Bureau, it will be automatically approved without the need for the Energy Bureau to act on it.</p> <p>If the T&D contractor renders services or acts according to the T&D Contract before the term for filing the application for certification expires, as provided in Act 120, it shall not be deemed to be a violation of any law or regulations.</p>

The T&D contractor will also be subject to certain corporate, tax, operational and labor filings and other permitting requirements. Respondents should seek advice from their local counsel regarding any such filings and requirements.

5.9. Legal Requirements Applicable to the Entity Structure of the T&D Contractor

Neither the PPP Act nor Act 120 imposes requirements on the legal structure of the entity that will enter into the T&D Contract. The only requirement included in Article 9(a)(i) of the PPP Act, is that at the time of the execution of the T&D Contract, the private party should be authorized to do business in Puerto Rico. Proponents should consult their legal and financial advisors to determine which legal structure is appropriate for them.

¹⁵⁵ Puerto Rico Energy Comm’n, Regulation No. 9021, §3.01(A)(1) (2018).

¹⁵⁶ Senate Bill 1121, art. 1.10(l).

¹⁵⁷ The draft is being prepared by Siemens, as Technical Advisor to Puerto Rico.

¹⁵⁸ As discussed in paragraph 2.1, FERC requirements applicable to the electric sector generally do not apply in Puerto Rico. Not included in this section are permits that could otherwise be applicable under U.S. laws and regulations.

5.10. General Rules Restricting Foreign Companies' Activities

As a general matter, Puerto Rico law does not restrict foreign ownership or impose special restrictions on foreign companies operating in Puerto Rico. As noted above, any T&D contractor must be authorized to do business in Puerto Rico. The T&D contractor must also comply with Federal rules and visa requirements applicable to foreign (non-U.S.) workers.

The parties to the T&D contract should also assess whether a notification will be required by the Committee on Foreign Investment in the United States (“CFIUS”) in connection with the T&D Project.

CFIUS has jurisdiction to review “covered transactions,” which are transactions in which a foreign person gains “control” over a U.S. business. “Control” is often interpreted as equity, but CFIUS’ definition is far broader: “[t]he term control means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, *contractual arrangements*, formal or informal arrangements to act in concert, *or other means, to determine, direct, or decide important matters affecting an entity*[.]” Therefore, depending on the ownership structure or other operational control of the T&D contractor, CFIUS could view the operating agreement as conferring control, thus subjecting the transaction to CFIUS jurisdiction.

Currently, the CFIUS notification process is voluntary for most transactions (*i.e.*, transactions that do not involve “critical technology”). Parties choose to notify CFIUS of their transactions because the President has broad authority to block transactions (or unwind them if they have already closed) if he or she determines that a transaction threatens U.S. national security, although this is rare. In addition, if the parties do not voluntarily file their transaction, before or after closing CFIUS can ask the parties to file or self-initiate its own review. If CFIUS clears a transaction, that clearance provides a safe harbor against future CFIUS action related to that transaction.

Under the Foreign Investment Risk Review Modernization Act (the “FIRRMA”), the first major CFIUS reform in a decade, parties are *required* to notify CFIUS of certain transactions. Certain FIRRMA provisions became effective immediately, and the remaining provisions are being implemented in piecemeal – by creating “pilot programs” – through February 2020. For example, starting in November 2018, parties are required to notify CFIUS of controlling and non-controlling foreign investments in U.S. critical technology businesses. At some point in 2019, CFIUS is expected to implement a similar pilot program that will require parties to notify CFIUS of controlling and non-controlling investments in U.S. critical infrastructure. The timing of this action is not currently known, but it could be in the near future.

Annex A

List of Principal PPP and Electricity Laws and Regulations

Principal Laws	
1.	Act No. 83 of May 2, 1941, as amended (Puerto Rico Electric Power Authority Enabling Act)
2.	Act No. 114-2007, as amended (Net Metering Program)
3.	Act No. 29-2009, as amended (Public-Private Partnership Authority Act)
4.	Act No. 82-2010, as amended (Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act)
5.	Act No. 83-2010, as amended (Green Energy Incentives Act of Puerto Rico)
6.	Act No. 1-2011, as amended, Chapter 3 of Subchapter D (Exemptions to Sales and Use Tax under the Puerto Rico Internal Revenue Code of 2011)
7.	Act No. 57-2014, as amended (Puerto Rico Energy Transformation and RELIEF Act)
8.	Act No. 4-2016 (PREPA Revitalization Act)
9.	Act No. 120-2018 (Puerto Rico Electric Power System Transformation Act)
10.	Act No. 211-2018 (Act for the Implementation of the Puerto Rico Public Service Regulatory Board Reorganization Plan)
11.	Senate Bill 1121 of 2018 (Energy Policy Act)
Principal Regulations	
12.	Regulation on the Standards of Ethical Conduct for Employees of PREC, Regulation No. 8542, Department of State, December 18, 2014
13.	Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, Regulation No. 8543, Department of State, December 18, 2014
14.	Regulation on Mediation and Arbitration Procedures of PREC, Regulation No. 8558, Department of State, February 5, 2015
15.	Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies, Regulation No. 8701, Department of State, February 5, 2016
16.	New Regulation on Rate Filing Requirements, Regulation No. 8720, Department of State, March 16, 2016
17.	Joint Regulation for the Procurement of Energy Purchase Contracts and Modernization of the Generation Fleet, Regulation No. 8815, September 2016
18.	Regulation on the Contribution In lieu of Taxes, Regulation No. 8653, Department of State, October 16, 2015
19.	Regulation on the Procedure for Bill Review and Suspension of Electric Service Due to Failure to Pay, Regulation No. 8863, Department of State, November 23, 2016

20.	Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Participatory Public-Private Partnerships Contracts under Act No. 29-2009, as amended, Regulation No. 8968, Department of State, May 3, 2017
21.	Regulation on Integrated Resource Plan for PREPA, Regulation No. 9021, Department of State, April 24, 2018
22.	Resolution on the Codes and Standards for Microgrid Compliance, May 16, 2018
23.	Order on the Regulation on the Interconnection of Microgrids, May 16, 2018
24.	Resolution on the Regulation on Microgrid Development, May 16, 2018
25.	Regulation on Microgrid Development, Regulation No. 9028, Department of State, May 18, 2018

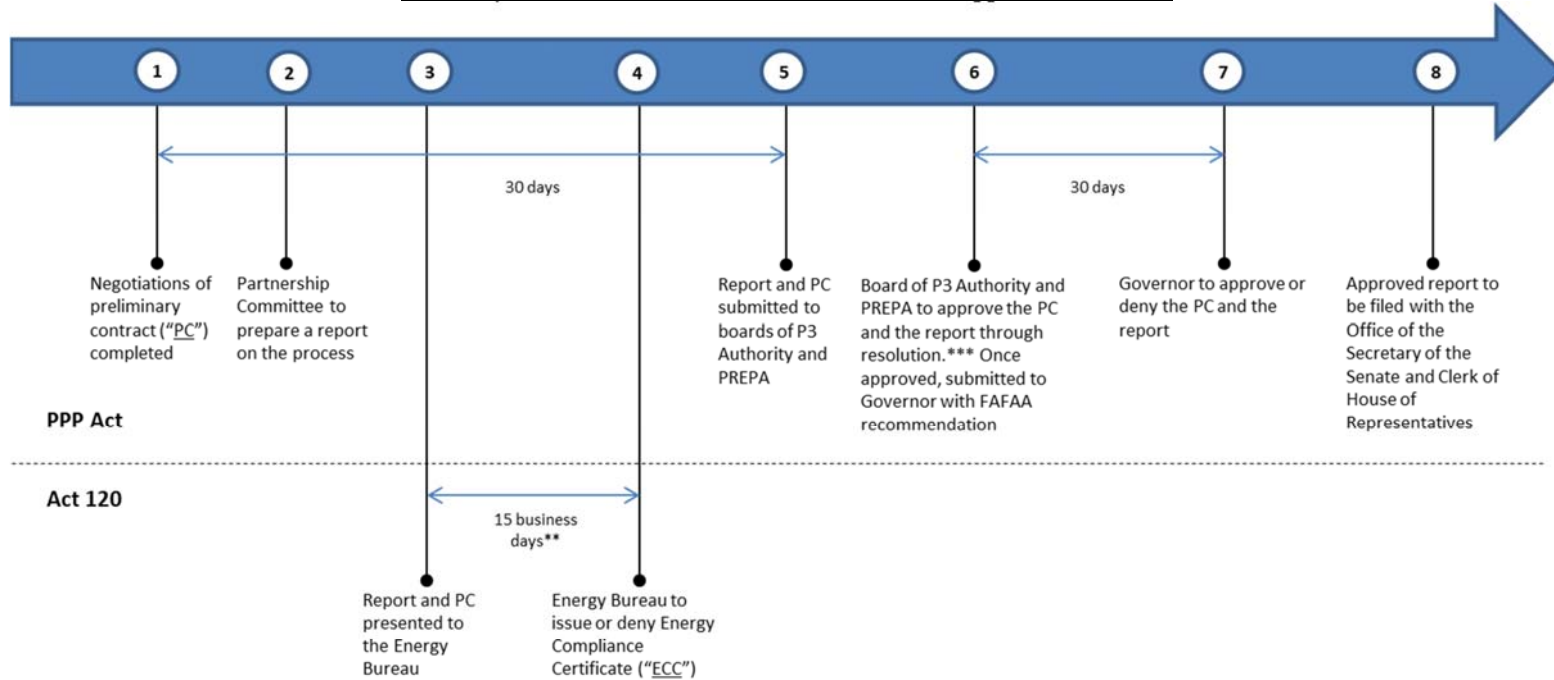
Annex B

Summary of Principal PPP and Electricity Sector Agencies and their Principal Functions

	PREPA	P3 Authority	Energy Bureau	PREA	ICPO	CEPPO or Policy Program
Full Name	Puerto Rico Electric Power Authority	Puerto Rico Public-Private Partnership Authority	Puerto Rico Energy Bureau (formerly the Energy Commission)	Puerto Rico Energy Administration	Independent Consumer Protection Office	Energy Public Policy Office, formerly known as the Commonwealth Energy Public Policy Office
Principal Enabling Act(s)	Puerto Rico Electric Power Authority Enabling Act, Act No. 83-1941	Public-Private Partnership Authority Act, Act No. 29-2009	Reorganization Plan of the Puerto Rico Public Service Regulatory Board Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014	Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014	Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014	Reorganization Plan of the Puerto Rico Public Service Regulatory Board Puerto Rico Energy Transformation and RELIEF Act, Act No. 57-2014
Additional Relevant Acts and Regulations	Electric Power Authority Revitalization Act, Act No. 4 of February 16, 2016 Puerto Rico Electric System Transformation Act, Act No. 120-2018 Senate Bill No. 1121 dated October 17, 2018	Puerto Rico Electric System Transformation Act, Act No. 120-2018 Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Participatory Public-Private Partnerships Contracts under Act No. 29-2009	Electric Power Authority Revitalization Act, Act No. 4 of February 16, 2016 Puerto Rico Electric System Transformation Act, Act No. 120-2018 Senate Bill No. 1121 dated October 17, 2018	Senate Bill No. 1121 dated October 17, 2018	Senate Bill No. 1121 dated October 17, 2018	Senate Bill No. 1121 dated October 17, 2018
Principal Function	Regulated utility responsible for providing electric power to Puerto Rico, subject to the regulation of the Energy Bureau	Sole government entity responsible for implementing the public policy on PPPs and for determining the functions, services or facilities for which PPPs are to be established	Independent regulator (attached to the Public Service Regulatory Board) that ensures compliance with the energy public policy Certifies energy companies and approves rates	Administrative and operational support to the Energy Bureau and ICPO Proposed to be eliminated under SB 1121	Represents consumers before the Energy Bureau and make independent recommendations on rates and other matters	Develops and adopts energy public policy in Puerto Rico Reviews initial IRP; receives presentations on IRP from PREPA every 2 years

Annex C

Summary of PPP Act and Act 120 Post-Selection Approvals Process*



* Process above is limited to PPP Act and Act 120 only, once the proponent is selected. Does not cover procurement or selection, Title III, FOMB, bondholder or other processes.

** The October Senate Bill proposes to extend the Energy Bureau's review period to 30 days.

*** Per §10(b) of Act 120, PREPA transactions that do not involve the sale of PREPA assets must be approved by the affirmative vote of both representatives of the public interest of the board of the P3 Authority.

**** Additional legislative approvals are required for sales contracts involving a PREPA asset related to electric generation.