COMMONWEALTH OF PUERTO RICO
ENERGY COMMISSION

IN RE: PETITION FOR APPROVAL OF TRANSITION ORDER FILED BY THE PREPA REVITALIZATION CORPORATION	ORDER NO. CEPR-AP-2016-0001 SUBJECT: TECHNICAL HEARING PROCEDURAL ORDER

INSTITUTO DE COMPETITIVIDAD Y SOSTENIBILIDAD ECONOMICA DE PUERTTO RICO (ICSE-PR) BRIEF

TO HONORABLE COMMISSION:

Now comes the Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE-PR) through its undersigned attorney and respectfully alleges and prays:

1. The Commission held technical hearings from Tuesday May 24th to Friday May 27th, 2016.

2. The Commission has requested PREPA, the Corporation and the Intervenors to file briefs stating their positions and summarizing the issues raised by each party.

3. The Commission has general and specific powers under Laws 114, 57 and 4. It is the Commission's role to balance those powers to guarantee Puerto Rico and Puerto Rico's residents safe, lowest possible cost, competitive cleaner energy with renewable sources, to help obtain sustainable economic development, balanced with PREPA's reality, and while transitioning to a more open competitive model of operations.

4. It is in this context that ICSE presents its position:

Both PREPA's Director Dr. Javier Quintana and the Corporation local Attorney Edwin Quiñónes recognized at the hearings that the securitization should be treated in a "holistic manner" with the Integrated Resource Plan (IRP) and the Rate Case. Dr. Quintana further stated that the issues raised by those three Energy Commission cases "overlap".

Attorney Rippie, representing the Corporation during Friday May 27th hearing, specifically recognized that Dr. Quintana referred to the Commission's actions, and not only to the manner in which PREPA approached the issues, when expressing the need for "Holistic" approach.

Ms. Donahue, although giving lip service to the concept of holistic approach, in fact stated that the processes are fully independent. Dr. Quintana is right and Ms. Donahue is wrong.

Eng. Sonia Miranda's testimony in the Rate case refers to PREPA's "significant drop in energy sales and decreasing population and demand". (Page 6 of 46 lines 106-107). In addition in pages 7 to 10 of 46, (starting on line 132 to line 200), Eng. Miranda testified on the relation of PREPA's Business plan, rate requests and financial restructuring goals and how these elements "work together to achieve " PREPA's goals. It is important to note that PREPA's goals have to be consistent and align with the very specific goals established in law 114, 57 and Law 4.

Any pretention of prematurely approving the securitization, separate from the other goals and elements would open up the very certain possibility of the whole process collapsing and unraveling making the Commission performance and compliance with its obligations impossible.

The key to understanding inevitable strong dependence of the securitization relation to the IRP and to the Rate Case concerns the automatic adjustment mechanism to the transition fees, together with the formula rate mechanism (FRM) under the rate case.

If the transition fees were a fixed amount, fixed today on today's PREPA's client and electricity consumption levels, then the Commission might be able to make a decision. But such is not the case. The automatic adjustment mechanisms will work in the future both on the restructuring and on the rates, and they will depend on variations on number of consumers and electricity consumption levels.

In addition to the automatic adjustment for transition fees, also under the FRM, the basic rate could also increase, when faced with the declining "sales, population and demand"; not to mention demand reductions based on consumer choice enabled by generation, storage, and efficiency technologies.

The current patterns of reduction in the size of PREPA's customer base and amounts of PREPA electric service consumption connected to declines in Puerto Rico's population, (as recognized by Miranda), in addition to reductions in consumption of PREPA electric service due to weaker demand and consumer switching to Distributed Generation (DG) supply options, will force the transition fees to rise. Not taking these factors into account, as PREPA and the Corporation are doing, ignores the current and near future situations facing PREPA and the Corporation that could unravel the entire securitization. The proposal does not even mention the normal reduction in consumption due to an increase in price.

By ignoring these factors, the Commission would not be complying with its legal obligations. The Commission does not have on its record evidence on how the adjustment would behave, due to not having in its record any study on reduction on number of clients, reduction in consumption of sales of energy, as admitted by PREPA.

Lisa Donahue's testimony on the rate case specifically ties the rate case to the debt restructuring. How can they be separate at the time of approval? (Donahue rate testimony page 32, paragraph 71).

We must also note the very limited participation by the OEPPE and the lack of Consumer Office (OIPC) representation in these proceedings. There are important consumer and State interests that must be represented by these entities and not by individual intervenors. It has not happened, due mainly to an inexcusable lack of economic and technical resources in both entities.

The only way the Commission can perform its legal duties is acting in a reasonable manner, with adequate projections on consumption, number on clients, with projections on investment needed, supported by an IRP itself based on real numbers of the reduction of sales, consumers and population.

With regard to overseeing the Corporation's performance, the Commission must act as a public entity with fiduciary duties, just as Corporation attorneys Piettri and Quiñónes recognized. Such fiduciary duties require the Commission to assure the reasonableness and viability of the transition fees, including guarding against an unraveling of the securitization as transition fees are adjusted, together with the FRM adjustment.

These legal obligations are part of the legislated scheme, commenced with Law 114 concerning renewable energy, and continued by Law 57 and Law 4.

With great clarity Act 57 identifies how "costly" electricity service is in Puerto Rico, which "impedes economic development" and hinders efforts to stimulate the economy. The act's preamble describes Puerto Rico as "hostage to an inefficient energy system." To address this problem (in addition to reducing air contamination), Act 57 aims to transform PREPA, move the Commonwealth to save energy consumption; promote net metering and renewable energy; establish "regulation" to promote the use of " highly efficient fossil generation", based on an integrated resource plan with a 20-year horizon. Furthermore, the Puerto Rico Legislature and the Governor, committed to Act 57's goals of "Puerto Rico Energy Transformation and RELIEF" with the broadest citizen participation.

Section 1.2 of Act 57 provides the following Public Policy Statement on Electric Power:

> ...
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> "..(m) Prices shall be based on the actual cost of the service provided, efficiency standards, or any other parameters recognized by government and non-governmental organizations specialized in electric power service;..."

The mandate of Law 57 (Art. 206) is clear:

> "The Authority shall rise to energy and environmental challenges by using scientific and technological advances available; incorporate the best practices in the electric power industries of other jurisdictions; make the connection of renewable energy producers to the electric power grid feasible; carry out any process needed to make the electric power generated in Puerto Rico, whether by PREPA, co-generators, or independent power producers, highly efficient and clean for a better environment and public health."

Act 4 defines itself not as a separate legislative act but as a "link" in a chain of PREPA reform efforts, beginning with Act 57:

> "The Authority's transformation does not begin with the approval of this Act. This legislative piece is just one link in the chain of efforts that have been and will be carried out by this Administration for the benefit of all customers. The Energy Commission was created upon the approval of Act No. 57-2014, as amended, known as the "Puerto Rico Energy Transformation and RELIEF Act." Said Commission is in charge of overseeing and following up the services received by customers, as well as rate reviews, among others. It is worth noting that the Commission continues to be empowered to approve any rate review, a power that was granted thereto under Act No. 57-2014, supra. It is also hereby granted additional review and approval powers to ensure that the Authority's transformation is carried out fully and transparently."

As we have stated, Law 4 does not stand alone.

As shown above, PREPA's restructuring efforts and the enactment of new public policy are all focused on achieving the lowest possible cost coupled with less pollution, more power options, more renewable energy, and facilitating interconnection and integration to PREPA's electric power grid, among other purposes. The Commission must ensure these goals are furthered by PREPA's proposed securitization. Accordingly, the Commission's exercise of its powers under the Act 4 cannot alter or revoke the requirements nor its obligations under Law 57 while executing the required evaluation in this proceeding.

Based on these considerations, the Commission should exercise its powers under Act 4 as an additional tool to achieve the purposes of Act 57, and the Commission should not, in fact it can not, do so in a manner contrary to the purposes of Acts 114 and 57. Specifically, the Commission's execution of powers

under Act 4 requires the protection of the powers and obligations created by Act 57, namely energy at the lowest possible cost, and an efficient, clean and diverse supply portfolio.

How could the Commission act prudently if the efficacy of the securitization and the success of the business plan and investment plans are fully tied one to the other, but have not been approved simultaneously? In fact the Commission is being asked to approve the securitization without knowing what elements of the IRP or of the rate case will be approved. The whole securitization process and the rate case are for obtaining new investment, and improvements, which are part of the IRP not yet approved as recognize by Miranda page 17 of 46 lines 344 to 354.

The same situation arises with Donahue' rate case testimony. She continuously refer to goals, supposedly specific "essential investments", etc. but those are precisely the IRP components, still not approved; and not approvable without a proper evaluation of the declining customer base.

The balance of private investments, renewable integration among other issues are IRP and Business plan components not securitization components which make impossible to approve the securitization separate from those specific improvements components. Concerning Mace, Donahue and Zarumba testimonies and rebuttals, although illustrative, fail in responding to the main question that needs to be answered in this proceeding: Will the projected demand or customer base of the Puerto Rico Electric Power Authority (PREPA) for the next 25 years will be enough to cover the projected debt of nearly $7 billion in a reasonable and sustainable manner?

Why is this question important? Because this debt will be directly paid by the current customer base, the size of which is recalculated every three (3) months under the proposed adjustment mechanism. This recalculation is important considering the following facts:

(1) PREPA's electricity demand has dropped 16.4% from 2006 to 2015 (Serie Histórica AEE, 2016).
(2) The overall population of Puerto Rico has dropped 6.8% from 2010 to 2015 (US Census Bureau, 2015).

The demand reduction for the past 10 years, as shown above, is equivalent to a yearly drop of about 1.6%. If this trend continues for the next 25 years, then PREPA's electricity demand would drop about 33% by the end of the proposed securitization schedule. The conclusion of this analysis is that, as a minimum, close to two thirds (67%) of PREPA's current customer base as reflected by electricity demand would be responsible for the overall debt being considered for securitization in this proceeding.

The proposed securitization plan is unsustainable with regard to handling projected reductions in electricity demand and other reductions in PREPA's customer base. PREPA and the Corporation must change the proposed securitization plan rather than passing increases in per customer costs to the remaining customers. The Commission must also consider that 42% of Puerto Rico's population lives below poverty levels (US Census Bureau, 2014); and the effect in such population of potential increases in both, the transition charges and on the regular rates through the FRM.

After seeing these figures, there is serious doubt about the capability of the Puerto Rico Power Authority's declining costumer base to effectively assume a nearly $7 billion debt in the proposed period of time. The questions that need to be answered are the following:

(1) What amount of debt should be reasonable to directly distribute to PREPA's customer base through securitization?;

(2) What amount should be recovered through PREPA's operating revenue?;

(3) Since as stated in the Petition for Restructuring Order: "There shall be no cap on the Transition Charge calculated pursuant to the Adjustment Mechanism"; is securitization convenient under these conditions?; and

(4) Would an equal (i.e., "50/50") split of the proposed securitization, without an adjustment mechanism, that results in a sustainable charge to the customer base, could reasonably balance the relevant considerations in this proceeding?

In line with this thinking, it would be reasonable to contemplate PREPA restructuring, as previously mentioned, in a holistic manner by allowing the Commission to first conduct a complete evaluation of PERPA's Integrated Resources Plan; continuing with a thorough financial restructuring evaluation as part of a Tariff / Rate Review proceeding with the purpose of the Commission to determine which part of PREPA's debt is to be covered as part of its normal operation revenue and which part should be securitized. As part of this proceeding, important aspects such as "decoupling" (Regulatory Assistant Project, 2011) could aid in maximizing PREPA's capacity of paying its debt form it operation revenues, before resorting to securitization. Acting otherwise, as currently proposed by PREPA's Revitalization Corporation under this proceeding, binds the Commission to a specific securitization model and transition charges, before determining which debt amount could not be paid by PREPA's operational revenues and can be securitized or funded otherwise.

Based on the above, if this Honorable Commission decides to approve the proposed securitization charges before determining which amount of PEPA's debt can be paid through its operational revenues, it would be setting a wrong precedent and a dangerous path forward toward PREPA's restructuring and Puerto Rico's debt restructuring as a whole.

Further, PREPA or the Corporation should provide a demand study that considers how the government sector ratepayers could react to the securitization charges when they are imposed in addition to other rate increases that PREPA plans to impose; or is obliged to, due to fuel cost increases. Given that those ratepayers will also come under fiscal pressure from the Commonwealth's other debts, all that is clear at this stage is that the proposed securitization charges will only further complicate those ratepayers' decisions about whether to spend their funds on PREPA services or other fiscal demands like payroll or debts. If they choose to pay PREPA, then they may need to spend less on payroll and debt payments, which would not likely improve Puerto Rico's economic health and could contribute to further population decline or otherwise contribute to a shrinking PREPA customer base and overall demand. Under the current proposal, under those conditions, the Corporation could continue to increase the size of the securitization charges in order to try to maintain collections. But that easily could cause further reductions in the customer base or overall demand for PREPA services (partly due to migration and / or closing of business due to high energy costs). Thus, without any assurances that PREPA or the Corporation know how PREPA customers will react to expected future electric rates and securitization charges, the proposed securitization could become a more expensive method of restructuring PREPA's debt than other methods that PREPA could pursue. This information is not on the record.

Concerning PREPA's Chief Restructuring Officer Lisa Donahue's rebuttal, it is obvious that the premise of PREPA's and the Corporation's, position is based on the absolute separation between PREPA and the Corporation, which in fact is not true. Not only it is not true, but this expression, in the restructuring case, clashes with Donahue's own testimony on the rate case.

Both PREPA's revitalization and the Corporation, as an instrument to facilitate such revitalization, are geared to the same end, which is to obtain the lowest costs for electricity which permit sustainable economic development for Puerto Rico, less contamination, more open access, more renewable energy, and greater modernization of PREPA's operation.

To discuss PREPA's and the Corporation as "separate" denies the truth that an incomplete or not efficient securitization can act as a serious limitation to PREPA's future capacity and to Puerto Rico's sustainable economic development. This has in fact been admitted by Quintana, Donahue and Sonia Miranda.

ICSE-PR position is that this Commission simply does not have the necessary information to make an informed opinion, at this time.

Unlike Dr. Quintana, Ms. Donahue emphasizes the independence of the securitization from other PREPA reform activities.

Indeed, by stating that "... the securitization would be essential even if the proposed IRP were completely rejected," Ms. Donahue seems willing to completely disregard PREPA's overall capital needs in pursuit of the proposed securitization. That approach would be contrary to a more logical and appropriate approach of using the IRP process to determine PREPA's expected optimal capital needs before making any irreversible decisions regarding debt restructuring through securitization or other methods.

Ms. Donahue's rebuttal testimony also states, "The policy goals of Puerto Rico, as expressed in Act 57-2014 and then supplemented and amended by Act 4-2016, are served by both an appropriate IRP and the timely and successful implementation of the securitization transaction; none are served by denying or postponing that securitization" (page 6). This statement does not persuade us to change our views or recommendations.

That statement seems to present a false choice as a weak argument in favor of the current proposal – i.e., that PREPA either maintain its existing debts or pursue the securitization plan that is currently being proposed at this time. That false choice is not contained in Act 4 or Act 57 and is irrelevant here. Put differently, neither Act 4 nor Act 57 requires the Commission to approve the current proposal as the only method for restructuring PREPA's debt; rather it provides the Commission the alternate of rejecting the proposed restructuring order.

If that statement is not meant to proffer that false choice, then perhaps that statement is meant to stress the assumption that the currently proposed securitization transaction could be "timely and successfully" implemented. If so, then we disagree with the statement for the reasons previously given for why it would be suboptimal for the Commission to approve the proposed securitization at this time.

Meanwhile, PREPA Director Quintana had the frankness to recognize the importance of the serious "insertidumbre" (in Spanish) of Puerto Rico's current situation.

Despite Dr. Quintana's recognition, we have serious concern if Ms. Donahue's views discussed above represent PREPA's disregard for the economic conditions facing Puerto Rico now and for the foreseeable future. We also have concerns if the above comments of Ms. Donahue reflect PREPA's ignoring of Puerto Rico's current situation.

It is important for purposes of these proceedings and as a general rule that PREPA understand Puerto Rico's current situation and why it is relevant. Simply put, neither PREPA nor the Commission have demonstrated that demand for PREPA's electric service or PREPA's customer base will support the proposed securitization plan. This

omission undermines the credibility of the likely success of having the securitized debt directly paid by PREPA's customers.

As we all know the fiscal situation of Puerto Rico is currently very fluid. The action or inactions of the United States Congress in regards to H.R. 5278, as well as the resolution of the Government of Puerto Rico to implement the moratorium law create a situation that prevents the Commission, or anybody for that matter, from making an adequately informed, rational evaluation of any debt restructuring proposal for PREPA.

Also, as a matter of law and policy, the Commission must meet its obligations under Act 57 to ensure that electric rates are affordable and develop plans for an optimum energy portfolio. Meeting either of those mandates depends on the Commission establishing a reasonable Integrated Resource Plan for PREPA that facilitates competitive private investment through open access to PREPA's system. The Commission has not done that.

Concerning renewable resources, it is obvious that the Commission can not accept the imposition of "behind the meter" charges, for it has no evidence on the record that such charges do not "...constitute an obstacle to the implementation of renewable energy projects", as substantively the law requires.

We repeat there is no evidence on the record, and as matter fact the Commission does have in its record the opposite evidence, that "behind the meter" charges have a catastrophic impact in the renewable energy markets.

Neither does the Commission have on the record any evidence on whether the "behind the meter" charges are "practical to administer", an additional substantive requirement.

Simply stated, the proposed securitization transition fees are contrary to law. ICSE-PR supports Windmar Group statements and position as stated in its final brief of Intervenor.

By imposing charges "behind the meter" the Corporation and PREPA are incentivizing customers to go completely off grid. This will not help PREPA, or the Corporation, much less the consumers who stay on the grid.

The economic factor of consumer going off grid, together with technological developments of mini grids, self-production, and efficient energy practices, none of these potential actions all of which further reduce PREPA's customer base or sales, have been shown to be present in PREPA's business plan, or proposed IRP. The Commission can not approve a proposal securitization absent this information.

It is important to note that the terms "practical to administer" and does not "...constitute an obstacle to the implementation of renewal energy projects" are

substantive law requirements that need to be in full compliance for the consideration of the securitization transaction fees submitted by the corporation and PREPA.

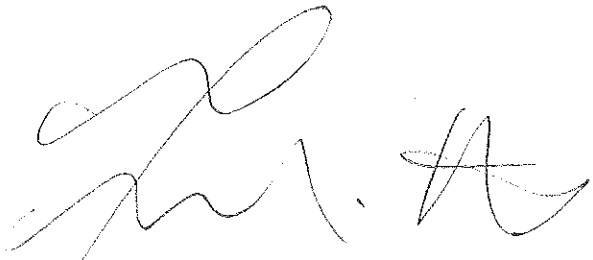
These are not "affirmative defenses" to be presented by an intervenor. The requirements have to be satisfied by the filed transition fees scheme and the Commission must determine that such fees scheme complies with each and every substantive requirement. Absent evidence of the Corporation and PREPA's compliance with any substantive requirements, the Commission can not legally approve, because the law does not authorize the Commission to amend the submittal, it has to reject the whole proposal.

WHEREFORE: It is respectfully requested that this Board receives this motion and reject the proposed securitization transition fees.

RESPECTFULLY SUBMIITED.

I HEREBY CERTIFY that the foregoing was regular mail Corporación para la Revitalización de la Autoridad de Energía Eléctrica, Quiñónes & Arbona, PSC, Edwin Quiñónes, Víctor D. Candelario- Vega, Giselle M. Martínez-Velázquez, Richard Hemphill Cabrera, PO Box 10906, San Juan, Puerto Rico 00922; Grupo Windmar, Lcdo. Marc G. Roumain Prieto, 1702 Avenida Ponce de León, 2do Piso, San Juan, Puerto Rico 00909, Oficina Estatal de Política Pública Energética, Lcdo. Edwin J. Quiñónes Porrata, PO Box 41314, San Juan, Puerto Rico 00940 y a la Lcda. Coral M. Odiot Rivera, 268 Hato Rey Center, Suite 524, San Juan, Puerto Rico 00918.

In San Juan, Puerto Rico, on June 11, 2016.



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