

(S. B. 984)

(No. 258-2018)

(Approved December 14, 2018)

AN ACT

To create the “Puerto Rico Energy Cooperatives Act,” in order to establish the public policy on Energy Cooperatives in Puerto Rico’s energy model; amend Sections 3.3 and 18.0, add a new Chapter 36, and renumber the current Chapter 36 as 37, as well as the subsequent Chapters and Sections of Act No. 239-2004, as amended, known as the “Puerto Rico General Cooperative Associations Act of 2004”; and for other related purposes.

STATEMENT OF MOTIVES

The people of Puerto Rico have been severely affected by the Electric Power Authority’s (PREPA) financial and operational crisis. Shortly after filing for Bankruptcy under PROMESA Title III, nature destroyed over 80% of PREPA’s power grid. The destruction caused by Hurricane Maria plunged Puerto Rico into a blackout for several months, from September 2017.

The public policy of the Government of Puerto Rico aims at PREPA’s transformation. However, this Legislative Assembly believes that any transaction involving the sale or assignment of PREPA’s assets should not constitute an obstacle for communities to explore alternative methods of producing and distributing electricity.

Electric cooperatives, also known as energy cooperatives, have a longstanding tradition in the United States. The Rural Electrification Administration (REA), created under the leadership of President Franklin Delano Roosevelt, drafted in 1937 the Electric Cooperative Corporation Act, a model state law for formation and operation of rural electric cooperatives. Dozens of states have laws authorizing electric cooperatives.

There are currently hundreds of electric cooperatives in the United States. The National Rural Electric Cooperative Association (NRECA) groups over 900 electric cooperatives in the United States. According to NRECA, the electric cooperatives maintain 42% of the United States' distribution lines and serve over forty-two (42) million people.

Furthermore, there is a longstanding tradition of electric cooperatives in Europe and South American countries such as Argentina and Chile, and in Costa Rica in Central America.

The cooperative movement in Puerto Rico has been going strong for decades. The cooperative sector is stable, financially sound, and strongly supported by the people of Puerto Rico.

The Statement of Motives of the "General Cooperative Associations Act of 2004," Act No. 239-2004, as amended, states the following principle:

The cooperative movement is a socioeconomic system which pursues the enfranchisement of human beings and their integrated betterment through economic justice and social cooperation.

It further adds that

[t]he mission of the Puerto Rican Cooperative Movement is to improve the quality of life of our Island by serving as a socioeconomic model for democratic development and organization. In order to accomplish this mission, the following objectives have been set forth:

- Successfully integrating the Cooperative Movement by developing and consolidating the appropriate entities and by devising a common project that convenes the transformative actions of the cooperative movement to address the social and economic issues of Puerto Rico.
- Devising a political-economic project that lays the groundwork for the Cooperative Movement Development Model for Puerto Rico.

- Defining and consolidating a social sector of the economy upon which to hinge the alternative economic development model of our Island, and for which the Cooperative Movement shall be the hub.
- Developing drive and creativity in the entrepreneurial endeavor as a key element for cooperative development.
- Promoting the democratization of the Puerto Rican economy by encouraging the conversion of public and private enterprises into cooperatives, thus fostering administrative efficiency and the participation processes inside our cooperatives.
- Encouraging the formation of cooperative movement leaders and workers who understand and apply our doctrine and who commit to excellence in the entrepreneurial endeavor.
- Seeking the successful approval of an appropriate legal framework for the development of the Puerto Rican Cooperative Movement in light of the postulates of Cooperative Law.
- Developing and consolidating other key economic sectors by means of the cooperative system, such as production, services, agriculture, and housing.
- Strengthening the financing mechanisms of the Cooperative Movement and conforming these mechanisms to the developmental needs of the Movement.

Moreover, Puerto Rico's public policy on energy seeks to broaden the people's access to renewable energy. Said public policy is set forth in the "Puerto Rico Energy Transformation and RELIEF Act," Act No. 57-2014, as amended; Act No. 82-2010, as amended, "Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act"; the "Net

Metering Act,” Act No. 114-2007, and Act No. 133-2016, which incorporated key concepts such as microgrids and community solar into our statutes.

This Legislative Assembly has determined to statutorily establish that Puerto Rico’s energy transformation model shall include the establishment of community solar, regional, or municipal microgrid communities, and electric or energy cooperatives. In this manner, we shall achieve the goal of democratizing renewable energy and contribute to the community’s resilience to natural disasters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- This Act shall be known as the “Puerto Rico Energy Cooperatives Act.”

Section 2.- Definitions.

(a) PREPA Asset(s): Any and all real property (including any right thereon), personal property (tangible or intangible), facilities, resources, proprietary interests, rights of any nature, and any other asset PREPA holds, whether directly or indirectly, or uses in accordance with any law, and any present or future interest to receive Property, whether vested or non-vested.

(b) PREPA: The Puerto Rico Electric Power Authority created under Act No. 83 of May 2, 1941, as amended, or subsequent laws, and any subsidiary thereof.

(c) Community Solar: A voluntary program whereby several members of a community may agree to benefit from a solar energy system, whether they are the owners thereof or not.

(d) Electric Cooperatives or Energy Cooperatives: Cooperatives organized under the ‘Puerto Rico General Cooperative Associations Act of 2004,’ Act No. 239-2004, as amended, for the purpose of meeting the individual and common electric power needs of their members and communities through electric power generation and distribution systems, pursuant to the regulations of the Energy Bureau.

(e) Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico: the entity created by virtue of Act No. 114-2001, as amended (COSSEC, Spanish acronym).

(f) Microgrid or Microgrids: In accordance with Act No. 133-2016, means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to PREPA's grid. The goal of microgrids is to reduce energy consumption based on fossil fuels by opting preferably for local renewable energy generation and strategies to reduce energy consumption. A microgrid can connect and disconnect from PREPA's grid to enable it to operate in both grid-connected or off the grid.

(g) Puerto Rico Energy Bureau: Independent and specialized entity created under Act No. 57-2014, in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico, formerly the Puerto Rico Energy Commission.

Section 3.- Public Policy.

At present, Puerto Rico has a centralized energy model, and since 1941, it has been controlled by PREPA's legal monopoly. This Legislative Assembly supports the decentralization of Puerto Rico's energy model, which is currently obsolete and useless for the people. In order to achieve said model's decentralization, we support the development and integration of community solar, regional, or municipal community microgrids, and electric or energy cooperatives so that communities, including special or isolated communities, may have access to renewable energy options, thus contributing to their resilience to natural disasters.

Section 4.- Section 3.3 of Act No. 239-2004, as amended, is hereby amended as follows:

“Section 3.3.- Nature of Cooperatives.

According to their nature, cooperatives may be comprised by workers, consumers, housing, electric or energy, and users and mixed groups, and may be devoted to provide services or to production, or to both activities.”

Section 5.- Subsection (i) of Section 18.0 of Act No. 239-2004, as amended, is hereby amended as follows:

“Section 18.0.- Fiduciary Duties and Conflict of Interest.

a. ...

...

i. No employee of a cooperative may serve as delegate or director of the cooperative for which he works, except for industrial, agro-industrial, or services worker cooperatives and electric or energy cooperatives.

j.

k. ...”

Section 6.- Electric Cooperatives or Energy Cooperatives.

A new Chapter 36 is hereby added to Act No. 239-2004, as amended, to read as follows:

“CHAPTER 36 - ELECTRIC OR ENERGY COOPERATIVES

Section 36.1.- Definition.

‘Electric or Energy Cooperative’ means Cooperatives organized under this Act for the purpose of meeting the individual and common electric power needs of their members and communities through electric power generation, transmission, and/or distribution systems, pursuant to the regulations of the Puerto Rico Energy Bureau.

Section 36.2.- Authorization.

The organization of Electric or Energy Cooperatives in accordance with this Act is hereby authorized.

Section 36.3.- Powers.

Electric or Energy Cooperatives shall be empowered to generate, transmit, distribute, and sell electric power subject to the following requirements:

(a) Electric or Energy Cooperatives shall generate, transmit, and/or distribute electric power mainly to meet the electric power needs of the members and communities thereof. However, Electric or Energy Cooperatives may also enter into agreements to sell electric power to other affiliate consumers, as well as to sell the excess power produced to other power grid services or the Electric Power Authority. All types of users who are consumers of electric power services and/or electric power workers and producers, including natural persons or nonprofit juridical persons, may be members of energy cooperatives.

(b) The number of members shall be determined by the cooperative's production resources and its generation, transmission, and distribution capacity. The cooperative shall not be required to keep or admit new members when such capacities have been exceeded. A minimum of five (5) members shall be required to organize Electric or Energy Cooperatives.

(c) Electric or Energy Cooperatives shall operate without profit, for its main purpose shall be to provide electric power services in a continuous, stable, efficient, and reliable manner to their members and other consumers at the lowest possible cost. Rates and other fees charged by an Electric or Energy Cooperative to its members shall be sufficient to pay the operating and maintenance expenses required by the electric power system, as well as their financial obligation in order to guarantee the continuity, stability, efficiency, and reliability of services, meeting the needs of future developments.

(d) The retiring of any capital, property, or rights contributed by a member who is withdrawing from the cooperative which has the foreseeable consequence of affecting in the short- or the medium-term the financial stability or the operations of the cooperative, may be contingent on the establishment by the Board of Directors an investment repayment plan, whose purpose shall be to guarantee at all times during the process the financial stability of the cooperative and the continuity of its operations.

Section 36.4.- Preferred Members.

The combined contribution of all preferred members' contributions shall not exceed forty-five percent (45%) of the social capital of the cooperative, whose members shall own jointly not less than fifty-five percent (55%) of the social capital of the cooperative. No member may hold individually more than thirty-five percent (35%) of social capital.

A cooperative's power to issue capital stocks to preferred members shall have the previous consent of the members' general assembly. Preferred members may participate, but shall not be entitled to vote, in the deliberative Assemblies of the Cooperative where matters directly related to the financial results of the cooperative or the valuation or payment of its return on stock are discussed.

If a preferred members' withdrawal affects the financial or operational stability of the cooperative due to the impact of the member's retiring of his investment therein, the repayment of such capital shall be contingent on the Board of Directors' approval of an investment repayment plan, whose purpose shall be to guarantee at all times during the process the financial stability of the cooperative and the continuity of its operations.

Section 36.5.- Regulatory Jurisdiction.

(a) The Puerto Rico Energy Bureau or its legal successor shall prescribe by regulations the minimum technical requirements for the establishment of Electric or Energy Cooperatives as part of the industry regulated by the Bureau. Electric cooperatives shall be certified as ‘electric power service companies’ in accordance with the regulations of the Puerto Rico Energy Bureau.

(b) The Puerto Rico Energy Bureau or its legal successor may review and approve rates and other fees charged by Electric or Energy Cooperatives, to ensure that such rates are just and reasonable, and may exercise administrative jurisdiction over Electric or Energy Cooperatives as well as over any other entities participating in the energy industry, guaranteeing at all times that Electric or Energy Cooperatives shall enjoy all the powers and prerogatives granted by law to other juridical persons, and preventing discriminatory restrictions or additional requirements from being applied thereto for having been organized as a cooperative.

(c) The Puerto Rico Energy Bureau or its legal successor shall exercise its regulatory powers over Electric or Energy Cooperatives taking into account always the unique nature thereof as cooperative enterprises property of, governed by, and operated for the benefit of their consumer members. Provided, that by a majority vote of its members, when members lose trust in their Board of Directors, the Energy Bureau may intervene in administrative matters for the purpose of implementing guidelines and parameters that allow for order and proper operation to be restored in electric cooperatives.

(d) Electric or Energy Cooperatives shall not be under the jurisdiction of the Public Corporation for the Supervision and Insurance of Cooperatives (COSSEC, Spanish acronym).

(e) The Cooperative Development Commission as the entity that promotes the cooperatives subject to this Act shall assist Electric or Energy Cooperatives in accordance with the duties assigned thereto under Act No. 247-2008, as amended, and support them in any aspect related to their compliance with this Act.”

Section 7.- Chapter 36 of Act No. 239-2004, as amended, is hereby renumbered as Chapter 37 and Sections 36.0, 36.1, 36.2, 36.2A, 36.2B, 36.3, 36.4, 36.5, 36.6, 36.7, 36.8, 36.9, 36.10, 36.11, 36.12, 36.13, and 36.14 are hereby renumbered as Sections 37.0, 37.1, 37.2, 37.2A, 37.2B, 37.3, 37.4, 37.5, 37.6, 37.7, 37.8, 37.9, 37.10, 37.11, 37.12, 37.13, and 37.14.

Section 8.- Chapter 37 of Act No. 239-2004, as amended, is hereby renumbered as Chapter 38 and Sections 37.0, 37.1, and 37.2 are hereby renumbered as Sections 38.0, 38.1, and 38.2.

Section 9.- Chapter 38 of Act No. 239-2004, as amended, is hereby renumbered as Chapter 39 and Sections 38.0, 38.1, and 38.2 are hereby renumbered as Sections 39.0, 39.1, and 39.2.

Section 10.- Chapter 39 of Act No. 239-2004, as amended, is hereby renumbered as Chapter 40 and Sections 39.0, 39.1, 39.2, and 39.3 are hereby renumbered as Sections 40.0, 40.1, 40.2, and 40.3.

Section 11.- The Puerto Rico Energy Bureau shall amend, approve, and/or repeal rules and regulations as necessary to fully comply with the provisions of this Act within ninety (90) days after its approval.

Section 12.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 258-2018 (S. B. 984)** of the **3rd Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to create the “Puerto Rico Energy Cooperatives Act,” in order to establish the public policy on Energy Cooperatives in Puerto Rico’s energy model; amend Sections 3.3 and 18.0, add a new Chapter 36, and renumber the current Chapter 36 as 37, as well as the subsequent Chapters and Sections of Act No. 239-2004, as amended, known as the “Puerto Rico General Cooperative Associations Act of 2004”; and for other related purposes.

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

In San Juan, Puerto Rico, on this 8th day of January, 2019.

Orlando Pagán-Ramírez
Director