

(S. B. 1444)

(No. 234-2011)

(Approved December 11, 2011)

AN ACT

To amend clauses (a), (e), and (f); add subsections (g), (h), and (i) to subsection (2); and amend subsection (3) of Section 15 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” in order to increase, from fifty thousand dollars (\$50,000) to two hundred thousand dollars (\$200,000), the sum up to which the Electric Power Authority may acquire goods and services without the need for a bidding process; provide that the Electric Power Authority may purchase all fuels for the generation of power through the price request process; establish that a bidding process shall not be necessary when the prices of the goods or the profit margin thereof are regulated by law; and increase from fifty percent (50%) to one hundred percent (100%) the annual volume percentage allowed for the purchase of fuel acquired under clause (f) from foreign entities or companies so as to meet the annual needs of the Authority; and for other purposes.

STATEMENT OF MOTIVES

Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” establishes that, “The Authority is hereby created for the purpose of conserving, developing, and using, as well as assisting in the conservation, development, and exploitation of fluvial and energy sources in Puerto Rico to make more accessible to the inhabitants of the Commonwealth of Puerto Rico, in the most economic manner, the benefits of the foregoing, and through this means to promote general welfare and increase trade and prosperity.”

Section 15 also provides that every procurement and supplies and service contracts, excluding personal services, shall be made, with certain exceptions, through a call for bids. Through Act No. 194-2002, subsection (a), paragraph (2) of

said Section was amended to increase, from twenty thousand dollars (\$20,000) to fifty thousand dollars (\$50,000), the maximum amount for the acquisition of goods and services by the Electric Power Authority without the need for a bidding process.

At that time, it was stated that the twenty-thousand-dollar (\$20,000) limit had been established in 1980; therefore, its purchasing power had substantially declined. In other words, under the exception provided by subsection (a), paragraph (2) of Section 15, much fewer goods and services could be acquired than on the date of the amendment.

Inflation and the decrease in value of the dollar persisted in recent years, thus creating a multiplier effect in the reduced purchasing power of the dollar in terms of goods and services.

The Electric Power Authority is a highly technical and complex public corporation. This entails a continuous assessment of its internal processes in order to improve the same and streamline the mechanisms for the acquisition of certain goods and services and carry out the mission of providing an efficient service at the least cost possible without impairing the environment. The procurement and contracting procedures of this corporation should maximize the use of time, effort, and resources, as well as guarantee the purity thereof in the acquisition of such goods and services.

Technological advances require the Electric Power Authority to remain competitive in the acquisition of the fuel it uses for generation to be able to take advantage of the most economic price offerings to benefit residential, commercial, and industrial clients.

The cost of fuel has a direct impact on the bills of Electric Power Authority clients, since the provisions of law in effect set forth that the same is to be distributed among all clients in order for the Electric Power Authority to recover its service costs.

However, the acquisition of fuel has historically been made through a public bidding process, whose bureaucratic requirements tend to increase the cost of the product. Said process limits commercial agility and flexibility and prevents the Electric Power Authority from obtaining a lower cost that would benefit its clients.

Compliance with the requirements of public bidding limits the participation of large fuel providers that could offer more competitive prices. At present, these companies use middlemen to participate in the public bidding process, thus increasing the prices offered to the Authority.

Puerto Rico's sustained economic development and quality of life cannot be separated from the rendering of essential services to citizens, such as providing reliable electric power at the least cost possible, while respecting the environment. The Authority adopted a public policy to promote the diversification of fuel for the electric power generation and to use renewable energy sources as a mechanism to stabilize the cost of electric power in Puerto Rico.

The acquisition of fuel through a more flexible process than that which has traditionally been used by the Authority, as well as the acquisition of coal and natural gas, among others, could reduce the cost of energy generation. The bidding process requirement for the acquisition of fuel for generation adversely affects clients of the Authority, while limits the number of potential suppliers. Furthermore, it forces the Authority to complete a process that takes time and could delay its efforts to obtain the best price in the market, so as to reduce the costs of power generation. The price request process, as opposed to bids for the acquisition of all fuels needed for electricity generation, offers certain guarantees

in the competition among potential supplies, while providing greater flexibility for their participation, thus broadening the spectrum of offers that may allow for lower prices for the benefit of the Authority's customers. Said process is practical for the acquisition of goods related to complex, technical issues, such as that of fuel for the generation of electric power. On the other hand, acquiring fuel for generation through the price request process would be in the public interest, which would seek the protection of public funds and ensure that said acquisitions are conducted with transparency, efficiency, and probity.

It is also necessary to grant greater flexibility to the Authority so that it may obtain greater savings in the purchase of fuel that would benefit their customers. Granting the Authority a broader power to purchase larger quantities of fuel from entities, government, organizations, companies, and other foreign corporations can help it identify other fuel producing countries that offer more competitive prices when selling such product. It would also encourage the purchase of fuel for generation by the Authority at a better price per volume, which would undoubtedly entail a reduction in the costs of the electric power service provided to Puerto Rican consumers.

It is necessary to increase the annual fuel purchase volume for generating electricity in facilities owned by the Authority whenever purchasing from entities, governments, organizations, companies, and other foreign government enterprises. At present, the volume of fuel acquired for use in the generation of electricity through the purchase thereof from governments, organizations, companies, and other foreign government entities cannot exceed fifty percent (50%) of the annual estimated needs of the Authority. Therefore, greater flexibility should be granted by increasing the portion of the annual estimated fuel need that can be purchased from governments, organizations, companies, and other government entities.

At the global level, the cost of fuel for the generation of power increased significantly for several reasons that cannot be attributed to the Authority. The amendments proposed herein have the purpose of adjusting the operations of the Authority to the current economic situation, so that it may entail substantial savings for the company, as well as for its residential, commercial, and industrial customers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Paragraphs (a), (e), and (f) are hereby amended, and subsections (g), (h), and (i) are hereby added to subsection (2) of Section 15 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” to read as follows:

“Section 15.- ...

(1) ...

(2) Competitive bidding shall not be necessary:

(a) When the estimated amount for the acquisition or work does not exceed two hundred thousand dollars (\$200,000).

(b) ...

(c) ...

(d) ...

(e) Whenever prices are noncompetitive because there is only one supply source or because the prices of the goods or profit margin of such goods are regulated by law.

(f) When fuel purchased for use in the generation of power in facilities owned by the Electric Power Authority is acquired from foreign governments, organizations, enterprises, agencies, departments, or other entities or corporations, partnerships, or other private enterprises or entities; provided, that the annual volume of fuel to be purchased under clause (f) shall be of up to one

hundred percent (100%) of the estimated annual fuel needs of the Authority. Also, under this clause (f), the Authority may purchase such crude oil or by-products thereof to be processed by local refineries and use in its generation facilities. The Authority and the local refineries shall negotiate the terms and conditions under which the purchase or processing of said crude oil or its by-products shall be carried out.

(g) In the acquisition of fuel such as, but not limited to natural gas, coal, and crude oil and its by-products that complies with sulfur content standards as required by consent agreements entered into by the Electric Power Authority and the Federal Environmental Protection Agency for the generation of electric power, such acquisition shall be made through the price request process. Acquisitions from any entity, government, and company may be carried out, provided, that the same prove that they have business volumes directly related to the fuel.

(h) When the Electric Power Authority acquires crude oil, its by-products, or natural gas to be processed by refineries and used by the Authority in its generation facilities, the latter and the refineries shall negotiate the terms and conditions under which the acquisition or processing of said crude oil, its by-products, or natural gas shall be conducted.

(i) When the Electric Power Authority contracts an advisor for the acquisition of crude oil or its by-products, which may happen on a month-to-month basis to satisfy the needs of the Authority, in seeking the achievement of economies of scale and better performance under the fiduciary duty set forth in the advisory contract; provided, that the Authority shall establish transparent mechanisms for the acquisition of fuel under this paragraph (i) for which it shall adopt the necessary regulations.

In such cases covered by paragraphs (a) through (i) of this subsection, the purchase or acquisition of materials, works, supplies, equipment, parts, accessories, fuel, or the procurement of professional or expert services or works may be made on the open market pursuant to the usual business practices. In the cases covered under paragraphs (f) through (i), the purchase may be conducted through the Government Development Bank for Puerto Rico.”

Section 2.- Subsection (3) of Section 15 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” is hereby amended to read as follows:

“(3) The purchase of fuel without requiring bids referred to in paragraphs (f) through (i) of subsection (2) shall be made pursuant to the following conditions:

(a) That for each purchase or contract, the Authority shall make an analysis on the advantages and benefits to be derived from the contractual relationship between itself and any of the aforementioned entities, governments, and enterprises, and after thus concluding that said purchase is favorable to the public interest.

(b) That every contract for the purchase of fuel executed between the Authority and any of the aforementioned entities, governments, and enterprises, pursuant to subsection 2 of this Section, shall be approved by the Government Development Bank for Puerto Rico before its execution in accordance with the regulations to be approved by the Authority to such effects.

(c) That the financing of fuel purchases and the negotiations of the terms of such purchase under the provisions of this Section shall be conducted through the Government Development Bank for Puerto Rico (GDB), acting as fiscal agent, in accordance with the parameters established in its organic act and the regulations thereunder. The fixed price insurance coverage for the purchase of fuel to be used for generating electric power in facilities owned by the Electric

Power Authority (known as hedging) shall be negotiated by the Government Development Bank for Puerto Rico (GDB) in accordance with the parameters established in its organic act and the regulations approved thereunder.”

Section 3.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 234-2011 (S. B. 1444)** of the **6th Regular Session** of the **16th Legislative Assembly of Puerto Rico**:

AN ACT to amend clauses (a), (e), and (f); add subsections (g), (h), and (i) to subsection (2); and amend subsection (3) of Section 15 of Act No. 83 of May 2, 1941, as amended, known as the "Puerto Rico Electric Power Authority Act," in order to increase, from fifty thousand dollars (\$50,000) to two hundred thousand dollars (\$200,000), the sum up to which the Electric Power Authority may acquire goods and services without the need for a bidding process; provide that the Electric Power Authority may purchase all fuels for the generation of power through the price request process; etc.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 17th day of November, 2015.

Juan Luis Martínez Martínez
Director