ELEVENTH OLBIIL ERA KELULAU

Fifth Special Session, November 2021

RPPL No. 11-18

(Passed as House Bill No. 11-50-5S, HD1, SD3, CD1)

AN ACT

To amend Title 37 of the Palau National Code to expand the title and duties of the Palau Energy Administration and authorize the Administration to regulate water and wastewater, to transfer the Palau Energy Administration to the Ministry of Finance; to amend the FY2022 Budget; to appropriate funds to the relief measures under the CROSS Act; and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The Olbiil Era Kelulau finds that the Palau Energy Administration should be empowered to set water and wastewater rates and regulate the water and wastewater sector. Increasing the scope of regulatory authority for PEA shall provide an accountable and transparent process for all rate setting in the Republic and create a resilient regulatory framework for the water and wastewater sector. The Palau Energy Administration shall be renamed the Palau Energy and Water Administration and have capacity to engage experts in utility regulation to elevate the public utility services of the Republic.

This action is undertaken as part of the Policy Based Loan from the Asian Development Bank (ADB), and will include much needed capacity building and technical assistance to assist the functionality of the current PEA. ADB reports indicate that utility servicing would be improved with better investment planning, budgeting, corporate governance, and government-assisted reforms. This bill aims to incorporate PEA's regulatory oversight into the water and wastewater sector to create a sustainable PPUC that is able to recoup its operating costs and provide high-quality services to all of Palau's residents.

Additionally, the Olbiil Era Kelulau finds that it is pertinent at this time to combine these two utility sectors under one authority charged with the specific mandate to standardize the application of tariffs based on international standards and fulfill the conditions of the policy based loan that the Republic has recently committed to in order to continue receiving financial and technical support from the Asian Development Bank and remain flexible as different needs arise in the future.

Finally, the Olbiil Era Kelulau finds that the PEA is rightly positioned within the

Ministry of Finance as a rate setting regulator. The Ministry of Finance has capacity to support the PEA, authorize access to key financial data, and more seamlessly assess the sustainability and capacity of PPUC.

Section 2. Amendment. Chapter 4 of Title 37 of the Palau National Code is hereby amended repeal and replace Section 411(b)(9) and is hereby amended to state as follows:

"Chapter 4

Palau Public Utilities Corporation

§ 401. Short title.

...

§ 419. Palau Energy and Water Administration as energy, water, and waste water regulator.

§ 401. Short title.

...

§ 402. Definitions.

In this chapter:

(a) ...

...

(g) "Palau Energy and Water Administration" or "PEWA" means the Administration as established in Chapter 7 of this Title.

...

§ 403. Creation of corporation; general provisions.

(a) There is created a public corporation, to be called the Palau Public Utilities Corporation (PPUC), which shall operate in the form and manner prescribed by this chapter, and which shall be subject to regulations as promulgated by the Palau Energy and Water Administration.

(b) ...

§ 404. The PPUC Board of Directors; terms, vacancies, quorum and compensation.

(a) The affairs of the PPUC shall be directed, and its corporate powers exercised, by a Board of Directors, as regulated by the Palau Energy and Water Administration, per 37

PNC § 419.

...

§ 405. Public meetings and official documents. ...

...

§ 407. Review of contracts.

(a) The Chief Executive Officer and the Board shall ensure that all legal agreements and contracts are reviewed and approved as to form and legality by an attorney with responsibility for assisting the PPUC or by the Attorney General, subject to subsection (b) of this section. For contracts requiring the prior approval of the PEWA pursuant to 37 PNC § 408, 37 PNC § 707, or any other provision of law, the PPUC shall coordinate with the PEWA to ensure timely submission of the contract to the PEWA for review.

(b) If the PPUC transfers any ownership interest or operating control to a private entity, the Attorney General's Office shall no longer be eligible to review contracts under this section.

§ 408. Review of major business negotiations.

(a) PPUC shall secure approval from the PEWA before entering into major business negotiations. If the PEWA grants approval to enter into negotiations, PPUC shall notify the President of the Republic of Palau and the presiding officers of the Olbiil Era Kelulau in writing of these negotiations. The PEWA shall create regulations establishing the manner in which prior approval to enter into major business negotiations is requested and subsequently granted or denied.

(b) PPUC shall submit to PEWA for review any contracts that finalize agreements resulting from major business negotiations. Such contracts may not be signed by PPUC unless PEWA approves the contract.

...

§ 411. Powers and responsibilities of PPUC.

(a) Subject to applicable rules and regulations as promulgated by the PEWA, the PPUC shall be responsible for the electricity operations of the Republic, which shall include the following powers and responsibilities:

(1) ...

...

(7) To adopt electricity service regulations to set electrical standards for the power system and any renewable energy systems, subject to approval by the PEWA;

...

(9) To propose standards and guidelines for adoption by the Palau Energy and Water Administration, pursuant to applicable regulations, that allow the PPUC to receive energy generated by hotels and other Independent Power Producers into the PPUC electrical grid; and

(10) To propose for adoption a structure of rates and to implement the rate structure as approved by the Palau Energy and Water Administration for its electrical services calculated to ensure that adequate and equitable charges are imposed for its services.

(b) Subject to the regulations promulgated by the PEWA, the PPUC shall be responsible for the water and waste water operations of the Republic, which shall include the following powers and responsibilities:

(1) ...

...

(9) To propose for adoption a structure of rates and to implement the rate structure as approved by the Palau Energy and Water Administration for the water and waste water services and facilities calculated to ensure that adequate and equitable charges are imposed for its services;

...

§ 412. Rates; rate making process; restriction of tariff raises by Palau Public Utilities Corporation.

(a) ...

(b) The rates set by the Palau Water and Sewer Corporation for the water and waste water operations of the Republic that are in effect on the effective date of this Act shall be the rates of PPUC on the effective date of this Act in Arai and Koror State. All other

outlying states' water rates shall be rates from 2011 until such time as determined by PEWA, that is appropriate for subsection (d) to apply in the determination of future rates for outlying states; provided that the 2011 rates shall remain in effect for the outlying states for not less than two years from the effective date of this act.

(c) Future electricity rates shall be designed on the equitable basis of meeting PPUC's operational costs and recovering the cost of capital of PPUC. Future electricity rates shall be established pursuant to the following procedure:

(1) If the Board elects to adjust electricity rates in the Republic, it shall notify the PEWA of the proposed rate change and seek prior approval.

(2) If PEWA approves the proposed rate change, PPUC shall then comply with the requirements of subsection (f) of this section.

(d) Future water rates shall be assessed on the basis of quality and volume of water used. Waste water rates shall be assessed on the basis of usage and the manner of such usage. Customers may be classified for the purpose of assessing water and waste water rates in accordance with this policy. All future rates shall be designed on the basis of achieving full cost recovery, meeting PPUC's operational costs, and recovering the cost of capital of PPUC.

(1) If the board elects to adjust water or waste water rates in the Republic, it shall notify the PEWA of the proposed rate change and seek prior approval.

(2) If PEWA approves the proposed rate change, PPUC shall then comply with the requirements of subsection (f) of this section.

(e) The Board may propose rates distinguishing between commercial and residential users and preferential rates for individuals or households with low demand or low income. Any proposed rate changes must comply with the procedural requirements of this section. Additionally, any proposed electricity rate changes must be consistent with any applicable PEWA rules and regulations.

...

(h) The Board shall conduct a public hearing at which the views of the public may be heard. If the public hearing concerns a change in electricity, water, or waste water rates,

a representative of the PEWA shall also attend.

(i) Only after having complied with the provisions of this Section, including securing prior approval from the PEWA for any electricity, water, or waste water rate change, may the PPUC Board adopt the proposed tariff schedule. All rates and charges must be in the tariff schedule, and shall be filed at the President's office. The effective date of the rates shall be the day the tariff schedule is filed at the President's office. The new tariff schedule shall also be publicized and be made available to the general public.

(j) ...

...

§ 415. Prohibition of free or discounted services.

(a) No officer or employee of the Palau Public Utilities Corporation or the Palau Energy and Water Administration may receive free utility service, or any discount for such service that is not generally available to customers of PPUC.

(b) ...

...

§ 419. Palau Energy and Water Administration as energy, water, and waste water regulator.

The Palau Energy and Water Administration shall have sole regulatory authority in the areas of energy production, water and waste water production, purchase, and sale, as further established in Chapters 6 and 7 of this Act. The PPUC shall have no authority to issue regulations governing energy production, water and waste water production, and any existing regulations governing energy production, and water and waste water production, shall be rendered void upon the promulgation of regulations by PEWA."

Section 3. Amendment. Chapter 6 of Title 37 of the Palau National Code is hereby amended to state as follows:

"Chapter 6

Palau Net Metering Act of 2009

§ 601. Short title.

...

§ 606. Regulations.

§ 601. Short title. …

…

§ 603. Metering.

Consistent with the other provisions of this chapter, electric energy measurement for net metering systems shall be calculated in the following manner:

(a) …

(b) …

(c) Where electricity generated by the customer exceeds the electricity supplied by the electric company, the customer shall be credited for the excess kilowatt-hours generated at the applicable tariff(s) to be adopted by the PEWA pursuant to applicable regulations, during the billing period with this kilowatt-hour credit shown on the following month's bill as an offset for kilowatt-hours supplied from the grid for that month.

§ 604. Implementation of this chapter by PPUC.

The PPUC:

(a) shall develop a standard contract providing for net energy and water metering, which shall adhere to any applicable rules, guidelines, and regulations set forth by the Palau Energy and Water Administration, and shall, upon request, make this contract available to eligible customer- generators;

(b) shall use appropriate technical standards for grid connection of renewable energy systems, pursuant to any applicable rules, guidelines, and regulations set by the Palau Energy and Water Administration, and inspect and provide a license for those renewable energy installations that meet the technical standards developed by PPUC and the other provisions of this chapter. Issuance of a license shall be solely to show that the PPUC has approved the interconnection of the customer's renewable energy system and the PPUC grid and shall not be interpreted to impose liability or approval by the PPUC for any part of the renewable energy system, its design, or its method of implementation. The technical standards imposed will be based solely on those necessary to ensure the safety of PPUC personnel and for the maintenance of PPUC power quality. Standards and

technical requirements shall be consistent with existing technical practices for similar types of installations in the United States, Australia, or the European Union.

...

§ 605. Total capacity.

The PEWA shall by regulation establish a maximum limit for the installed capacity of net metered renewable energy systems connected to the PPUC grid for each system of renewable energy technology and for residential and commercial classes. The limit set shall be reviewed every two (2) years by the PEWA with a view to both accelerating deployment of renewable energy and maintaining the financial viability of the PPUC, and shall be adjusted as necessary in accordance with changes in renewable energy technologies and in accordance with the current operating conditions of the PPUC. The PPUC shall advise the PEWA regarding its current operating conditions and financial viability during the maximum limit review and shall provide any recommendations for preferred maximum limit.

§ 606. Regulations.

Within one hundred and eighty (180) days of the effective date of the amendment of this Title, the Palau Energy and Water Administration shall promulgate rules and regulations necessary or appropriate to effectuate the provisions of this chapter. Such regulations shall be exempt from the notice and hearing requirements set forth in 37 PNC § 413(a), and shall be promulgated in accordance with the Administrative Procedures Act, 6 PNC Chapter 1. Such rules and regulations shall have the force and effect of law."

Section 4. Amendment. Chapter 7 of Title 37 of the Palau National Code is hereby amended to state as follows:

"Chapter 7

Palau Energy Act

§ 701. Short title.

§ 702. Intent and purpose.

§ 703. Definitions.

§ 704. Palau Energy and Water Administration; establishment, duties and powers.

§ 705. National Energy Policy.

§ 706. Palau Annual Energy Report.

§ 707. Independent Power Producers.

§ 708. Electricity, Water, and Waste water tariffs.

§ 709. Energy efficiency.

§ 710. National Water and Sewage Policy (NWSP).

§ 711. Independent Review.

§ 701. Short title.

...

§ 702. Intent and purpose.

The intent and purpose of this chapter is to establish a comprehensive national framework to improve energy security by diversifying the supply of energy to the people of Palau, including renewable-energy, to provide for the regulation of the water and waste water sector, and to promote progressive policy development and implementation by a more robust, cost-effective, and efficient Palau Energy and Water Administration.

§ 703. Definitions.

In this chapter:

...

(b) "Palau Energy and Water Administration" or "PEWA" means the key agency within the executive branch of the Government of Palau with responsibility for the regulation of the energy sector and the water and waste water sector.

...

(j) "Minister" means the Minister of Finance.

...

(p) "Tourism marine vessel efficiency standards" means the fuel emissions standards that the Palau Energy and Water Administration establishes for marine vessels used by private tourism operators.

...

(r) "Water and waste water sector" means the Palau water and waste water sector,

including the infrastructure, stakeholders and institutions that are directly or indirectly involved in the importation, storage, treatment, distribution, processing, and usage of water and waste water resources and services.

§ 704. Palau Energy and Water Administration; establishment, duties and powers.

(a) There is established the Palau Energy and Water Administration which shall:

(1) be a separate entity within the Ministry of Finance;

...

(b) The general duties and powers of the PEWA are to:

(1) monitor all energy, water, and waste water-related matters in the Republic and prepare the Palau Annual Energy Report, as specified by section 706 of this chapter;

(2) provide advice on matters of energy, water, and waste water sector policy and implementation to the President, Minister, and any energy, water, and waste water-related institutions, including but not limited to PPUC;

...

(c) The PEWA is responsible for reporting and coordinating with the relevant executive branch climate change office such energy-related climate change information as is specified by applicable international and regional initiatives to which the Government of Palau has made a commitment, including:

(1) PIFACC;

(2) FAESP; and

(3) UNFCCC.

(d) The PEWA is responsible for setting energy efficiency benchmarks for public utilities such as PPUC and for monitoring and reporting on their performance against such benchmarks.

(e) Standards, rules, and regulations established in compliance with this section shall be binding on any and all energy producers and generating bodies, including, but not limited to, the PPUC and any hotel or other Independent Power Producer.

§ 705. National Energy Policy.

(a) The PEWA will develop and disseminate the NEP. The objectives of the NEP are the delivery of clean, secure, and affordable energy within Palau, and to respond to the risks of climate change through adaptation and mitigation measures that enhance social and economic resilience and reduce greenhouse gas emissions from the energy sector.

(b) The PEWA will review and update the NEP on an ongoing basis through the EMER Framework. The key energy metrics of the EMER Framework are:

(1) the Palau renewable energy target;

(2) the Palau energy efficiency target;

(3) FAESP energy security indicators;

(4) Tourism marine vessel efficiency standards; and

(5) the Government green fleet efficiency standards.

(c) The PEWA will make publicly available an updated version of the NEP on its official website.

§ 706. Palau Annual Energy Report.

(a) The PEWA shall support the development of the National Energy Policy through the preparation of a Palau Annual Energy Report that it must submit to the Minister, President, Senate, and House of Delegates by the 30th of September each year. The objectives of this report are to:

(1) …

(2) …

(b) In reporting on the key energy metrics, the PEWA shall assess the following in the Annual Energy Report:

(1) …

…

(c) The Annual Energy Report will include an assessment of the following:

(1) …

(2) …

(3) PPUC's and any other utilities' performance under energy, water, and waste water efficiency performance benchmarks set by the PEWA; and

(4) Any other dataset or information that is considered by the PEWA to be consistent with this objective.

(d) The PEWA shall make the Annual Energy Report publicly available.

§707. Independent Power Producers.

(a) The PEWA shall set standards for different categories of renewable-energy providers, and shall provide the information necessary for Independent Power Producers to participate in a solicited or unsolicited process whereby a proposal is made for the development of a renewable-energy project.

(b) Requests for proposals for renewable energy projects may be made by the PEWA or PPUC. Unsolicited requests for grid connection for renewable energy projects must be made to both PPUC and the PEWA.

(c) The PEWA, in consultation with PPUC, shall establish and publish forms and guidelines for the submission and assessment of applications for grid connection. These guidelines shall address the following criteria:

...

(d) Grid connection with PPUC shall require the approval of the PPUC and the PEWA. Applications for grid connection shall first be reviewed by the PPUC. If the PPUC approves an application, the PPUC shall submit the application to the PEWA for approval, as required by Section 408(a) of this Title. The PEWA shall approve or deny the application for grid connection and shall respond to PPUC within forty-five (45) days. PPUC shall communicate the final decision in writing to the applicant within sixty (60) days of the date PPUC submitted the application to PEWA for review.

(e) The PPUC may enter into a Grid Connection Agreement and Power Purchase Agreement after securing approval from the PEWA as required by Section 408(b) of this Title.

(f) The PEWA or PPUC may work with an applicant to help the applicant satisfy the application guidelines for grid connection. The PEWA, in conducting its assessment of an application, may conduct a public consultation process.

(g) ...

§ 708. Electricity, Water, and Waste water tariffs.

(a) The PEWA shall promulgate regulations under which it will review and approve or deny the PPUC's proposed electricity, water, and waste water tariff schedules and tariff formulas.

(b) Any change to the electricity, water, and waste water tariff schedules requires approval by the PEWA prior to implementation.

§709. Energy efficiency.

(a) The PEWA will develop energy efficiency programs in accordance with the objectives of the National Energy Policy. In so doing, the PEWA shall:

(1) …

…

(b) In keeping with the objectives of the National Energy Policy, and in the interest of improving economic productivity, reducing localized pollution and curbing the emission of greenhouse gases, the PEWA shall:

(1) …

§ 710. National Water and Sewage Policy (NWSP).

(a) The Palau Energy and Water Administration will develop and disseminate the NWSP. The objective of the NWSP is the delivery of clean, secure, and affordable water and sewage services within Palau.

(b) The Palau Energy and Water Administration will review and update the NWSP on an ongoing basis to be consistent with the United Nations' Sustainable Development Goal 6.

(c) The PEWA shall make the latest version NSWP publicly available on its official website at all times.

§ 711. Independent Review.

The Minister of Finance shall, in coordination with the Palau Energy and Water Administration, hire an independent third party to conduct a review of the performance and efficacy of the Palau Energy and Water Administration. This review shall determine whether the PEWA should be dissolved or if the mission of the PEWA would be best

accomplished through activities conducted by parties who are independent of the National Government of the Republic of Palau or a different government entity. The Minister of Finance shall report the findings of such review with a recommendation to the President of the Republic of Palau and the presiding officers of the Olbiil Era Kelulau within thirty (30) days of completing the review. The Minister of Finance shall arrange for such review to be conducted every five years after the effective date of this section."

Section 5. Amendment. Title and Sections 32 and 33 of RPPL No. 11-12, as amended, are hereby amended to read as follows:

"AN ACT To enact a budget law for Fiscal Year 2022 through the authorization of the sum of $95,933,000 and appropriation of the amount of $89,204,000 from the National Treasury for the annual general operations, special revenue, and debt service budget of the Republic of Palau for the fiscal year ending September 30, 2022, to amend Titles 40 and 41 of the Palau national Code, and for related purposes.

...

Section 32. Amendment. Section 21 of RPPL No. 11-3 is hereby amended to read as follows:

"Section 21. PPUC "Lifeline" Subsidy Program. The sum of $200,000 is hereby authorized to be appropriated and is hereby appropriated to the Ministry of Finance for expenditure or obligation for Fiscal Year 2021 for the purpose of the permanent subsidy program for electrical power, water, and wastewater consumption, to pay the full cost of the first 150 kWh of electricity and 5000 gallons of water and sewer services per month for vulnerable households whose total annual household income is less than $20,000 and $6,000 or less per individual resident, including fixed or low income households and underemployed or unemployed PPUC residential customers. Within thirty (30) days of the effective date of this Act, the Ministry of Finance shall adopt regulations governing how this money will be used to fully cover or subsidize both prior and current bills of vulnerable PPUC customers and households. Regulations adopted pursuant to this section shall be exempt from the requirements of 6 PNC § 125. The entire amount authorized to be appropriated and appropriated in this section shall come from local revenues. Any

unexpended or unobligated balance of the appropriation of this section shall not lapse at the end of the fiscal year. It shall be unlawful for any person to misreport income information in an application or other document as required by regulations promulgated by the Ministry of Finance with the intent to receive the subsidy by fraud, forgery, or misrepresentation and such person shall be subject to the penalty assessed under Subsection (e) or Subsection (f) of 37 PNC § 416.

Section 33. PPUC Fuel Expenses. The sum of $3,950,000 is hereby authorized to be appropriated and the sum of $3,950,000 is hereby appropriated for the purpose of paying PPUC Fuel Expenses.

(a) Of the $3,950,000 appropriated under this Section, the sum of $2,550,000 is hereby appropriated for expenditure or obligation for Fiscal Year 2022 to the Palau Public Utilities Corporation for the purpose of paying PPUC's prior quarter fuel expenses, scheduled to be collected from October 2021 through December 2021 through an increase in PPUC's Automatic Fuel Price Adjustment Clause (AFPAC). Of the total amount appropriated in this section, $800,000 shall come from the $1,000,000 that was originally appropriated to the Minister of Finance for the PPUC Lifeline Subsidy Program in Section 21 of RPPL No. 11-3, but which was reduced to an appropriation of $200,000 by Section 32 of this Act, and $200,000 shall come from the General Fund Reserve. Of the total amount appropriated in this section $1,550,000 shall come from the $1,800,000 appropriated as a reimbursable appropriation in Section 16 of RPPL 10-53, with the remaining $250,000 remaining in the General Fund. $1,550,000 of the funds appropriated in Section 16 of RPPL 10-53 shall no longer be required to be reimbursed by PPUC to the General Fund and any amount up to the $1,550,000 appropriated in this Chapter that has been reimbursed to the General Fund of the Republic of Palau by the effective date of this section shall be returned to PPUC for the purpose of paying prior quarter fuel expenses. Any unexpended or unobligated balance of the appropriation of this section shall not lapse at the end of the fiscal year.

(b) Of the $3,950,000 appropriated in this Section, the sum of $1,400,000, or so much thereof as may be necessary, is hereby appropriated for expenditure or obligation for Fiscal

Year 2022 to the Palau Public Utilities Corporation to pay $0.10 per kWh of the AFPAC rate up to 500 kWh per month for residential customers. Notwithstanding 40 PNC § 1404(b), up to $1,400,000 or so much thereof as may be necessary, shall come from the Road Maintenance Fund. Within thirty (30) days of the effective date of this section, the Minister of Finance shall promulgate regulations providing for an automatic monthly disbursement of funds to PPUC equaling the total sum of the subsidy to be paid for the $0.10 per kWh of the AFPAC rate on up to 500 kWh for residential PPUC customers during that month. Such regulations shall be exempt from the requirements of 6 PNC § 125."

Section 6. CROSS Act COVID-19 Private Sector Temporary Relief Measures. The amount of $1,000,000 is hereby authorized to be appropriated and is hereby appropriated for expenditure or obligation for Fiscal Year 2022 for the purpose of continuing the Private Sector Relief Measures established by Section 3 of RPPL No. 10-56 as amended by RPPL No. 11-1, RPPL No. 11-3, and RPPL No. 11-12. Notwithstanding 40 PNC § 330, the entire amount authorized to be appropriated and that is appropriated in this section shall come from the available balance of the Cyclical Reserve Fund. Any unexpended or unobligated balance of the appropriation shall not lapse at the end of the fiscal year.

Section 7. Effective Date. This Act shall take effect upon its approval by the President of the Republic of Palau or upon its becoming law without such approval, except as otherwise provided by law.

Passed: March 16, 2022

Approved this 24th **day of** March **, 2022**

H. E. Surangel Whipps, Jr.
President of the Republic of Palau