

SUMMARY OF THE PUBLIC UTILITIES REGULATORY COMMISSION BILL

February 10, 2015

The Public Utilities Regulatory Commission Bill (“PURC”) will repeal and replace in its entirety the Public Utilities Commission Act (“PUCA”), originally enacted in 1994 concurrently with the privatisation of the Grenada electricity sector and enactment of the Electricity Supply Act, 1994. The PURC is an integral part of the larger comprehensive reform of the electricity sector, and its enactment is anticipated to accompany the enactment of a new Electricity Supply Act, which will open the sector to domestic and foreign investment in new projects for the generation of electricity, particularly from renewable energy sources (e.g., wind, solar, geothermal, biomass, wave and tidal sources). It is expected that a new Public Utilities Regulatory Commission (“Commission”) will be appointed concurrently with or shortly after the commencement date of the new PURC, with the Commission initially to regulate the electricity sector.

Because, like the PUCA, the PURC will apply to all public utilities, in any sector, placed under its jurisdiction by order, it is not possible for the PURC itself to specify every standard and procedure governing its regulation of public utilities in every such sector. To address this problem and, thus, achieve a desirable level of specificity for the regulation of each individual sector (*e.g.*, electricity, water), the PURC will contain references throughout to “other written law,” to ensure that the Commission’s functions and powers will include, and harmonise with, provisions of sector-specific laws such as the new Electricity Supply Act and its assignment of electricity-sector specific functions and powers to the Commission.

The PURC will add many features of public utility regulation that are not present in the PUCA. For example, the PUCA requires that the Commission consist of five Commissioners, but it is anticipated that the PURC will allow a Commission of either three or five members, to facilitate the prompt and cost-effective appointment of the Commission members and their initiation of regulation of the electricity sector. Regardless of whether the Commission is composed of three or five members, however, its constitution is anticipated to continue to consist of members who bring professional expertise to the Commission’s work as well as one member (in the case of a three-member Commission) and two members (in the case of a five-member Commission) from consumer groups and/or the general public.

The PURC expands the PUCA’s protections against conflicts of interest on the part of Commissioners, by prohibiting a person’s service as a Commissioner if, during a designated previous period, he or she held a senior position in a public utility under the Commission’s jurisdiction. It will also introduce new prohibitions on a Commissioner’s engaging in discussions, during his or her service on the Commission, for employment by a regulated public utility after leaving the Commission and on his or her acceptance of any such employment for a designated period after leaving the Commission. In addition, the PURC broadens the Commission’s powers to retain and compensate experts and other professional persons on a temporary basis, to ensure that the Commission can obtain the expertise necessary for its work in

a cost-effective manner. The PURC will also extend the conflicts of interest prohibitions to these experts and other professional persons.

Like the PUCA, the PURC will empower the Commission to set the rates that may be charged by a public utility under its jurisdiction. In combination with provisions of the Electricity Supply Bill and a new licence to be issued to GRENLEC when both Bills have been enacted and brought into effect, the PURC will place the regulation of GRENLEC's rates (as well as the approval of power purchase agreements between GRENLEC and anticipated independent power producers) for the first time under the jurisdiction of the Commission, in accordance with rate-setting regulations to be issued under the anticipated new Electricity Supply Act. The PURC also broadens the jurisdiction of the Commission to include matters assigned to it under laws other than the PURC itself and under the regulations issued under such other laws. As one example, the new Electricity Supply Bill assigns to the Commission regulatory functions for the electricity sector that go beyond the Commission's authority to set rates under the existing PUCA (*e.g.*, the enforcement of the terms and conditions of licences issued to electricity suppliers). The PURC also harmonises with provisions of the Electricity Supply Bill that contemplate the transfer of designated functions for regulation of the Grenada electricity sector to the anticipated Eastern Caribbean Energy Regulatory Authority (ECERA), contingent upon conclusion of a treaty between Grenada and at least one other participating OECS country for ECERA's establishment and operationalisation.

The PURC will also update the penalty provisions of the PUCA to increase, to current standards, the fines to which public utilities and their directors, officers and employees who violate the Act's requirements are subject. Finally, in connection with preparation of the PURC Bill, the Government is reviewing the manner in which the Commission is to be funded, in several respects. First, it is considering the possibility of replacing the current PUCA's vague language for Parliamentary approval of funding of the Commission with a provision requiring the Commission to prepare an annual budget for its operations, to be submitted through appropriate channels to Parliament for approval. Second, the Government is reviewing whether, to the extent that the Commission's operating costs might not be fully covered by Parliamentary appropriations, the PURC would allow those costs to be covered by an annual assessment on public utilities under its jurisdiction, up to a specified, small percentage of a public utilities' gross annual revenues from services. Third, consideration is being given to whether to include in the PURC the requirement that a public utility under the Commission's jurisdiction fund the excess cost of specific proceedings and investigations for its regulation by the Commission, again up to a small percentage of the public utility's gross annual revenues from services.