

“Puerto Rico Electric Power Authority Act”

Act No. 83 of May 12, 1941, as amended,

(Contains amendments incorporated by:

Act No. 27 of June 10, 1959
Act No. 58 of June 6, 1960
Act No. 62 of June 17, 1966
Act No. 39 of May 23, 1967
Act No. 112 of June 28, 1969
Act No. 5 of June 28, 1973
Act No. 36 of May 25, 1973
Act No. 106 of June 28, 1974
Act No. 59 of May 27, 1976
Act No. 3 of February 1, 1979
Act No. 57 of May 30, 1979
Act No. 46 of May 12, 1980
Act No. 148 of June 18, 1980
Act No. 4 of June 8, 1981
Act No. 144 of August 2, 1988
Act No. 34 of July 24, 1989
Act No. 29 of July 26, 1991
Act No. 32 of July 22, 1992
Act No. 84 of August 13, 1994
Act No. 47 of May 23, 1995
Act No. 164 of August 11, 1995
Act No. 124 of August 11, 1996
Act No. 164 of August 23, 1996
Act No. 152 of July 19, 1998
Act No. 145 of August 9, 2002
Act No. 194 of August 17, 2002
Act No. 272 of December 8, 2002
Act No. 297 of December 25, 2002
Act No. 28 of January 1, 2003
Act No. 189 of August 18, 2003
Act No. 300 of December 8, 2003
Act No. 255 of September 7, 2004
Act No. 370 of September 16, 2004
Act No. 2 of January 5, 2006
Act No. 223 of October 4, 2006
Act No. 79 of July 29, 2007
Act No. 86 of July 30, 2007
Act No. 131 of September 27, 2007

Act No. 138 of October 1, 2007)

(Amendments non-incorporated:
Act No. 162 of December 7, 2009
Act No. 222 of December 30, 2010)

Be it enacted by the Legislature of Puerto Rico :

Section 1. — [Short title] (22 L.P.R.A. § 191)

That this Act may be cited as the "Puerto Rico Electric Power Authority Act".

Section 2. — Definitions. (22 L.P.R.A. § 192)

The following terms, whenever used or referred to in this Act, shall have the following meanings, except where the context clearly indicates otherwise:

(a) *Authority.* — Shall mean the Puerto Rico Electric Power Authority created by this Act.

(b) *Board.* — Shall mean the Governing Board of the Authority.

(c) *Bonds.* — Shall mean the bonds, temporary bonds, refunding bonds, debentures, notes, interim bonds, receipts, certificates, or other evidences of indebtedness or obligations which the Authority is authorized to issue pursuant to this Act.

(d) *Undertaking.* — Shall mean any one or a combination of two or more of the following for continuing the development of the water and energy resources of Puerto Rico, to wit: water, irrigation, electric, heat, light, power or equipment works, facilities, structures, plants or systems together with all parts thereof and appurtenances thereto, and lands, rights in lands, water rights, rights and privileges in connection therewith and any and all other property or services which the Authority shall deem to be necessary, proper, incidental or convenient in connection with its activities including, but not limited to, irrigation and hydroelectric supply and distribution systems, plants for generating electricity by water power or by any other means, including steam, and stations, reservoirs, dams, canals, tunnels, conduits, transmission and distribution lines, and other facilities and appurtenances necessary, useful, or customarily used and employed in the production, diversion, collection, storage, conservation, utilization, transportation, distribution, sale, exchange, rendering, or other disposition of water, electric energy, electric equipment, supplies, services or other activities in which the Authority shall engage or desire to engage pursuant to its purposes.

(e) *Federal agency.* — Shall mean the United States of America, the President or any department thereof, or any corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the United States of America.

(f) *Holder of bonds or bondholder.* — Any similar term shall mean any person who shall be the bearer of any outstanding bond or bonds registered to bearer or not registered or the registered owner of any outstanding bond or bonds which at the time shall be registered other than to bearer.

(g) *System of Utilization of the Water Resources.* — Shall mean all the works and property forming the development of water resources and electric system constructed or acquired, or

in process of being constructed or acquired, or intended to be constructed or acquired by the Commonwealth Government, together with the rights, water rights, and water-power rights, used, useful, or appropriate in connection with said development and system so far accomplished, or with the continuance and expansion of said development and system by means of revenue-producing undertakings, under the provisions of Act No. 60, approved July 28, 1925, Joint Resolution No. 36, approved April 29, 1927, Act No. 36, approved April 25, 1930, Act No. 93, approved May 6, 1938, Act No. 7, approved April 6, 1931, Joint Resolution No. 5, approved April 8, 1931, Act No. 8, approved July 12, 1932, Joint Resolution No. 7, approved March 29, 1935, Joint Resolution No. 27, approved April 17, 1935, Act No. 41, approved August 6, 1935, Act No. 1, approved September 22, 1936, Act No. 94, approved May 6, 1938, and Act No. 21, approved June 17, 1939, all of which are Acts and Joint Resolutions of the Legislature of Puerto Rico.

(h) *Utilization of the Water Resources.* — Shall mean the organization established pursuant to law by the Commissioner of the Interior of Puerto Rico for the purpose of handling the activities provided for by Act No. 60, approved July 28, 1925, Joint Resolution No. 36, approved April 29, 1927, Act No. 36, approved April 25, 1930, Act No. 93, approved May 6, 1938, under which organization there were also placed by the Commissioner of the Interior of Puerto Rico, in accordance with the provisions of Act No. 58, approved April 30, 1928, all matters relative to the operation, including surveys and technical direction of new constructions, extensions and improvements, of the "Hydroelectric System of the Puerto Rico Irrigation Service, South Coast".

(i) *Hydroelectric System of the Puerto Rico Irrigation Service, South Coast.* — Shall mean the hydroelectric works and transmission and distribution lines and all facilities forming the electric system constructed or acquired pursuant to the provisions of the Public Irrigation Law, approved September 18, 1908, [22 L.P.R.A. §§ 251--259] and laws amendatory thereof or supplementary thereto.

(j) Words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, partnerships of all kinds and corporations.

Section 3. — Creation and Composition of the Authority. (22 L.P.R.A. § 193)

(a) There is hereby created a body corporate and politic constituting a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico by the name of the "Puerto Rico Electric Power Authority".

(b) The Authority hereby created is and shall be a governmental instrumentality subject, as provided herein, to the control of its governing board, but it is a corporation having legal existence and personality separate and apart from that of the Government. The debts, obligations, contracts, bonds, notes, debentures, receipts, expenditures, accounts, funds, undertakings, and property of the Authority, its officers, agents or employees shall be deemed to be those of said government-controlled corporation and not to be those of the Commonwealth Government or any office, bureau, department, commission, dependency, municipality, branch, agent, officer or employee thereof.

Section 4. — Governing Board. (22 L.P.R.A. § 194)

The powers of the Authority shall be exercised and its general policy shall be determined by the Governing Board, to be known hereafter as "the Board".

The Governor of Puerto Rico shall appoint with the advice and consent of the Senate, six (6) of the nine (9) members, who shall compose the Board, one of whom shall be appointed for two (2) years, two (2) for three (3) years, and three (3) for four (4) years. As the terms of office of the members of the Board so appointed expire, the Governor shall appoint their successors for a term of four (4) years. Any vacancy in such offices shall be filled by appointment by the Governor for the unexpired term thereof, within a term of sixty (60) days from the date the vacancy occurs. With regard to the other three (3) members of the Board, one of whom shall be the Secretary of Transportation and Public Works, and the other two (2) members shall be elected through a referendum which shall be supervised by, and held according to the procedure determined by the Department of Consumer Affairs, in accordance with the Governing Board of the Authority. The Authority shall provide the needed facilities and the resources therefor. The Authority shall implement the referendum pursuant to the procedure so determined. These two (2) members shall represent the consumers' interest, and shall not be employees or officials of the Authority, nor members of a local or central directing body of a political party, which includes all persons working actively for the party, nor any person who is directly connected to the Authority's labor unions.

The term of office of these two (2) members shall be one for two (2) years and the other for three (3) years, and until their successors are appointed and qualified. As the terms of their offices expire, their successors shall be elected for a term of four (4) years.

Any vacancy in such offices shall also be filled for a period of four (4) years, within a term of one hundred twenty (120) days after the date the vacancy occurs.

The members of the Board who are officials of the Government of the Commonwealth shall not receive compensation for their services. The other members shall be entitled to a reasonable per diem for each day of session they attend or for each day they perform duties entrusted to them by the Board or its Chairperson. The Board is hereby empowered to establish the amount of the per diem through regulations to such effect.

Within sixty (60) days after being appointed, the Board shall meet, organize and select its Chairman and Vice-Chairman. At that same meeting, it shall appoint and fix the compensation of an executive director, and shall also appoint a secretary, neither of whom shall be a member of the Board. The Board may delegate to the Executive Director or other officers, agents or employees of the Authority such powers and duties as it may deem proper. The Executive Director shall be the executive officer of the Authority and shall be responsible to the Board for the execution of its policy and for the general supervision of the operational phases of the Authority. Five (5) members of the Board shall constitute a quorum for the transaction of its business and any other purpose, and every action shall be taken by not less than five (5) of such members.

The Executive Director shall be charged with the general supervision of the officials, employees and agents of the Authority. The Executive Director may attend all meetings of the Board but shall not be entitled to vote.

Section 5. — Executive Director. (22 L.P.R.A. § 195)

The Executive Director shall be appointed by the Board exclusively upon the basis of merit as determined by technical training, skill, experience, and other qualifications best suited to carrying out the purposes of the Authority. The Executive Director shall be removable by the Board but only for cause and after he has been given notice and an opportunity to be heard.

Section 6. — Powers of the Authority. (22 L.P.R.A. § 196)

The Authority is hereby created for the purpose of conserving, developing and utilizing, and aiding in the conservation, development and utilization of water and energy resources of Puerto Rico, for the purpose of making available to the inhabitants of the Commonwealth, in the widest economic manner, the benefits thereof, and by this means to promote the general welfare and increase commerce and prosperity; and the Authority is granted and shall have and may exercise all rights and powers necessary or convenient to carry out the aforesaid purposes, including (but without limiting the generality of the foregoing) the following:

- (a) To have perpetual existence as a corporation.
- (b) To adopt, alter, and use a corporate seal, which shall be judicially noticed.
- (c) To prescribe, adopt, amend and repeal bylaws and regulations governing the manner in which its general business may be conducted and the powers and duties granted to, and imposed upon it by law may be exercised and performed; as well as, with the intention of guaranteeing the safety of the persons or the property, to regulate the use and enjoyment of its properties and of such other properties under its administration; the use and consumption of electric power; the intervention with and handling of equipment, enterprises, facilities, apparatus, instruments, wires, meters, transformers and objects of any analogous nature owned by the Electric Power Authority and which are used in connection with the production, transmission, distribution and use and consumption of the electric power produced by said Authority. The bylaws so adopted shall have force of law once the provisions of Act No. 170 of August 12, 1988 [3 L.P.R.A. §§ 2101 et seq.] are complied with. Any [juridical] or natural person who violates or induces to violate any provision of a bylaw promulgated in accordance herewith, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) or imprisonment in jail for a term of not less than one (1) month nor more than three (3) months or both penalties in the discretion of the court.
- (d) To have complete control and supervision of any undertaking constructed or acquired by it including the power to determine the character of and necessity for all its expenditures and the manner in which they shall be incurred, allowed and paid without regard to the provisions of any laws governing the expenditure of public funds, and such determination shall be final and conclusive upon all officers of the Commonwealth Government, and to prescribe, adopt, amend, and repeal such rules and regulations as may be necessary or proper for the exercise and performance of its powers and duties or to govern the rendering of service or sale or exchange of water or electric energy.
- (e) To sue and be sued, implead and be impleaded, complain and defend, in all courts.
- (f) To make contracts and to execute all instruments necessary or convenient in the exercise of any of its powers.

(g) To prepare, or cause to be prepared, plans, designs, and estimates of costs for the construction, reconstruction, extension, improvement, enlargement, or repair of any undertaking or any part or parts thereof, and from time to time to modify such plans, designs, and estimates.

(h) To acquire in any lawful manner including, but without limitation, acquisition by purchase, whether by agreement or by the exercise of the power of eminent domain, lease, bequest, devise, gift, and to hold, maintain, use and operate any undertaking or parts thereof.

(i) To acquire in the manner set forth in subsection (h) hereof, produce, impound, develop, manufacture, treat, hold, conserve, use, transmit, distribute, supply, exchange, sell, rent and otherwise dispose of, water, electric energy, equipment, and such other things, supplies and services as the Authority shall deem necessary, proper, incidental, or convenient in connection with its activities; Provided, That in disposing at wholesale of electric energy the Authority shall give preference and priority as to supply to public bodies and cooperatives.

(j) To acquire in the manner set forth in subsection (h) hereof and to hold and use any property, real, personal, or mixed, tangible or intangible, or any interest therein, deemed by it to be necessary or convenient for carrying out the purposes of the Authority, and (subject to the limitations contained in this Act) to lease as lessor, or exchange, any property or interest therein at any time acquired by it.

(k) To construct or reconstruct any undertaking or any part or parts thereof, and any additions, improvements, and extensions to any undertaking of the Authority by contract or contracts, or under, through, or by means of its own officers, agents, and employees.

(l) [To] determine, fix, alter, charge, and collect reasonable rates, fees, rentals and other charges for the use of the installations of the Authority, or for electric power services, or other commodities sold, rendered, or furnished by it, which shall be sufficient for the payment of the expenses of the Authority incurred in the conservation, development, improvement, extension, repair, maintenance, and operation of its facilities and properties, for the payment of the principal and interest on its bonds, and for fulfilling the terms and provisions of such covenants made with or for the benefit of the purchasers or holders of any bonds of the Authority; [Provided, further, That] upon fixing rates, fees, rentals, and other charges for electric power, the Authority shall take into consideration those factors that promote the broadest and [most] economically possible diversified use of electric power.

The Authority shall have a maximum term of one hundred and twenty (120) days from the [issuance] of the invoice for electric power service consumption to notify clients of errors in calculation. Once said term concludes, the Authority may not claim retroactive charges for said errors, such as those of an administrative or operational nature, or for an erroneous reading of electric power service consumption meters. This shall only apply to residential clients; it shall not apply to commercial, industrial, institutional clients, or otherwise. In those cases in which clients keep the meters out of our readers' visual reach, or when for force majeure, such as hurricanes, among others, the meters cannot be read, this measure shall not apply to invoices issued based on consumption estimates. Likewise, it is hereby prohibited to report delinquent accounts from residential clients to credit bureaus, except in the case of uncontested accounts from clients not committed to a payment plan, of which the amount and whose recurrence of nonpayment, after multiple requirements for payment have been conducted and all collection mechanisms exhausted, imply that there is the intent to defraud the Authority.

Before changes in the general rate structure for the sale of electric power service are made, or in cases in which the Board decides to make changes and deems the immediate effectiveness thereof to be necessary, then, within a reasonable term after such changes are made, a public hearing shall be held with respect to said changes before the Board of the Authority, or before such officer or officers that the Board may designate for such a purpose, pursuant to the powers, duties and obligations conferred to it by this Act. Once said hearing is held, the Board may alter, suspend or revoke such changes.

(m) To provide free access to the official Internet website of the Authority to all of its customers, so that they may obtain information related to their bill, such as the reading of the meter at the beginning and at the end of the billing period, dates and number of days comprised in the billing period, and usage constant [sic] of the meter, the rates, the date of the next reading, as well as any other information that makes the verification of the reading easier, and to pay bills, examine the consumption history and the usage pattern. The Executive Director shall adopt any necessary norms, rules or regulations to comply with the purposes consigned in this subsection and to guarantee the confidentiality of the accounts of every natural or juridical person.

(n) To appoint such officers, agents, and employees and vest them with such powers and duties, and to fix, change, and pay such compensation for their services as the Authority may determine.

(o) To borrow money, make and issue bonds of the Authority for any of its corporate purposes, and to secure payment of its bonds and of any and all other obligations by pledge of or lien on all or any of its contracts, revenues, and income only.

(p) To make and issue bonds for the purpose of funding, refunding, purchasing, paying, or discharging any of the outstanding bonds or obligations issued or assumed by it or any bonds or obligations the principal or interest of which is payable in whole or in part from its revenues.

(q) To accept grants from, and enter into contracts, leases, agreements, or other transactions with, any federal agency, the Commonwealth of Puerto Rico, or political subdivisions of the Commonwealth of Puerto Rico, and to expend the proceeds of any such grants for any corporate purposes.

(r) To sell, or otherwise dispose of, any property of any kind, real, personal, or mixed, or any interest therein, that in the judgment of the Board is no longer necessary for carrying on the business of the Authority or for effectuating the purposes of this Act.

(s) To enter on any lands, waters, or premises, after notifying the owners or holders thereof, or their representatives, for the purpose of making surveys, soundings, or examinations.

(t) [To] cede and transfer surplus property, free of cost, in favor of other government and municipal entities, subject to compliance with any conditions set forth in the applicable regulations and norms.

(u) To do all acts or things necessary or convenient to carry out the powers granted to it by this Act or by any other act of the Legislature of Puerto Rico, or by any act of the Congress of the United States; Provided, however, That the Authority shall have no power at anytime or in any manner to pledge the credit or taxing power of the Commonwealth of Puerto Rico or any of its political subdivisions, nor shall the Commonwealth of Puerto Rico or any of its political subdivisions be liable for the payment of the principal of or interest on any bonds issued by the Authority.

(v) To create, in Puerto Rico or abroad, companies, entities, or subsidiary corporations, for profit or nonprofit, affiliated or associated, for purposes, among others, of developing, financing, building and operating industrial projects and other infrastructure directly related to the maximization of the Authority's electrical infrastructure, and acquiring, having and disposing of value and participation, contracts, bonds or other interests in other companies, entities or corporations, and exercising each and every power and right that such interest allows, provided that, in the Board's judgment, such act be necessary, appropriate or convenient to reach the Authority's purposes or to exercise its powers, and to sell, lease, grant or in any other way convey any property of such Authority or to delegate or transfer any of its rights, powers, functions or duties, to any of said companies, entities or corporations that are subject to its total or partial control, except the right to begin expropriation procedures. The above shall take place without detriment to the functions that other public corporations or government agencies of the Commonwealth of Puerto Rico currently have.

(w) Not later than May 31 of each year, the Executive Director of the Electric Power Authority shall submit a report to the Governor and the two Chambers of the Legislature of the Commonwealth of Puerto Rico, stating the measures taken by the Authority during the preceding calendar year to address the emergencies that may arise with respect to the upcoming hurricane season and other atmospheric disturbances, including floods that may affect the electrical system of the Island. Likewise, said report shall present the plans or protocols adopted to be followed in the case of fires in facilities or establishments of the Authority. It shall include further any measure identified for the prevention and conservation of the electrical lines in the case of an earthquake. The report shall include, without it being understood as a limitation, the following information:

- (1) Improvements to the Electric Power Authority's Revised Operating Plan for Emergencies due to Atmospheric Disturbances.
- (2) Development of an emergency plan to face a possible seismic disturbance (earthquake), from which the Island is not exempt.
- (3) Plans or protocols adopted to be followed in cases of fire in facilities or establishments of the Authority.
- (4) Status of the tree trimming program in order to protect electrical transmission lines. The Authority shall work in said program together with the Department of Natural and Environmental Resources in order to protect our trees and prevent them from being damaged.
- (5) Decision-making protocol and process to enforce the shutting down of the electrical system.
- (6) Trainings offered to the essential personnel of the Authority to qualify it on the steps to be taken in case of emergencies arising from atmospheric disturbances, fire in facilities or establishments of the Authority or earthquakes as well as a certification attesting that all the personnel conducting supervisory functions in the operating areas has been duly oriented on the norms of the operating emergency plan in effect.
- (7) Contingency plans to address the situation after the passing of a storm, hurricane, fire in the facilities or establishment of the Authority or earthquake, directed to normalizing or reestablishing the electrical system as soon as possible, keeping in mind and giving priority to hospitals, homes for the elderly, and schools, as well as those non-profit agencies and corporations that provide services to the needy of the Island.

Section 7. — Officers and Employees. (22 L.P.R.A. § 197)

(a) Appointments, removals, promotions, transfers, discontinuances, reinstatements, suspensions, leaves of absence and changes in grade, compensation or title of the officers and employees of the Authority shall be made and permitted as provided in rules and regulations to be prescribed by the Board in pursuance of a general plan similar, insofar as the Board shall deem it consistent with the best interests of the Authority, of its employees and of its service to the public, to that which may be in effect for employees of the Commonwealth Government under the Civil Service Laws of Puerto Rico. The members, officers, and employees of the Authority shall be entitled to reimbursement for, or per diem payment in lieu of, such necessary travel expenses as shall be authorized or approved pursuant to rules and regulations of the Board. Officers and employees of any board, commission, agency, or department of the Commonwealth of Puerto Rico may be appointed to similar positions in the Authority without examination. Any such Commonwealth officers and employees that shall have been so appointed who, prior to said appointment, were beneficiaries of any existing pension, retirement or savings and loan fund system or systems, shall continue to have, after said appointment, the rights, privileges, obligations, and status, with respect thereto that are prescribed by law for officers and employees holding similar positions in the Commonwealth Government, unless within six (6) months after this act takes effect or six (6) months after said appointment, whichever is later, they or any of them shall signify the intention to relinquish them, in which case they shall then have those of resigned or separated officers or employees of the Commonwealth Government; and all employees so appointed to positions in the Authority who, at the time of their appointment, held or shall have held positions in the Commonwealth Government or any rights or status under the rules and classifications of the Puerto Rico Civil Service Commission, shall have the same status with respect to employment or re-employment in the service of the Commonwealth Government as they had at the time they entered the service of the Authority or since better or higher right or status as the Civil Service Commission shall consider to be consistent with advancement attained in the Authority. All officers and employees appointed to positions in the Authority, who, at the time of their appointment, had, or shall later acquire, some right or status under the rules and classifications of the Puerto Rico Civil Service Commission for appointment to any similar position in the Commonwealth Government shall have, upon request, the same rights, privileges, obligations, and status, with respect to becoming beneficiaries of any existing pension, retirement or savings and loans fund system or systems, as if they had been appointed to similar positions in the Commonwealth Government. The Authority shall be subject to the provisions of Act No. 8, approved April 5, 1941, as subsequently amended.

(b) No person shall hold office as a Member, officer, employee, or agent of the Authority who has a direct or indirect financial interest in any privately owned public utility in Puerto Rico engaged in the production, distribution, or sale of electric energy, or in any entity in or outside of Puerto Rico affiliated with or having any interest in any such public utility in Puerto Rico; or who has a direct or indirect financial interest in any industrial or commercial enterprise engaged in the production, distribution, or sale of any commodity or service of a character commercially opposed to, or in competition in Puerto Rico with, the production, distribution, or sale of electric energy produced by hydroelectric means; Provided, That where such incompatibility affects a Member of the Authority, the position of such Member

shall become vacant, and the vacancy so created shall be filled for the time that said incompatibility exists, by the appointment by the Governor of Puerto Rico of the head of any Department of the Commonwealth Government.

Section 8. — Transfer of System of the Utilization of the Water Resources. (22 L.P.R.A. § 198)

There is hereby transferred and delivered, or there shall be so transferred and delivered to the Authority, all the property, real, personal, and mixed, tangible and intangible, of whatsoever kind and wheresoever situated, constituting the "System of the Utilization of the Water Resources" including all the funds, rights, franchises, privileges and assets of every character and description pertaining thereto, subject to all obligations and encumbrances, legal or equitable, with which the same may be burdened.

Section 9. — Transfer of Records. (22 L.P.R.A. § 199)

The transfers provided by Section 8 hereof shall take effect ninety (90) days after this act becomes effective. As soon as possible thereafter, the Utilization of the Water Resources and the Department of Transportation and Public Works of Puerto Rico shall transfer and deliver to the Authority all contracts, books, maps, plans, papers, books of account, and reports of whatever description relating to the operation, maintenance, designing, or construction of any existing or contemplated undertaking, and the Authority is authorized to take possession for its uses and purposes of all such contracts, books, maps, plans, papers, books of account, and records.

Section 10. — Continuity of Obligations. (22 L.P.R.A. § 200)

The Authority shall not take any action which shall have the effect of impairing the obligation of any contractual duties imposed upon or assumed by the People of Puerto Rico under authority of existing law. From and after the effective date of the transfers provided by Section 8 of this act, the Authority shall assume all contracts and obligations of any department or agency of the People of Puerto Rico which may have been entered into or incurred for, or in the name of, or on behalf of, the Utilization of the Water Resources; and all such contracts and obligations shall inure to the benefit and credit of the Authority.

Section 11. — Appropriations and Acts Confirmed. (22 L.P.R.A. § 201)

All appropriations by the Legislature of Puerto Rico, whether by act or by joint resolution, to or for the benefit of the Utilization of the Water Resources or for the purpose of the development of the water resources of Puerto Rico, are hereby approved, confirmed, and ratified, and all sums so appropriated and all sums set aside or required to be set aside to or for the Utilization of the Water Resources or for the development of the water resources of Puerto Rico, except only appropriations to or for the benefit of public irrigation systems built and operated by the Commonwealth Government pursuant to special laws and all sums set

aside or acquired to be set aside for said systems, shall be available to the Authority for the purposes for which they were so appropriated and set aside.

Section 12. — Moneys and Accounts of the Authority. (22 L.P.R.A. § 202)

All moneys of the Authority shall be deposited in qualified depositories for funds of the Commonwealth Government, but they shall be kept in a separate account or accounts in the name of the Authority. The disbursements shall be made by it pursuant to regulations and budgets approved by the Board.

The Secretary of the Treasury of Puerto Rico shall, upon consultation with the Authority, establish the accounting system required for the proper statistical control and record of all expenses and income belonging to or managed or controlled by the Authority. The said Secretary of the Treasury shall require that the accounts of the Authority be kept in such manner as appropriately to segregate, insofar as advisable, the accounts in respect of the different classes of operations, projects, undertakings, and activities of the Authority, and he shall consider the advisability of requiring the Authority to adopt in whole or in part the system of accounts from time to time prescribed by the Federal Power Commission, or other Federal Authority, for public utilities owning properties and engaged in business similar to the properties and business of the Authority, and the necessity of keeping in accordance with such system of accounts, complete accounts of costs of generation, transmission, and distribution of electric energy and of the total cost of electric generation, transmission and distribution works constructed or otherwise acquired by the Authority and a description of the major components of said costs, together with records of such other physical data and operating statistics as may be helpful in determining the actual cost and value of the services and practices, the methods, facilities, equipment, appliances, and the standards and sizes, types, location and geographical and economic integration of the plants and systems under the control of the Authority which may be best suited to promote the public interest, the efficiency and the wider and more economical use of electric energy; Provided, also, That the said Secretary of the Treasury or his representative shall from time to time, examine the accounts and books of the Authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters which relate to its financial condition, and shall report thereon to the Board of the Authority and the Legislature.

Section 13. — Acquisition of Property by the People of Puerto Rico for the Authority. (22 L.P.R.A. § 203)

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 14. — Grant of Property by Municipalities and Political Subdivisions. (22 L.P.R.A. § 204)

All municipalities and political subdivisions of Puerto Rico, notwithstanding any contrary provision of law, are authorized to grant and convey to the Authority, upon its request and upon reasonable terms and conditions, any property or interest therein (including property already devoted to public use) which the Authority may deem necessary or convenient to effectuate the purposes of the Authority. The Authority shall have the right and power to construct or place any part or parts of any of its undertakings across, in, over, under, through or along any street, public highway, or any lands which are now or may hereafter be property of the Commonwealth Government or any municipality or political subdivision thereof, without obtaining any franchise or other permit therefor. The Authority shall restore any such street, highway, or lands, as nearly as may be, to their condition or state at the beginning of the work, and shall not use the same in a manner to impair unnecessarily their usefulness.

When it becomes necessary to relocate installations or undertakings of the Authority on the public highway or in any other place by reason or as a result or consequence of the execution, construction, expansion, repair or improvement of a public work undertaken by the Department of Transportation and Public Works, or by any other government agency, public corporation or municipality, including the Government of the Capital, the cost of such relocation shall be considered a part of the cost of such public work and shall be paid or reimbursed to said Authority by the corresponding entity executing the work, according to the system in force with respect to payments belonging to the execution of a public work; Provided, That when the federal government may make any contribution toward defraying such expenses of relocation, the requirements necessary to make possible such contribution shall be met; and Provided, further, That if the relocation is used for an improvement or expansion of the affected system, the Authority shall assume the resulting additional cost.

Provided, That upon building the underground distribution systems within the territorial limits of any municipality, when it is necessary for the optimum development thereof, or when the Electric Power Authority builds new installations, any agency, public corporation

or private entity whose lines are installed on the posts of the electric system owned by the Authority, it shall be required to remove them within the term provided in this chapter, without impairing the previously contracted obligations.

The Authority or the government entity that proposes the work shall notify the agency, public corporation or private entity of its intention to build or install new facilities underground, at least one hundred twenty (120) days prior to executing the work; the entities thus notified shall inform the Authority and the municipality of its acceptance to participate along with the proponent of the work, of the process or development of the underground installation or its development, within the term of thirty (30) days from the receipt of the notice remitted by the Authority or the proponent of the work. The development shall include, but without being limited to the study, design, construction, inspection and installation of the service. If the entity should opt to not participate of the underground installation process along with the Authority or corresponding government entity, it must then remove its cables within the non-renewable term of ninety (90) days from the end of the term provided for its answer regarding its acquiescence to participate in these processes.

If the agency, public corporation or private entity accedes [sic] to participate in the process of developing or installing the cables underground in conjunction with the developer of the project, and subsequent to its confirmation decides that it will not comply with the works as agreed, it shall have the obligation to thus notify it, and shall remove its cables within twenty (20) days after its refusal.

It shall be the obligation of these entities, once notified, to participate in the development of the work and perform the underground installation of the power lines within the term described, in coordination with the Authority or the proponents of the work, or remove them at their own cost. If they do not participate in the development, underground installation or removal of the cables within the established term, said entities shall be imposed a penalty equal to two hundred and fifty thousand dollars (\$250,000), or three times the cost of the underground works, or the construction of a new installation of the electrical system, whichever amount is greater; furthermore, in said case, the proponent party of the project shall be liable for the removal thereof, chargeable to the corresponding agency, public corporation or private entity. Once the cables that belong to said entities have been removed, no further liability for damages shall be imposed, unless there is negligence, on the party in charge of the works for losses of any nature caused to third parties or suffered by said entities as a direct or indirect result of the transfer or removal of its cables and the posts owned by the Authority on which the same are installed.

Section 15. — Construction and Purchase Contracts. (22 L.P.R.A. § 20)

(1) All purchases and contracts for supplies or services, except personal services, made by the Authority, including its capital construction contracts, shall be made by calling for bids with sufficient time before the date the bids are opened so that the Authority can guarantee proper knowledge and appearance of competitive bidders. Upon comparing proposals and making adjudications, due consideration shall be given to such factors, in addition to whether the bidder has complied with specifications, as the ability of the bidder to carry out construction work of the nature involved in the contract under consideration; the relative quality and adaptability of the materials, goods, equipment or services; the financial

responsibility of the bidder and his expertise, experience, reputation of business integrity and ability to render repair and conservation services; and the deadline for the delivery or performance offered. The Authority may approve regulations for the presentation of bids.

(2) Competitive bidding shall not be necessary:

(a) When the estimated amount for the acquisition or work does not exceed fifty thousand dollars (\$50,000).

(b) An emergency requires immediate delivery of the material, supplies or equipment or the performance of the services.

(c) Spare parts, accessories or supplemental equipment or services are required for previously furnished or contracted equipment or services.

(d) Professional or expert services or work are required and the Authority deems it in the best interests of good administration for such works or services to be contracted without such announcements.

(e) Prices are noncompetitive because there is only one source of supply or they are regulated by law.

(f) Oil purchased to be used in the generation of power in the facilities owned by the Electric Power Authority, is acquired from governments of foreign countries, or bodies, enterprises, agencies, departments or other government entities of foreign countries, or corporations, partnerships or other enterprises controlled by governments of foreign countries; the annual volume of fuel to be acquired through the purchase under this clause shall not exceed fifty percent (50%) of the estimated annual oil needs of the Authority. Also, under this clause, the Authority may purchase crude oil or its by-products to be processed by local refineries for use by the Electric Power Authority 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 by-products shall be carried out.

The purchase or acquisition of material, works, supplies, equipment, parts, accessories, oil 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 by clauses (a) through (f) of this subsection.

(3) The purchase of oil without requiring bids, referred to in subsection (2)(f) of this section, 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 the Authority and any of the foreign government entities mentioned above, and that from such analysis it is concluded that such purchase is favorable to the public interest.

(b) That every contract for the purchase of oil executed between the Authority and any of the foreign government entities mentioned above, be approved by the Governor of Puerto Rico before it takes effect.

(c) Those officials or employees on whom the duty of procuring oil on the open market pursuant to the usual business practices is delegated, shall submit an [a] report, accompanied by the proposed contract, to the Executive Director, of the analysis of advantages and benefits referred to in above mentioned clause (a) of this subsection. If the Executive Director agrees with the analysis as well as with the proposed contract, he shall remit the same, with his endorsement, to the Board of Directors. The Board of

Directors shall pass judgment on the documents that have been submitted by the Executive Director, and if they deem proper, they shall recommend the approval of the proposed contract for the approval of the Governor. The Board shall submit each contract for which approval is requested, accompanied by the report containing the analysis showing the advantages and benefits of the contract in the public interest to the Governor. The Board of Directors shall notify the Legislature of any contract executed under the provisions of this section, within thirty (30) days after its granting.

Section 16. — Bond of the Authority. (22 L.P.R.A. § 20)

(a) By authority of the Government of Puerto Rico, which is hereby granted, the Puerto Rico Electric Power Authority may issue and sell its own bonds from time to time and have outstanding at any one time, exclusive of bonds issued solely for the purpose of exchanging the same in return for the cancellation of bonds either issued by the Authority or assumed by it, bonds not in excess of five million (5,000,000) dollars, in aggregate principal amount of its bonds, in addition to all sums that the Legislature of Puerto Rico has authorized or may authorize separately for particular purposes; Provided, however, That refunding bonds of the Authority issued solely for the purpose of applying the proceeds thereof to the payment for, or purchase of, bonds issued by the Authority or assumed by it, shall not be included in computing any such limitation until six (6) months after their sale.

(b) The bonds may be authorized by resolution or resolutions of the Board, and may be of such series, may bear such date or dates, may mature at such time or times not exceeding fifty (50) years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate allowed by law at the time; may be in such denomination or denominations, may be in such form either coupon or registered bonds, may carry such registration or conversion privileges; may be executed in such manner; may be payable in such medium of payment and at such place or places; may be subject to such terms of redemption, with or without premiums; may be declared or become due at such time before the maturity date thereof; may provide for the replacement of mutilated, destroyed, stolen or lost bonds; may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the Authority shall determine; Provided, That refunding bonds may be exchanged for outstanding bonds of the Authority on such terms as the Board may deem to be in the best interests of the Authority. Notwithstanding the form and tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all bonds of the Authority shall at all times be, and shall be understood to be, negotiable instruments for all purposes.

(c) The bonds of the Authority bearing the signature of members of the Board or officers of the Authority in office on the date of the signing thereof, shall be valid and binding obligations notwithstanding that before the delivery thereof and payment therefor any or all of the members of the Board or officers of the Authority whose signatures or facsimile signatures appear thereon shall have ceased to be such members of the Board or such officers of the Authority. The validity of the authorization and issuance of the bonds shall not be dependent on or affected in any way by any proceedings relating to the construction,

acquisition, extension, or improvement of the undertaking for which the bonds are issued, or by any contracts made in connection with such undertaking. Any resolution authorizing the bonds may provide that any such bond may contain a recital that it is issued pursuant to this Act, and any bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this Act.

(d) Pending the execution and delivery of definitive bonds, temporary or interim bonds, receipts or certificates may be issued in such form and with such provisions, as may be provided in such resolution or resolutions.

(e) Any resolution or resolutions authorizing any bonds may contain provisions, which shall be a part of the contract with the holders of the bonds:

(1) As to the disposition of the entire gross or net revenues and present or future income of the Authority, including the pledging of all or any part thereof to secure payment of the bonds;

(2) as to the rates to be charged for water and electric energy, and the application, use, and disposition of the amounts that may be raised by the collection of such rates and from other receipts of the Authority;

(3) as to the setting aside of reserves for amortization funds, and the regulation and disposition thereof;

(4) as to limitations on the right of the Authority to restrict and regulate the use of any undertaking or part thereof;

(5) as to limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied;

(6) as to limitations on the issuance of additional bonds;

(7) as to the procedure by which the terms of any resolution authorizing bonds or any other contract with the bondholders may be amended or abrogated, and the amount of the bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) as to the amount and kind of insurance to be maintained on the undertakings of the Authority; and the use and disposition of insurance moneys;

(9) as to covenanting against pledging all or any part of the revenues and income of the Authority to which its right then exists or the right to which may thereafter come into existence;

(10) as to events of default and terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(11) as to the rights, liabilities, powers, and duties arising upon the breach by the Authority of any of its covenants, conditions, or obligations;

(12) as to the vesting in a trustee or trustees the right to enforce any covenants made to secure, to pay, or in relation to the bonds; as to the powers and duties of each trustee or trustees, and the limitation of the liabilities thereof; and as to the terms and conditions upon which the holders of the bonds or any proportion of percentage of them may enforce any covenants made under this Act or duties imposed hereby;

(13) as to the manner of collecting the rates, fees, rentals, or other charges for the services, facilities, or commodities of undertaking of the Authority, and the combining in

one bill of the rates, fees, rentals, or other charges for the services, facilities, or commodities of any two or more of such undertakings;

(14) as to the discontinuance of the services, facilities, or commodities of any undertakings of the Authority, in the event that the rates, fees, rentals, or other charges for the services, facilities, or commodities of such undertaking are not paid, and

(15) as to any other acts and things not inconsistent with this Act that may be necessary or convenient for the security of the bonds, or as may tend to make the bonds more marketable.

(f) Neither the members of the Board nor any person executing the bonds shall be liable personally on [for] the bonds or be subject to any liability by reason of the issuance thereof.

(g) The Authority is authorized to purchase any outstanding bonds issued or assumed by it with any funds available therefor, at a price not more than the principal amount or the current redemption price thereof and the accrued interest. All bonds so purchased shall be cancelled.

Section 17. — Right to Receivership Upon Default. (22 L.P.R.A. § 207)

(a) In the event that the Authority shall default in the payment of the principal of, or interest on, any of its bonds after the same shall become due, whether it be a default in the payment of principal and interest or in the payment of interest only at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or in the event that the Authority or the Board, officers, agents, or employees thereof shall default in any agreement made with the holders of the bonds, any holder or holders of the bonds (subject to any contractual limitation as to a specific percentage of such holders), or trustee therefor, shall have the right to apply in an appropriate judicial proceeding to any court of competent jurisdiction in Puerto Rico for the appointment of a receiver of the undertakings, or parts thereof, the income or revenues of which are pledged to the payment of the bonds so in default, whether or not all the bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right or to exercise any remedy in connection with such bonds. Upon such application the court may appoint, and if the application is made by the holders of twenty-five (25%) per centum in principal amount of such bonds then outstanding, or by any trustee for holders of bonds in such principal amount, shall appoint a receiver of such undertakings.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of such undertakings and each and every part thereof, and may exclude the Authority, its Board, officers, agents, and employees and all persons claiming under them, wholly therefrom and shall have, hold, use, operate, manage, and control the same and each and every part thereof, and, in the name of the Authority or otherwise, as the receiver may deem best, shall exercise all the rights and powers of the Authority with respect to such undertakings as the Authority itself might do. Such receiver shall maintain, restore, insure, and keep insured, such undertakings and from time to time shall make all such necessary or proper repairs as such receiver may deem expedient, shall establish, levy, maintain, and collect such rates, fees, rentals, and other charges in connection with such undertakings as such receiver may deem necessary, proper and reasonable, and shall collect and receive all income and revenues and deposit the same in a separate account

and apply the income and revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds, and interest thereon, and upon any notes, bonds, or other obligations, and interest thereon, having a charge, lien, or encumbrance on the revenues of such undertakings and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein, and all defaults in consequence of which a receiver may be appointed shall have been cured and made good, the court may, in its discretion and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of such undertakings to the Authority, the same right of the holders of the bonds to obtain the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall act, in the performance of the powers hereinabove conferred upon him, under the direction and supervision of the court and shall at all times be subject to the orders and decrees of the court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of the court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth in this Act.

(e) Notwithstanding anything in this section to the contrary, such receiver shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the Authority and useful for such undertakings, but the powers of any such receiver shall be limited to the operation and maintenance of such undertakings, and the collection and application of the income and revenues therefrom, and the tribunal shall not have jurisdiction to enter any order or decree requiring or permitting said receiver to sell, mortgage, or otherwise dispose of any such assets.

Section 18. — Remedies of Bondholders. (22 L.P.R.A. § 208)

(a) Subject to any contractual limitations binding upon the holders of any issue of bonds, or trustees therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

- (1) By mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the Authority and its Board, officers, agents, or employees to perform and carry out its and their duties and obligations under this Act and its and their covenants and agreements with bondholders;
- (2) by action or suit in equity to require the Authority and the Board thereof to account as if they were the trustee of an express trust;
- (3) by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders, and
- (4) to bring suit upon the bonds.

(b) No remedy conferred by this Act upon any holder of the bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting and without regard to any other remedy conferred by this Act or by any other law. No waiver of any default or

breach of duty or contract, whether by any holder of the bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon the holders of the bonds, may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action, or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the bonds, or any trustee therefor, then and in every case the Authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action, or proceeding had been brought or taken.

Section 19. — Reports. (22 L.P.R.A. § 209)

The Authority shall submit to the Legislature and to the Governor of Puerto Rico, as soon as practicable after the close of each fiscal year of the Commonwealth Government but prior to the end of the calendar year: (1) A financial statement and complete report of the business of the Authority for the preceding fiscal year, and (2) a complete report on the status and progress of all its undertakings and activities since the creation of the Authority or the date of its last such report. The Authority shall also submit to the Legislature and to the Governor of Puerto Rico, at such other times as may be required, official reports of its business and activities under this Act.

Section 20. — Commonwealth and its Political Subdivisions not Liable on Bonds.. (22 L.P.R.A. § 210)

The bonds and other obligations issued by the Authority shall not be a debt of the Commonwealth of Puerto Rico or any of its municipalities or other political subdivisions, and neither the Commonwealth of Puerto Rico nor any such municipalities or other political subdivisions shall be liable thereon, nor shall such bonds or other obligations be payable out of any funds other than those of the Authority.

Section 21. — Bonds Legal Investments for Fiduciaries and Security for Public Deposits.. (22 L.P.R.A. § 211)

The bonds of the Authority shall be lawful investment, and may be accepted as security, for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the Government of Puerto Rico or any officer or officers thereof.

Section 22. — Tax Exemptions. (22 L.P.R.A. § 212)

(a)

(1) It is hereby found and declared that the purposes for which the Authority is created and shall exercise its powers are: the conservation of natural resources, the improvement

of the general welfare, and the promotion of commerce and prosperity and are public purposes in all respects for the benefit of the Commonwealth of Puerto Rico, and therefore, the Authority shall not be required to pay any taxes or assessments on any property acquired by it or under its jurisdiction, control, possession, or supervision, or on its activities in the operation and maintenance of any undertaking; or on the income derived from any of its undertakings or activities. Persons who enter into contracts with the Authority shall not be subject to the government contract tax imposed by the Internal Revenue Code of 1994, Act No. 223 of November 30, 1995, as amended.

(2) Natural or juridical persons who have signed contracts with the Authority for the purchase and sale of electric power through a cogeneration plant or small producer of electric power shall be exempted from the payment of Internal Revenue stamps and registration fees in the granting and registration of public instruments in the Property Registry of Puerto Rico, including, but without being limited to, the sale, transfer, exchange, donation, usufruct and/or leasing of real property for the establishment of said cogeneration plant or small producer electric power, as well as the transfer, settlement, extension, modification, discharge of liens on real or personal property, for financing and refinancing of the establishment and operation of said plant. The Authority shall certify, in an authentic document, the capacity for appearing in any of said public instruments as a natural or juridical person who has signed a contract with the Authority for the purchase and sale of electric power through a cogeneration plant or of a small producer of electric power. This exemption shall be granted, provided that, proof that it is beneficial for the consumers is presented to the Electric Power Authority through an analysis.

(b) The Authority shall devote a sum equal to eleven percent (11%) of its gross income, derived from the sale of electric power to consumers as a contribution from the current fiscal year, to offset of the tax exemption. Said sum shall be distributed as provided below:

(1) The Authority shall cover the cost of the current residential subsidy, corresponding to fiscal years subsequent to fiscal year 1990-91, the sum resulting after making the contribution to its internal funds. Also, the Authority shall cover with this sum the subsidy or grant programs fixed by the laws in effect as of June 30, 2003, rural electrification programs and public irrigation systems and any debt accrued on account of the subsidies mentioned in this subsection.

(2) Commencing [in] fiscal year 2002-2003, the Authority shall deduct from its net income, as defined in the Trust Agreement in effect, the costs of the subsidies or grants, in accordance with the provisions of the previous clause (1) of this subsection. Of the remaining amount, the Authority shall distribute twenty percent (20%) among the municipalities as contribution in lieu of taxes, or a sum equal to the actual electric power consumption of each municipality or the average paid by the Authority as contribution in lieu of taxes to the municipalities, in the five fiscal years preceding the fiscal year in which the corresponding payment of the contribution in lieu of taxes is made, whichever of the three (3) sums is higher. This shall be a moving average and shall be calculated annually. Said sum shall be paid to each municipality in which the Authority directly distributes electric power to the public. This contribution to be distributed among the municipalities shall be apportioned in proportion to the electric power billing for public lighting and public facilities of each municipality during said fiscal year. In the event the net income available of the Authority is not sufficient in any given fiscal year for the

Authority to pay the total contribution in lieu of taxes, determined as provided herein, the insufficiency shall be paid within three years. The Authority may deduct from such payment any sum payable and owed to the Authority by any municipality at the end of the current fiscal year. The deducted sums may be applied for the payment of debts, according to their age, regardless of whether the debt is for electric power consumption or for other services. Provided, That in events of force majeure, such as: hurricanes, wars, or events that cause disproportionate fluctuations in the price of fuel, the Authority shall pay, on account of the contribution in lieu of taxes, an amount in accordance with its net income available. Provided, further, That in the case of force major [sic] in which the federal government or private insurance companies compensate the Authority for income loss, such compensation shall be added to the gross income of Authority earned during the year such compensation is received for purposes of the computation of the contribution in lieu of taxes to be paid to the municipalities on said year. For the purposes of this contribution, net income is defined, as provided by the Trust Agreement of 1974 in effect, as gross income less current expenses, less subsidy or grant costs provided by the applicable laws in effect as of June 30, 2003. The Trust Agreement of 1974 defines the term current expenses, as, and we quote: "the Authority's reasonable and necessary current expenses of maintaining, repairing, and operating the system and shall include, without limiting the generality of the foregoing, all administrative expenses, insurance premiums, expenses of preliminary surveys not chargeable to Capital Expenditures, engineering expenses related to operation and maintenance, fees and expenses of the Trustee, the 1947 Trustee, the paying Agents, and of the paying agents under the 1947 Indenture, legal expenses, any payment to pension or retirement funds, and all other expenses required to be paid by the Authority under the provisions of the 1947 Indenture, this Agreement or by law, or permitted by standard practices for public utility systems, similar to the properties and business of the Authority and applicable in the circumstances but shall not include any deposits to the credit of the Sinking Fund, the Reserve Maintenance Fund, the Subordinate Obligations Fund, or the 1947 Sinking Fund or deposits under the provisions of Sections 511, 512, and 513 of the 1947 Indenture."

[No] later than April 30 of each fiscal year, the Authority shall notify to the municipalities the estimate of the contribution in lieu of taxes corresponding to the next fiscal year. Said estimate shall be subject to quarterly revisions of the Authority until March 31 of the year to which the payment of the contribution in lieu of taxes corresponds; Provided, That, such contribution in lieu of taxes shall be made directly to the municipalities not later than November 30 of the next fiscal year to which said payment corresponds. The Authority shall submit to the Office of the Commissioner of Municipal Affairs a thorough report on the application of the formula and [a] copy of its financial statements or report to bondholders, including its gross income, deductions of current charges for determining the net income subject to the calculation of the contribution in lieu of taxes and a certification in which external auditors of the Authority state the correctness of the calculation of the contribution in lieu of taxes of the municipalities. Likewise, it shall also inform the sum of the electric power billing of each municipality and the cost of the payment of subsidies and grants, among others.

(3) As provided above, the Authority shall set aside the remain[der] of the separated sum as an internal funds contribution to finance the Capital Improvements Program and for corporate purposes thereof.

The obligations assumed by the Authority in the Trust Agreement in effect and any other that may be assumed in the future, which secures the bonds of the Authority shall have priority over any contribution granted in this section. The Authority shall not be bound to make any payment in any fiscal year in excess of the amount of the net income available for such purposes, and shall not be required to repay any previous fiscal year's deficit for such payments, except as provided in clause (2) of this subsection.

(c) A partial credit shall be granted in the invoice of every subscriber under a residential rate, who is eligible to receive said credit, pursuant to the regulations adopted from time to time by the Authority, and who has a maximum monthly consumption of up to 400 kWh or less; or a maximum bimonthly consumption of 800 kWh or less, which credit would be equal to the amount that, through regulations, the consumer would have had to pay in the corresponding period indicated, as a result of the adjustment for the adjusted fuel price up to a maximum of thirty dollars (\$30) per barrel. Provided, That the adjustment for any excess in the cost of fuel above the maximum price adopted per barrel, shall be paid by the consumer, in addition to any other charge resulting from the increase in the price of fuel. Provided, further, That those users who are entitled to said credit pursuant to the Authority's regulations in effect, and who have a maximum monthly consumption of up to 425 kWh, or a maximum bimonthly consumption of up to 850 kWh, shall be entitled to the aforesaid credit up to 400 kWh a month or 800 kWh bimonthly. It being understood that for the purposes of this Act, the monthly or bimonthly periods, as the case may be, shall have the number of days of the billing cycles of the Electric Power Authority.

Upon request, an additional credit shall be granted, to be equal to the consumption by the equipment that a person uses to preserve his/her life, pursuant to the [stipulations] herein provided. In the case of persons of scarce resources, the credit shall be for the total electric power consumption attributable to said appliances or equipment. All applications shall include a certification issued by the Department of Health regarding the need of the applicant of using electric equipment to preserve life, as well as the equipment needed. Furthermore, all applications must include a certification issued by the Department of the Family to the effect that the applicant is a person of scarce financial resources, pursuant to the definition given to this term by the Department. The Authority shall determine through regulations the method for calculating the consumption by the essential equipment and the Departments of Health and of the Family shall regulate the procedure for the certifications to be issued pursuant to this Act. In the cases of persons who have been diagnosed with multiple sclerosis, they shall be granted a fifty percent (50%) credit of the electric power consumption attributable to said equipment, even if they are not persons of scarce resources.

In addition, a credit shall be granted when requested, to be equal to fifty percent (50%) of the total electric power used at the homes of children or persons who require the assistance of technological equipment for their survival, that is, mechanical ventilators to be connected to a tracheotomy, artificial respirators, air conditioners, artificial kidney machines or any other electric appliance, equipment or machine needed to preserve their life, even if they are [not] persons of scarce resources.

In the case in which the person that needs to use the electric equipment to preserve life is not the subscriber, said benefit shall be transferred to the subscriber in charge of paying the bill for electric power consumed by the person who needs to use this equipment.

The Electric Power Authority shall adopt through regulations, pursuant to the provisions of "Uniform Administrative Procedure Act", [3 L.P.R.A. §§ 2101 et seq.], all those provisions it deems pertinent, necessary with regard to the credit granted for fuel adjustment and for persons with disabilities, by virtue of this Act. Provided, That the maximum cost of this credit shall not exceed \$100 million per year.

(d) For the purpose of expediting the procurement of funds by the Authority, which allow it to attain its corporate purposes, the bonds issued by the Authority and the income earned therefrom shall always be and remain tax exempted.

(e) Any provision in which reference is made to Section 22 of Act No. 83 of May 2, 1941, as amended, shall be deemed as amended by the provisions herein stated.

Section 23. — Declaration of Public Utility. (22 L.P.R.A. § 213)

For the purposes of subsection (h) of Section 6 and Section 13, all works, projects, and property and their accessories, which the Authority may deem necessary and convenient to use in carrying out the purposes expressed in this Act are hereby declared of public utility.

Section 24. — Coordination and Integration of Irrigation and Hydroelectric Projects. (22 L.P.R.A. § 214)

(a) With a view to the coordination and integration of irrigation and/or hydroelectric projects and their activities, at present existing or that may be developed in the future, all powers, duties, functions, obligations, and responsibilities which prior to the enactment of this Act were vested in, conferred or imposed upon the Chief Engineer of the Irrigation Service, the Secretary of Transportation and Public Works and the Executive Council of Puerto Rico, or any of them under the Public Irrigation Law approved September 18, 1908, and laws amendatory thereof or supplementary thereto, heretofore or hereafter enacted by the Legislature of Puerto Rico, providing for the construction and operation of a public irrigation system, and under those provisions of Act No. 58, approved April 30, 1928, applicable to the Hydroelectric System of the Puerto Rico Irrigation Service, South Coast, are hereby transferred to and conferred and imposed upon the Authority. The Authority shall administer said laws in conformity with the provisions thereof and shall be governed by them in the operation, maintenance, repair, reconstruction, construction of extensions, improvements, and enlargement of the works or systems constructed and operated and maintained pursuant to those laws; and to the extent that the exercise of such power does not impair the obligations of any contract of the Commonwealth of Puerto Rico, the Authority shall have power, notwithstanding anything to the contrary in said Act No. 58, to fix the basis for allocating operating expenses to the several systems operated by the Authority.

(b) In carrying out its duties under the next preceding subsection, the Authority shall pay directly all costs and expenses incurred by it. The Authority shall be reimbursed for all such costs and expenses, including a fair share of the Authority's own overhead and operating expenses attributable to the Puerto Rico Irrigation Service, South Coast, as determined

pursuant to subsection (a) above, from the funds available in the Commonwealth Treasury for the operation and maintenance, repair, reconstruction, construction of extensions, improvements and enlargements of the works or systems, constructed and operated and maintained pursuant to the Public Irrigation Law of 1908, approved September 18, 1908 [22 L.P.R.A. §§ 251--259] and laws amendatory thereof or supplementary thereto. There shall be advanced to the Authority, from time to time, from said Irrigation funds in the Treasury, amounts sufficient to provide a working fund adequate at all times to meet all of said costs and expenses promptly. Said funds shall be held and administered by the Authority in the same manner as its own funds but shall be used by it only for the payment of said costs and expenses.

(c) Upon authorization of the Legislature of Puerto Rico, the Authority, when it deems it advisable in the public interest, may take over and operate any irrigation and/or hydroelectric project existing and owned, or that may be developed or acquired in the future, by the Commonwealth of Puerto Rico.

Section 25. — Agreement of Commonwealth Government. (22 L.P.R.A. § 215)

The Commonwealth Government does hereby pledge to, and agree with, any person, firm or corporation, or any federal, Commonwealth or state agency, subscribing to or acquiring bonds of the Authority to finance in whole or in part any undertaking or any part thereof, that it will not limit or alter the rights or powers hereby vested in the Authority until all such bonds at any time issued, together with the interest thereon, are fully met and discharged. The Commonwealth Government does further pledge to, and agree with, the United States and any other federal agency that in the event that any federal agency shall construct, extend, improve, or enlarge, or contribute any funds for the construction, extension, improvement, or enlargement of, any project for the development of the water resources in Puerto Rico or any portion thereof, the Commonwealth Government will not alter or limit the rights or powers of the Authority in any manner which would be inconsistent with the continued maintenance and operation of the water resources development or the extensions, improvement, or enlargement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such federal agency; and the Authority shall continue to have and may exercise all rights and powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this Act and the purpose of the United States or any other federal agency in constructing, extending, improving or enlarging, or contributing funds for the construction, extension, improvement or enlargement of, any water resources development or any portion thereof.

Section 26. — Injunctions. (22 L.P.R.A. § 216)

An injunction shall not be granted to prevent the application of this Act or any part thereof.

Section 27. — Inconsistent Provisions of Other Acts. (22 L.P.R.A. § 217)

Insofar as the provisions of this Act are inconsistent with the provisions of any other act of the Legislature of Puerto Rico, the provisions of this Act shall be controlling and no law

heretofore or hereafter passed governing the administration of the Commonwealth Government or any parts, offices, bureaus, departments, commissions, dependencies, municipalities, branches, agents, officers, or employees thereof shall be construed to apply to the Authority unless so specifically provided, but the affairs and business of the Authority shall be administered as provided herein.

Section 28. — Separability of Provisions. (22 L.P.R.A. § 218 note)

If any provisions of this Act or the application of such provisions to any person or circumstance shall be held invalid, the remainder of the Act and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected. thereby.

Section 29. — Time of Taking Effect.

This Act shall take effect ninety days after its approval.

Note. This compilation was prepared by Puerto Rico OMB staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text. Compiled by the Office of Management and Budget Library.