

(S. B. 1562)

(No. 297)

(Approved December 25, 2002)

AN ACT

To amend Section 13 of Act No. 83 of May 2, 1941, as amended, known as the “Electric Power Authority Act,” in order to authorize the Puerto Rico Electric Power Authority to carry out procedures of eminent domain to acquire any asset that is useful and necessary for it to fulfill the purposes for which it was created.

STATEMENT OF MOTIVES

The Electric Power Authority is a public corporation and autonomous instrumentality of the Government of the Commonwealth of Puerto Rico. It was created with the purpose of conserving, developing and using the sources of energy of Puerto Rico, and to make accessible the benefits of said energy sources to the inhabitants of the Island in the broadest affordable way possible and through this means promote the general welfare, thus increasing commerce and prosperity. The electric power generation and distribution service rendered by the Electric Power Authority is essential for our people and it pertains to said Authority to offer the people a reliable and inexpensive service that will reach the homes, industries and commercial establishments of our Island.

The present code of laws confers the power to acquire assets to the Electric Power Authority, by any legal means, including, without limitation, the acquisition through sale (whether by agreement or through the exercise of eminent domain), lease, bequest, legacy or gift.

The power of the State to carry out procedures of eminent domain is set forth in Article II, Sec. 9 of the Constitution of the Commonwealth of Puerto Rico and in Article 282 of the Civil Code of Puerto Rico. This power inherent to the sovereignty of the State has only two limitations: that the property to be expropriated shall be for a public purpose, and that fair compensation is paid for it. See E.L.A. v. Rosso 95 D.P.R. 501 (1967); M. Mercado e Hijos v Tribunal Superior, 85 D.P.R. 370 (1962); Autoridad Sobre Hogares v. Corte, 68 D.P.R. 54 (1948). This constitutional mandate is enabled by the Eminent Domain Act of March 12, 1903, as amended.

The Supreme Court of Puerto Rico has repeatedly ruled that the power to expropriate shall only be exercised through a law that specifies the occasion, form and manner that expropriations should be resorted to, and the agencies that shall make use of this special power. Autoridad Sobre Hogares v. Corte, supra and P.R. Railway, Light & Power v. Ortiz, 59 D.P.R. 921 (1942). Said norm has also been recognized by the United States District Court for the District of Puerto Rico, by ruling that no agency, official, municipality or instrumentality of the Commonwealth of Puerto Rico may initiate eminent domain procedures unless said power has been expressly delegated to it by the State. Commonwealth of Puerto Rico v. Cordero Development Corp. 534 F. Supp. 612 (1982).

The power of eminent domain that is delegated to an agency or public corporation, as is the case of the Electric Power Authority, does not entail the power to initiate the eminent domain procedure, unless it is thus expressly provided. Many of the instrumentalities of the Commonwealth of Puerto Rico have been granted the power to acquire properties through eminent domain in a limited way, since they must request authorization from

the Governor or other legally authorized official, to initiate the eminent domain procedure.

The Electric Power Authority Act, Act No. 83 of May 2, 1941, as amended, does not contain any provision to authorize its Board of Directors or any of the officials of the Authority to sign a statement of public utility for the property that is to be expropriated. The Eminent Domain Act, supra, grants this power to the Governor or the official or agency designated by him/her.

The power of eminent domain is inherent to the sovereignty of the State. Therefore, the Governor delegated this power on the Secretary of Justice through Executive Order No. 1991-67. Only the State, through the Legislature, may expressly delegate part of a power on a government entity for it to acquire property through eminent domain, directly and on its behalf. Therefore, the only way that the Electric Power Authority may be granted the power to acquire property, interests or rights directly through the process of eminent domain is through an amendment to Act No. 83, supra.

The Electric Power Authority is in the process of developing an ambitious expansion and improvement plan for the purpose of strengthening and extending its capacity to offer the People an electric power service at a level comparable to enterprises of similar size at world level. The legal authority to initiate eminent domain procedures on its own is a tool that would expedite said procedure improve electric power service in Puerto Rico. Therefore, the Legislature deems it is necessary to grant the Electric Power Authority this power which, in turn will contribute to alleviate the heavy workload of the Department of Justice of Puerto Rico in the field of eminent domain procedures.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 13 of Act No. 83 of May 2, 1941, as amended, is hereby amended to read as follows:

**“ACQUISITION OF LAND BY THE PEOPLE OF PUERTO RICO
FOR THE AUTHORITY”**

Section 13.- By request of the Authority, the Governor of Puerto Rico or the Secretary of Transportation and Public Works shall be empowered to acquire, be it through an agreement, or the exercise of the power of eminent domain, or by any other legal means, on behalf and representation of the Commonwealth of Puerto Rico, any property deed or interest thereon, that the Board of the Authority deems necessary and convenient for its own purposes. The Authority may place, at the disposal of said officials, such funds that may be needed to pay for said property, and once it is acquired, shall reimburse any amount paid that has not been previously delivered to the Commonwealth Government. Upon making said reimbursement to the Commonwealth Government (or in a reasonable time, if the total cost or price has been advanced by the Authority, as determined by the Governor), the title of said property thus acquired shall be transferred to the Authority. The Secretary of Transportation and Public Works, with the approval of the Governor, may make those he deems pertinent for the exploitation and control of said property by the Authority in benefit of the Commonwealth Government during the period of time that elapses before said deed has been transferred to the Authority. The power that it is hereby conferred, shall not limit or restrict, the power of the Authority to acquire properties in any form or limitation whatsoever. The title of any property of the Commonwealth of Puerto Rico acquired in the past or that may be in the future, and is deemed necessary or convenient for the purposes of the Authority, may be

transferred to it by the official in charge of said property, or who has custody thereof, under the terms and conditions that shall be fixed by the Governor or the official or agency he/she designates. The power that is hereby conferred to the Governor, shall not limit nor restrict the power of the Authority to initiate on its own the procedure of eminent domain, when its Board of Directors deems it convenient. Furthermore, the Authority shall meet the requirements established by the Planning Board in cases of public improvements.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 297 (S.B. 1562) of the 4th Session of the 14th Legislature of Puerto Rico:

AN ACT to amend Section 13 of Act No. 83 of May 2, 1941, as amended, known as the “Electric Power Authority Act,” in order to authorize the Puerto Rico Electric Power Authority to carry out procedures of eminent domain to acquire any asset that is useful and necessary for it to fulfill the purposes for which it was created,

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

In San Juan, Puerto Rico, today 30th of September of 2004.

Elba Rosa Rodríguez-Fuentes
Director