

WHITE PAPER

PUERTO RICO ELECTRICITY SECTOR REGULATORY FRAMEWORK

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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 one or more private parties or consortia (the “Contractor”) to provide management, operation, maintenance, asset managing, and decommissioning, as applicable, to one or more of the base-load generation plants and gas turbine peaking plants (the “Legacy Generation Assets”) located throughout the island of Puerto Rico (the “Generation Project”) pursuant to an operation and management contract with terms tied to the remaining useful lives of the applicable Legacy Generation Assets (the “Generation Contract”).

1. INTRODUCTION

1.1. Overview of the Generation Project

The Puerto Rico Public-Private Partnerships Authority (the “P3 Authority”), in collaboration with the Puerto Rico Electric Power Authority (“PREPA”), has issued a Request for Proposals (as amended and supplemented from time to time, the “RFP”) for the Generation Project. The RFP invites Qualified Respondents (as defined therein) to prepare and submit proposals for the Generation Project and includes a term sheet summarizing the terms and conditions contemplated for the Generation 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 No. 211-2018, as amended; and
- Puerto Rico Energy Policy Act, Act No. 17-2019 (the “Energy Policy Act”).

The purpose of this White Paper is to describe the existing PPP and electric utility regulatory framework relevant to the Generation Project. This White Paper does not examine the suitability of the current regulatory framework to potential Contractors 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 the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), potential Federal government funding, labor or environmental considerations, all of which are covered in 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 4.10 of the RFP. Respondents should undertake their own independent review of Puerto Rico and U.S. laws and regulations relevant to the Generation Project and form 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 “Contractor” includes a reference to a “proponent” or a “contractor” under the PPP Act or Act 120, or to a “concessionaire” or an “electric service company” under the Energy Policy Act;
- the “Generation Contract” includes a reference to a “partnership contract” under the PPP Act, Act 120 or the Energy Policy Act; and
- a “PPP” in the context of PREPA includes a reference to a “PREPA Transaction” under Act 120 or the Energy Policy Act.

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 Puerto Rico 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, the U.S. Securities and Exchange Commission regulates all publicly traded securities and the U.S. Commodity Futures Trading Commission has jurisdiction to regulate trade in commodities.

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/>.

- ***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 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, among other transactions. The provisions of the PPP Act (as modified or supplemented by Act 120 and the Energy Policy Act) were applied to procure the contract for the operation, maintenance and modernization of PREPA’s transmission and distribution system (the “T&D System”) completed in June 2020 and will also be applied to the procurement process relating to the Generation 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 Generation Project (*i.e.*, the preliminary Generation 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 amended by the Energy Policy Act),

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).

form the core legislative framework that authorizes the Generation Project. 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 amended by the Energy Policy Act) 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 Contractor) and their rates.

- **Energy Policy Act.** On March 26, 2019, the Legislative Assembly of Puerto Rico passed the Energy Policy Act, which was signed into law by the Governor of Puerto Rico on April 11, 2019. The Energy Policy Act established the public policy concerning Puerto Rico's energy sector. Among other matters, the Energy Policy Act 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 Contractor) and their rates. Alongside the Energy Bureau, 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.⁷ 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);

⁷ The Energy Policy Act eliminates the former Puerto Rico Energy Administration (or "PREA"), which previously provided administrative and operational support to the Energy Bureau.

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

In 2009, the P3 Authority promulgated the regulations under the PPP Act, which were further amended in 2017 (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 Generation 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 [they 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 enter into payment agreements, or negotiate exemptions for municipal license fees, excise

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.

taxes or municipal taxes, with municipal authorities. 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, as amended by Act 60-2019 (Act No. 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 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 governmental entity 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 governmental entity (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 the P3 Authority and the partnering governmental entity, 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

¹¹ Act No. 29-2009 § 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.

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. PREPA is also authorized to enter into Generation Contracts for its Legacy Generation Assets. 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 designated 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. In accordance with Act 120, on March 8, 2019, the P3 Authority adopted the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act No. 120-2018, which, together with Act 120, provide the guidelines and procedures for the award of partnership contracts under Act 120.
- ***The P3 Authority must establish a partnership committee.*** Consistent with the general PPP framework, Act 120 requires the P3 Authority to establish a partnership committee to negotiate the partnership contracts.¹⁸
- ***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.¹⁹ 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.²⁰ The Energy Bureau has 30 days to issue an energy compliance certificate, or to deny the issuance thereof.²¹ The Energy Policy Act further states 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.²² 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.²³

¹⁶ Act No. 120-2018 § 5(b).

¹⁷ Act No. 120-2018 § 8.

¹⁸ Act No. 120-2018 § 5(c), (e).

¹⁹ Act No. 120-2018 § 5(g).

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

²¹ Act No. 120-2018 § 5(g), as amended by Energy Policy Act, art. 6.2.

²² Energy Policy Act, art. 6.3.

²³ 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.

- ***The Energy Bureau has continuing jurisdiction to regulate rates and fees.***²⁴ Under Act 120, the Contractor under a partnership contract is expressly authorized to collect duties, rents, rates and other types of fees for applicable services and functions pursuant to the partnership contract.²⁵ However, notwithstanding the 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.²⁶ The T&D System contractor will also need to comply with the requirements of the 2014 Transformation Act or other applicable law to increase or reduce rates.²⁷ 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.*”²⁸ No partnership or sales contract may include language that impairs the powers and duties of the Energy Bureau.²⁹ Partnership and sales contracts must include a clause mandating full compliance with the energy policy and regulatory framework, except those specifically excluded by Act 120 or the Legislative Assembly.³⁰
- ***Cross-ownership of generation is prohibited.***³¹ Generation assets must be sold separately. Acquisitions by generation Contractors of additional generation assets require Legislative Assembly approval. The T&D System contractor may not be a contractor under a partnership or sales contract for generation assets.
- ***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).³² The Energy Policy Act allows the Partnership Committee to grant further exemptions to (or provide for alternative procedures for) the requirements of the IRP and/or any statutory provision applicable to PREPA, so long as the partnership committee has the authorization of the Energy Bureau through the issuance of the Energy Compliance Certificate.³³

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 currently 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

²⁴ Act No. 120-2018 § 8.

²⁵ Act No. 120-2018 § 8(f).

²⁶ Act No. 120-2018 § 8(f).

²⁷ Act No. 120-2018 § 8(f).

²⁸ Act No. 120-2018 § 8(f).

²⁹ Act No. 120-2018 § 8(d).

³⁰ Act No. 120-2018 § 5(f).

³¹ Act No. 120-2018 § 8(g)-(h).

³² Act No. 120-2018 § 6(d); 22 L.P.R.A. § 196(c). Note that the Energy Policy Act broadens this flexibility to grant exemptions. *See* Energy Policy Act, art. 6.3.

³³ Energy Policy Act, art. 6.3

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.³⁴

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.³⁵ 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.³⁶

If and when the transaction for the operation, maintenance and modernization of PREPA's T&D System is complete and the T&D System is handed over to the operator, PREPA may cease to operate as a vertically integrated utility given that a private consortium will operate and maintain the T&D System.

- ***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.³⁷ The Board, with the Executive Director's advice, appoints a Director of 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.³⁸ The Energy Policy Act changes the composition of PREPA's Governing Board. The Governor of Puerto Rico will appoint 6 members of a 7-member board, 3 of whom must be selected from a short list prepared by a recognized executive search firm and 1 of whom will be independent and not employed by the Government of Puerto Rico. The remaining member not appointed by the Governor of Puerto Rico through the process described above will represent the interests of customers and will be selected pursuant to an election supervised by the Puerto Rico Ombudsman.
- ***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.³⁹ 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.⁴⁰
- ***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

³⁴ 22 L.P.R.A. § 193.

³⁵ 22 L.P.R.A. § 196.

³⁶ 22 L.P.R.A. §§ 196, 206.

³⁷ 22 L.P.R.A. §§ 194(d), 195.

³⁸ 22 L.P.R.A. § 195a.

³⁹ 22 L.P.R.A. § 203.

⁴⁰ 22 L.P.R.A. § 204.

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.⁴¹ As discussed in paragraph 4.2 below, the Energy Bureau reviews PREPA's rates to determine whether they are fair and reasonable.

- ***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 of fuel 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.⁴²
- ***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.⁴³
- ***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 may not include costs or charges under the category "fuel purchase" or "energy purchase" that are not approved by the Energy Bureau.

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.⁴⁴ Formerly known as the Energy Commission, the Energy Bureau was created in 2018

⁴¹ 22 L.P.R.A. § 196a.

⁴² 22 L.P.R.A. § 194(b).

⁴³ 22 L.P.R.A. § 212. As noted below, the Energy Policy Act requires the Energy Bureau to conduct a study into the effectiveness and reasonableness of the CILT system.

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

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.⁴⁵ 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.⁴⁶ The Chair and commissioners each serve six-year terms.⁴⁷ Energy Bureau decisions are made by majority vote of the commissioners.⁴⁸

The 2014 Transformation Act also establishes: 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 CEPPPO), to develop and adopt energy public policy in Puerto Rico.

The Energy Policy Act amends the definition of “electric power company” under the 2014 Transformation Act to mean “*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.⁴⁹

- ***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.⁵⁰ 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);⁵¹
 - 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

⁴⁵ 22 L.P.R.A. § 1054d(a).

⁴⁶ 22 L.P.R.A. § 1054e(a).

⁴⁷ 22 L.P.R.A. § 1054e(d).

⁴⁸ 22 L.P.R.A. § 1054d(c).

⁴⁹ Energy Policy Act, art. 5.2.

⁵⁰ 22 L.P.R.A. § 1054x(c).

⁵¹ 22 L.P.R.A. § 1054x(b).

- citizen participation in the rate review process.⁵²

The Energy Policy Act directs the Energy Bureau to issue regulations 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 benefits for the electric system and consumers.⁵³ 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.⁵⁴

- ***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;⁵⁵ ensure prices in power purchase agreements (“PPAs”), wheeling rates and interconnection charges are just and reasonable;⁵⁶ regulate wheeling of energy;⁵⁷ revise, approve and oversee compliance with technical requirements for interconnection of distributed generators;⁵⁸ and set and oversee compliance with standards for facilities or plants of generating electric companies to guarantee efficiency and reliability of electric service in accordance with industry best practices.⁵⁹ Among other things, the Energy Policy Act expands the Energy Bureau’s power to regulate direct sales of electricity from independent energy producers to larger-scale commercial and industrial consumers, energy cooperatives or other aggregators of electric energy demand.⁶⁰
- ***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.⁶¹ The Energy Bureau may limit access to confidential information and documents that may be required, if requested by the applicant.⁶² The Energy Bureau also has investigative powers⁶³ and the power to impose penalties for non-compliance of up to US\$25,000 per day (capped at the

⁵² 22 L.P.R.A. § 1054x(b).

⁵³ Energy Policy Act, art. 5.21.

⁵⁴ Energy Policy Act, art. 5.21.

⁵⁵ 22 L.P.R.A. § 1054b(k).

⁵⁶ 22 L.P.R.A. § 1054b(f).

⁵⁷ 22 L.P.R.A. § 1054b(g), (cc).

⁵⁸ 22 L.P.R.A. § 1054b(t).

⁵⁹ 22 L.P.R.A. § 1054b(u).

⁶⁰ Energy Policy Act, art. 1.7. See also the description in paragraph 4.4 below of the Energy Bureau’s Regulation on Electric Energy Wheeling.

⁶¹ 22 L.P.R.A. § 1054u(a).

⁶² 22 L.P.R.A. § 1054n.

⁶³ 22 L.P.R.A. § 1054w.

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.***⁶⁴ 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.⁶⁵ Generally, new applicants will be granted certifications if the Energy Bureau does not request additional information from the applicant within 30 days from filing.⁶⁶ 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.⁶⁷
- ***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.⁶⁸
- ***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.⁶⁹
- ***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 was required to 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.⁷⁰ The Act also requires PREPA to present to the Energy Bureau the Energy RELIEF Plan,⁷¹ 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.⁷² The Energy Policy Act expands 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

⁶⁴ 22 L.P.R.A. § 1054(a).

⁶⁵ 22 L.P.R.A. § 1054i(d).

⁶⁶ 22 L.P.R.A. § 1054i(b).

⁶⁷ 22 L.P.R.A. § 1054bb(b).

⁶⁸ 22 L.P.R.A. § 1054o(d).

⁶⁹ 22 L.P.R.A. § 1054aa(b).

⁷⁰ 22 L.P.R.A. §§ 1054bb, 1054ee.

⁷¹ 22 L.P.R.A. § 1051a(mm).

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

customer.⁷³ 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 Generation Contract, before such contracts are executed.⁷⁴ 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.⁷⁵ 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.⁷⁶ The Energy Policy Act amends 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.⁷⁷ With respect to the initial award of a PREPA transaction and signing of a Contract 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.

4.3. Puerto Rico Energy Policy Act

- ***The Energy Policy Act provides a broad statement of Puerto Rico’s energy policy through 2040.*** 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 Through Alternative and Sustainable Renewable Energy, and the Net Metering Act, among others. The Energy Policy Act lists seven guiding principles for Puerto Rico’s 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 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.

The key objectives of the Energy Policy Act include (a) promoting smaller scale generating plants, distributed generation and energy storage, as well, (b) transitioning away from fossil fuels,

⁷³ Energy Policy Act, art. 5.2.

⁷⁴ 22 L.P.R.A. § 1054ff(a).

⁷⁵ 22 L.P.R.A. § 1054ii(a).

⁷⁶ 22 L.P.R.A. § 1054ii(c).

⁷⁷ Energy Policy Act, art. 5.31.

establishing a renewable portfolio standard requiring 40% of energy production to be obtained from renewable sources by 2025, 60% by 2040 and 100% by 2050 and (c) improving energy efficiency, reaching a goal of 30% energy efficiency by 2040.⁷⁸

The Energy Policy Act identifies as a specific policy goal the “aspirational” achievement of an energy charge of less than 20 cents per kWh to guide the Energy Bureau in exercising its rate setting authority.⁷⁹ The Energy Policy Act’s amendments to PREPA’s fee collection powers under the PREPA Organic Act allow PREPA to propose and collect fees to those that are “*fair, reasonable, not greater than 20 cents per kilowatt hour, pursuant to the Puerto Rico Energy Policy Act, and non-discriminatory, rights, rents, and other charges approved by the Bureau.*”⁸⁰ In our view, these amendments must be read in the context of the Act’s aspirational goals (*i.e.*, the 20 cent reference here is aspirational, and not a cap on what PREPA may propose or collect).

- ***The Energy Policy Act reinforces the role of the Energy Bureau as an independent regulator.*** The Energy Policy Act expands the Energy Bureau’s authority to include oversight and review of PREPA’s (or its successor’s) and any electric service company’s tariffs.⁸¹ 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.*”⁸² The Energy Policy Act 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.⁸³ The Energy Bureau is, however, required to publish its budget on its website and respond to requests from any agency or the Legislative Assembly for more information.⁸⁴ Moreover, the Energy Policy Act expressly prohibits the Energy Bureau’s commissioners from engaging in political activities.
- ***PREPA may retain ownership of Legacy Generation Assets but delegate operation of those assets to O&M contractors.***⁸⁵ PREPA may retain ownership of and title to all Legacy Generation Assets and, except for certain reserved rights and responsibilities to be set forth in the Generation Contract, expects to grant the Contractor all other rights and responsibilities associated with the Legacy Generation Assets, including, but not limited to, managing, operating, maintaining, and decommissioning, as needed, the Legacy Generation Assets. PREPA is required to delegate or transfer the operation, administration and/or maintenance of the T&D System and its Legacy Generation Assets 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.
- ***Puerto Rico will transition to an unbundled electric system.*** The Energy Policy Act does not permit vertically integrated monopolies or horizontal monopolies in generation.⁸⁶ No electric service company or affiliate may, independently or collectively, control more than 50% of generation capacity assets, except where PREPA controls its own Legacy Generation Assets. PREPA or the T&D System contractor must allow the interconnection of electric service

⁷⁸ Energy Policy Act, art. 1.6.

⁷⁹ Energy Policy Act, art. 1.5(1)(a) and 1.6(16).

⁸⁰ Energy Policy Act, art. 2.6.

⁸¹ Energy Policy Act, art. 5.1.

⁸² Energy Policy Act, art. 5.1.

⁸³ Energy Policy Act, art. 5.16.

⁸⁴ Energy Policy Act, art. 5.16.

⁸⁵ Energy Policy Act, art. 1.7.

⁸⁶ Energy Policy Act, art. 1.8.

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.⁸⁷

- ***Electric service companies (including the Contractor) must comply with the IRP and other listed requirements.***⁸⁸ The long-term planning of the electric system will be based on the IRP, which will be prepared by the energy company or companies responsible for the operation of the electric system and approved by the Energy Bureau. The IRP must describe the combination of supply and conservation and resources which would satisfy short, medium and long-term energy needs at the lowest reasonable cost and must include the information listed in the Energy Policy Act. The IRP is prepared for a planning horizon of 20 years but is revised every three years. Each energy service company must comply with the IRP.⁸⁹

Electric service companies must comply with other listed duties, as applicable 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.⁹⁰

- ***The partnership committee and the Energy Bureau may exempt the Contractor from certain IRP 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 or other statutory requirements applicable to PREPA.⁹¹
- ***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.⁹² The Energy Policy Act provides that coal is to be eliminated as a generation source by January 1, 2028,⁹³ and no permit or amendment to an existing contract may authorize or contemplate coal-based energy generation beyond that date.⁹⁴ The Energy Policy Act requires that a minimum of 60% of fossil fuel-based energy (gas or petroleum-derived) must be generated in a highly efficient manner.⁹⁵ Parties to sale or partnership contracts who acquire PREPA generation assets are required to modernize the plants or substitute them for highly efficient plants within five years.⁹⁶ These requirements do not apply to PREPA's Legacy Generation Assets.⁹⁷

⁸⁷ Energy Policy Act, arts. 1.6, 1.8.

⁸⁸ Energy Policy Act, art. 1.9.

⁸⁹ Energy Policy Act, art. 1.10(1).

⁹⁰ Energy Policy Act, art. 1.10.

⁹¹ Energy Policy Act, art. 6.3.

⁹² Energy Policy Act, art. 1.11(a).

⁹³ Energy Policy Act, art. 1.6(3).

⁹⁴ Energy Policy Act, art. 1.11(a).

⁹⁵ Energy Policy Act, art. 1.11(a).

⁹⁶ Energy Policy Act, art. 1.11(a).

⁹⁷ Energy Policy Act, art. 1.11(a).

- ***The Energy Bureau will retain regulatory authority over PPAs with Independent Power Producers.*** Power purchase agreements between PREPA, or the T&D System contractor, and any independent power producer, are subject to the requirements of the 2014 Transformation Act and the regulations adopted by the Energy Bureau. However, when the PPA agreement is part of a PPP transaction under Act 120, only a certificate of energy compliance is required. The Energy Bureau would establish parameters for pricing, adjustments, escalation and profit margins for PPAs. Energy companies are prohibited from earning a mark-up on fuel sales.⁹⁸
- ***PREPA or the T&D System contractor will set the reserve margin.*** PREPA or the T&D System contractor will establish (subject to the review and approval of the Energy Bureau) the optimum system reserve margin for Puerto Rico and shall work to maintain such reserve for the stability and reliability of electric service.⁹⁹
- ***PREPA and the T&D System contractor must accommodate renewable energy, distributed generation and microgrids.*** PREPA and the T&D System 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.¹⁰⁰ PREPA and the T&D System contractor shall respond to microgrid regulations,¹⁰¹ plus expedited procedures for the interconnection of small residential and commercial solar rooftop systems of less than 25 kW of capacity. The Energy Policy Act requires 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 System 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 Energy Policy Act sets reconstruction priorities for PREPA and the T&D System contractor.*** Listed priorities include: replacing temporary transmission structures with monopoles designed to resist sustained winds of 150 mph; replacing and maintaining anchoring systems; implementing corrosion mitigation programs; strengthening substation assets and control equipment; maintaining compatibility of T&D System voltage; diversifying black-start capable generating units; evaluating the installation of underground transmission and distribution systems in urban centers and essential service facilities; relocating substations located in flood zones; modernizing the generation assets and allowing for natural gas; integrating microgrids; and adopting technologies to improve customer service and the stability of the system, among others.¹⁰³
- ***The Energy Policy Act contemplates near-term regulations, plans and studies for demand response, energy storage and the CILT program, medium-term studies into net metering and distributed generation, plus a long-dated study into a possible future competitive electricity market.*** The Energy Policy Act required that the Energy Bureau adopt guidance for electric service companies to establish demand response programs or demand side management programs,

⁹⁸ Energy Policy Act, art. 1.11(b).

⁹⁹ Energy Policy Act, art. 1.11(c)

¹⁰⁰ Energy Policy Act, art. 1.11(d).

¹⁰¹ Energy Policy Act, art. 1.13.

¹⁰² Energy Policy Act, art. 1.12.

¹⁰³ Energy Policy Act, art. 1.15.

with electric service companies submitting their proposals for such programs to the Energy Bureau within a further period of six months, within 180 days after the approval of the Energy Policy Act.¹⁰⁴ To this end, in October 2019, the Energy Bureau proposed the adoption of the Regulation for Energy Efficiency and Demand Response (discussed in Section 4.4 below). Furthermore, as required by the Energy Policy Act, the Energy Bureau prepared a study into energy storage systems, dated January 10, 2020, which was presented to the Legislative Assembly, with the purpose of integrating renewable energy to the grid, complying with the Renewable Portfolio Standards and establishing regulation-specific energy storage goals for certain regulated entities.¹⁰⁵ On December 13, 2019, the Energy Bureau adopted the Regulation for Performance Incentive Mechanisms with the purpose of directing the Energy Bureau to establish metrics, targets and financial incentives to ensure electric power service companies comply with the orders of the Energy Bureau (discussed further in Section 4.4 below).¹⁰⁶ As set out in the Energy Policy Act, the regulation provides for the imposition of penalties based on performance of electric service companies in relation to the foregoing.¹⁰⁷ Within 5 years after the effective date of the Energy Policy Act, the Energy Bureau is required to conduct a formal independent study into the net metering program, distributed technologies, small-scale solar and energy storage.¹⁰⁸ On or before June 30, 2025, the Energy Bureau is required to conduct, and submit to the Governor and the Legislative Assembly, a study on the possible future establishment of an electricity market based on free competition.¹⁰⁹

- ***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 of fuel 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.¹¹⁰
- ***Expedited permitting for renewable energy projects.*** The Energy Policy Act seeks to expedite permitting of renewable energy projects by the Puerto Rico Permit Management Office pursuant to an expedited “state of emergency” process pursuant to Act 76-2000.¹¹¹

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 of the PREPA T&D System and the establishment of net metering arrangements 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

¹⁰⁴ Energy Policy Act, art. 5.24.

¹⁰⁵ Energy Policy Act, art. 4.10.

¹⁰⁶ Energy Bureau Reg. No. 9137.

¹⁰⁷ Energy Policy Act, art. 5.21.

¹⁰⁸ Energy Policy Act, art. 3.4.

¹⁰⁹ Energy Policy Act, art. 1.19.

¹¹⁰ Energy Policy Act, art. 2.8.

¹¹¹ Energy Policy Act, art. 1.11(f).

Interconnection Agreement.¹¹² The Net Metering Act further directs PREPA to adopt an expedited process 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.¹¹³ The Energy Policy Act updates Puerto Rico’s net metering rules, including a ban on PREPA or the T&D System contractor charging additional fees or increasing the consumption rate for net metering customers,¹¹⁴ and including a new policy on interconnection.¹¹⁵ The Energy Policy Act also contains a transitional rate and grandfathering provisions for the net metering contracts entered into prior to the completion of the study into net metering described in Section 4.3 above.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.

The Energy Policy Act gives 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 System contractor or retail energy providers.¹¹⁹ It states that partnership contracts under Act 120 may provide statutory exemptions or alternative procedures for compliance with 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,

¹¹² 22 L.P.R.A. § 1019.

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

¹¹⁴ Energy Policy Act, art 3.4.

¹¹⁵ Energy Policy Act, art. 3.9.

¹¹⁶ Energy Policy Act, art. 3.4.

¹¹⁷ 12 L.P.R.A. § 8133(e)(3).

¹¹⁸ 12 L.P.R.A. § 8133(f).

¹¹⁹ Energy Policy Act, art. 4.3.

¹²⁰ Energy Policy Act, art. 6.3.

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 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 On October 11, 2019, the Energy Bureau published its proposed amendments to the regulation in order to, among other things, facilitate access and participation of parties in the rate review process and conform the regulation to the most recent changes in the law. As of the date hereof, the Energy Bureau has not taken further actions with respect to these proposed amendments.

- ***Regulation on Mediation and Arbitration Procedures of the Puerto Rico Energy Bureau (formerly Energy Commission) (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

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).

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).

As noted in footnote 23, Act 120 would deem a Contractor to be certified under the 2014 Transformation Act upon submission of an application for certification. See paragraph 5.9 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 distributed 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
- ***Proposed Regulation for Energy Efficiency and Demand Response (September 4, 2019)***. As discussed in Section 4.3, this proposed regulation is designed to ensure that Puerto Rico reaches the goal of thirty percent (30%) energy efficiency by 2040, as provided in the Energy Policy Act, with programs overseen by a third-party administrator experienced in designing and implementing energy efficiency programs that will be available for all types of customers, including municipalities.
- ***Regulation on Electric Energy Wheeling (September 16, 2019)***. On September 16, 2019, the Energy Bureau adopted a new Regulation for Wheeling that introduces competition in the energy generation sector by allowing generators to provide energy services directly to customers subject to certain rates and tariffs.

Among the participants in this new industry structure are the following types of entities:

- “Provider of Last Resort” that maintains the primary responsibility for providing for any of the generation, transmission, distribution, commercialization, and operating functions of the electrical system. The Provider of Last Resort shall be PREPA or its agent or successor.
- “Independent Power Producer” that is an electric power generation company that does not have a Provider of Last Resort obligation.

An Independent Power Producer must have executed a PPA with its customers in order to deliver power directly to them through wheeling. In addition, an Independent Power Producer must have an approved Wheeling Services Agreement with the Provider of Last Resort prior to delivering power to customers.¹³³ Any Independent Power Producer who intends to sell power to a customer through wheeling must be certified with the Energy Bureau to do so.¹³⁴ In the event that the Independent Power Producer defaults on the delivery of power to its customers through wheeling for any given period, the Independent Power Producer shall be responsible for compensating the customer to account for any shortfall in the difference between the rates and terms of the PPA and the tariff rate paid for the replacement power by the customer to the Provider of Last Resort.¹³⁵ The Energy Bureau will review and approve the rates that the Provider of Last Resort

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

¹³³ Puerto Rico Energy Bureau, Regulation No. 9138, § 3.02 (2019).

¹³⁴ Puerto Rico Energy Bureau, Regulation No. 9138, § 3.03 (2019).

¹³⁵ Puerto Rico Energy Bureau, Regulation No. 9138, § 3.05 (2019).

may charge the Independent Power Producers for the use of the transmission and/or distribution of power.¹³⁶

- ***Regulation for Performance Incentive Mechanisms (December 13, 2019)***. As discussed in Section 4.3, this regulation directs the Energy Bureau to establish metrics, targets and financial incentives in an initial proceeding to ensure electric power service companies comply with the orders of the Energy Bureau. After the initial proceeding, the regulation requires that the Energy Bureau hold an annual proceeding to evaluate each company's performance reports, make adjustments to the performance incentive mechanisms, and determine whether to establish, eliminate or modify any metric, target or financial incentive.¹³⁷ The Energy Bureau shall apply volatility, affordability, reliability, customer service, energy efficiency and infrastructure maintenance principles, among others, in establishing the performance incentive mechanisms.¹³⁸

Any penalty or reward assessed or imposed due to compliance or noncompliance with the metrics and targets shall be implemented through an order issued by the Energy Bureau.¹³⁹ The companies required to report on the metrics and targets established by the Energy Bureau must publish a copy of these reports in their company website.¹⁴⁰ This regulation applies to all electric power service companies, except for electric cooperatives.¹⁴¹

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; 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 Generation 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. The Energy Policy Act amends 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 Legacy Generation 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

¹³⁶ Puerto Rico Energy Bureau, Regulation No. 9138, § 7.01 (2019).

¹³⁷ Puerto Rico Energy Comm'n Regulation No. 9137, § 3.1 (2019).

¹³⁸ Puerto Rico Energy Comm'n Regulation No. 9137, § 7.1 (2019).

¹³⁹ Puerto Rico Energy Comm'n Regulation No. 9137, § 3.4 (2019).

¹⁴⁰ Puerto Rico Energy Comm'n Regulation No. 9137, § 6 (2019).

¹⁴¹ Puerto Rico Energy Comm'n Regulation No. 9137, § 1.2 (2019).

must act in accordance with the principles in its organic act and may not act arbitrarily or capriciously.¹⁴²

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 the procedure with respect to partnership contracts involving PREPA's Legacy Generation Assets. Article 9(g)(iv) of the PPP Act provides that, once the partnership report and the partnership contract 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, whether the partnership contract is structured as a concession or as an operations and maintenance contract, the procedure set forth in the PPP Act and Act 120 would satisfy any applicable 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 the Energy Policy Act, the Government of Puerto Rico, through PREPA or an affiliate, may retain ownership of Legacy Generation Assets. However, PREPA is required to delegate or transfer the operation, administration and/or maintenance of the Legacy Generation Assets through PPPs under the PPP Act and Act 120 by a target date of December 31, 2020.¹⁴³

5.4. Operation and Maintenance Legal Powers

As noted above, Act 120 expressly authorizes a PPP for PREPA's Legacy Generation Assets. The Government of Puerto Rico may retain ownership of and title to the Legacy Generation Assets and, under this Generation Project, expects to grant the Contractor all other rights and responsibilities associated with the Legacy Generation Assets, including, but not limited to, managing, operating, maintaining, and decommissioning, as needed, the Legacy Generation Assets.

5.5. Rate Regulation Framework Applicable to PREPA

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

¹⁴² Energy Policy Act, art. 8.3.

¹⁴³ Energy Policy Act, art. 1.8.

may also disconnect customer's electricity service. 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.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ 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.¹⁴⁷

As discussed in paragraph 3.2, Act 120 ensures that the Energy Bureau may revise and approve any modifications to rates.¹⁴⁸ The Energy Bureau must ensure that any such modification is "*prudent and reasonable, and consistent with accurate fiscal and operating practices that provide a reliable service at the lowest possible cost.*"¹⁴⁹ 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,¹⁵⁰ including ensuring that wheeling rates and interconnection charges are just and reasonable (see paragraph 4.1 above).¹⁵¹ 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.¹⁵² 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 its own review.¹⁵³ 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.¹⁵⁴

The four primary components of PREPA's current rate structure are (1) the Base Rate, (2) the Provisional Rate, (3) Fuel Adjustment, and (4) Purchased Power. The Base Rate is intended to cover PREPA's operations and maintenance ("O&M") expenses, which have not been increased for ratemaking purposes since 1989. This includes fixed charges (\$3.00) for clients on secondary distribution, and demand charges for clients served by primary distribution and transmission. The Energy Bureau authorized PREPA to collect Provisional Rate revenue to cover its O&M deficit (\$222M as of August 2016) during the pendency of the permanent rate case (discussed below). Fuel Adjustment revenue constitutes the fuel commodity, shipping, and other fuel related costs plus an

¹⁴⁴ Puerto Rico Energy Comm'n, Regulation No. 8720, § 1.03 (2016).

¹⁴⁵ Puerto Rico Energy Comm'n, Regulation No. 8720, §§ 1.03, 4.02 (2016).

¹⁴⁶ Puerto Rico Energy Comm'n, Regulation No. 8720, § 2.02 (2016).

¹⁴⁷ Puerto Rico Energy Comm'n, Regulation No. 8720, § 2.04 (2016).

¹⁴⁸ Act No. 120-2018 § 8.

¹⁴⁹ Energy Policy Act, art 5.20 (amending art 6.25 of the 2014 Transformation Act).

¹⁵⁰ 22 L.P.R.A. § 1054b(k).

¹⁵¹ 22 L.P.R.A. § 1054b(f).

¹⁵² 22 L.P.R.A. § 1054x(b).

¹⁵³ 22 L.P.R.A. § 1054x(b).

¹⁵⁴ 22 L.P.R.A. § 1054x(b).

11% surcharge intended to cover CILT plus subsidies authorized by law. The Energy Bureau approved a permanent rate structure that has yet to be implemented that would eliminate the 11% surcharge construct and instead include direct pass through line items in customers' bills to cover CILT and subsidies. PREPA does not recover a rate of return for capital expenditures invested.

Article 1.8(b) of the Energy Policy Act 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. With respect to the interaction between these rate regulation functions and the transfer of the operations of the T&D System, the T&D System operator may, from time to time or as otherwise required by applicable law or ordered by the Energy Bureau, request the Energy Bureau for a change in customer rates or charges. The approval by the Energy Bureau of the T&D System operator's request may result in a change in customer rates. PREPA shall support the T&D System operator's proposed rate changes to ensure that adequate amounts for the operation and maintenance of the T&D System are available for inclusion in any budget provided that the rates are reasonable and customary. The T&D System operator shall abide by any rate order reflecting determinations and directives of, and requirements established by, the Energy Bureau through its review of such request and the rate review proceeding. The Energy Policy Act updates the factors that the Energy Bureau must consider when setting rates (including, among other things, removal of express references to bondholder-related requirements and returns on investment).¹⁵⁵

5.6. PREPA's Permanent Rate Case

On May 27, 2016, PREPA submitted its petition for the approval of a new rate structure ("Permanent Rate")—to remain unchanged until changed by lawful process—as well as a Provisional Rate (discussed above) as a transitional measure in accordance with the PREPA Organic Act, the 2014 Transformation Act, and the Electric Power Authority Revitalization Act. The Energy Bureau approved a Provisional Rate of 1.299c/kWh, which was added to the existing base rate for all customer classes. This rate came into effect in the first billing cycle of August 2016 and remains in effect until the implementation of the Permanent Rate.

In the aftermath of Hurricanes Irma and Maria, the Energy Bureau extended the effectiveness of the Provisional Rate and ordered PREPA to implement the Permanent Rate by April 1, 2019.¹⁵⁶ PREPA later requested to delay the implementation of the Permanent Rate until May 1, 2019 (which the Energy Bureau granted) due to unexpected technical problems regarding the configuration of the Net Metering rates and the Cable TV Power Supplies "CATV" rate, which posed the risk of net metering customers being billed incorrectly. PREPA explained these issues during the Energy Bureau's Fourth Compliance Monitoring Hearing on March 15, 2019. During that conference, PREPA stated that, although the CATV rate configuration problem had been resolved, it would require additional time to complete the configuration and testing of six Net Metering rates.

According to the Energy Bureau, permanent Rate charges under transparent billing are to be broken down in a detailed way.¹⁵⁷ These charges will include the following, as applicable: Customer Charge (Fixed or Basic), Energy Charge, Demand Charge (in primary distribution and transmission voltage rates), Minimum Bill, and Reconciliation Clauses and Riders. The Reconciliation Clauses and Riders

¹⁵⁵ Energy Policy Act, art 5.20 (amending art. 6.25 of the 2014 Transformation Act).

¹⁵⁶ Puerto Rico Energy Bureau, In re: Puerto Rico Electric Power Auth. Rate Review, PREPA's Verified Motion for Extension of Time, Case No. CEPR-AP-2015-0001 (Nov. 28, 2018).

¹⁵⁷ Puerto Rico Energy Bureau, In re: New Transparent Bill §6B(C) of Law No 83, As Amended, Final Resolution and Order, Case No. CEPR-AP-2016-0002 (Jan. 10, 2017).

shall include, as applicable: Fuel Charge Adjustment, Purchased Power Charge Adjustment, Fuel Oil Subsidy, CILT – Municipalities, Subsidies, Public Lighting (Municipal) and other Subventions, Energy Efficiency Charge, Net Metering Credit, Purchases from (Payments to) Qualifying Facilities (Parallel Generation), Life Preserving Discount Rider, Direct Debit Rider, Discount Rider, Church and Social Welfare. The Energy Bureau analyzed these proposed factors to reconcile the Provisional Rate and the Permanent Rate, as well as the yearly and quarterly Fuel, Purchased Power and Subsidies factors to be applied on July 1, 2019.¹⁵⁸

PREPA participated in another Technical Conference on April 8, 2019, per the Energy Bureau's request, "in order for PREPA to provide a thorough walkthrough of several documents pertaining to the fuel, purchased power and subsidies riders to be implemented on May 1, 2019 as part of PREPA's permanent rate."¹⁵⁹

On May 1, 2019, PREPA proceeded to implement the Permanent Rate. Pursuant to said rate, the Energy Bureau would approve adjustment factors on a quarterly basis for fuel purchase and power purchase and on an annual basis regarding costs associated with the CILT and other subsidies. The Energy Bureau continues to evaluate and approve the adjustment factors on a quarterly basis.

On September 18, 2020, PREPA submitted a request to the Energy Bureau for a rate increase based primarily on a recent increase in oil prices. The Energy Bureau celebrated a technical conference to address the request. The Energy Bureau denied PREPA's request on September 29, 2020.

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,¹⁶⁰ which plan takes into account both supply and demand-side resources.¹⁶¹ 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.¹⁶² PREPA must submit any new or updated IRP for Energy Bureau approval,¹⁶³ but PREPA is required to update the IRP at least once every three years.¹⁶⁴

The IRP regulations provide for generation planning in the IRP.¹⁶⁵ The IRP must describe each of the existing generation resources that serve or meet PREPA's customer's energy and capacity requirements, identifying, among other things, the resource type, nameplate and peak available capacity, annual capacity factor of the last 5 years, fuel type, ownership information, location, commercial operation date, remaining service life, anticipated projects or programs that would alter

¹⁵⁸ Puerto Rico Energy Bureau, In re: Puerto Rico Electric Power Auth. Rate Review, PREPA's Refiling of Certain Documents and Request for Additional Information, Case No. CEPR-AP-2015-0001 (Mar. 29, 2019).

¹⁵⁹ Puerto Rico Energy Bureau, In re: Puerto Rico Electric Power Auth. Rate Review, Resolution and Order, Technical Conference Reschedule, Case No. CEPR-AP-2015-0001 (Apr. 1, 2019).

¹⁶⁰ Puerto Rico Energy Comm'n, Regulation No. 9021, § 2.01(A) (2018).

¹⁶¹ Puerto Rico Energy Comm'n, Regulation No. 9021, § 1.03 (2018).

¹⁶² Puerto Rico Energy Comm'n, Regulation No. 9021, §§ 2.02-2.03 (2018).

¹⁶³ Puerto Rico Energy Comm'n, Regulation No. 9021, §2.01(c) (2018).

¹⁶⁴ Puerto Rico Energy Comm'n, Regulation No. 9021, §2.04(A) (2018).

¹⁶⁵ Puerto Rico Energy Comm'n, Regulation No. 9021, §2.03(D) (2018).

the remaining service life, remaining contract life, average annual heat rate over the last 5 years, current fuel cost in dollars per MMBtu, current variable operations and maintenance costs, current total production costs, current fixed O&M costs, and average annual capital expenditures over the last 5 years. The IRP must also describe the expected retirement date for any resource expected to retire within the first 10 years of the IRP planning period and an explanation of the reason for retirement.

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.¹⁶⁶ 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.¹⁶⁷ No less than 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.¹⁶⁸

Each energy service company must comply with the IRP.¹⁶⁹

A draft IRP was prepared and submitted to the Energy Bureau for approval on February 12, 2019.¹⁷⁰ On March 14, 2019, the Energy Bureau issued a Resolution and Order determining that certain aspects of the IRP were not in compliance with the IRP regulation described above and prior Energy Bureau orders, and directing PREPA to correct the identified deficiencies and refile the IRP by April 13, 2019. PREPA filed with the Energy Bureau on March 26, 2019 a response requesting (1) clarification on a number of points in the March 14 Resolution and Order, (2) an expedited response from the Energy Bureau on the requested clarifications and (3) a resetting of the deadline for PREPA's response to the March 14 Resolution and Order. On April 1, 2019, PREPA and the Energy Bureau held a technical conference to address PREPA's questions on the March 14 Resolution and Order, refine the compliance timeline and address next steps. On April 5, 2019, the Energy Bureau issued a Resolution and Order in which it addressed various clarification questions PREPA posed in its March 26, 2019 response and ordered PREPA to refile its proposed IRP within 35 days of the date of the order, or May 10, 2019. On June 7, 2019, PREPA refiled its proposed IRP. On July 3, 2019, the Energy Bureau issued an order setting forth the procedural schedule in accordance with the IRP regulations.

On August 24, 2020, the Energy Bureau issued a Final Resolution and Order approving in part and rejecting in part the proposed IRP.¹⁷¹ Said order modifies the Action Plan in the proposed IRP submitted by PREPA and orders the adoption and implementation of a Modified Action Plan that is focused primarily on the renewable resource plus battery storage additions described in a Scenario/Strategy combination (Scenario 3, Strategy 2 (“S3S2”)), which assumed costs of renewable capacity additions significantly below the base case costs of renewables which PREPA evaluated, as set forth in the Final Resolution. Specifically, the Energy Bureau –

- Rejected PREPA's claim that additional gas infrastructure at Mayagüez and Yabucoa, which was included in the Action Plan as a “fixed decision,” is needed, and directed PREPA not to

¹⁶⁶ Puerto Rico Energy Comm'n, Regulation No. 9021, §3.02 (2018).

¹⁶⁷ Puerto Rico Energy Comm'n, Regulation No. 9021, §3.03(A) (2018).

¹⁶⁸ Puerto Rico Energy Comm'n, Regulation No. 9021, §3.01(A)(1) (2018).

¹⁶⁹ Energy Policy Act, art. 1.10(l).

¹⁷⁰ The draft was prepared by Siemens, as Technical Advisor to PREPA.

¹⁷¹ Final Resolution and Order on PREPA's Integrated Resource Plan, *In re Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001 (Aug. 24, 2020).

expend resources related to the design and development of such infrastructure or new fossil-fuel powered generation at Mayagüez or Yabucoa (it separately rejected PREPA’s proposal to convert the existing 200 MW of peaking capacity at Mayagüez to burn natural gas);

- Found that the evidence does not support the inclusion of a new gas-fired combined cycle unit at Palo Seco by 2025 as part of a least cost plan (although “to protect against the uncertainty of near-future solar PV and battery energy storage price outcomes, or other potential reliability concerns, [and] out of an abundance of caution,” it authorized PREPA to expend up to \$5 million for preliminary economic, siting, permitting and planning analysis of a new fossil-fuel powered unit and/or energy storage at Palo Seco);
- Rejected the proposed development of new fossil-fuel peaking resources to replace existing Frame 5 combustion turbines (though it found that it would be reasonable for PREPA to replace a small number of these older gas turbines through a competitive procurement process open to all resources);
- Accepted as reasonable PREPA’s modeling results showing a substantial need for new solar PV and battery energy storage resources in the near-term and the longer-term (and found that competitive procurement of these resources should include utility-scale and smaller, distributed scale “virtual power plants” as long as technical specifications are met);
- Found that microgrids could contribute significantly to improved system resiliency and should be incorporated into all of PREPA’s transmission, distribution, and resource planning;
- Found that PREPA had not supported its assertion that the MiniGrid construct is a “least cost” approach to achieving resiliency against weather events, “given the lack of analysis of reasonable alternatives and of cost optimization of the MiniGrid construct” (though it announces the opening of a “MiniGrid Optimization proceeding” in the Fall of 2020 that will explore costs, benefits and alternative configurations and combinations of wires and distributed resources that would best safeguard against the effects of outages resulting from severe weather events);
- Found that PREPA had not demonstrated that all critical load must be served solely with thermal resources, and had not provided evidence that solar PV and batteries are unable to supply a substantial portion of the critical load and that solar PV and batteries cannot contribute sufficiently to system resiliency; and
- Found that PREPA had adequately established the need for transmission system upgrades and for the expenditure of up to \$2 billion for hardening of transmission infrastructure as well as the investment of \$911 million in distribution system upgrades to enhance resiliency and support distributed generation.

The Energy Bureau has directed PREPA to adopt a Modified Preferred Resource Plan and Modified Action Plan that would generally pursue the resource additions described in the S3S2 Scenario (which envisions an increased level of solar PV and battery resource additions relative to those contemplated by PREPA’s Action Plan, and costs of renewables below the base case cost derived from National Renewable Energy Laboratory data), while incorporating five core elements of

PREPA's Action Plan, "because they contain elements common to all plans, are 'no regrets' actions and are reasonable." These elements are:

- timely conversion of older steam plant infrastructure to synchronous condensers to provide dynamic reactive support and stability PREPA's system will require with the installation of increased quantities of solar PV;
- Energy Efficiency deployment to the maximum amount obtainable as assumed in "full Energy Efficiency" Scenarios;
- maximum procurement of solar PV;
- procurement of substantial amounts of battery energy storage; and
- hardening of PREPA's T&D system.

The Energy Bureau found that "increased deployment of solar PV and battery resources should be pursued if the results of procurement processes produce costs that reflect the parameters associated with Scenario S3S2 (for all loading levels under that scenario) and if those resources are available for faster installation than was assumed for PREPA's [Energy System Modernization] Plan [incorporated into PREPA's Action Plan]." It orders PREPA "to test the actual market-delivered price for energy storage, both as stand-alone installations and coupled with solar PV, through competitive procurement processes prior to determining the specific investments to make or contracts to sign." It also states that "the underlying installation pace and cost of solar PV and battery energy storage procurement is a critically important piece of information, and ultimately would inform what the true least cost [s]scenario would be, in combination with confirming the costs associated with a new CCGT build at Palo Seco."

The Energy Bureau approved or accepted –

- PREPA's plans for continued operation and year-end 2027 retirement of the AES coal-fired units;
- the renegotiated EcoEléctrica PPA and Naturgy Natural Gas Sale and Purchase Agreement;
- conversion of San Juan Units 5 and 6 to burn natural gas (while ordering PREPA to include the extension of the NFEnergía Fuel Sale and Purchase Agreement "as an option, not a constraint, in the next IRP");
- PREPA's plan to allow the repair and short-term operation of Costa Sur units 5 and 6 (while finding that PREPA must "retire Costa Sur units 5 and 6 when reliable system operation can be supported without their presence, after retirement of the oil-fired resources");
- PREPA's plans for retirement of the oil-fired steam resources over the next 5 years, at San Juan, including Units 7, 8, 9 and 10; at Palo Seco, including Units 3 and 4, and at Aguirre, including Steam Units 1 and 2, as well as PREPA's plans for retirement of the Aguirre CC Units 1 and 2 over the next 5 years;
- the portion of PREPA's proposed Action Plan that included prioritized expenditures to bring existing transmission system assets up to current or new standards, as seen in the Proposed IRP

Exhibit 10-11, totaling \$1.15 billion through 2025 (while not approving any specific expenditures); and

- (conditionally) PREPA's plans for \$911 million in distribution system investments for resiliency enhancement and support for distributed generation (while directing PREPA to consider how distribution system investments for resiliency may be modified to reflect an optimized approach to MiniGrid transmission investment).

The Modified Action Plan includes several specific directives to PREPA. These include:

- A requirement that PREPA issue a series of RFPs for provision of renewable energy consistent with Act 82's Renewable Portfolio Standards goals, and for the provision of battery energy storage. Not later than October 23, 2020, PREPA must submit a draft renewable resource and battery energy storage resource procurement plan to the Energy Bureau. Of note, the Energy Bureau has stated that –
 - competitive procurements to obtain PPAs for these resources must be open to all forms of renewable energy, including solar PV, onshore and offshore wind, hydro and storage;
 - PREPA should not limit the quantities of capacity to be procured to 250 MW blocks; and
 - PREPA must include in the draft Procurement Plan the specific information described in ¶ 860 of the Final Resolution.
- Completion of a study to be conducted by the P3A of the feasibility of refurbishing each of PREPA's hydroelectric facilities, "including the expected cost and likely change in electricity production, as well as the potential to control production to produce at the times of greatest value in the context of increasing solar and battery storage." This study, "along with a proposed action plan for each facility informed by the study," is to be filed with the Energy Bureau within 180 days of the date of the Final Resolution (which would be February 20, 2021).
- Preparation of bi-annual status reports, commencing on April 1, 2021, that "provide a near-term forecast (two years forward of the reporting date) of PREPA's expected capacity resource balance on a seasonal basis and its ability to meet peak load and operating reserve requirements with existing and anticipated resources on its system at each of the forecasted intervals." Each such status report is to include –
 - a retirement schedule for the worst-performing of the 18 existing gas turbine peaking units located at Daguao, Yabucoa, Jobos, Vega Baja, Palo Seco, Aguirre, and Costa Sur;
 - a description of the status of the operating condition of each Costa Sur unit and how such status factors into PREPA's overall generation plant retirement plans;
 - an explanation as to how its expected capacity resource balance informs its plans to retire specific units or to convert them to synchronous condensing operation; and
 - "the threshold capacity balance at which retirement for these units can commence, or continue, and provide an explanation of its rationale for decisions to retire, or retain,

these units prior to or past the retirement dates listed in the resource development scenarios in the Proposed IRP.”

- Completion of a study of Puerto Rico’s offshore wind resource and electric grid that evaluates “the cost, generation profile, and other characteristics of anchored and floating wind turbine options,” to be submitted within two years of the date of the Final Resolution (PREPA is to solicit and incorporate feedback from the Energy Bureau regarding this study’s scope before issuing any RFP for it).
- Completion and submission to the Energy Bureau of a scoping and feasibility analysis of options to develop new generation and/or energy storage at the Palo Seco site. In addition, PREPA must submit quarterly reports, beginning no later than June 1, 2021, “describing the work performed related to new generation at Palo Seco, the staffing or consultant resources used to complete the work, and the status of the overall preliminary efforts.”
- Development of a competitive procurement process, open to all single or aggregated sources of demand and supply-side options, intended to solicit capacity to replace 81 MW of Frame 5 gas turbine capacity to be retired, for the Energy Bureau’s review and approval.
- Development and submission, by no later than one year following the date of the Final Resolution (*i.e.*, by August 24, 2021) of “a detailed report describing how PREPA will improve its resource planning process,” to include the items listed in ¶ 921 of the Final Resolution.
- Development and submission, by no later than one year following the date of the Final Resolution (*i.e.*, by August 24, 2021), of a draft Request for Qualifications for IRP consulting services which shall set forth the minimum qualification requirements for providing IRP-related consulting services. The process by which PREPA is to establish a pool of qualified consultants and to contract for their services will be subject to detailed Energy Bureau requirements and approval.

Various third parties have filed motions for reconsideration of the Final Resolution and Order.¹⁷² As of the date of this document, those motions are pending before the Energy Bureau.

5.8. Principal Electric Sector Permits that the Contractor must Obtain¹⁷³

<i>Permit</i>	<i>Requirements</i>
Energy Compliance Certificate	Pursuant to Act 120, the grant of the Generation Contract to the 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	Pursuant to Act 120, upon signing of the Generation Contract, the Contractor will be deemed to be a Certified Electric Power Company (as defined in the 2014 Transformation Act).

¹⁷² The third parties that filed motions for reconsideration of the Final Resolution and Order include local environmental organizations, solar energy companies, renewable energy project lenders, and Empire Gas Company, a local propane gas company.

¹⁷³ 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.

The Contractor must fill out and file with the Energy Bureau an application for an Electric Power Company certification within 90 days after the Generation Contract is executed.

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.

If the Contractor renders services or acts according to the Generation 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.

The 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 Contractor

Neither the PPP Act nor Act 120 imposes requirements on the legal structure of the entity that will enter into the Generation Contract. The only requirement included in Article 9(a)(i) of the PPP Act, is that at the time of the execution of the Generation Contract, the private party must 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.

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 Contractor must be authorized to do business in Puerto Rico. Contractors must also comply with Federal rules and visa requirements applicable to foreign (non-U.S.) workers.

The parties to the Generation 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 Generation 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 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; other provisions have been implemented by regulations issued earlier this year. On February 13, 2020, two Final Rules issued by CFIUS implementing most of the provisions of FIRRMA became effective. One Rule expands CFIUS’ jurisdiction to review certain non-controlling foreign investments in U.S. businesses involving critical technology, critical infrastructure, and sensitive personal data (“TID businesses”) (the “U.S. Business Rule”). The other Rule expands CFIUS’ jurisdiction to review certain foreign investments in U.S. real estate (the “Real Estate Rule”). These Rules will impact foreign investment – including foreign investments made indirectly via U.S. investors – in the U.S. energy, infrastructure, telecom/IT, financial services, technology, healthcare and pharmaceuticals, and real estate sectors.

Under the U.S. Business Rule, non-controlling foreign investment in U.S. businesses that produce, design, test, manufacture, fabricate, or develop critical technology will be subject to CFIUS voluntary filing jurisdiction if a foreign person also acquires information access, board nomination, or decision-making rights as a result of the investment. The U.S. Business Rule authorizes CFIUS to review covered investments in U.S. businesses involved in a sensitive subset of critical infrastructure, defined as “covered investment critical infrastructure.” In particular, a covered investment will be subject to CFIUS voluntary filing jurisdiction if the investment is in a U.S. business that owns, operates, manufactures, supplies, or services (each a critical infrastructure “function”) specific types of critical infrastructure, including bulk power facilities for generating, transmitting or distributing electric energy identified under the Federal Power Act as well as certain electric energy systems or facilities providing electric power to or located near military installations. In addition, CFIUS filings will be required for certain investments in TID businesses involving foreign government investors. CFIUS requires a mandatory filing when a foreign person obtains a “substantial interest” in a U.S. business and a foreign government in turn holds a “substantial interest” in the foreign person. That is, if a foreign person’s investment in a TID business gives that foreign person a 25% or greater direct or indirect voting interest in the TID business, and a foreign government, in turn, holds a 49% direct or indirect interest in the foreign person making the investment, a mandatory declaration is required.

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.	Act No. 17-2019 (Puerto Rico 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
26.	Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of The Electric System under Act No. 120-2018, as amended, March 8, 2019
27.	Regulation on Electric Energy Wheeling, Regulation No. 9138, September 16, 2019
28.	Regulation for Performance Incentive Mechanisms, Regulation No. 9137, December 13, 2019

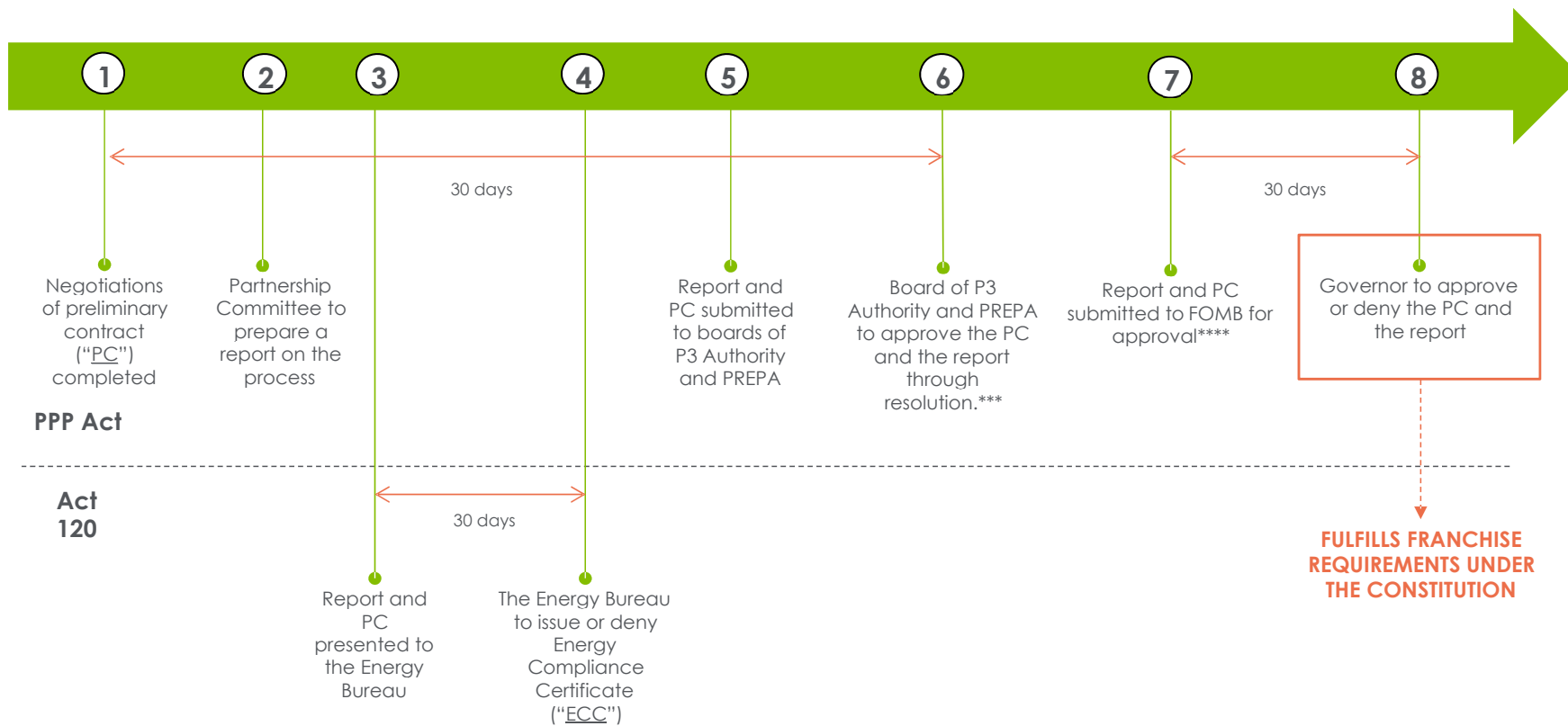
Annex B

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)	(Formerly) 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	(Formerly) 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 Energy Policy Act	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 Energy Policy Act	Energy Policy Act	Energy Policy Act	Energy Policy Act
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	(Formerly) Administrative and operational support to the Energy Bureau and ICPO Eliminated under Energy Policy Act	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*



* Description limited to post -selection process under PPP Act and Act 120. Excludes Title III, FOMB, bondholder or other processes.

** Per Section 10 of Act 120, PREPA transactions that do not involve asset sales must be approved by affirmative vote of both representative of the public interest of the board of the P3 Authority.

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

**** Per FOMB's Contract Review Policy as modified July 3, 2018.