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VIA EMAIL comentarios@energia.pr.gov

Mr. Edison Avilés Deliz
President
Puerto Rico Energy Bureau
World Plaza Building, Suite 202
268 Ave. Muñoz Rivera San Juan, Puerto Rico 00918

Junta Reglamentadora
de Servicio Público

NOV 22 2019

Secretaría
Negociado de Energía

Re: Proposed Amendments to the Regulation on Certification, Annual Fees and Operational Plans for Electric Service Companies in Puerto Rico CEPR-MI-2015-0006
Regulation No. 8701

Dear Mr. Avilés Deliz:

On October 10, 2019, the Puerto Rico Energy Bureau (the "Bureau") issued a Resolution approving certain amendments to the Regulation on Certification, Annual Fees and Operational Reports for Electric Service Companies in Puerto Rico, Regulation No. 8701 (the "Proposed Amendments"), to conform it with the provisions of the Puerto Rico Energy Policy Act, Act 17-2019, and formally initiated the process for its adoption under the Uniform Administrative Procedure Act, Act 38-2017. Pursuant to the Resolution, interested parties were allowed to submit comments to the Proposed Amendments until November 9, 2019.

On November 8, 2019, the undersigned requested an extension of twenty (20) days from November 12 to submit comments to the Proposed Amendments to Regulation No. 8701 on behalf of our client, Pattern Santa Isabel LLC ("Pattern Santa Isabel"), a certified electric service company under Regulation No. 8701. On November 12, 2019, the Honorable Energy Bureau granted all interested parties until November 22, 2019 to submit comment or reply to comments on the record. Pattern Santa Isabel herein complies.

Legal Limit of Pro Rata Charge or Fee

Section 5.16 of Act 17-2019 amends Section 6.16 of Act 57-2014, which addresses budget and regulatory fees to be imposed by the Energy Bureau. Subsection (a) provides that the Bureau

shall impose and collect fees to generate sufficient income for its operation. Subsection (b) provides that the annual fee shall be established proportionally, based on the gross income derived from the provision of electric power services or electric power transmission services, pursuant to regulations adopted by the Bureau for such purpose. Meanwhile, subsection (c) establishes how the fees that would apply to the Puerto Rico Electric Power Authority, and the Puerto Rico Electric Power Authority Revitalization Corporation in the context of a restructuring transaction, would be computed.

In turn, subsection (d) provides that “[a]ny other person or electric power company that earns profit from the rendering of electric power services as defined in this Act or as defined by the energy Bureau shall pay a fee to the Bureau that **shall not exceed point twenty-five percent (.25%)** of its annual gross income earned from the provisions of such services in Puerto Rico” (added emphasis). Subsection (d) is clear, unambiguous and mandatory in that an electric service company shall not to pay a fee of more than 0.25% of the gross income it derives from the rendering of electric power services in Puerto Rico.

Subsection (e) then states that “[b]eginning Fiscal Year 2019-2020, the annual budget of the Energy Bureau shall be twenty million dollars (\$20,000,000) which shall be computed on the basis of a regulatory fee to be determined by the Bureau, from the annual gross income of the Electric Power Authority created by virtue of Act No. 83 of May 2, 1941, and electric power services Companies in Puerto Rico.” Though subsection (e) grants the Energy Bureau the power to determine a fee through regulation, such provision must be analyzed in context with subsection (d) and Act 17-2019 as a whole in order to arrive at a harmonious interpretation that would allow the Bureau to establish such fee through regulation provided it does not surpass the limit set by the statute.

Legal Hermeneutic Principles Support the 0.25% Cap

Puerto Rico’s Supreme Court has repeatedly held that a statute should be interpreted as a whole and not by isolated sections. Administración de Reglamentos y Permisos v. Franklin Ozores Pérez, 116 D.P.R. 816 (1986); Moisés Arcelay Rivera y Otros v. Dr. José Álvarez de Choudens, 106 D.P.R. 196 (1977) (our translation). Moreover, it is a cardinal principle of statutory construction in cases of apparent conflict between two laws to find a way to harmonize them so that the apparent conflict disappears and both laws can be made effective by ascribing the construction that best accomplishes the result which such precepts are intended to obtain, and to reject a construction that leads to absurd, unreasonable or undesirable consequences. (Reiterating Ops. Sec. Jus. March 4 and 10, 1977, unpublished; No. 1977-29; March 4 and 18, 1977, unpublished; and No. 1976-10.) 1984 Op. Sec. Jus. No. 14. Construction of a specific provision of law requires that the statute in its totality be considered, as part of a harmonious and coherent whole: the law in question should be examined and its parts compared in such a

way that they are made consistent and effective; the different provisions or sections of a statute should be interpreted each in relation with the others. 1993 Op. Sec. Just. No. 10 (our translation).

Although this case does not present a conflict between two statutes, but rather an apparent or potential conflict between provisions of the same statute, the same principle can be applied. Specifically, the apparent contradiction within Section 5.16 of Act 17-2019 lies, on the one hand, in general language providing that the Energy Bureau shall fix an annual fee proportionally on the basis of gross income pursuant to the regulation promulgated by the agency, and on the other hand, the specific language setting the 0.25% cap based on gross income. These two provisions can be harmonized and made coherent by interpreting the general wording on the proportionality of the fee as the method for its computation, while applying the 0.25% as the limit for such fee.

The 0.25% Maximum Would Avoid an Unreasonable Legislative Outcome

Based on data that is publicly available,¹ Pattern Santa Isabel made preliminary calculations to estimate its annual fee using the pro rata formula provided in the Proposed Amendments. These computations resulted in an annual fee that would nearly double Pattern Santa Isabel's current fee. Pattern Santa Isabel has reason to believe that other electric service companies would also experience significant increases in their annual fees. Such across the board increases, we respectfully submit, would run contrary to the Government's strong policy, as set forth in Act 17-2019, Act 57-2014, and Act 82-2010, among others, promoting the diversification of energy sources and establishing a 100% renewable portfolio standard by the year 2050.

However, by interpreting Section 6.16, as amended, in the above-suggested fashion, an unreasonable outcome can be avoided. Therefore, we propose that the Energy Bureau revise the formula included in the Proposed Amendments, or add language providing that its result shall not exceed the legal 0.25% limit provided for in Section 6.16(d) of Act 57-2014, as amended.

Respectfully submitted,


Carlos J. Fernandez Lugo

¹ Pattern Santa Isabel does not have information on gross revenues of other electric service companies that are not PREPA or Pattern Santa Isabel.

