

26 de agosto de 2019

Hon. Luis A. Pérez Vargas
Director Ejecutivo
Oficina de Ética Gubernamental

Estimado Señor Director:

El día 15 de julio de 2019 los señores, Ralph Kreil, David Owens, Charles Bayless, y Robert Poe, miembros de la Junta de Directores de la Autoridad de Energía Eléctrica (AEE) se comunicaron por medio de carta con su antecesora Zulma Rosario (acompañó copia). El día 21 de agosto de 2019 le sometí a usted una primera respuesta en cuanto a la referida carta de los cuatro compañeros de Junta (acompañó copia). La prensa indicó que la OEG había referido la solicitud de "investigación" al Área de Asesoramiento Jurídico y Litigación.

Como surge de mi comunicación, advine en conocimiento de la carta el 21 de agosto de 2019 por medio de un periodista que tenía posesión de esta y deseaba obtener mi reacción a dicha información. Solicité copia de la carta para poder reaccionar a la misma. Debo indicar que respeto la confidencialidad de las fuentes periodísticas como parte de la libertad de prensa, tan importante para la buena democracia, y la búsqueda de transparencia.

Creo, sin embargo, importante llamar a su atención con relación a las circunstancias en que la carta de los señores Kreil, Owens, Bayless, y Poe fue publicada.

El Artículo 7.1(d) de la Ley de la Ética Gubernamental que indica:

“(d) Cualquier persona que intencionalmente ofrezca información, dé a la publicidad o públicamente comente cualquier investigación que se esté llevando a cabo en la Oficina, sin estar autorizado por la Dirección Ejecutiva, será culpable de delito grave. La persona que resulte culpable por la comisión de este delito será sancionada con pena de reclusión por un término fijo de 3 años y multa de cinco mil (5,000) dólares. El tribunal podrá, además, imponer la pena de servicios comunitarios. Cuando la conducta antes mencionada se produzca por descuido u omisión, la persona será culpable de delito menos grave. La persona que resulte culpable por la comisión de este delito será sancionada con pena de reclusión por un término fijo de seis (6) meses y multa de mil (1,000) dólares.”

Dado que la OEG tiene un distinguido historial de confidencialidad de sus propias investigaciones, es razonable que la investigación que estoy solicitando se centre en el lado que comunicó la carta y la envió, para verificar si se hizo pública en contravención de nuestras leyes.

Solicito formalmente a la oficina que usted dirige comience una investigación y/o someta al Departamento de Justicia el hecho de que se hizo pública una investigación que está realizando su oficina. Le solicito que se investigue si algún miembro de la Junta de la AEE o funcionario de la AEE hizo pública la carta de los señores Kreil, Owens, Bayless, y Poe.

Dicha carta, es obviamente una carta oficial de la AEE, y es pertinente a la investigación de posible comisión de delito que se contacte a los señores Kreil, Owens, Bayless, y Poe firmantes de la misma y a las personas que redactaron y/o colaboraron con la conceptualización, redacción y envío de esta.

Hago esta solicitud, dado a que lo implicado en dicha carta es frívolo, carente de verdad y sustancia. El filtrar esta carta a los medios bajo la premisa que existe una

investigación en la OEG está dirigido a tratar de manchar mi reputación y alejar la discusión pública de los verdaderos asuntos altamente cuestionables en la AEE y que he denunciado.

Deseo que conste también que en ningún momento se estableció ningún procedimiento formal en la Junta con relación a un reclamo de conflicto de intereses, ni se entablaron acciones que establecieran políticas y procedimientos para atender cualquier preocupación de los miembros de junta.

Atentamente,



Tomás J. Torres, MPL, PE, LPP
Representante de los Clientes
Junta de Gobierno AEE

XC: Archivos.

interests of PREPA in the Title III proceedings currently pending before the United States District Court for the District of Puerto Rico, possibly taking advantage of information received during an Executive Session. ICSE went as far as announcing Engineer Torres as its witness against the RSA and requesting the appearance of PREPA Board Chairman Eli Díaz as an adversary/hostile witness.

We also received a letter from ICSE through its legal representative, requesting a great amount of highly sensitive information. Engineer Torres then tried to have the PREPA Board reconsider our vote concerning this matter during our Wednesday May 29, 2019 Executive Session Board Meeting.

Also, Engineer Torres has gone to the press on several occasions, after having access to confidential information during PREPA Governing Board Meetings, particularly information received in Executive Session, to advance the ICSE's goals. It is worthy of mention that long before Engineer Torres became part of the Board, a Resolution was approved by the PREPA Board limiting contact with the press to the Chairman of the Board or who he appoints. This behavior has had a seriously dampening effect on all Board discussions at present, as we feel we can no longer depend on confidentiality during Executive Sessions to discuss personnel issues, audit findings, contract concerns, etc.

Lastly but no less important, on several occasions Engineer Torres has testified or reported to a broad range of groups on energy issues outside of the PREPA Governing Board meetings, including to the U.S. Congress and the U.S. Senate. His planned Congressional testimony before the House Committee on Natural Resources was not notified to the PREPA Governing Board or PREPA management, even though PREPA officials were participating in the very same testimony. In other words, we had no idea he had a separate role/agenda in his extra-political activities. Often, it has been unclear who Engineer Torres is representing in these testimonies – is he representing himself, ICSE, ICSE's donors, or the PREPA consumers?

We believe all Board seats on the PREPA Governing Board are public servants of Puerto Rico first and foremost, 24 hours a day, 7 days a week, 365 days of the year. Further, holding these board seats require that we carry out the legal, business, contractual and public/business relations roles with any other job without conflict. Each PREPA Board member considers themselves a fierce representative for the PREPA ratepayer, and for all Puerto Ricans, as we work to take on the massive restructuring that our Integrated Resources Plan (IRP) envisions - its success will be for Puerto Rico's long-term benefit.

Engineer Torres has expressed to us that "he wears two hats, one when he is in the PREPA Board Room, and another when he is in his outside life". We believe this to be an insufficient argument that demonstrates non-compliance with our legal framework regarding conflicts of interest,

either real or potential. It is also quite conflicting that, as recent as our last regular board meeting of June 26 of this year, engineer Torres recused himself from voting on several resolutions to award contracts for consultants advising the public utility on matters related to the RSA, Title III, among other instances, in which he acknowledged a potential conflict of interest with actions taken by ICSE against PREPA. Although abstained from voting, Mr. Torres became into contact and had access to PREPA's strategies moving forward on these sensitive and confidential matters.

This conflict appears so serious to us, that we feel unable to have frank conversations with Engineer Torres, stifling any collegial relationship, since we don't know how that information may be used to further private interests. In our minds, he is not an "honest broker" in the conversations we have with him.

As per the foregoing, we formally request that your office look into this matter and guide us regarding the appropriate next steps. Finally, please let us know whether we can sustain a personal meeting, within the next couple of weeks, in order to go over the content of this communication in a more detailed manner.

Respectfully,

/s/ Ralph Kreil, Vice Chairman
/s/ David Owens, Independent Member
/s/ Charles Bayless, Independent Member
/s/ Robert Poe, Independent Member

21 de agosto de 2019

Hon. Luis A. Pérez Varga
Director Ejecutivo
Oficina de Ética Gubernamental
ENTREGADO A LA MANO

Durante el día hoy, advine en conocimiento de una carta enviada por cuatro miembros de la de Junta de Gobierno de la AEE fechada el 15 de julio de 2019, ver copia adjunta. Esta carta, se envió hace más de un mes y no ha habido ningún proceso formal de dialogo ni evaluación del tema. En esta carta se cuestiona nuestras labores en dicha junta. En términos generales esta carta, filtrada hoy a los medios de comunicación, es frívola, y carente de verdad y sustancia.

Actualmente, ocupo el puesto de Representante de los Consumidor en la Junta de Gobierno de la AEE. En cumplimiento con la Ley 83 de 1941, fui certificado por el Departamento de Asuntos del Consumidor (DACO), en un proceso que duró más de seis meses, luego de acudir a los tribunales para finalmente ser certificado. Al ocupar dicha posición, la misma había estado vacante por más de un año.

La elección de un miembro de la junta, representante de los consumidores, es un mandato de ley que emana de la Ley Orgánica de la AEE, Ley 83 de 1941. La razón de ser de que la legislatura y el gobernador aprobaran esta representación especial y especifica de los consumidores, es precisamente el patrón de la AEE por años de no proteger los intereses de los consumidores.

Esta carta, sin fundamento alguno, es el resultado de la presión pública que he hecho recientemente a favor de los consumidores de energía eléctrica, como me

obliga la ley, para establecer procesos transparentes en la AEE. La misma es para desviar la atención de estos señalamientos públicos.

En cuanto al contenido específico de dicha carta, indico lo siguiente:

- 1) No participo ni he participado de ningún comité de la Junta de Gobierno de la AEE, además del Comité de Asuntos del Consumidor. Luego solicitar a la Junta de Gobierno participar en comités adicionales como "Contracting and Recovery", Auditoria, Infraestructura y otros, y no haber recibido respuesta, indiqué a la Junta de Gobierno mi disponibilidad para que me incluyeran en él o los comités donde hubiera consenso. Debe recordarse que soy miembro de la Junta de Directores en pleno derecho. En ningún lugar la ley establece que el representante de los consumidores tiene menos prerrogativas de participación que los otros miembros de la Junta.
- 2) Tanto en mi rol de Director Ejecutivo en el Instituto de Competitividad y Sostenibilidad Económica (ICSE), como en mi posición como representante de los consumidores ante la Junta de Gobierno de la AEE, represento el interés público, abogando públicamente en temas de transparencia y participación ciudadana. Esto se manifiesta en nuestras frecuentes ponencias y declaraciones públicas.
- 3) En cuanto a lo mencionado en dicha carta en relación la aprobación del RSA (acuerdo de restructuración de la deuda de la AEE con sus bonistas), señalé la necesidad de ratificar dicho acuerdo luego de la aprobación dada por la Junta de Gobierno el 17 de abril de 2019, ya que dicha votación se llevó a cabo sin todos los documentos que componen el acuerdo, que incluyen seis anejos al documento principal. Estos anejos se hicieron públicos el 3 de mayo de 2019 por la Junta de Supervisión Fiscal. Nuestro consejo a la Junta fue ratificar dicho voto en vías de buena gobernanza y prácticas

institucionales. Ver carta adjunta, enviada al presidente de la Junta de Gobierno el 7 de mayo de 2019.

- 4) En cuanto a reclamos de publicación de información confidencial, la Ley 83 de 1941, en su Sección 4, Junta de Gobierno, establece lo siguiente:

“La Autoridad deberá anunciar en su portal de Internet y en sus oficinas comerciales, el itinerario de las reuniones ordinarias de la Junta de Gobierno junto con la agenda de la última reunión de la Junta y la agenda de la próxima. **Se publicarán, además, las actas de los trabajos de las reuniones ordinarias y extraordinarias de la Junta en el portal de Internet de la Autoridad, una vez sean aprobadas por la Junta en una reunión subsiguiente.**”

En cuanto a deberes y responsabilidades de la AEE, se indica en la Sección 6 de la Ley 83 lo siguiente:

“ (k) Tener y mantener un portal de Internet con acceso libre de costo, a través del cual la Autoridad provea, como mínimo, lo siguiente:

...

iii. **Copia de todos sus contratos y de las resoluciones de la Junta de Gobierno;**”

Actualmente, y por mi solicitud e insistencia, en el portal de la AEE, se publican todas las resoluciones de la Junta de Gobierno hasta el mes de Julio de 2019.

Cabe señalar, que no tengo información de dichas resoluciones antes que se lleven a la consideración de la Junta de Gobierno en pleno ya que por decisión de esta Junta no pertenezco a ningún otro comité más allá del Comité de Servicio al Cliente.

- 5) En torno a lo referente a nuestra ponencia en el Congreso, ante el Comité de Recursos Naturales de la Cámara de Representantes de E.U. como parte de la vista "The Status of the Rebuilding and Privatization of the Puerto Rico Electric Power Authority" el 9 de abril de 2019, esta fue pública y cubierta por los medios. La ponencia se concentró en la en la solicitud de fondos federales para la reconstrucción del sistema eléctrico y aspectos relacionados que afectan dicha transformación. La misma se hizo en calidad de Director Ejecutivo del ICSE, ver anejo adjunto.

- 6) En torno a mi inhibición en votaciones relacionadas con asuntos que actualmente el ICSE está ventilando en los tribunales, esto demuestra que evitamos todo conflicto o apariencia de conflicto, al no ser parte de dichas votaciones.

- 7) Por último, en cuanto al señalamiento, de estos cuatro miembros de junta, de no tener conversaciones con el que suscribe, esto me sorprende de sobremanera. Dado a mi experiencia como ingeniero licenciado por más de 31 años, planificador licenciado, y experiencia en el campo energético en Puerto Rico y E.U., durante todas las reuniones de junta, inclusive las reuniones de Junta del 30 y 31 de julio, sostenemos conversaciones, en algunas ocasiones extensas, ya que aunque diferimos frecuentemente, especialmente en lo que se refiere a la Nueva Política Pública Energética, Ley 17 de 2019, mantenemos un ambiente profesional de trabajo y respeto.

La premisa de la carta es que continúe la vieja AEE con los viejos estilos que la llevó a la quiebra y que tanto daño a causado los consumidores. La premisa es ignorar el mandato claro de apertura que representa incorporar representante de los consumidores a la Junta de Gobierno de la AEE, precisamente porque en el pasado decisiones tomadas en cuartos oscuros perjudicaron a la AEE y a los consumidores. La premisa es que el mandato legislado de transparencia y apertura de las leyes 57 de 2014 y 17 de 2019 se ignoren.

En resumen, la carta enviada a la Oficina de Ética Gubernamental, filtrada hoy a los medios, es frívola y sin fundamento para desviar los señalamientos que hemos hecho recientemente en torno a la necesidad de desarrollar una cultura de transparencia en la AEE.

Atentamente,



Tomás J. Torres, MPL, PE, LPP
Representante de los Clientes
Junta de Gobierno AEE

XC: Archivos.



GOVERNMENT OF PUERTO RICO
Puerto Rico Electric Power Authority
Governing Board

July 15, 2019

Ms. Zulma Rosario
Executive Director
Government Ethics Office
Government of Puerto Rico

Dear Executive Director Ms. Rosario Vega,

We hope this letter finds you well. As you are aware, as mandated by law, we recently attended your office's seminar on Puerto Rico's General Ethics law. We are reaching out today to ask for your guidance in regards to recent and continuing actions by the current Consumer Representative on the Puerto Rico Electric Power Authority (PREPA) Governing Board, Engineer Tomás Torres. We have reason to believe certain facts, more thoroughly detailed below, may put into question his capacity to fulfill his obligations in compliance with the Commonwealth's ethical and legal framework.

Currently, Engineer Torres is a member of the Consumer Affairs Committee of the PREPA Governing Board, clearly appropriate for the PREPA Consumer Representative. However, very recently he has requested to be a member of additional committees, specifically the Audit Committee, the Infrastructure Committee and Contracting Committee, which deal regularly with confidential and otherwise sensitive information.

We are sincerely concerned that he may have a substantive conflict of interest in fulfilling his "Consumer Representative" role on the PREPA Governing Board. Aside from his role as a PREPA Board member, he is employed by the Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE) as its Executive Director. Although ICSE has many laudable goals for energy in Puerto Rico, it represents a small number of self-appointed large companies operating in Puerto Rico, and does not represent the broader PREPA consumer; the very constituents the Consumer Representative Board seat was intended to represent under the law. In short, if Engineer Torres fails to represent the views of the few companies who make up ICSE- regardless of whether said views go against the best interests of PREPA and its consumers as a whole- his income may be at stake, resulting in a very real potential conflict of interest. Of course, this is our interpretation. Your input and guidance on this matter will be much appreciated.

We believe the following instances evidence Engineer Torres's potential conflicts of interest:

Regarding the most recent Restructuring Support Agreement (RSA), approved by the PREPA Board with seven (7) votes in favor and one (1) vote against (Engineer Torres), ICSE has filed several motions and requests of appearances against the



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interests of PREPA in the Title III proceedings currently pending before the United States District Court for the District of Puerto Rico, possibly taking advantage of information received during an Executive Session. ICSE went as far as announcing Engineer Torres as its witness against the RSA and requesting the appearance of PREPA Board Chairman Eli Díaz as an adversary/hostile witness.

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Respectfully,

/s/ Ralph Kreil, Vice Chairman
/s/ David Owens, Independent Member
/s/ Charles Bayless, Independent Member
/s/ Robert Poe, Independent Member

May 7, 2019

Eng. Eli Diaz Atienza
President, Board of Directors
Puerto Rico Electric Power Authority
Santurce, Puerto Rico
HAND DELIVERY

Re: Definitive Restructuring Support Agreement

Dear Mr. Chairman:

As discussed yesterday, after reviewing the Definitive RSA published by the Financial Oversight and Management Board (FOMB) on Friday May 3rd, I found that it has six annexes, that to the best of my knowledge, were not included as part of the documents considered by the Governing Board during the meeting where the agreement was voted on April 17, 2019. Those annexes are:

- Annex A To Recovery Plan Term Sheet,
- Schedule I-A Demand Protection Term Sheet,
- Schedule I-B Securitization Protections,
- Annex B To Recovery Plan Term Sheet: Structure 1: Custodial Trust Section 1: Definitions,
- Structure 2: Escrow Section 1: definitions, and
- Annex A To Definitive RSA, Ad Hoc Group Members

These annexes are an integral part of the RSA and if they were not provided nor considered by the Board, the April 17th, 2019 approval by the Board could be null.

An additional concern is that during the April 17th meeting it was stated in several instances that the Definitive RSA was negotiated in compliance with the new Puerto Rico public energy policy. Schedule I-A Demand Protection Term Sheet, is in my judgment contrary to the public policy included in Act 17 of 2019.

Schedule I-A, Demand Protection Term Sheet, defines Non-Bypassability as follows:

Transition Charges are non-bypassable charges, the payment of which shall be obligatory. Transition Charges shall be assessed on all Customers, regardless of the date as of which they become Customers, through a fixed charge or volumetric charge, as applicable,

unless, subject to the conditions set forth herein, including the assessment of the Subsidy Charge, a Customer in an Excepted Customer Class is excepted from paying all or a part of the Transition Charges. Customers shall not be permitted to evade the imposition of Transition Charges or reduce their responsibility for Transition Charges by disconnecting and subsequently reconnecting to the System or by withholding from the Servicer any information required in order to assess Transition Charges or determine the Customer's status as a BTMG Customer or Grandfathered BTMG Customer.

Schedule I-A, Demand Protection Term Sheet, defines Allocation of Transition Charges Among Customer Classes as follows:

*Exemptions, subsidies and credits may be offered to certain classes of Customers, and exemptions, subsidies and credits may be created for the benefit of low- and middle-income residential Customers. The value of any such exemptions, subsidies and credits and of the Additional Subsidies described below shall be spread among other Customers on the terms set forth below (the Customers to whom such exemptions, subsidies, charges and credits apply, the "**Excepted Customer Classes**"); provided that (i) the aggregate value of all such exemptions, subsidies or credits (collectively, the "Subsidy Value") shall be calculated and charged to all other Customers, through a fixed or volumetric charge, as applicable, by the Servicer through a transition charge subsidy line item on Customer invoices (such line item, the "Subsidy Charge"), and then remitted to the Trustee for the Securitization Bonds in the same manner as all other Transition Charges and such subsidy payments, and the Amended Act shall provide that such Subsidy Charge and all rights thereto shall form a portion of the Restructuring Property to the same extent as all other Transition Charge revenue and rights thereto; (ii) any such exemption, subsidy or credit shall not impair the Servicer's ability to collect the aggregate amount of revenue to be generated in any period through imposition of the Transition Charge; and (iii) such exemptions, subsidies or credits shall only be permitted to the extent the recovery of the Subsidy Value (including the Uncollected Amounts Charge) from Customers other than Customers in the Excepted Customer Classes never increases the responsibility of any Customer class for Transition Charges by more than 25%.*

The Servicer shall verify and audit the Transition Charge Revenue to confirm that any Subsidy Charges or credits are net revenue neutral, and the Subsidy Value and Subsidy Charge shall be recalculated annually.

Schedule I-A, Demand Protection Term Sheet, defines Grandfathered and Non-Grandfathered Customers as follows:

Grandfathered Behind the Meter Generation (BTMG) Customers

Customers with behind the meter generation (“BTMG Customers”) that was approved, in place, and operational prior to the Implementation Date (each, a “Grandfathered BTMG Customer”) will be subject to a monthly Transition Charge in the form of a fixed charge calculated for each month by multiplying the Transition Charge Rate applicable to such month by a monthly average of the Grandfathered BTMG Customer’s Net Consumption over the prior twenty-four (24) month period, after taking into account a three (3) month lag time (such period, the “Twenty-Four Month Period”). The fixed charge shall be revised as set forth in (1) and (3) of “Fixed Charge Updates.”

Any Grandfathered BTMG Customer whose behind the meter generation capacity increases by more than 20% above the capacity in place on the Implementation Date shall cease in the next billing period and in all subsequent billing periods to be considered a Grandfathered BTMG Customer to the extent of the behind the meter generation capacity increase.

Notwithstanding anything to the contrary provided in this Term Sheet, all Grandfathered BTMG Customers shall cease to be Grandfathered BTMG Customers on the twentieth (20th) anniversary of the Effective Date and each such Customer shall thereafter be a Non-Grandfathered BTMG Customer.

Non-Grandfathered Behind the Meter Generation (BTMG) Customers

All BTMG Customers other than Grandfathered BTMG Customers, including former BTMG Customers that cease to be Grandfathered BTMG Customers (each, a “Non-Grandfathered BTMG Customer”), shall be obligated to pay the Servicer for the cost of installing at, a minimum, a revenue grade meter to measure the amount of electricity that is generated behind the meter (each such meter, a “BTMG Meter”). The BTMG Meter shall be in place and functioning by the time the Customer’s behind the meter generation system first comes online. The BTMG Meter shall be installed immediately after the behind the meter generation system and before such generated electricity reaches any load. The Servicer shall, from time to time, inspect and test a sampling of BTMG Meters consistent with industry practice.

Each Non-Grandfathered BTMG Customer with a BTMG Meter shall be subject to a monthly Transition Charge in the form of a charge that shall be the greater of (x) a fixed charge calculated for each month by multiplying (i) the Transition Charge Rate applicable to such month by (ii) the monthly average of that Non-Grandfathered BTMG Customer’s Gross Consumption during the then-applicable Twenty-Four Month Period, and (y) the product of the Transition Charge Rate applicable to such month and the Non-Grandfathered BTMG Customer’s Net Consumption for such month. The fixed charge set

forth in (x) shall be revised as set forth in (2) and (3) of “Fixed Charge Updates.” The initial Twenty-Four Month Period for a Non-Grandfathered BTMG Customer shall be the Twenty-Four Month Period concluding on the date on which that Customer became a Non-Grandfathered BTMG Customer.

Until such time as a Non-Grandfathered BTMG Customer has an operating BTMG Meter, then, for purposes of clause (x)(ii) of the immediately preceding paragraph, the monthly average of that Non-Grandfathered BTMG Customer’s Gross Consumption during the then-applicable Twenty-Four Month Period shall be deemed to be the gross electricity inflows received from the System in the month for which the fixed charge is being calculated.

Schedule I-A, Demand Protection Term Sheet, defines Gross Consumption and Net Consumption follows:

“Gross Consumption” means, for any given time period, the amount of electricity consumed by a Customer, regardless of the source of such electricity, including thermal, solar, wind, geothermal or other renewable or recyclable sources, whether owned by PREPA or any successor, lessor or concessionaire, an independent power producer, municipality, cooperative or a Customer. The Gross Consumption of a new Customer (i.e., a Customer that has not established a history of electricity consumption over a period of at least twenty-four (24) months) prior to the date it connects to the System) shall be deemed for the period before such new Customer has established twenty-four (24) months of electricity consumption history to be the average kWh consumed over a period of twentyfour (twenty-four) months by an electricity consumer in Puerto Rico having a connected electric load comparable to the electric load which such new Customer shall have reported to PREPA , the Servicer or subservicer, as the case may be, at the time it applies for connection to the System, as such average may be adjusted to take into account the size of the new Customer premises, the nature of the loads to be connected, the location of the new Customer’s premises relative to the System and other factors bearing on electricity consumption, including size and specifications of the behind the meter system.

“Net Consumption” means, for any given time period, a Customer’s Gross Consumption less amounts of electricity which such Customer produces through properly permitted behind the meter generating facilities.

The definitions and elements included in Schedule I-A, Demand Protection Term Sheet, are similar to the ones included on the Petition for Approval Transition Order (CEPR-AP-2016-0001) presented during 2016. Those principles were specifically repealed by Act 17, 2019. Returning to those principles will be a repeal of Act 17. The application of charges, of such

magnitude as the Transition Charges, to Behind the Meter Customers could preclude the development and integration of Distributed Energy Resources, that is the cornerstone of Act 17, 2019. Such important issues were not discussed during the April 17th vote, as it was represented to PREPA Boards Members that the Definitive RSA under our consideration was, as I have already stated, in accordance with the new energy policy.

In addition, the list of Ad Hoc Group Members included on Annex A To Definitive RSA was not disclosed to the Governing Board, precluding Board Members to made an evaluation of any possible conflicts, in a list that includes over 76 capital funds and investments firms.

For the above reasons, and for the sake of good governance and institutional practices, and the fulfillment of the Board fiduciary duties a new vote on the Definitive RSA should be called, providing board members all the information included on the final agreement and enough time for its evaluation.

Sincerely,



Tomás J. Torres

Board Member

Consumers Representative

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Testimony of Tomás J. Torres MPL, PE, LPP

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**Before the
U.S. House of Representatives Committee on Natural Resources**

The Status of the Rebuilding and Privatization of the
Puerto Rico Electric Power Authority
April 9, 2019

Chairman Grijalva, Ranking Member Bishop, and Members of the Committee:

My name is Tomás Torres. I am the Executive Director of the Puerto Rico Institute for a Competitive and Sustainable Economy (ICSE). I am also the consumers representative on the Board of Directors of PREPA. Thanks for the opportunity to appear before this Committee. My testimony today is not on behalf of the PREPA Board, but on behalf of ICSE.

As Executive Director of the ICSE I had the privilege of participating in the three main efforts that helped craft the new Puerto Rico energy policy. Those efforts include the Public Collaborative for Puerto Rico's Energy Transformation, the Puerto Rico Senate Advisory Committee on Energy and the Southern States Energy Board Blue Ribbon Task Force.

The Public Collaborative, developed by the ICSE in conjunction of Rocky Mountain Institute, convened leaders from many sectors of society to define the future of the Puerto Rico electric system. During four days of focused discussions, concerned citizens from a wide variety of Puerto Rican organizations came together. Four main areas for change were identified in this effort: (1) A New Vision for Self-Sufficiency and Credibility; (2) The need for an Independent Regulator with Enforcement Powers; (3) The creation of a Modern Regulatory Framework and Integrated Resource Plan (IRP); and (4) The need to Involve Cooperatives and Municipalities in this Transition.

The three above mentioned efforts resulted in the creation of the Puerto Rico Energy Policy Act which was approved by the Puerto Rico Senate and by the Puerto Rico House of Representative, now pending for the signature of the Governor.

The situation is really complex. It is a “perfect storm” situation were the actual hurricanes massive impact, plus deteriorated infrastructure mixed with collapse finances created an unmanageable debt burden.

For the transformation of the Puerto Rico grid to be successful, not only is the enactment of an energy policy needed, but also an implementation strategy that considers the island’s complex situation. This strategy must consider the utility’s legacy debt and the massive resources needed to rebuild the grid. The Build Back Better Plan has estimated the cost of rebuilding the power system is \$17.6 billion; the Central Office for Recovery Reconstruction and Resiliency (COR3) has estimated this effort to be \$26 billion. In addition to these amounts, there are another \$10 billion of PREPA’s debt, now in bankruptcy proceedings under Title III of the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA). The scale of these amounts indicate that funds required to rebuild the electrical grid cannot come from PREPA and its costumers alone or solely from privately-owned capital investments. Even if available, relying primarily in privately-owned capital investments would result in very high electricity rates, well beyond Puerto Rico electricity consumers’ ability to pay. The total value of Puerto Rico’s debt amounting to \$73.8 billion, precludes that reconstruction funds come from local government resources. Reconstruction needs to be accomplished primarily through reconstruction funds from the Federal Emergency Management Agency, as well as other federal agencies.

Other aspects of Puerto Rico’s current situation need to be considered for any transformation effort to be effective. Key considerations include the following:

Technology. Electricity generated by consumers costs less than building new generation facilities because it is generated in the distribution grid at load centers, reducing the need for transmission systems. If consumers do not feel incentivized to remain on the grid, they have the option to disconnect, and operate off grid. This new paradigm, if properly managed, can not only be for the benefit of consumers but for the benefit of the utility as well. It points to a scenario of less central investment with a deeper focus on distribution.

Resiliency. After the 2017 hurricanes it became evident that power sources need to be closer to the point of end use. Photovoltaics with battery storage systems proved to be a steady source of power in the aftermath of those events, especially for basic and medical-therapeutic home needs. The installation of photovoltaic and battery storage systems and its financing to electricity consumers could be a way for the utility and system operator to implement the

new paradigm of distributed energy. It would increase their income, while satisfying resiliency needs.

Population Decrease. Based on U.S. Census Bureau population estimates, for nearly a decade Puerto Rico's population declined by five hundred thirty-one thousand, equivalent to 14.1 percent according to data from April 2010 to July 2018. The Census Bureau projects a population of two million nine hundred eighty thousand in 2025 and two million eighty-nine thousand in 2050. A reliable and affordable electric system that propels Puerto Rico's economic development can be an important tool to reverse this trend.

Socioeconomic Conditions. Considering data for year 2017, Puerto Rico has a gross domestic product of one hundred four billion dollars, which has decreased for the past ten years by 8.6 percent – at constant pricing values, not considering inflation. Before the 2017 hurricanes Puerto Rico had 44.9% of its population below poverty levels (now estimated over 50%).

High electricity rates are not a viable way to recover costs associated with the reconstruction of its electrical system. It is not real, it is not practical. The PREPA Fiscal Plan certified by the Financial Oversight and Management Board (FOMB) in August 2018, states that it is intended to provide low-cost, clean, and resilient power at a rate below 20 cents per kilowatt-hour. Previous declaration of Andrew Wolfe, economic advisor to the FOMB, as part of PREPA Tittle III PROMESA proceedings, and Fiscal Consultant for the Inter-American Development Bank, points out that raising PREPA's blended rate to anything over 21.4 cents per kWh would greatly increase the risk of reducing economic growth below the minimum amount of real economic growth necessary for Puerto Rico to achieve fiscal and debt sustainability. Considering that current rates are at 22 cents per kilowatt hour, without including the recovery of legacy debt, the implications for recovery strategy are clear: Puerto Rico needs to rebuild its electrical grid without raising electric rates, which already are above sustainable levels, and achieve rates below 20 cents per kilowatt-hour.

Transparency. Transparency contributes to the legitimacy of public processes. Electricity consumers validate planning and rate review processes, as they are allowed to participate in regulatory proceedings. Lack of transparency and public participation can negatively affect regulatory processes that in turn could lead to defective planning and insufficient reconstruction funds resulting in high electricity rates that cannot be carried by consumers.

In summary, the challenge ahead is bigger than the restoration of the Puerto Rico electrical system; it is reversing the long-term trend toward declining population and declining gross domestic product to provide Puerto Ricans a better future. Financial strategies need to be realistic, calibrated to the financial capacity of Puerto Rican ratepayers, including PREPA's legacy debt restructuring, and the timely allocation of reconstruction federal funds. Neither sustainable debt restructuring, nor access to federal funds can be achieved without trust in Puerto Rican institutions. This requires transparent public processes, and the development and strict adherence to objective, non-partisan standard regulatory procedures.

We appreciate the opportunity to offer our testimony as part of this hearing. We are optimistic about Puerto Rico's future. A new and better electricity grid can be built, one which takes advantage of the latest technologies and policy innovations, following the foregoing principles to build a promising future for all the citizens of Puerto Rico.

Thank you, and I am ready to answer your questions.