

**EXPLORING ENERGY CHALLENGES
AND OPPORTUNITIES FACING
PUERTO RICO**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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Tuesday, January 12, 2016

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**OVERSIGHT HEARING ON EXPLORING
ENERGY CHALLENGES AND OPPORTUNITIES
FACING PUERTO RICO**

Tuesday, January 12, 2016
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 10:08 a.m., in room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Thompson, Lummis, Benishek, Labrador, Graves, Bishop; Costa, Gallego, Polis, and Grijalva.

Also Present: Representatives Serrano, Gutierrez, Velazquez, and Pierluisi.

Mr. LAMBORN. The Subcommittee on Energy and Mineral Resources will come to order. The subcommittee is meeting today to hear testimony on exploring energy challenges and opportunities facing Puerto Rico.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and Ranking Member and the Vice Chairman and the designee of the Ranking Member. This will help us to hear from our witnesses sooner, and help Members keep to their schedules.

Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Subcommittee Clerk by 5:00 p.m. today.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered.

I also ask unanimous consent that the gentleman from Puerto Rico, Mr. Pierluisi; the gentlelady from New York, Ms. Velazquez; the gentleman from Illinois, Mr. Gutierrez; and also the gentleman from New York, Mr. Serrano be allowed to sit on the dais and participate in today's hearing. And last, should his schedule permit, I also ask that the gentleman from Alaska, Mr. Young, be allowed to sit on the dais and participate.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered.

Before we get started, it is important to explain that this hearing is not about Chapter 9 of the bankruptcy code. The bankruptcy code is within the jurisdiction of the House Judiciary Committee. This hearing and any subsequent hearings held by this committee will focus on other issues.

I now recognize myself for an opening statement.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. Today we are here to discuss the very challenging energy situation in Puerto Rico. At the forefront is the Puerto Rico Electric Power Authority, or PREPA, which is a fiscal and managerial disaster. With over \$9 billion in debt and an increasingly uncertain future, PREPA represents one of the greatest challenges facing Puerto Rico.

This crisis did not arise overnight. Rather, it has developed because of major issues within PREPA that were allowed to stagnate into the situation that we face today. One cannot begin to address the issues surrounding PREPA without first discussing the aged infrastructure that is overwhelmingly reliant on oil. Because of this, Puerto Ricans have historically paid one of the highest electrical rates within the United States. And, despite oil prices being the lowest they have been in decades, Puerto Rico residents are still paying on average 50 percent more for electricity than the United States' national average.

However, what this statistic fails to capture is the impact the price of energy has on the average resident. When median income is accounted for, keeping an air conditioner on for 24 hours has five times the economic impact on the average Puerto Rican than it does for the average citizen on the mainland. Thus, keeping the lights on for an extra hour or two is a serious decision that average residents on the island may face daily.

As mentioned, PREPA currently relies on an outdated infrastructure of which over 80 percent of PREPA's power plants were constructed before 1977. Not only are these plants inefficient, but they are environmentally deficient and unreliable. In fact, PREPA recently acknowledged that modernizing its facilities over the next 20 years would cost approximately \$5 billion.

The state of energy infrastructure in Puerto Rico represents the sad truth that PREPA cannot make the politically tough decisions. Although it was granted unilateral control over establishing rates, PREPA has failed to update its base rate in 27 years. In other words, PREPA has not been recovering its basic operational and maintenance costs for nearly three decades.

Further, PREPA's failure to collect and bill customers has crafted the notion that electricity is not a commodity that needs to be paid for, but rather is an entitlement. Exemplifying this is the shocking fact that PREPA has \$1.75 billion in accounts receivable as of September of 2014, of which over \$750 million of this was owed by various entities within the Puerto Rican government. In fact, one-third of the island receives subsidized rates, paying fractional amounts or nothing at all.

Finally, the management of PREPA has contributed to an indifferent working environment, as bureaucracy and political connections have stood in the place of merit and hard work. For instance, each new Puerto Rican administration since 2001 has gutted the administration of PREPA. As such, there has existed no path to leadership and has encouraged an environment without individual accountability or goals.

Going forward, PREPA not only needs to address its overwhelming financial crisis, but it must also address the systemic

issues that hamstring its ability to become an efficient and adaptive utility.

For instance, increased privatization through public-private partnerships or power purchase operating agreements would provide opportunities for PREPA to evolve, by putting electric generation in private entities not bogged down by political and bureaucratic concerns.

Unfortunately, for PREPA, there is no easy solution. Blanket grants of debt restructuring would be irresponsible and would merely punt the hard decisions to future generations. The way forward will be politically challenging, but we owe it to the future not to bypass this opportunity.

[The prepared statement of Mr. Lamborn follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMBORN, CHAIRMAN, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Today, we are here to discuss the very challenging energy situation in Puerto Rico. At the forefront is the Puerto Rico Electric Power Authority, or PREPA, which is a fiscal and managerial disaster. With over \$9 billion in debt and an increasingly uncertain future, PREPA represents one of the greatest problems currently facing Puerto Rico.

This crisis did not arise overnight. Rather, it has developed because of major issues within PREPA that were allowed to stagnate into the situation that we see today.

One cannot begin to address the issues surrounding PREPA without first discussing the aged infrastructure that is overwhelmingly reliant on oil. Because of this, Puerto Ricans have historically paid one of the highest electrical rates within the United States. And despite oil prices being the lowest they have been in decades, Puerto Rico residents are still paying on average 50 percent more for electricity than the United States' national average.

However, what this statistic fails to capture is the impact the price of energy has on the average resident. When median income is accounted for, keeping an air conditioner on for 24 hours has five times the economic impact on the average Puerto Rican than it does for the average citizen on the mainland. Thus, keeping the lights on for an extra hour or two is a serious decision the average resident on the island must face daily.

As mentioned, PREPA currently relies heavily on an outdated infrastructure of which over 80 percent of PREPA's power plants were constructed before 1977. Not only are these plants inefficient, but they are environmentally deficient and unreliable. In fact, PREPA recently acknowledged that modernizing its facilities over the next 20 years would cost approximately \$5 billion.

The state of energy infrastructure in Puerto Rico represents the sad truth that PREPA cannot make the politically tough decisions. Although it was granted unilateral control over establishing rates, PREPA has failed to update its base rate in 27 years. In other words, PREPA has not been recovering its basic operational and maintenance costs for nearly three decades.

Furthermore, PREPA's failure to collect and bill customers has crafted the notion that electricity is not a commodity that needs to be paid for, rather it is an entitlement. Exemplifying this is the shocking fact that PREPA had \$1.75 billion in accounts receivable in September 2014, of which over \$750 million of this was owed by various entities within the Puerto Rican government. In fact, one-third of the island receives subsidized rates, paying fractional amounts or nothing at all.

Finally, the management of PREPA has contributed to an indifferent working environment, as bureaucracy and political allegiance have stood in the place of merit and hard work. For instance, each new Puerto Rican administration since 2001 has gutted the administration of PREPA. As such, there has existed no path to leadership, and has encouraged an environment without individual accountability or goals.

Going forward, PREPA not only needs to address its overwhelming financial crisis, but it must also address the systemic issues that hamstring its ability to become an efficient and adaptive utility. For instance, increased privatization through Public-Private Partnerships or Power Purchase Operating Agreements provides opportunities for PREPA to evolve, by putting electric generation in private entities not bogged down by political and bureaucratic concerns.

Unfortunately for PREPA there is no easy solution. Blanket grants of debt restructuring would be irresponsible, and would merely punt the hard decisions to future generations. The way forward will be politically challenging, but we owe it to the future not to bypass this opportunity.

Mr. LAMBORN. At this point I would like to recognize the Ranking Member of this subcommittee, or his designee, for an opening statement.

Mr. PIERLUISI. Thank you, Chairman Lamborn.

I ask unanimous consent that my longer statement be included in the record.

[No response.]

Mr. LAMBORN. I see no objection; so ordered.

**STATEMENT OF THE HON. PEDRO R. PIERLUISI, A DELEGATE
IN CONGRESS FROM THE TERRITORY OF PUERTO RICO**

Mr. PIERLUISI. This is the sixth hearing on Puerto Rico in the 114th Congress. While Congress has debated this matter, the situation has gone from bad to worse.

In 2015, migration from Puerto Rico to the states was the highest in modern history. The territory government has been unable to provide tax refunds, pay contractors, and make pension contributions. Two public entities missed payments to bond holders, leading to a lawsuit by two bond insurers. There will likely be larger defaults and more lawsuits later this year. I don't know which stakeholders think they will benefit from this situation, but I know it will not be my constituents or the vast majority of Puerto Rico's creditors.

The crisis in Puerto Rico is the joint responsibility of the Puerto Rico government, whose policies and practices have often been irresponsible, and the Federal Government, whose policies toward Puerto Rico have clearly been inequitable. As a territory, Puerto Rico lacks democracy, justice, and power. This undignified status must be discarded. If these hearings are merely a forum for Congress to criticize the Puerto Rico government while disregarding its own contribution to the crisis, this is not a constructive exercise.

My constituents are hurting and they are seeking a hand up, not a hand out. Congress should empower them, not reprimand them. Although it is not the subject of this hearing, Congress should enact legislation that authorizes Puerto Rico to restructure a meaningful portion of its debt as every state is authorized to do. And that provides Puerto Rico with better treatment under Federal programs.

I would support the creation of a board to help the Puerto Rico government improve its fiscal practices, but only if Congress provides Puerto Rico with reasonable tools and more equitable treatment. Of course, the high cost of electricity for households and businesses in Puerto Rico hampers economic growth and spurs migration. So, the legislation could include provisions to make power more affordable in the territory.

For example, Congress has enacted a law requiring the Secretary of the Interior to appoint a team of experts to develop an energy action plan for Puerto Rico; but Interior claims it does not have the

funding to proceed. Congress should reassign responsibility for the plan to the Department of Energy and ensure it is swiftly prepared.

Congress also should treat Puerto Rico equally under LIHEAP, which helps households pay their electric bills. I persuaded the Federal Government to take administrative steps to increase Puerto Rico's LIHEAP funding from \$4 million to \$50 million a year; but state-like treatment could translate into \$24 million a year.

On the other hand, Federal tax credits to encourage households to install renewable energy technology do not benefit Puerto Rico. Congress should authorize the Puerto Rico government to offer the credits through its local tax system, with the Federal Government reimbursing the territory government for the lost revenue.

Congress also has authorized, but never funded, two territory-specific grant programs to help Puerto Rico reduce its dependence on foreign oil and to improve its electricity distribution system. Congress should appropriate money for these programs.

In addition, Congress should enact my legislation to increase the number of ships qualified to transport LNG from the states to Puerto Rico, and require DOE to prepare a report on the prospect of the territory becoming a hub for the distribution of American-produced energy in the Caribbean region.

Meanwhile, on the Puerto Rico level, operations at PREPA require fundamental reform. After becoming PREPA's chief restructuring officer in 2014, Ms. Donahue, who is here today, observed that PREPA was far behind the industry in virtually every respect. I will ask Ms. Donahue for a progress report during the course of this hearing.

PREPA must diversify its fuel supply, reducing reliance on petroleum and boosting use of natural gas and renewable energy. The private sector should have a larger role in developing Puerto Rico's energy system. PREPA currently purchases electricity generated by two private companies; additional public-private partnerships could benefit consumers.

Finally, I will ask Ms. Donahue about the debt restructuring agreement PREPA signed with 70 percent of its bond holders, now pending before the Puerto Rico legislature. As Ms. Donahue will note, it took PREPA over 15 months to negotiate the agreement, because PREPA lacks access to an orderly debt restructuring process such as Chapter 9. The burden is on the government of Puerto Rico to make the case that this agreement is in the best interests of the American citizens of Puerto Rico.

Thank you. I yield back.

[The prepared statement of Mr. Pierluisi follows:]

PREPARED STATEMENT OF THE HON. PEDRO PIERLUISI, A DELEGATE IN CONGRESS
FROM THE TERRITORY OF PUERTO RICO

INTRODUCTION

Thank you, Chairman Lamborn. And I want to thank Congressman Lowenthal for giving me the opportunity to serve as Ranking Member for this hearing.

Let me begin by describing the factual backdrop against which the Subcommittee on Energy and Mineral Resources meets today. This is the sixth hearing on Puerto Rico that Congress has held in the past 11 months. Later this month, another

subcommittee of the Natural Resources Committee is expected to hold a seventh hearing about Puerto Rico. During the time period in which Congress has debated this matter, but done nothing, the situation in the U.S. territory has gone from bad to worse. Since 2004, when Puerto Rico's population was at its peak, the territory's population has fallen by about 10 percent, from 3.82 million to 3.47 million—and preliminary data indicate that, in 2015, the level of migration from Puerto Rico to the states was the highest in the modern era. The Puerto Rico government has been unable to pay hundreds of millions of dollars in tax refunds it owes to taxpayers, in payments it owes to private-sector companies that sold products to or rendered services for the government, and in contributions it is required to make to its various public pension funds. According to a November 2015 report, for every dollar the government of Puerto Rico owes in pension payments to retired workers (former central government employees, municipal government employees, employees of all but one public corporation, public school teachers, and judges), it only has 4¢, on average, to meet those obligations. Two of the roughly 18 public entities in the territory that issue bonds—the Puerto Rico Infrastructure Financing Authority (PRIFA) and the Puerto Rico Public Finance Corporation (PFC)—have missed scheduled payments to bondholders, and those missed payments led to the filing of a lawsuit against the government of Puerto Rico by two providers of financial guaranty insurance, known as bond insurers or monolines. If the present course continues, it is a virtual certainty that there will be additional—and far larger—defaults on bonded debt in mid-2016, followed by more lawsuits. Apart from lawyers and consultants, it is unclear who will benefit from this pattern of defaults and ensuing litigation. Certainly not my constituents, nor the vast majority of Puerto Rico's individual and institutional creditors.

Congressional hearings can serve a valuable purpose, providing the evidentiary basis for legislation designed to address a complex problem of national importance—like the situation in Puerto Rico. But hearings can also become a substitute for legislative action or, put differently, a cover for legislative inaction.

Every objective observer recognizes that there is a genuine crisis in Puerto Rico, and that it is the joint responsibility of the Puerto Rico government, whose policies and practices have often been irresponsible and inept, and the Federal Government, whose policies toward Puerto Rico have been immoral, inequitable, and incoherent. If hearings such as this one lead to legislation—that is, if discussion culminates in deeds—then these hearings will have been worth the effort expended.

However, if these hearings are merely a forum for Members of Congress to preach and pontificate about the Puerto Rico government's shortcomings, while disregarding or downplaying the Federal Government's own major contribution to the crisis in the U.S. territory, then all of these hearings will have been a colossal waste of time. This would be the ultimate insult to my constituents, who are truly hurting and who are asking only for a hand-up, not a hand-out, from their national government—in which they have no vote.

On December 16, 2015, Speaker Ryan issued a public statement, noting that he had instructed the committees of jurisdiction in the House to develop a “responsible solution” to the crisis in Puerto Rico by March 31, 2016. Since then, I have spoken with Speaker Ryan, House Majority Leader Kevin McCarthy, House Natural Resources Committee Chairman Rob Bishop, and House Judiciary Committee Chairman Bob Goodlatte. They assured me that they are cognizant of the need for congressional action to tackle this crisis. I thought then—and I continue to think now—that these assurances were made in good faith. I also believe that Speaker Ryan and his fellow Republican leaders recognize that I am a pragmatic legislator that is open to principled compromise and has no agenda other than helping the American citizens I represent, who have received a raw deal from both their local government in San Juan and their national government in Washington, DC.

As I emphasized at previous hearings, it is necessary and appropriate for Congress to enact a legislative package that authorizes Puerto Rico to restructure a reasonable portion of its roughly \$70 billion in debt, while ensuring that Puerto Rico fulfills the obligations to creditors enshrined in our own constitution. Creditors that have opposed a fair and orderly legal framework in which Puerto Rico can restructure some of its debt obligations are making a serious mistake, advocating a position that will not ultimately be in their self-interest. I hope they realize their error in judgment before it is too late. Whether they do or not, it is Congress' job to legislate in the broader public interest, and not to be dissuaded from legislating by powerful players making poor arguments.

This legislative package should also provide Puerto Rico with more equitable treatment under key Federal spending programs like Medicaid and Medicare¹ and Federal tax credit programs like the earned income tax credit and the child tax credit, because the cumulative impact of such disparate treatment has been devastating for quality of life in Puerto Rico and for the fiscal situation of the territory government, which has over-spent local funds and over-borrowed in the capital markets in order to compensate for the shortfall in Federal support. Given the jurisdiction of this subcommittee and the narrow scope of today's hearing, I want to emphasize that this legislative package could also include provisions aimed at ensuring that affordable and reliable electric power is available in Puerto Rico. I will describe a number of specific options later in my testimony.

If provisions granting the Puerto Rico government authority to adjust debt and improving the treatment of the territory under certain Federal programs are included in the legislative package, I will not oppose a provision establishing a temporary and independent board that would ensure that the Puerto Rico government complies with sound budgeting standards and fiscal metrics. However, I will adamantly oppose any Federal oversight unless Congress provides Puerto Rico with the reasonable tools and the fair treatment we require and deserve. Such a one-sided approach would be a political stunt, not a practical solution to a serious problem.

ENERGY

I now turn to the specific subject of today's hearing—energy challenges and opportunities in Puerto Rico.²

The most pressing energy-related challenge in Puerto Rico is the high cost of electric power. Puerto Rico is an island jurisdiction that produces no petroleum, natural gas or coal, and that relies heavily on imported fuel—mainly petroleum—to generate electricity. Based on the best available data, the price of electricity for residential customers in Puerto Rico peaked in February 2013 (when the price of crude oil was about \$116 per barrel) at 30.6¢ per kilowatt hour, compared to a U.S. national average of 11.6¢ per kilowatt hour and a Florida state average of 11.3¢ per kilowatt hour. In recent years, as the price of oil has decreased substantially, the price of electricity paid by consumers in Puerto Rico has fallen as well, but remains high relative to the national average. For example, in November 2015 (the last month for which Puerto Rico data is available, when the price of crude oil was about \$44 per barrel), the price of electricity for residential customers in Puerto Rico was 19.3¢ per kilowatt hour, compared to a U.S. national average of 12.7¢ per kilowatt hour and a Florida state average of 11.6¢ per kilowatt hour. Of course, there is no guarantee that the price of oil will remain this low in the future, as oil prices are volatile and can rise or fall depending on events occurring anywhere in the world.

In Puerto Rico, the high price of electricity is compounded by the low ability to pay. Median household income in the U.S. territory is about \$19,500 a year, versus about \$52,000 in the states, and island households have to devote a significant portion of their limited monthly income to pay their electricity bills. This makes it harder for households to purchase other products and services, which serves as a drag on overall consumer demand, business sales, and economic activity. Likewise, businesses of all sizes in Puerto Rico invariably cite the high cost of electricity as one of the major challenges they confront. They emphasize that expensive electricity bills affect their ability to earn a profit, to expand operations, and to retain existing workers and hire new workers. Some larger companies in Puerto Rico have responded by disconnecting from the island-wide electric grid and generating their own electricity on-site, but this is not a feasible option for most businesses.

The goal, then, must be to reduce the cost of electric power for the residential sector, the commercial sector, and the industrial sector in Puerto Rico. The argument that Puerto Rico households and businesses ought to pay *higher* electricity prices—

¹ There has been recent progress on the Medicare front. The Consolidated Appropriations Act for Fiscal Year 2016 (Public Law 114–113), enacted in December 2015, included the language of my bills to provide Puerto Rico hospitals with the same base payment rate as hospitals in the states for treating Medicare patients (H.R. 1417), and to make Puerto Rico hospitals eligible for the same Medicare bonus payments as hospitals in the states for converting to electronic health records (H.R. 1225). Nevertheless, Puerto Rico (and the other U.S. territories) continue to face numerous disparities under Medicare, and I have introduced legislation to eliminate or mitigate each of these disparities. See H.R. 2635 (Pierluisi) and S. 1961 (Schumer), Improving the Treatment of the U.S. Territories Under Federal Health Programs Act, and H.R. 4163 (Pierluisi) and S. 2342 (Nelson), the Territories Medicare Prescription Drug Assistance Equity Act.

² See generally Puerto Rico Territory Energy Profile, U.S. Energy Information Administration, U.S. Department of Energy (last updated April 16, 2015), available at <http://www.eia.gov/state/?sid=RQ>.

a view I have heard expressed only by individuals who do not live on the island—should be treated with extreme skepticism. Before outlining various steps that can be taken at the local level and the Federal level to improve the energy system in Puerto Rico and to provide cost savings to consumers, a bit of background will help frame the discussion.

BACKGROUND

Puerto Rico’s electricity is supplied by the Puerto Rico Electric Power Authority, known as PREPA, a public corporation established in 1941. PREPA has a governing board consisting of nine individuals, six of whom are appointed by the Governor of Puerto Rico with the advice and consent of the Puerto Rico Senate. Senior managers include an executive director, a vice-executive director, and various functional directors. PREPA has about 9,500 employees, including about 6,700 unionized workers affiliated with four separate unions. PREPA has its own employee retirement system, a defined benefit pension plan. About 14,000 individuals are currently receiving benefits under this plan. In 2014, PREPA had operating revenue of about \$4.7 billion. PREPA is in severe financial distress, and the outstanding principal amount of bonds that PREPA has issued exceeds \$8 billion. Like nearly all bonds issued by public entities in Puerto Rico, PREPA bonds have been downgraded by the three main credit rating agencies to non-investment grade—or junk—status.

PREPA owns and operates all but two of the electricity generating stations—power plants—in Puerto Rico. The PREPA system is composed of four main power plants. They are as follows:

- The “Costa Sur” plant in the municipality of Guayanilla, located on southwest coast of Puerto Rico, which consists of four units.
 - Unit 3 and Unit 4 burn Number 6 residual fuel oil (bunker fuel). Unit 3 and Unit 4 would operate on “limited use” status in the event that the Mercury and Air Toxics Standards (MATS), promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Clean Air Act, take effect.
 - Unit 5 and Unit 6 are capable of burning either bunker fuel or, due to a \$60 million investment made in 2012, natural gas.
- The “Aguirre” plant in the municipality of Salinas, located on the southeast coast of Puerto Rico, which consists of four units.
 - Unit 1 and Unit 2 burn bunker fuel.
 - Combined Cycle Unit 1 and Combined Cycle Unit 2 burn Number 2 fuel (diesel fuel).
 - In recent years, efforts to enable the Aguirre facility to burn natural gas were commenced but not completed. Before these units can burn natural gas, a means of delivering natural gas to the facility must be secured. To this end, Excelerate Energy—a Texas-based company—has proposed to construct (1) an offshore berthing platform off the southeastern coast of Puerto Rico to receive LNG from ships, and (2) a 4-mile-long subsea pipeline connecting the berthing platform to the Aguirre facility. In July 2015, this proposal was approved by the Federal Energy Regulatory Commission (FERC), but it still requires approval from other Federal agencies. PREPA is seeking a loan guarantee from the U.S. Department of Energy to finance up to 80 percent of the project cost, but DOE has been unable to approve the loan guarantee application due to PREPA’s financial condition and the associated risk that the public corporation would be unable to repay the loan.
- The “Palo Seco” plant in the municipality of Cataño, in the San Juan metropolitan area, which consists of four units.
 - All four units burn bunker fuel.
 - Unit 1 and Unit 2 would operate on “limited use” status if MATS take effect.
- The “San Juan” plant located in the municipality of San Juan, which consists of six units.
 - Unit 5 and Unit 6 burn diesel fuel.
 - Unit 7, Unit 8, Unit 9, and Unit 10 burn bunker fuel. Unit 7 and Unit 8 would operate on “limited use” status if MATS take effect.

In addition to the four power plants owned and operated by PREPA, PREPA purchases power generated by two plants owned and operated by private companies.

- A plant in the municipality of Peñuelas, located on the southwest coast of Puerto Rico, which is owned by EcoEléctrica, a Puerto Rico corporation. The plant has been in operation since 2000. The plant burns natural gas, which is imported mainly from Trinidad and Tobago, as well as from Belgium, Nigeria, Norway and Spain, and is delivered to Puerto Rico on foreign-flagged ships. I understand that EcoEléctrica's offshore import terminal—which receives LNG from a ship approximately twice a month—operates at about half its capacity and could accept additional LNG deliveries. EcoEléctrica has 80 employees. EcoEléctrica has entered into a power purchasing agreement with PREPA.
 - In addition to purchasing electricity generated from natural gas at EcoEléctrica's plant in Peñuelas, PREPA also purchases natural gas from EcoEléctrica for use at Unit 5 and Unit 6 at PREPA's own Costa Sur plant in nearby Guayanilla. There is a natural gas pipeline connecting the EcoEléctrica facility in Peñuelas and the PREPA facility in Guayanilla.
- A plant in the municipality of Guayama, located on the southeast coast of Puerto Rico, which is owned by AES Puerto Rico, a subsidiary of the AES Corporation, based in northern Virginia. The plant has been in operation since 2002. The plant burns coal, which is imported from Colombia and delivered to Puerto Rico on foreign-flagged ships. AES Puerto Rico has 110 employees. AES has entered into a power purchasing agreement with PREPA.

According to the latest statistics published by the U.S. Energy Information Administration within the U.S. Department of Energy, in 2013 Puerto Rico generated 55 percent of its electricity from petroleum, 28 percent from natural gas, 16 percent from coal, and 1 percent from renewable sources. In terms of renewables, Puerto Rico enacted legislation in 2010 that established a Renewable Energy Portfolio Standard, or RPS. Under the RPS, PREPA is required to obtain 12 percent of its electricity from renewable sources by 2015 (a standard it failed to meet), 15 percent by 2020, and 20 percent by 2035. Renewable sources in Puerto Rico include solar, wind and hydroelectric. AES Puerto Rico owns and operates the largest solar farm in Puerto Rico, which opened in 2012 in the municipality of Guayama. The electricity generated from this solar farm is sold to PREPA.

In May 2014, the Puerto Rico government approved Law 57–2014, the Puerto Rico Energy Transformation and RELIEF Act. The core of Law 57 is the creation of an Energy Commission, composed of three commissioners appointed by the Governor with the advice and consent of the Puerto Rico Senate, to regulate PREPA and any other “energy company” that operates in Puerto Rico. Pursuant to Law 57, electricity rates established by PREPA, which previously had not been subject to meaningful review, must now be approved by the Energy Commission before taking effect. The intent of Law 57 is sound; how effectively the legislation will be implemented remains to be seen.

In August 2014, PREPA entered into “forbearance agreements”—providing a grace period during which PREPA's creditors refrained from pursuing certain legal actions against PREPA—with fuel line lenders and some bondholders and bond insurers. These agreements were subsequently extended many times, through late 2015.³

In September 2014, PREPA's governing board appointed Lisa Donahue—one of today's witnesses—as chief restructuring officer. In this role, Ms. Donahue is charged with crafting and implementing structural and operational reforms at PREPA and negotiating a consensual debt restructuring agreement with creditors.⁴

Because Puerto Rico, unlike every state, does not have access to Chapter 9 of the Federal bankruptcy code, the Puerto Rico government did not have the option of enacting legislation to authorize PREPA (or other instrumentalities) to seek the adjustment of its debts in a fair and equitable manner under the supervision of a Federal judge. The Puerto Rico government could not even use the *prospect* of a Chapter 9 filing by PREPA as a means to foster swift and successful negotiations between PREPA and its creditors. As a result of Puerto Rico's exclusion from Chapter 9, the territory government enacted a local law in July 2014 that sought to authorize certain public entities in Puerto Rico—including PREPA—to restructure their debts in the Puerto Rico court system. In February 2015, a Federal

³ See http://www.bgfpr.com/investors_resources/prepa.html.

⁴ See Lisa Donahue, Testimony Before the Committee on Energy Affairs and Water Resources, Puerto Rico Senate (April 14, 2015), available at <http://www.aeepr.com/Docs/Lisa%20Donahue%20PR%20Senate%20Statement%204-14-15.pdf>.

district court invalidated that law on the ground that it is preempted by Chapter 9 (even though Chapter 9 excludes Puerto Rico) and, in July 2015, a Federal appeals court affirmed that decision. However, in December 2015, the U.S. Supreme Court granted certiorari to review the appeals court's conclusion, and that case will be argued and decided later this year.

Late last year, after a process that can only be characterized as lengthy and laborious, PREPA—led by Ms. Donahue—reached an agreement with fuel line lenders and bondholders and bond insurers controlling about 70 percent of PREPA's bonds, called the Restructuring Support Agreement (RSA). Implementation of the RSA is contingent on the completion of a number of steps that must still be taken, including enactment of a bill called the PREPA Revitalization Act by the Puerto Rico Legislative Assembly. I have reviewed the English and Spanish versions of this legislation, but the text of the bill is still undergoing material changes.

In testimony delivered in support of the PREPA Revitalization Act before the Puerto Rico Senate on November 10, 2015, Ms. Donahue stated as follows:

Since entering into the Forbearance Agreements, PREPA has negotiated extensively with its creditors with the ultimate goal of reaching agreement on a comprehensive restructuring plan that addresses both PREPA's financial and operational challenges. *The lack of an available legal framework within which to restructure its debts has complicated and extended PREPA's negotiation process. We have no ability to compel anyone to agree or even participate in the process. Therefore the overall solution, which must be consensual, has to be fair, balanced and holistic.*⁵ (emphasis added)

As a matter of principle, I am a strong advocate of consensual debt restructuring negotiations between Puerto Rico's bond-issuing public entities and their creditors—and I have criticized the current administration in San Juan for not being sufficiently proactive in pursuing such negotiations. As a matter of practice, I have concerns that consensual negotiations—if not backstopped by a legal framework that creates the proper incentives for the parties to reach an accord—can drag on for an excessive period of time, result in an agreement that is unfair or unbalanced, and lack a suitable mechanism to bind “holdout” creditors who disapprove of the terms of the deal. It bears emphasis that Chapter 9 is not intended to *substitute for* consensual negotiations—indeed, a debtor generally cannot obtain Chapter 9 relief unless it demonstrates that it sought in good faith to negotiate an out-of-court accord with its creditors—but rather to *facilitate* such negotiations.

During the question-and-answer session, I will ask Ms. Donahue to explain in simple terms (1) why she believes that the RSA—as embodied in the PREPA Revitalization Act now pending before the Puerto Rico Legislative Assembly—meets her self-imposed test of being “fair, balanced and holistic”; (2) what provisions in the agreement give her the most pause; (3) whether the agreement is in any tension with Law 57, especially the provisions of Law 57 that vest the Energy Commission with the power to approve electricity rates; (4) the practical implications of the fact that creditors controlling 30 percent of PREPA's bonds have not signed the RSA; (5) whether the agreement will position PREPA financially to make necessary capital improvements to power plants, power lines and other energy infrastructure; and (6) what impact the agreement is likely to have on electricity rates for island households and businesses in the short, medium and long term.

I am willing to support this agreement, but the burden of proof is on PREPA and its creditors to convince me that the terms of the deal are beneficial for the people of Puerto Rico. I will also ask the other witnesses on the panel for their perspective on the agreement.

RECOMMENDED POLICY STEPS AT THE PUERTO RICO LEVEL

There are four main policy steps that must be taken at the Puerto Rico level in order to improve the delivery of affordable and reliable power to households and businesses on the island.

⁵ See Lisa Donahue, Testimony in Support of PREPA Revitalization Act Before the Committee on Energy Affairs and Water Resources, Puerto Rico Senate (November 10, 2015), available at <http://www.aeepr.com/Docs/PREPA%20-%20Donahue%20Statement%20Testimony%20to%20Legislative%20Assembly%20-%20Nov%202010.pdf>. When Ms. Donahue testified on November 10th, PREPA had yet to reach agreement with the three monolines ensuring roughly 28 percent of PREPA's debt. Since that testimony was delivered, PREPA has reached agreement with two of the monolines, Assured Guaranty Corporation and National Public Finance Guarantee Corporation (a subsidiary of MBIA Inc.), rolling them into the RSA. To date, agreement has evidently not been reached with the third monoline, Syncora Guarantee Inc.

First, operations at PREPA must be fundamentally reformed. Ms. Donahue’s April 2015 testimony before the Puerto Rico Senate—regarding the welter of deficiencies she found at PREPA—makes for sobering reading. As Ms. Donahue notes: “When I arrived at PREPA [in September 2014], it was clear to me that PREPA was far behind the industry in virtually every respect.” Among the many problems she identifies are: power plants that are old and technologically outdated, result in a high rate of forced power outages, and rely on expensive and environmentally unfriendly fuel; strategic decisions—like whom to hire and what capital improvement projects to pursue—that are frequently based on political considerations rather than on sound business judgment; the absence of a comprehensive plan to ensure that PREPA’s power plants will be able to comply with Federal environmental standards like MATS; a baffling rate structure that requires substantial revision; a lack of institutionalized procedures and processes; outdated information technology systems; the inability or unwillingness to collect payment from customers and to prevent theft of electricity; poor inventory control, procurement practices and customer service; and an unsafe working environment for employees. The situation that Ms. Donahue describes is totally unacceptable. PREPA can—and must—change the way it conducts business. I am heartened that Ms. Donahue has testified that improvements are in fact being made, and I will ask her to describe in more detail what reforms have occurred and what reforms still need to occur.

Second, PREPA must diversify its fuel supply, reducing its reliance on petroleum (which is not used in the 50 states to generate electricity) and increasing its use of natural gas and renewable energy sources. With respect to natural gas, it must be emphasized that the United States became the world’s largest producer of natural gas in 2011, and the first export terminals necessary to deliver that gas to other jurisdictions (whether non-contiguous states like Hawaii, U.S. territories like Puerto Rico, or foreign nations) will come on-line later this year. Puerto Rico should have the option of purchasing natural gas from the states, rather than from foreign countries, because it may be able to do so more efficiently and at lower cost. However, there are no Jones Act-compliant tankers available to transport natural gas from the states to Puerto Rico, which is why I introduced legislation to authorize modern tankers built outside the United States but otherwise compliant with the Jones Act to fill this gap.

Relatedly, if the Jones Act issue is addressed, I think Puerto Rico is well-positioned to serve as a U.S. natural gas hub for the Caribbean region. Specifically, a large tanker could transport natural gas from the states to Puerto Rico, whereupon the natural gas could be placed on smaller vessels for transport (so-called “milk runs”) to other islands in the area. With respect to renewables, I have been disappointed by the lack of progress made by the current administration in San Juan to comply with either the letter or the spirit of the RFS. With strong leadership and smart planning, Puerto Rico can do a much better job harnessing the power of the sun, the wind, and the water. Parenthetically, I also believe that Puerto Rico has the potential to develop a biofuel industry, and (1) to use biofuels to blend with diesel fuel at those PREPA plants that still rely on Number 2 fuel, and (2) to use biofuels for transportation fuel, as is required in the U.S. mainland pursuant to the Renewable Fuel Standard (RFS) program.

Third, it is absolutely clear that there must be a larger role for the private sector in developing Puerto Rico’s energy system—whether it is electricity generation, transmission or distribution. One model is the EcoEléctrica and AES model, in which PREPA enters into a contract to purchase power generated by a private corporation in a more cost-efficient manner than PREPA could generate on its own. Another model worth analyzing would be for a private corporation to generate electricity and then to deliver this electricity using PREPA’s transmission and distribution lines (a process known as “wheeling”).

Fourth, PREPA must undertake a smart and serious capital improvement program to modernize its generation, transmission and distribution system. The problem, of course, is that PREPA is in severe financial distress, does not have access to credit markets, and will thus struggle to pay for new infrastructure or to upgrade existing infrastructure. Investors are understandably wary of entering into a contract with a public corporation that is financially unstable and may not be able to fulfill its contractual obligations. Thus, unless PREPA can achieve financial stability, whether as a result of the pending RSA or through other means, it will be difficult for PREPA to finance the capital improvements necessary to benefit consumers.

RECOMMENDED POLICY STEPS AT THE FEDERAL LEVEL

Hopefully, one purpose of this hearing is to explore ways in which the Federal Government—both the executive branch and Congress—can help Puerto Rico improve its energy system and provide affordable electricity to consumers. Here, then, are seven constructive steps the Federal Government could take:

- *Appropriate Funds for the Congressionally Authorized “Energy Action Plan” for Puerto Rico:* In December 2014, Congress enacted the Fiscal Year Consolidated and Further Continuing Appropriations Act (P.L. 113–235). At my initiative, the law contains a provision requiring the Secretary of the Interior to appoint a team of technical, policy and financial experts to develop an “energy action plan” for Puerto Rico. The plan must include recommendations for how Puerto Rico can: (1) reduce its reliance on foreign fuels; (2) develop and utilize U.S. fuel energy sources; and (3) improve performance of energy infrastructure and overall energy efficiency. To date, the Secretary of the Interior has not appointed the required team, claiming that the Department does not have sufficient funding to prepare the plan. Congress should reassign responsibility for the plan from the Department of the Interior to the Department of Energy, which is better suited to prepare the plan, and then ensure that the Department of Energy prepares the plan without delay.
- *Provide Equality for Puerto Rico Under LIHEAP:* The Low Income Home Energy Assistance Program (LIHEAP), which is administered by the U.S. Department of Health and Human Services (HHS), helps low-income households pay their electricity bills. Puerto Rico has always been treated unequally under LIHEAP, receiving far less funding than it would if it were a state. Specifically, in the 1981 Federal law that established LIHEAP, Congress directed HHS to allocate each year, for the five territories to share, no less than 0.10 percent and no more than 0.50 percent of the total LIHEAP appropriation. According to the law, the percentage annually allocated by HHS is supposed to be determined on the basis of need in the territories. However, from the inception of LIHEAP until Fiscal Year 2013, HHS provided exactly 0.135 percent for the territories each year, just barely above the minimum level authorized by law. I led an effort by the five territory delegates to persuade HHS to increase the funding provided to the territories to the maximum amount allowed under law—0.50 percent—and this effort was successful. Accordingly, Puerto Rico received about \$15 million in both Fiscal Year 2014 and Fiscal Year 2015, compared to the less than \$4 million that Puerto Rico received under the old formula in Fiscal Year 2013. However, Puerto Rico is still treated unequally under the LIHEAP statute, compared to the states. Congress should amend the LIHEAP statute to provide Puerto Rico with state-like treatment, which—according to one estimate—would result in Puerto Rico receiving about \$24 million a year.
- *Extend Federal Renewable Energy and Energy Efficiency Tax Credits to Puerto Rico Households:* Congress has enacted various Federal tax credits to encourage households to install renewable energy technology and energy efficiency technology. For example, there are Federal tax credits for households that adopt solar-electric, solar water-heating, fuel cell, wind energy, and geothermal heat pump technology, and Federal tax credits for households that make their homes more energy efficient, such as by purchasing certain appliances or installing insulation. See Internal Revenue Code §§25C, 25D, 45L and 45M. However, because Congress has exempted Puerto Rico households from paying Federal income taxes on income earned in Puerto Rico, most households in the U.S. territory cannot benefit from these important credits. Therefore, as it has done with respect to other Federal tax credits, Congress should amend current law to apply these renewable energy and energy efficiency credits to Puerto Rico through a “cover-over” mechanism. Under this mechanism, the U.S. Treasury Department would authorize the Puerto Rico government to offer these credits to households through the local Puerto Rico tax system, and the U.S. Treasury Department would make an annual grant to the Puerto Rico government to compensate it for the foregone tax revenue.
- *Expand USDA Electricity-Cost Reduction Programs in Puerto Rico:* The U.S. Department of Agriculture (USDA) administers multiple grant programs aimed at reducing the cost of electricity, including the Rural Energy for America Program (REAP) and the High Energy Cost Grant Program. Under REAP, USDA provides grants up to \$500,000 and loan guarantees to farmers and small businesses to help them purchase and install renewable energy systems or make energy efficiency improvements. While multiple farmers and

small business owners in Puerto Rico have received grants under this program, it is clear that more can be done to expand the number of REAP applications from Puerto Rico, and so I urge USDA to enhance its efforts to educate potential applicants in the territory about the program. By contrast, the High Energy Cost Grant Program has not been put to use in Puerto Rico. This program was established in 2000 to provide assistance to communities most challenged by high energy costs. Grants may be used to improve energy generation, transmission or distribution facilities serving eligible communities, or to install renewable energy systems and make energy efficiency improvements in eligible communities. However, under current program rules, grants are only available in communities with annual residential energy costs exceeding 275 percent of the national average. Given that under the PREPA rate structure, a single island-wide rate is charged to customers, Puerto Rico has not been in a position to benefit from this important grant program. I urge USDA and PREPA to meet so that they can review whether there are ways in which this program could be modified in order to assist Puerto Rico communities, given the very high cost of electricity in the U.S. territory.

- *Update the Existing Jones Act LNG and LPG Exemption in Puerto Rico:* Congress should enact my legislation, the Puerto Rico Interstate Commerce Improvement Act, in order to increase the number of maritime vessels authorized to transport LNG and liquified petroleum gas (LPG) from ports in the U.S. mainland to ports in Puerto Rico. The Jones Act has three main pillars. It requires that products transported between ports in the United States be carried on vessels that are predominantly owned by U.S. citizens and registered in the United States, built at shipyards located in the United States, and operated with mostly U.S. citizen crews. In 1996, Congress granted Puerto Rico a narrow exemption from the Jones Act. That law authorizes two categories of vessels to transport LNG or LPG from ports in the U.S. mainland to ports in Puerto Rico, even though those vessels do not satisfy all three pillars of the Jones Act. The first category are vessels built outside of the United States prior to October 1996. The second category are vessels built in the United States prior to October 1996, but then registered by their owners in foreign countries. Under the Jones Act, once a vessel has been registered outside of the United States, it cannot subsequently be re-registered in the United States. According to the best available statistics, only about 60 of the 450 or so foreign-built LNG tankers in the world qualify for the 1996 exemption under category one. The average age of those 60 tankers is about 30 years old, while the average age of all LNG tankers in operation is about 12 years old. In addition, there are only about 11 LNG tankers that qualify for the 1996 exemption under category two, and all are at least 35 years old. My legislation would update the 1996 exemption, allowing any vessel built outside of the United States, not merely those built before October 1996, to transport LNG and LPG from a port in the U.S. mainland to a port in Puerto Rico. This will benefit energy producers in the states, who will gain access to an important new U.S. market. It will also provide a direct benefit to consumers in Puerto Rico, who will see their electricity bills decrease and their environment improve.
- *U.S. Department of Energy Report on the Potential for Puerto Rico to Become a Transshipment Hub for U.S.-Produced LNG in the Caribbean Region:* Either as part of the energy action plan for Puerto Rico mandated by Congress in P.L. 113-235 (described above), or independent of that plan, the U.S. Department of Energy should prepare a report for Congress and the public on the feasibility and desirability of Puerto Rico becoming a transshipment hub for the distribution of U.S.-produced LNG and other energy products throughout the broader Caribbean region. If necessary, Congress should enact legislation requiring this report.
- *Sustain and Strengthen USDOE Technical Assistance to Puerto Rico:* In October 2014, with my support, the government of Puerto Rico and the U.S. Department of Energy signed a memorandum of understanding that provides a broad framework under which the parties are working together to shape an energy policy for Puerto Rico that is in the public interest and rooted in transparency, efficiency, and strong citizen participation. These efforts complement the process initiated by the Puerto Rico Energy Commission under Law 57 to help PREPA transform itself. USDOE—through subject matter experts in its Office of Energy Efficiency and Renewable Energy (EERE), Office of Fossil Energy, National Energy Technology Laboratory (NETL), and Office of Intergovernmental Affairs—has been periodically meeting with government

and private-sector stakeholders in Puerto Rico to review progress, come to a consensus on a common vision, and set realistically attainable energy diversification goals. Specifically, the Energy Commission is currently reviewing the draft Integrated Resource Plan (IRP)—which PREPA contracted with Siemens to prepare—that addresses generation, transmission, distribution and fuel options. Stakeholders are providing input on the IRP with USDOE technical assistance. I urge USDOE to sustain and strengthen this technical assistance.

Mr. LAMBORN. I thank Mr. Pierluisi for his statement. I would now like to recognize the Ranking Member of the Full Committee, Mr. Grijalva of Arizona, for an opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much, Mr. Chairman, for your courtesy. We appreciate you scheduling this hearing in response to Speaker Ryan's instructions to this committee to craft a responsible solution to Puerto Rico's budget disaster and deep crisis by the end of March.

While exploring the energy challenges and opportunities facing Puerto Rico is a worthwhile topic, albeit somewhat disjointed from the fiscal reality that is going on right now in Puerto Rico, there is a larger issue here in Congress.

Congress is denying Puerto Rico the ability to have an orderly restructuring of its unpayable debt. It is a major reason for the debt crisis, it is the main barrier to recovery, and is even one of the primary energy challenges facing Puerto Rico. That is what we should be discussing today.

According to the Treasury Department, which has been assisting the island with its debt issues, Puerto Rico is insolvent. Last June, Governor Garcia Padilla announced that Puerto Rico could not pay its debts. His government defaulted on \$58 million in bond principal and interest payments in August and again in January. The Governor has been looking through the cushions of his government's couch to find ways to maintain these bond payments. This means other bonds have had to go unpaid, causing some insurers of Puerto Rican bonds to file suit against the government. It is just the beginning of what is expected to be a flood of expensive, chaotic litigation which only a Federal debt restructuring process can prevent.

The Puerto Rican government is robbing Peter to pay Paul. Some time in the next 3 to 6 months they will no longer be able to pay Paul or anyone else. This will profoundly deepen the humanitarian crisis on the island that we have been warned about, which is coming. We cannot allow this to happen. Our fellow American citizens in Puerto Rico deserve much better.

The island continues to suffer from decades of economic decline and will not be able to turn things around without congressional action. They cannot repair their economy until they deal with the debt problem. They cannot provide cost-effective energy until they raise billions of dollars to upgrade their old and dysfunctional power generation and distribution infrastructure. These billions will be impossible to raise or borrow until an orderly debt

restructuring brings everyone to the table and helps them repair their credit. Meanwhile, Puerto Rican families are forced to suffer more and more from brutal budget cuts.

Last September, my staff put out a report called, “Profit at Any Cost: How Hedge Funds Win By Making Sure Puerto Rico Loses.” It shows how vulture hedge funds helped cause the Puerto Rican debt crisis and are now standing in the way of resolving it. Since then, these funds have been using their influence in the courts and through political channels to stop all debt restructuring plans not on their terms. They are relying on their status as Puerto Rico’s only remaining lender to push extreme cuts to basic services that will, if enacted, increase their profits even more.

In the meantime, the island continues to bleed residents who see relocation to Florida or elsewhere on the mainland as their only hope for survival. By some estimation, up to 100,000 Puerto Ricans are expected to have left the island in 2015.

Much more pain in the name of austerity will be inflicted on the people of Puerto Rico if Congress continues to put the demands of hedge funds ahead of the needs of families. There is no reason they should have to pay for the risky investment decisions made by other people.

I urge this committee to put the American citizens of Puerto Rico first and allow this island to access bankruptcy protection.

Mr. Chairman, again, thank you for your courtesy. I yield back.
[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, we appreciate you scheduling this hearing in response to Speaker Ryan’s instructions to this committee to craft a “responsible solution” to Puerto Rico’s budget disaster by the end of March.

While “Exploring the Energy Challenges and Opportunities Facing Puerto Rico” is worthwhile, there’s a larger issue here. Congress is denying Puerto Rico the ability to have an orderly restructuring of its unpayable debt. It’s a major reason for the debt crisis. It’s the main barrier to recovery. It’s even one of the primary energy challenges facing Puerto Rico. That’s what we should be discussing today.

According to the Treasury Department—which has been assisting the island with its debt problems—Puerto Rico is insolvent. Last June, Governor Garcia Padilla announced that Puerto Rico could not pay its debts. His government defaulted on \$58 million in bond principal and interest payments in August and again in January.

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The Puerto Rican government is robbing Peter to pay Paul. Some time in the next 3 to 6 months they will no longer be able to pay Paul or anyone else. This will trigger the humanitarian crisis on the island that we have been warned is coming. We cannot allow that to happen. Our fellow American citizens in Puerto Rico deserve better.

The island continues to suffer from a decade of economic decline and will not be able to turn things around without congressional action. They can’t repair their economy until they deal with the debt problem. They can’t provide cost-effective energy until they raise billions of dollars to upgrade their old and dysfunctional power generation and distribution infrastructure. These billions will be impossible to raise or borrow until an orderly debt restructuring brings everyone to the table and helps them repair their credit. Meanwhile, Puerto Rican families are forced to suffer more and more brutal budget cuts.

Last September, my staff put out a report called "Profit at any Cost: How Hedge Funds Win by Making Sure Puerto Rico Loses." It shows how "vulture" hedge funds helped caused the Puerto Rico debt crisis and are now standing in the way of resolving it.

Since then, these funds have been using their influence in the courts and through political channels to stop all debt restructuring plans not on their terms. They are relying on their status as Puerto Rico's only remaining lender to push extreme cuts to basic services that will, if enacted, increase their profits even more.

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Much more pain in the name of austerity will be inflicted on the people of Puerto Rico if Congress continues to put the demands of hedge funds ahead of the needs of families. There is no reason they should have to pay for risky investment decisions made by other people.

I urge this committee to put the American citizens of Puerto Rico first and allow the island to access bankruptcy protection.

Mr. LAMBORN. Thank you. I would now like to introduce our witnesses. I appreciate every one of you being here today and serving as witnesses on this panel.

We have Ms. Lisa Donahue, Managing Director of AlixPartners; Mr. Jorge San Miguel, Chair of Environmental Law, Energy & Land Use of Ferraiuoli, LLC; Mr. Carlos Rivera-Vélez, President of the Puerto Rico Manufacturers Association; Mr. Josen Rossi, Chairman of the Institute for a Competitive and Sustainable Economy of Puerto Rico; and Mr. Jaime Sanabria-Hernández, Co-President and General Manager for Finance and Administration of EcoEléctrica, L.P. I hope I pronounced every one of those names and organizations correctly.

Let me remind the witnesses that under our Committee Rules, they must limit their oral statements to 5 minutes; but their entire statement will appear in the hearing record. When you begin, the lights on the witness table will turn green.

After 4 minutes, the yellow light comes on. Your time will have expired when the red light comes on. At that point, I would ask that you complete your statement.

I would also like to ask the entire panel to testify before the Members at the dais ask any questions.

We will now start in order, and the Chair recognizes Ms. Donahue to testify.

STATEMENT OF LISA J. DONAHUE, MANAGING DIRECTOR, ALIXPARTNERS, NEW YORK, NEW YORK; CHIEF RESTRUCTURING OFFICER, PUERTO RICO ELECTRIC POWER AUTHORITY

Ms. DONAHUE. Thank you, Chairman Lamborn, Ranking Member Lowenthal, Full Committee Ranking Member Grijalva, Resident Commissioner Pierluisi, and members of the subcommittee. My name is Lisa Donahue. I am the Chief Restructuring Officer of the Puerto Rico Electric Power Authority, or PREPA.

PREPA produces and delivers virtually all of the Commonwealth's electric power. PREPA owes approximately \$9 billion to creditors. Absent a financial restructuring, it will run out of money in the first half of 2016. Its problems are the results of

choices made over decades, often driven by political or electoral considerations rather than best practices or business imperatives.

Energy costs in Puerto Rico are high, but PREPA's costs are not fully covered by its existing rate structure. The rate deficit—that is the difference between the rate charged and PREPA's actual costs including existing debt service—is nearly 8¢ per kilowatt hour. PREPA also faces challenges because its infrastructure is outdated, inefficient, and does not currently comply with environmental regulations.

PREPA has developed a recovery plan to transform into a modern utility. The recovery plan is based on an equitable burden-sharing approach and involves three core goals: one, improving operations, efficiency, and therefore, cost structure; two, investing in infrastructure; and three, achieving a sustainable capital structure.

PREPA has focused its operational improvement efforts across the enterprise. Through continued focus and use of cross-functional teams, PREPA has achieved hundreds of millions of dollars in one-time and recurring savings.

PREPA has also developed a comprehensive, long-term capital plan that assumes \$2.4 billion in new investments. The plan improves fuel diversity by shifting away from fuel oil toward natural gas and renewables. The plan also provides for critical investments in the transmission and distribution system. The plan includes an RFP to solicit bids for third-party investment in its infrastructure. We are interested in attracting the most efficient capital and expertise to help us execute the plan.

PREPA's leaders and employees will continue to be critical to ensuring that it is able to execute the plan. Governance reforms pending before Puerto Rico's legislative assembly will promote independence to ensure that the changes are sustainable. In parallel, PREPA is working to instill a culture of meritocracy and accountability. It is also focused on achieving a sustainable debt structure.

We cannot expect any one constituent to carry all of the burden. All stakeholders should contribute and support PREPA's transformation. To that end, in December of 2015, PREPA reached a restructuring support agreement, or RSA, with creditors representing approximately 70 percent of its debt. The RSA outlines a comprehensive restructuring plan to reduce PREPA's debt burden while also increasing liquidity.

These are all positive developments, but PREPA's transformation is far from complete. The RSA is subject to many contingencies.

First, the RSA is with only a portion of our creditors. In order to consummate the restructuring agreement, additional bond holders must participate. Approximately \$2.7 billion in bonds have not yet agreed to the restructuring, and we need \$2 billion of those bonds to be exchanged voluntarily for the deal to become effective.

Second, the new securitization bonds must receive an investment-grade rating, which is challenging as the rating will depend, at least in part, on the Commonwealth's financial situation.

Third, the Puerto Rico legislature must approve legislation acceptable to the RSA creditors to reform PREPA's governance,

authorize the securitization bonds, and make other changes to facilitate the transformation.

If it became available, an orderly restructuring regime under the bankruptcy code would greatly help PREPA efficiently implement the agreement with its creditors. It would allow the super-majority of supporting creditors to bind holdout creditors. It would improve the deal economics by ensuring 100 percent participation, and it would provide a faster process with greater legal certainty under the leadership of a Federal judge.

The stakes are high and the human consequences of inaction are real. It goes without saying that electricity is the life blood of the Commonwealth. If the RSA terminates or we cannot consummate the recovery plan, we will be back to square one. PREPA could run out of money. Fuel supply could dry up. The safety and welfare of the Commonwealth and its people would be endangered. For these reasons, consummating PREPA's restructuring is critical to the social and economic well-being of the Commonwealth and its people.

Thank you for the opportunity to participate in this hearing. I look forward to your questions.

[The prepared statement of Ms. Donahue follows:]

PREPARED STATEMENT OF LISA J. DONAHUE, CHIEF RESTRUCTURING OFFICER,
PUERTO RICO ELECTRIC POWER AUTHORITY

Chairman Lamborn, Ranking Member Lowenthal, Commissioner Pierluisi and members of the subcommittee: My name is Lisa J. Donahue, and I am the Chief Restructuring Officer of the Puerto Rico Electric Power Authority (PREPA). I am also a Managing Director and the leader of the Turnaround and Restructuring Practice at AlixPartners, a global business and advisory firm. I am a Fellow of the American College of Bankruptcy, and a Director-elect for April 2016 of the American Bankruptcy Institute.

Prior to my appointment as PREPA's Chief Restructuring Officer, I served as an executive at a number of other power and energy companies, including as executive vice president and chief financial officer at Calpine Corp., an independent power producer operating in Texas, California, Canada and Mexico; chief financial officer at Atlantic Power Corp., a power and infrastructure company publicly traded on both the New York and Toronto stock exchanges; and chief restructuring officer at SemGroup, L.P., a mid-stream oil & gas, pipeline, storage and commodity trading company.

I want to thank the subcommittee for giving me the opportunity to participate in this hearing on behalf of PREPA. PREPA was created for the purpose of conserving, developing and utilizing Puerto Rico's energy resources to promote the general welfare of the Commonwealth's residents and to increase commerce and prosperity. PREPA produces and delivers virtually all of the electric power consumed in the Commonwealth. Its future is central to the subject matter of this hearing—and in fact the economic well-being of Puerto Rico.

PREPA's Governing Board selected and appointed me as Chief Restructuring Officer (CRO) in September 2014. Since then, I have reported directly to the Board and worked alongside PREPA's management to address fundamental operational problems that have hindered PREPA for decades, and to help lead PREPA's financial restructuring efforts, particularly its discussions with creditor representatives.

GENERAL BACKGROUND AND CHALLENGES

PREPA is currently in a state of crisis, and for years has been unable to transform into the modern, world-class utility that Puerto Rico deserves. In the summer of 2014, PREPA faced a severe financial and liquidity crisis, created by a combination of recurring negative cash-flows, an ongoing recession, outdated generation facilities, substantial debt maturities and an inability to access the capital markets. This crisis threatened PREPA's ability to operate, mainly by threatening its ability to continue purchasing fuel to run its power plants and provide energy to Puerto Rico.

PREPA's problems did not arise overnight, or even in a few years—they developed and intensified over a period of decades. During this time, management and other strategic decisions, including staffing and capital investment, were too often based on political or electoral considerations rather than best practices or business imperatives. As a result of this dynamic, PREPA suffered from regular employee reassignments and had difficulty conducting rational long-term planning, which compounded existing challenges.

Today, PREPA owes approximately \$9 billion to its bondholders and fuel line lenders, and continues to face very serious liquidity constraints. Absent a financial restructuring, between now and July 1, 2016, PREPA faces contractual obligations to pay \$700 million under its fuel lines of credit and approximately \$428 million in principal and interest under outstanding bonds. This is more than twice the amount of cash PREPA currently has on hand, and PREPA will not be able to make up the difference with revenue from operations during this period. As part of the recently announced restructuring support agreement (RSA), a group of PREPA creditors recognized PREPA's liquidity constraints by agreeing to relend to PREPA \$115 million of interest paid to bondholders on January 4, 2016.

Our financial situation would be much worse if our creditors had not agreed to forbearance agreements in August 2014 and more recently, the RSA. These agreements have given PREPA temporary relief from its obligations to creditors, including relief from its obligation to make more than \$600 million in sinking fund payments. Absent these agreements, PREPA would already have run out of money.

One contributing factor to PREPA's current financial situation is that its existing rate structure does not capture its operating costs and debt service. PREPA's base rate has not changed since 1989 despite increases in costs and debt service obligations. However, the all-in cost fluctuates based on the cost of fuel and purchased power, and reached highs of approximately 28¢ per kilowatt hour (kWh) in August 2014. Today, the all-in cost has fallen with oil prices to approximately 21¢ per kWh, which is high in comparison to the U.S. mainland, and has a disproportionate impact on Puerto Rico residents given their income levels and other economic factors. The "rate deficit" between existing rates and the rates PREPA would need to charge to cover operational costs, including debt service over the next 3 years, is approximately 7.8¢ per kWh.

Closing this rate deficit is critical to PREPA's sustainability. But PREPA's customers cannot carry this burden alone. Even the creditors who are party to the RSA agree with this point. To help close the rate deficit, we need to implement operational reforms to improve efficiency, and we need concessions from our creditors.

ONGOING REFORM EFFORTS

When our team arrived at PREPA in September 2014, we encountered a large and complex organization facing a range of challenges that had been decades in the making. Like a number of companies, including many that I have personally worked with in my turnaround management career, PREPA needed outside assistance to help restructure its operations and finances and create a plan to assure long-term sustainability.

Operational Improvements

PREPA has focused its operational improvement efforts on core business functions to improve organizational efficiency, increase revenue generation and instill a culture of safety in the workplace. By addressing shortcomings in accounts receivable and collections, fuel inventory, procurement, inventory management and safety, PREPA has begun the process to transform into a modern utility.

PREPA has made great strides in its accounts receivable and collections processes with respect to government and private customers alike. PREPA has directly engaged with the central Commonwealth government and its agencies to set appropriate Fiscal Year 2016 budgets and has implemented payment plans for past due government accounts. Given the current financial situation within the Commonwealth, these efforts have become even more important.

PREPA has also analyzed data to prevent theft and other non-technical losses, developed workforce training in its call center and implemented customer care and billing improvements. Taken together, these reforms create a platform for PREPA to work collaboratively with customers to reduce past due accounts and improve customer service.

PREPA has also worked to improve fuel inventory controls. In September 2014, PREPA's controls were sporadic at best. PREPA did not consistently measure based on industry standards or test for variations in consumption. Additionally, PREPA lacked a uniform process to forecast its fuel requirements based on optimized dispatch and deliver power at the lowest possible cost, leading to unnecessarily high fuel inventory levels and limitations on PREPA's ability to negotiate better terms.

Our team has worked with PREPA to implement an integrated process that addresses these issues. We measure and track fuel inventory and investigate variances point to point. We have also improved inventory controls and reduced inventory levels with respect to all inventory. In addition, we have implemented a Request for Proposal (RFP) process and negotiated with fuel suppliers to secure more favorable fuel purchase terms.

One issue of importance to PREPA, especially as it transitions to burning a significantly higher percentage of natural gas, is the Jones Act, which increases the cost of transporting fuel from the mainland to Puerto Rico. The impact of the Jones Act on PREPA's operations today is in the range of \$3 to \$5 million per year, due to the required use of Jones Act-compliant barges to distribute fuel oil between units. Based on current operational assumptions, this impact could increase by approximately \$20 to \$30 million per year if the Aguirre Offshore Gas Port (AOGP) is constructed and PREPA elects to source liquefied natural gas from the mainland. Relief from the Jones Act's stringent requirements could allow PREPA to save these amounts over time, and those savings would be passed along to its customers.

The safety of employees should be at the heart of every well-run utility. In the past 10 years, PREPA has had 15 fatalities and approximately 14,000 safety incidents. Its incident rate is significantly higher, in fact more than double, than that of its industry peers. In September 2014, we ran an RFP process and engaged industry leader DuPont to conduct an analysis of safety practices and procedures. PREPA is currently implementing the short- and long-term recommendations made by DuPont and tracking its performance in those areas. During 2015, PREPA reduced its incident rate by 15 percent, which represents a productive first step, but falls short of our ultimate goal.

PREPA is also working to improve its organizational culture and instill a focus on excellence. Many of PREPA's employees have embraced this effort and the board and management have also committed to these critical changes. Work is underway to introduce carefully selected key performance indicators (KPIs) to heighten the visibility of key priorities within the organization and focus process improvements where they will have the greatest possible impact. PREPA's workforce and organizational structure is being evaluated to reduce overlapping roles, streamline cross-divisional work and clarify job descriptions. PREPA is also undertaking succession planning for key positions to address potential retirements and other retention pressures.

All of these efforts have already had a significant financial impact, and show that PREPA can take actions to reduce costs, improve efficiency and apply industry standards. PREPA has achieved \$150 million in one-time cash generation savings and approximately \$162 million in recurring annual savings. As new operational initiatives are phased in, we expect additional one-time savings of \$185 million and recurring annual savings of up to \$280 million. These savings are important because they contribute to closing the rate deficit and because we are asking creditors and other stakeholders to contribute to PREPA's transformation.

Vision for a New PREPA

We have developed a comprehensive vision for a new, modern and self-sustaining PREPA. This is necessary because PREPA's outdated and inefficient generation fleet and transmission system have been major causes of rising costs and decreasing reliability to customers over time.

The system is under extreme stress. Generating units are old, and PREPA has not made the investments necessary to maintain their reliable service. PREPA's median plant age is 44 years, compared to a U.S. industry average of 18 years. Approximately 80 percent of PREPA's generating fleet is more than 25 years old, and PREPA's oldest thermal unit is 56 years old. Its heavy reliance on fuel oil creates price volatility for consumers and environmental compliance challenges for PREPA under Federal Mercury and Air Toxics Standards (MATS) and other regulations. PREPA's outdated transmission system makes it difficult to accommodate unplanned unit outages and integrate renewable generation sources. Overall, PREPA's outdated infrastructure is a key cause of high forced outage rates, poor efficiency, low reliability and high costs.

We have developed a comprehensive long-term capital plan that assumes \$2.4 billion in new investment—funded either through cash resources or new public-private partnership investments. Our capital plan is driven by PREPA's integrated resource plan (IRP), which was undertaken in response to local law requirements. To help develop the IRP, PREPA engaged Siemens Industry, Inc., an industry leader. The IRP was filed with the Puerto Rico Energy Commission (PREC), a newly established regulatory body, in July 2015 and was updated in August 2015. PREC is currently reviewing the IRP with input from other stakeholders.

Importantly, PREPA's capital plan includes the construction of the Aguirre Offshore Gas Port (AOGP), which will allow PREPA to receive natural gas directly and efficiently at the Aguirre complex, as well as the conversion of the Aguirre generation facility to burn natural gas. This transition from fuel oil to natural gas will improve fuel diversity and enable the Aguirre steam power generating units to comply with environmental regulations like MATS. Construction on AOGP has been delayed given certain permitting issues and PREPA's financial situation, but we anticipate that PREPA will be in position to commence construction in the second or third quarter of 2016, and to complete the project by late 2017 or early 2018.

PREPA is pursuing cost-effective financing for AOGP, including through discussions with the U.S. Department of Energy (DOE) regarding a potential loan guarantee under DOE's Section 1703 program. At this time, PREPA understands that DOE and other potential financing partners are awaiting a resolution of PREPA's overall financial situation before committing to invest in the project.

Other key projects in the capital plan include the construction of new units at PREPA's Palo Seco plant, the installation of new transmission and distribution equipment throughout PREPA's system, and the long-term repowering or replacement of generation units at Aguirre and Costa Sur. These investments, which will include flexible generation units, will improve PREPA's ability to utilize existing and incorporate additional renewable energy sources, which are a key component of PREPA's vision for efficient, sustainable energy in Puerto Rico. Execution of the capital plan will also help PREPA comply with MATS for steam power generating units and reduce reliance on fuel oil.

These initiatives will dramatically improve the efficiency of PREPA's system and reduce its environmental impact. The installation of newer and more efficient units will reduce the volume of fuel needed to power Puerto Rico and minimize the price volatility that results from relying on fuel oil for so much of Puerto Rico's supply. In addition, the shift to cleaner fuel sources will yield significant benefits. Today, 52 percent of total electricity generation in Puerto Rico is powered by fuel oil and coal, with 44 percent powered by natural gas and only 4 percent from renewable sources. Under PREPA's capital plan as contemplated in the IRP, by 2030, 83 percent of total electricity generation will be powered by natural gas and renewable sources (with renewables increasing to 14 percent of the total) and only 17 percent will be powered by fuel oil and coal (with fuel oil driven down to below 1 percent).

PREPA is focused on facilitating an increase in the usage of renewables as a means to further diversify energy sources in Puerto Rico and contribute to PREPA's environmental compliance efforts. The IRP forecasts renewable capacity growth from 207 MW in 2016 to 1,193 MW in 2030, an increase of almost 600 percent. Power produced from renewable sources is expected to increase by an average of 9 percent annually, which will reduce overall demands on PREPA's system and displace traditional thermal generation.

PREPA's capital plan is comprehensive and achievable. We intend to fund the plan with enhanced liquidity from operational savings, creditor concessions and a new transparent rate structure. PREPA will also pursue bids from third parties to finance and build new power generating units through an open and competitive RFP process to ensure that we are attracting the most efficient capital and expertise to help us execute the plan.

Another critical element of PREPA's vision for the future is governance reform. PREPA's leaders and employees are critical to ensuring that PREPA is able to execute on its capital and business plans. To this end, governance reforms embedded in the PREPA Revitalization Act that is currently pending before Puerto Rico's Legislative Assembly, including the appointment of an independent board, will promote independence in PREPA's leadership and management to ensure that the changes we are implementing and planning are sustainable. In parallel, PREPA is working to instill a culture of meritocracy, and as discussed above, implement concrete policies in line with that culture, including rewarding employees based on KPIs.

CREDITOR NEGOTIATIONS AND PREPA'S RESTRUCTURING SUPPORT AGREEMENT

In late December 2015, PREPA reached agreement with creditors holding or controlling approximately 70 percent of its debt, including bondholders, fuel line credit lenders and bond insurers, regarding a comprehensive restructuring plan to address its fiscal and operational challenges. It took PREPA over 15 months to negotiate the RSA in large part because PREPA lacks access to an orderly debt restructuring process and its accompanying "guard rails." In most situations of extreme financial distress, the possibility that a debtor will seek court protection incentivizes creditors to compromise more quickly. Moreover, in a typical situation, a bankruptcy process permits a supermajority of creditors to bind all creditors—it reduces the free-rider and holdout problem.

After many months, we were able to reach agreement but our work is far from complete. The RSA remains subject to significant contingencies and creditor termination rights.

The key economic terms of the RSA include the following:

Bondholder Agreement. All holders of uninsured PREPA bonds will have the option to exchange their outstanding bonds for new securitization bonds at 85 percent of the current face amount of their bonds. The new securitization bonds, which under the RSA must receive an investment grade rating (meaning a rating of at least BBB- or Baa3), will be interest-only bonds for the first 5 years, with an interest rate that is lower than the current rate on PREPA's existing debt based on the RSA pricing grid. An *ad hoc* group of bondholders representing approximately 40 percent of the outstanding bonds has agreed to exchange all uninsured bonds held by the group for new securitization bonds.

Fuel Line Agreement. PREPA's fuel line credit lenders will have two treatment options. The fuel line credit lenders may convert their existing credit agreements into term loans, with a fixed interest rate of 5.75 percent per annum, to be repaid over a period of 6 years in accordance with an agreed amortization schedule. This will decrease the annual interest rate PREPA is currently paying on its fuel line credit debts from 7.25 percent to 5.75 percent and extend the maturity date for \$700 million of debt by 6 years from the consummation of the restructuring transactions. Alternatively, they may exchange all or part of the principal due under the existing fuel line credit agreements for securitization bonds to be issued on the same terms as those issued and exchanged for the uninsured bonds.

Bond Insurers. To finance the restructuring transactions, PREPA's bond insurers will issue surety insurance policies in an aggregate amount up to \$462 million, which will support a portion of the debt service reserve fund for the securitization bonds.

Remaining Contingencies

PREPA's ability to execute on the RSA is far from certain. Its ability to do so will require the satisfaction of many conditions, the occurrence of a number of events outside its control and the continued cooperation of a diverse creditor body over a long period of time.

A few of the key contingencies are set forth below:

Creditor Participation. At present, creditors representing approximately 30 percent of outstanding PREPA debt are not party to the RSA. In order to consummate the bond exchange contemplated by the RSA, additional bondholders (who are not parties to the RSA now) holding more than \$2 billion in bonds (i.e., all but \$700 million) must voluntarily choose to exchange their existing bonds for securitization bonds at a discount. If these holders do not choose to exchange their bonds, the deal will not work for PREPA, and the parties will be forced to return to the drawing board in hopes of developing a new, workable restructuring plan. The availability of a legal mechanism such as the Federal Bankruptcy Code would ensure 100 percent participation among existing bondholders because a supermajority of bondholders could bind holdouts. In addition, it would greatly increase the odds that PREPA would be able to implement its deal, particularly given its existing widespread support among key creditor groups.

Securitization Bond Rating. Pursuant to the RSA, the creditors required that the new securitization bonds to be issued in the exchange offer must receive an investment grade rating from a recognized rating agency. While the restructuring transactions are designed to maximize the new securitization bonds' rating, achievement of an investment grade rating will likely depend at least in part on the rating agencies' views of the overall financial situation of Commonwealth of Puerto Rico and

its instrumentalities. Without the legal guard rails that would be provided by access to a Federal court, it is difficult to see how 18 different issuers in the Commonwealth will resolve their financial distress. A disorderly, litigious, and drawn-out process will jeopardize our ability to execute our deal.

Commonwealth Legislation. Under the terms of the RSA, the Commonwealth must enact legislation that is acceptable to the RSA creditors in accordance with the RSA. This legislation must include, among other things, a legal framework for the issuance of securitization bonds and certain noneconomic terms relating to such bonds as well as governance reforms to depoliticize PREPA, allow it to function like a modern utility and implement long-term operational savings and reforms. The legislation will also authorize and set forth a structure for a transparent process to allow third party investors to submit competitive bids to invest in PREPA's infrastructure, and is currently pending before Puerto Rico's Legislative Assembly.

Securitization Bond Validation Process. The RSA requires that the new securitization bonds be validated by a Commonwealth court pursuant to a newly established process, which may itself be the subject of a court challenge. This is necessary because PREPA does not have access to a Federal bankruptcy court to confirm a debt adjustment plan for PREPA. The benefits of plan confirmation are therefore another way in which access to a Federal court process could facilitate and expedite PREPA's restructuring efforts. A Federal court order approving the validity and enforceability of the securitization bonds would also be helpful to the rating agency process.

CONCLUSION

PREPA and its advisors continue to work tirelessly to close the restructuring transactions in the RSA. Fixing PREPA's capital structure is but one element of PREPA's overall transformation, but doing so is a necessary predicate to all of the other work PREPA is doing to modernize Puerto Rico's generation, transmission and distribution capacity for the long-term benefit of its people and the Puerto Rico economy.

The recent announcement of the RSA in late December 2015 shows that PREPA and a significant portion of its creditors can work together to craft a comprehensive solution. It remains unclear whether PREPA will be able to execute on its restructuring transactions despite the support of 70 percent of its creditors. In many ways, the RSA is a tenuous agreement, filled with process checkpoints, creditor termination rights and other conditions that may not be satisfied, despite PREPA's best efforts. Access to a restructuring regime would allow PREPA to implement the restructuring contemplated by the RSA, without so many contingencies and open issues. In fact, the RSA contemplates implementing the restructuring transactions by using the Federal Bankruptcy Code or a proceeding pursuant to Puerto Rico's local restructuring law, if either becomes available to PREPA.

If PREPA cannot execute on the RSA, agreed-upon creditor concessions will be lost and the governance improvements, cost savings measures and capital projects that form the core of PREPA's recovery plan will not go forward. In addition, the cost of energy to the people and businesses of Puerto Rico—who already face a financial crisis—would increase dramatically. This would have a tremendously adverse impact on the people and economy of Puerto Rico. Creditors would begin to take enforcement actions against PREPA, and fuel and other suppliers would tighten credit terms and refuse to deliver goods. PREPA could be forced to ration its existing fuel supply and employ rolling blackouts, and its ability to carry out core functions such as meeting payroll, and conducting critical maintenance on plants and distribution networks, would be in doubt.

The stakes are high, and have real human consequences. It goes without saying that electricity is the lifeblood of the Commonwealth. Any interruption in service would severely threaten the public health, safety and welfare of the Commonwealth and its people and could jeopardize other economic development and growth initiatives the Commonwealth is currently pursuing. For these reasons, we believe that consummating PREPA's restructuring transactions is critical to maintaining and protecting the social and economic health and well-being of the Commonwealth and its people.

I would like to thank the subcommittee for giving me the opportunity to participate in this hearing on behalf of PREPA.

Mr. LAMBORN. OK, thank you.
The Chair now recognizes Mr. San Miguel to testify.

STATEMENT OF JORGE L. SAN MIGUEL, CHAIR, ENVIRONMENTAL LAW, ENERGY & LAND USE, FERRAIUOLI, LLC, SAN JUAN, PUERTO RICO

Mr. SAN MIGUEL. Thank you, Chairman Lamborn, Ranking Member Pierluisi, and members of the committee. Good morning.

Puerto Rico's energy crisis has a solution and must be resolved now. Energy, after all, is the backbone of our economy and the basis of our future. As I will discuss, most of the remaining actions required are local. Yet, given the historic juncture, the risks involved, and our poor track record, it is my view that Congress should consider providing certain structured leadership and reform oversight.

By way of background, PREPA has faced internal challenges for decades now. Its 1941 structure is outdated and unfit for today's economy. PREPA is a government-controlled, top-down structure. Its median generating plant age, for example, is 44 years, compared to an industry average of 18. In fact, 80 percent of such plants are over 25 years old.

Further, PREPA electricity losses are estimated at 15 percent, due to technical and non-technical losses, where industry standard is estimated at 7 percent. This alone means approximately \$200 to \$300 million a year in losses, and there is much more.

There are also external challenges, like the island's deepening recession and migration uptick, among others. The result? Historically high and volatile energy prices, as well as inconsistent power quality, has weighed down hard and strong on our economy and our citizens.

PREPA needs a new focus. It must shift attention to the transmission and distribution business, divorce itself from the energy generation component, and leverage the private sector expertise and capital to construct and efficiently operate new generation facilities. Reforms must be quick and clear to achieve: number one, price reductions and stability; number two, modernization; number three, environmental protection; and number four, economic development and growth.

Transparency and credibility will be key ingredients in any restructuring effort. PREPA today appears to be achieving levels of internal transparency not seen before, though much more is needed. Operational efficiencies are starting to take hold. Yet the most important steps remain ahead of us. And, significantly, most of these are within Puerto Rico's control. Let's review three such key actions.

First, the government of Puerto Rico must quickly approve the PREPA Revitalization Act, or a similar version. This bill was proposed by the current Administration on November 4, 2015.

Second, we need an emergency permit reform. Permitting in Puerto Rico is a historic and unacceptable nightmare. Large infrastructure projects normally take 8 to 10 years to fully permit and construct. Puerto Rico does not have the luxury of time to modernize and reform its energy infrastructure.

Fortunately, under Act 76 of 2000, the Emergencies Act, the Governor is expressly authorized to declare an emergency and provide for expedited permitting authority via Executive Order. Emergencies under this law exist if there is any event or great problems of deterioration in the physical infrastructure for the rendering of essential services to the people. Electricity is an essential service, and by the government's own admission, its infrastructure is significantly deteriorating.

As for the third key action, Puerto Rico's Energy Commission must expedite the approval of a revised rate schedule and complete the evaluation of the integrated resource plan, the IRP. Given the advanced negotiations between PREPA and most of its creditors, the Energy Commission should take all necessary temporary rate adjustment measures while the formal application process is completed. As to the IRP, it should complete the approval process to enable PREPA to establish the footprint of its infrastructure reform and business plan.

Now, regarding a Federal role—as in any other state, infrastructure projects will require Federal approvals. Yet Federal inter-agency action can also take considerable time. Congress could consider a structure, like a temporary emergency permitting and oversight task force or a control board, to dovetail with a local enhanced permitting structure. This board could be tasked with expediting the joint review and approval of permits, in addition to grants, loans, and loan guarantees from existing programs. It could also ensure, with congressional authority, that PREPA is, in fact, reformed for good.

With these action items in place, PREPA will begin regaining needed credibility. Immediately thereafter, in collaboration with both local and Federal Government, as well as the private sector, PREPA must quickly address the power quality of the grid. This is affecting new manufacturing investment on the island and seriously threatening existing ones. In other words, jobs, both existing and new.

Concurrently, and to provide the lowest possible cost of electricity, it must maximize operational efficiencies, quickly leverage private sector capital and proponents to construct new state-of-the-art base load generation capacity, and maximize the expansion and assimilation of renewable energy portfolio.

In closing, it is clear that PREPA's structure is outmoded and an impediment to growth. Unleashing long-term private sector efficiencies and credibility is key. Puerto Rico has the tools to finish the job at PREPA. Together with the Federal Government, we must. There is no turning back or a later chance. It is time to move forward now. Inaction is not an option, and further studies less so.

We know the way; the question is will we have the will. The perfect cannot be the enemy of the good. We need to stop saying no and begin working on yes, and that means putting special interests and personal pride aside for the good of our economy, its growth, and opportunities. Thank you very much.

[The prepared statement of Mr. San Miguel follows:]

PREPARED STATEMENT OF JORGE L. SAN MIGUEL, ESQ.*, CHAIR, ENVIRONMENTAL
LAW, ENERGY, AND LAND USE, FERRAIUOLI, LLC

*The views, opinions and discussions presented in this document are those of the author, and do not necessarily reflect the views of Ferraiuoli, LLC.

Thank you for holding this hearing and the opportunity to testify and work constructively to address one of Puerto Rico's principal challenges.

The following provides some context into the Island's energy issues and challenges, discuss some of the root causes for such challenges, and some suggestions as to what is needed going forward from local leaders, and from Washington, DC in a supportive role. I trust this information will provide additional color on our situation and help guide and execute solutions that are well known and urgently needed.

Puerto Rico's energy crisis has a solution and must be resolved now. Energy, after all, *is* the backbone of our economy and the basis of our future. As we will discuss, most of the remaining actions required are local. Yet, given the historic juncture, the risks involved and our poor track record, it is my view that Congress should consider providing certain structured leadership and reform oversight.

INTRODUCTION

The Puerto Rico Electric Power Authority (PREPA) is a public corporation that was created through Act 83–1941. One of its main objectives was:

“. . . the purpose of conserving, developing and utilizing, and aiding in the conservation, development and utilization of water and energy resources of Puerto Rico, **for the purpose of making available to the inhabitants of the Commonwealth, in the widest economic manner, the benefits thereof, and by this means to promote the general welfare and increase commerce and prosperity**; and the Authority is granted and shall have and may exercise all rights and powers necessary or convenient to carry out the aforesaid purposes. . . .”¹

Unlike the mainland United States, PREPA is Puerto Rico's single, government-owned, electric power provider.² Since its beginnings, PREPA essentially operated as a vertically integrated self-regulated monopoly.³ At that time Puerto Rico was predominantly rural and private capital was limited for infrastructure projects. Therefore, PREPA's monopoly may have been perceived as necessary to push Puerto Rico's economic growth.⁴ Yet, the historic lack of multiple electric power service providers (*i.e.*, competition) has put the residential, commercial and industrial consumers at the mercy of one single energy provider in Puerto Rico.⁵ As a result, this has deprived the public (*i.e.*, residential, commercial and industrial consumers) of the ability to choose from various providers, creating healthy market competition.⁶

¹ Article 6 of Act 83–1941, as amended, known as PREPA's Enabling Act, 22 L.P.R.A. § 196. (Emphasis added).

² Until 1979 PREPA was known as the Puerto Rico Water Sources Authority (*Autoridad de Fuentes Fluviales*). The original name reflected the prevalent use of hydroelectric power at the time. <http://www.aeepr.com/Aees/historia.asp>.

³ PREPA owns and operates Puerto Rico's power generation plants and transmission and distribution infrastructure, except for two co-generators (*i.e.*, Ecoeléctrica L.P. and AES-Puerto Rico) and a few utility scale renewable energy projects that sell their energy to PREPA under Power Purchase Agreements (PPAs). During its first decade, PREPA acquired and consolidated under a single company the main generation and infrastructure owned by private parties. Sergio M. Marxuach, *Restructuring the Puerto Rico Electricity Sector*, Center for the New Economy, August 22, 2005, pages 3–5, <http://grupocne.org/2005/08/22/restructuring-the-puerto-rico-electricity-sector/>. See also, Statement of Motives, Act 57–2014, as amended.

⁴ *Id.*

⁵ There are consumers, however, that own and operate distributed generation systems. Yet, the majority are connected to the PREPA grid.

⁶ Interestingly, PREPA's first bond issuance took place in 1945 to enable PREPA's acquisition of the main electric power companies in Puerto Rico. In 1981, with the acquisition of the electric power system owned by the Municipality of Cayey, PREPA completed the consolidation of all Puerto Rico electric power systems under a single entity. See, <http://www.aeepr.com/Aees/historia.asp>.

In 1941, with prices of oil at \$1.14⁷ per barrel, it may have made sense to operate a self-regulated monopoly to ensure the construction of generation and transmission infrastructure. Today it does not make sense for many reasons. As a self-regulated government controlled monopoly, PREPA has failed. The original statutory infrastructure objectives have been achieved. However, the price of oil has changed dramatically and, more so, the variances/volatility of such prices.⁸ Today there is electric service throughout the Island, and there are new technologies, fuels and other disruptive forces that have impacted PREPA's original business model. The energy industry has evolved but PREPA's model has remained stuck. As a result, PREPA's structure has inflicted serious damage on our economy and the people of Puerto Rico. It is widely agreed that the single most important impediment to economic growth in Puerto Rico is the price/kWh, its variability, the power quality and the social cost inflicted as a result of environmental impacts. Without economic growth, there is no recovery, and without recovery, no real opportunity for the island's residents.

PREPA cannot pretend to obtain different results by doing the same thing—or essentially the same thing. That would constitute insanity as defined by Albert Einstein. Real and effective change at PREPA is long overdue. The Enactment of Act 57–2014,⁹ began to put an end to PREPA's self-regulated monopoly and enabled the Puerto Rico Energy Commission (Energy Commission) to approve, among other things, PREPA's energy rates. This process is in its initial stages, however, and is only one of the multiple measures needed to effectively address Puerto Rico's energy crisis.

CURRENT SITUATION AND CAUSES

In 2015, the cost of energy per kWh in Puerto Rico averaged 20.98¢.¹⁰ In contrast, the average energy cost in mainland United States for the same period was 10.47¢.¹¹ During the last 5-year period, the average energy cost per kWh in the mainland was 10.06¢ while in Puerto Rico it was 25.10¢.¹²

No one denies the energy crisis. PREPA residential customers frequently face the decision of paying the electric bill, buying food and/or medicines. Commercial and industrial clients must decide between increasing prices and/or services or closing operations based on unsustainable energy costs, price fluctuations or, worse yet, the power quality issues inflicted by a less than optimal energy grid. The private business sector (*i.e.*, industrial, commercial and small business) has complained for years about the variability of prices, the inefficiencies that affect such prices and the quality of the electric service provided.¹³ Puerto Rico's ability to attract new manufacturing investment is being affected by issues relating to power quality—voltage and frequency stability. Moreover, our existing manufacturing base is threatened by the same problem, thus putting at risk Puerto Rico's ability to protect and retain existing jobs.

It is evident that the energy crisis is not new. It has been diagnosed for years.¹⁴ What seems new(er) is the magnitude and the opportunity cost (economic impact)

⁷ https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=F000000_3&f=A.

⁸ See, Attachment A.

⁹ Act 57–2014, as amended, known as the *Transformation and Energy Relief Act*.

¹⁰ See, Attachment B. These recent prices have been aided by the somewhat unexpected reduction in the price of oil in the world market. Prior to that, Puerto Rico was experiencing energy prices of up to .30¢/kWh.

¹¹ See, Attachment C.

¹² See, Attachment D. Out of the 50 states, the only state with an energy cost higher than Puerto Rico's is Hawaii which averaged 33.04 ¢/kWh in 2015. See, Attachment E. Hawaii's situation differs from Puerto Rico, among other things, in the complexity of its electric power grid system.

¹³ In the past, private sector representatives have complained about the cost, quality and reliability of PREPA's service. See, Sergio M. Marxuach, *Restructuring the Puerto Rico Electricity Sector*, Center for the New Economy, August 22, 2005, page 3, <http://grupocne.org/2005/08/22/restructuring-the-puerto-rico-electricity-sector/>.

¹⁴ See, Sergio M. Marxuach, *A new Look at Puerto Rico's Electricity Sector*, Center for the New Economy, January 2009, <http://grupocne.org/2009/01/22/a-new-look-at-puerto-ricos-electricity-sector-january-2009/>; Sergio M. Marxuach, *Restructuring the Puerto Rico Electricity Sector*, Center for the New Economy, August 22, 2005, <http://grupocne.org/2005/08/22/restructuring-the-puerto-rico-electricity-sector/>; Intersectorial Committee on Environmental Compliance and Energy Alternatives, *Report on the Necessary Measures to Comply with the New EPA Regulations, and the Conversion to, and Use of Natural Gas in, the Northern Power Plants*,

Continued

of our current challenges. The consequences and implication of the energy crisis have been highlighted more recently because it coincides with the larger issue of fiscal and economic dilemmas that Puerto Rico is facing. In 2010, Puerto Rico formally recognized the energy crisis and initiated a path to address it.¹⁵ Unfortunately, the measures taken to begin addressing the crisis were hindered and/or discontinued by a change in government and by PREPA's political, internal and operational obstacles.

Puerto Rico's high energy costs and the related variability are the result of, among other things, the pervasive challenges listed below:

PREPA's Dependency on Oil

After PREPA relegated the use of hydroelectric power, it began relying heavily in the use of liquid fossil fuels.¹⁶

PREPA's Obsolete Infrastructure

PREPA's generation fleet is very old and inefficient. PREPA's median generating plant age is 44 years compared to an industry average of 18 years.¹⁷

Intrusion of politics in PREPA

Currently, the PREPA board has two seats of *ex officio* members from the Secretary of the Department of Economic Development and Commerce and the Secretary of the Department of Transportation and Public Works and four members appointed by the Governor with the advice and consent of the Senate. Additionally, there are three members who are representatives of the Public Interest (one for residential customers, one for commercial customers, and one for industrial customers).¹⁸ Management is transferred or moved at least with every electoral cycle, if not more frequently. Hiring is influenced in many instances not by qualifications of the candidate but by political influences. Many decisions are made contemplating potential political costs rather than sound business judgment and practices.¹⁹

June 15, 2012, <http://www.aepr.com/INVESTORS/DOCS/Financial%20Information/Budgets/Report%20on%20the%20necessary%20measures%20to%20comply%20with%20new%20EPA%20regulations.pdf>.

¹⁵ See, Executive Order No. OE-2010-034 of July 19, 2010 (<http://estado.pr.gov/en/executive-orders/>); Executive Order No. OE-2011-013 of April 12, 2011 (<http://estado.pr.gov/en/executive-orders/>); Executive Order No. OE-2011-047 of October 6, 2011 (<http://estado.pr.gov/en/executive-orders/>); Executive Order No. OE-2012-019 of April 9, 2012 (<http://estado.pr.gov/en/executive-orders/>); Executive Order No. OE-2012-052 of October 5, 2012 (<http://estado.pr.gov/en/executive-orders/>); and Executive Order No. OE-2013-038 of May 14, 2013 (<http://estado.pr.gov/en/executive-orders/>).

¹⁶ See, Attachment F. Intersectorial Committee on Environmental Compliance and Energy Alternatives, *Report on the Necessary Measures to Comply with the New EPA Regulations, and the Conversion to, and Use of Natural Gas in the Northern Power Plants*, June 15, 2012, <http://www.aepr.com/INVESTORS/DOCS/Financial%20Information/Budgets/Report%20on%20the%20necessary%20measures%20to%20comply%20with%20new%20EPA%20regulations.pdf>; and Sergio M. Marxuach, *Restructuring the Puerto Rico Electricity Sector*, Center for the New Economy, August 22, 2005, page 3, <http://grupocne.org/2005/08/22/restructuring-the-puerto-rico-electricity-sector/>.

¹⁷ See, PREPA's Transformation, A path to Sustainability, June 1, 2015. <http://www.aepr.com/Docs/RecoveryPlan.pdf>.

¹⁸ The Board of Directors selects its Chair and Vice-Chair and the Executive Director. The Board of Directors has a key role in the company's administration since it is charged with the responsibility of leading the strategic management of PREPA and the delegating to the Executive Director and/or other PREPA officials the administrative duties and works of the public corporation. Section 4 of Act 83-1941, as amended.

¹⁹ Based on information available, upon the designation of a Chief Restructuring Officer, AlixPartners (Lisa Donahue), measures to address these and other operational inefficiencies at PREPA have been put in place and the operational improvements are beginning to take root and are projected to generate annual savings of \$245-\$390 million in addition to one time savings. <http://www.aepr.com/Docs/RecoveryPlan.pdf>.

PREPA's Operational Inefficiencies

For a long time PREPA has had significant operational issues, including but not limited to employee performance, energy theft, energy losses, lack of adequate fuel inventory controls, deficient collection efforts²⁰ and inadequate procurement processes.²¹

PREPA's Historic Monopoly

Having a self-regulated—government controlled—monopoly did not provide any incentive for PREPA's adequate management and operational efficiencies since it was allowed to pass all its costs directly to the clients and had no competition.²²

PREPA's Obsolete Rate Structure

The rate structure has not contemplated and adequately captured PREPA's operational costs.²³

PREPA's Lack of Planning

PREPA lacked strategic infrastructure and environmental compliance planning and implementation. Priorities on infrastructure planning and investments are shifted with management changes that more than often coincide with electoral cycles.²⁴ Among other things, this lack of planning, has caused compliance issues and the aging of its infrastructure to coincide with the lack of funds to replace it.

²⁰ FTI Capital Advisors prepared a report on November 15, 2014 regarding PREPA's Accounts Receivable and CILT Report which highlighted that, as of September 30, 2014, PREPA had a total of \$1.75 billion in accounts receivable. Out of the \$1.75 billion, \$931,578,000 were uncollected payments from general clients and \$757,690,000 from the government. See, Accounts Receivable and CILT Report of November 14, 2014. <http://www.aeepr.com/Docs/restructuracion/PREPA%20AR%20and%20CILT%20Report%20Final.pdf>. According to CRO Lisa Donahue, "PREPA has made great strides in its accounts receivable and collections processes with respect to government and private customers alike. PREPA has directly engaged with Hacienda and other agencies regarding the setting of appropriate Fiscal Year 2016 budgets and has implemented payment plans for past due government accounts." Lisa Donahue Statement Testimony before House of Representatives November 11, 2015. See, [http://www.aeepr.com/Docs/Donahue%20Testimony%20to%20House%20of%20Reps%20-%20Leg%20Reform%20\(Final%208am\).pdf](http://www.aeepr.com/Docs/Donahue%20Testimony%20to%20House%20of%20Reps%20-%20Leg%20Reform%20(Final%208am).pdf).

²¹ Lisa Donahue Statement Testimony before House of Representatives November 11, 2015. See, [http://www.aeepr.com/Docs/Donahue%20Testimony%20to%20House%20of%20Reps%20-%20Leg%20Reform%20\(Final%208am\).pdf](http://www.aeepr.com/Docs/Donahue%20Testimony%20to%20House%20of%20Reps%20-%20Leg%20Reform%20(Final%208am).pdf).

²² See, Sergio M. Marxuach, *A new Look at Puerto Rico's Electricity Sector*, Center for the New Economy, January 2009, <http://grupocne.org/2009/01/22/a-new-look-at-puerto-ricos-electricity-sector-january-2009/>. See also, Statement of Motives, Act 57–2014, as amended.

²³ This should be addressed in the evaluation and approval of the new rate to be proposed by PREPA in the application it is required to file with Energy Commission as per the provisions of Act 57–2014. See also, PREPA's Transformation, A path to Sustainability, June 1, 2015.

²⁴ PREPA's deficient environmental compliance record has resulted in complex litigation against it by the U.S. Department of Justice, after the persistent intervention of community groups and the U.S. Environmental Protection Agency. The efforts to bring PREPA into compliance began in 1992. Thereafter, "[i]n 1999, the U.S. Department of Justice and PREPA entered into a consent decree under which PREPA agreed to take certain actions to come into compliance with multiple environmental laws at a cost of approximately \$200 million; pay a \$1.5 million penalty; implement additional projects to benefit the environment, costing approximately \$3.5 million; and spending \$1 million to hire an environmental contractor to oversee compliance with the consent decree." In 2004, after EPA identified PREPA violations to the 1999 Consent Decree, the parties negotiated modifications to the original consent decree to bring PREPA plants into compliance with certain air emissions standards and added a supplemental project for the benefit the communities around certain PREPA generating plants. http://www.justice.gov/archive/opa/pr/2004/June/04_enrd_433.htm.

Subsidies

PREPA has been forced by legislative provisions to provide services at subsidized rates to a significant amount of customers and to make certain contributions *in lieu* of municipal taxes with municipalities.²⁵

Corruption

Lack of Transparency of PREPA's internal procedures has resulted in allegations of corruption in areas such as the purchase of fuel.²⁶

The convergence of these factors throughout the past decades have resulted in a state run/controlled utility that, as a monopoly, has succeeded in becoming highly politicized, bureaucratic, inefficient, aged, expensive and accumulating nearly \$9 billion in outstanding debt. This eventually added to the pressure of other external challenges, like the island's deepening recession and migration uptick. No less important is the availability today, of disruptive technologies and practices that affect PREPA's historic and narrow business model. All this, with the anticipated and foreseeable result of contracting sales and revenues.

Public opinion on the Island today is overwhelmingly in favor of wholesale restructuring of this public utility.

MOVING PUERTO RICO'S ENERGY INFRASTRUCTURE FORWARD

The key to any serious restructuring effort is understanding the current state of affairs and its root causes, in order to design the path toward sustainable reform. The goal here is to implement reforms that take root, cannot be reversed, modified or watered down, so that we do not fall into the same pitfalls in years to come.

PREPA needs a new focus. It must shift attention to the Transmission & Distribution business, divorce itself from the energy generation component, and leverage private sector expertise and capital to construct and efficiently operate new generation facilities. Reforms must be quick and clear to achieve: (i) price reductions and stability; (ii) modernization; (iii) environmental protection; and (iv) economic development and growth.

Transparency and credibility will be key ingredients in any restructuring effort. PREPA today appears to be achieving levels of internal transparency not seen before, although much more is needed. Operational efficiencies are taking hold.

In the case at hand, time is of the essence given the many other variables and developments of the central government, the local economy and the alternatives available to the public beyond the traditional centrally supplied electricity.

²⁵ See, PREPA's Transformation, A path to Sustainability, June 1, 2015. Under the Contributions *in lieu* of Taxes, PREPA provides a municipality electric service in exchange of an exemption from municipal taxes. <http://www.aeepr.com/Docs/RecoveryPlan.pdf>.

²⁶ See, *Marrero Rolón et al v. Autoridad de Energía Eléctrica* (Case No. 3:15-cv-01167) <https://ecf.prd.uscourts.gov/cgi-bin/iqquerymenu.pl?115501>. The lawsuit, filed on Feb. 24, 2015 in the U.S. District Court for the District of Puerto Rico names 20 defendants (including PREPA, Vitol, Petrobras, among others) for allegedly receiving kickbacks and payments for colluding to raise fuel oil prices that were directly passed on to users of electricity, by agreeing to use non-complaint fuel oil and falsifying lab tests. [http://www.businesswire.com/news/home/20150224005237/en/Hagens-Berman-Puerto-Rico-Residents-Businesses-File;PREPA v. Vitol, Inc. et al](http://www.businesswire.com/news/home/20150224005237/en/Hagens-Berman-Puerto-Rico-Residents-Businesses-File;PREPA%20v.%20Vitol,%20Inc) (Case No. 3:2009cv02242). This case was filed on December 14, 2009. <https://ecf.prd.uscourts.gov/cgi-bin/iqquerymenu.pl?77028>.

Privatization of Generation

As many other jurisdictions have done, and particularly given the fiscal and operational challenges of PREPA, it must aggressively consider and use a privatization model. The models that seems most suitable to implement them are:

Model	Characteristics	Benefits
Long-Term Concession ²⁷	<ul style="list-style-type: none"> • PREPA retains ownership. • Long-term contract for the construction and management of the generation of power. • A third party would be under better conditions than PREPA to obtain the necessary financing. • The third party would bring its expertise. • The contract can be terminated under certain pre-established terms and conditions. 	<ul style="list-style-type: none"> • No need for PREPA to have access to financing. • Would allow PREPA to replace its fleet in a shorter term. • Ability for the third party to obtain financing. • Expertise from third party. • Ability to terminate agreement under certain terms and conditions. • Examples of successful projects: <ul style="list-style-type: none"> — Highway PR-22 — Highway PR-5 — Luis Muñoz Marín Intl. Airport
Power Purchase Agreement (PPA)	<ul style="list-style-type: none"> • Assets are owned by the third party. • Contract for the purchase of power generated by the third party. • Ability for the third party to obtain financing. • Expertise from third party. • Ability to terminate agreement under certain terms and conditions. 	<ul style="list-style-type: none"> • No need for PREPA to have access to financing. • Would allow PREPA to replace its fleet in a shorter term. • Ability for the party to obtain financing. • Expertise from third party. • Ability to terminate agreement under certain terms and conditions • Examples of successful PPAs: <ul style="list-style-type: none"> — EcoEléctrica²⁸ — AES-Puerto Rico²⁹ — Pattern Santa Isabel³⁰ — Punta Lima (GoGreen)³¹

²⁷ Act 29 2009, as amended, known as the Public Partnership Act. Act 20-2009 establishes as public policy of the Commonwealth of Puerto Rico "to favor and promote the establishment of public-private partnerships for the creation of priority projects, and among other things, to further the development and maintenance of infrastructure facilities, to apportion between the Commonwealth and the contractor the risk involved in the development, operation or maintenance of such projects, to improve the services rendered and the functions of the Government, to foster the creation of jobs, and to promote the socio-economic development and the competitiveness of Puerto Rico. Pursuant to the public policy set forth above, the . . . following projects . . . [can] be subject to a partnership contract:

(3) The construction, operation or maintenance of existing or new plants for the production of energy that use alternate fuels other than oil or that use renewable energy sources, such as wind, solar and oceanic-thermal energy, among others, as well as the transmission of energy of any kind . . ."²⁸ See, Act-29-2009, Section 3.

²⁸ EcoEléctrica, is a privately operated independent power producer and the only private energy generation facility in Puerto Rico that currently generates electric power using natural gas. The facility is located in southern Puerto Rico, has its own marine LNG terminal and has been operating successfully since the year 2000. It has a generation capacity of 507 MW, combined cycle unit. The natural gas used by EcoEléctrica is imported from Trinidad and Tobago. EcoEléctrica has storage capacity of 1,000,000 barrels of LNG, and it is the only facility on the island with the capability to import, store, regasify, and export natural gas. All of the electric power generated by EcoEléctrica is sold to the PREPA. <http://www.aeepr.com/Documentos/Ley57/EcoEléctrica/EcoEléctrica1.htm> and <http://ecoelectrica.com/>.

²⁹ AES Puerto Rico LP has a coal-fired co-generation plant located in Guayama, Puerto Rico. Since 2002, AES sells its energy to PREPA under a 25 year PPA. AES Corp. commenced the development of this plant in Puerto Rico in 1993. <http://www.aeepr.com/Documentos/Ley57/AES/Contratos%20AES1.htm> and <http://www.aespuertorico.com/>.

³⁰ Pattern Santa Isabel is a 101 MW project located on the south coast of Puerto Rico. The project commenced commercial operations in 2012 and sells its energy to PREPA under a 25 year PPOA. This was Puerto Rico's first commercial wind power project. <http://www.aeepr.com/Documentos/Ley57/CONTRATOS/Contrato%20Pattern%20Santa%20Isabel%20LLC%202010-P00047.pdf> and http://patternenergy.com/en/operations/facilities/santa_isabel/.

³¹ Punta Lima is a 23 MW wind farm located in the east coast of Puerto Rico. Punta Lima commenced commercial operation in 2013 and sells its energy to PREPA under a 25 year PPOA. [http://www.aeepr.com/Documentos/Ley57/CONTRATOS/Contrato%20Punta%20Lima%20\(Go%20Green\)%202010-AI0001.pdf](http://www.aeepr.com/Documentos/Ley57/CONTRATOS/Contrato%20Punta%20Lima%20(Go%20Green)%202010-AI0001.pdf) and <http://www.gestampren.com/en/node/2916>.

Professionalization and De-politization of PREPA

PREPA is not a for-profit entity. However, since it provides an essential public service to the people of Puerto Rico, it must be administered based on sound business judgment and practices. It is critical that PREPA decisions be free of political influences. The Authority needs to be administered and led by individuals with qualified management/business experience in order to ensure that decisions are not biased or influenced by political issues.³²

Local Permitting + Energy Crisis = Fast Track

Permitting Issues

Permitting processes in Puerto Rico have been identified as a significant challenge for the Island's economic development due to the multiplicity of permits required and the time it takes to complete a permitting process.³³ In Puerto Rico, obtaining the approvals for the development of a large infrastructure projects (*e.g.*, utility scale energy generation) may take between 8 to 10 years, excluding potential litigation.³⁴ Some of the permitting improvements introduced by the 2009 permitting reforms³⁵ were eliminated by amendments to the permit law approved by the current administration.³⁶ This has been without doubt a step back in the advancements made to improve Puerto Rico's position to jumpstart economic development and improve its global competitiveness.

Executive Orders—Declaration of Emergency

The Governor of Puerto Rico can utilize existing statutory tools to declare an energy emergency and enable the relevant agencies to activate expedited permitting processes in order to jumpstart the replacement of PREPA's old generation fleet and improve/replace transmission and distribution infrastructure. In 2010, the Governor issued an Executive Order (EO) declaring a state of emergency in connection with the infrastructure of the electric power utility in Puerto Rico. The EO's effective date was extended on multiple occasions until 2012, as per the provisions of Act 76–2000, as amended (Act 76). Pursuant to those EOs, expedited permitting proceedings were activated to approve multiple projects related to the generation of energy using alternate sources of fuel to those traditionally used (*e.g.*, petroleum derived sources). Act 76 was enacted to address certain emergencies, provide expedited processes for the application and granting of permits, endorsements, consultations and/or certifications related to the solution of emergencies so declared.³⁷

Act 76 grants the Governor the authority to issue an EO declaring an emergency covered under its provisions. Under the Act, an emergency shall be deemed to exist if, among others, there is an event or grave problem of deterioration in the physical infrastructure for the rendering of essential services to the people.³⁸ Upon the

³² See generally, PREPA's Transformation, A path to Sustainability, June 1, 2015.

³³ Puerto Rico was classified by the World Bank Group on the Ease of Doing Business as 41 of 189 countries in 2014, 47 of 189 countries in 2015 and 57 of 189 countries in 2016. In other words, during the last 3 years, Puerto Rico has lost 16 positions in this classification. See, Doing Business Report. Retrieved from <http://www.doingbusiness.org/reports/global-reports/>.

³⁴ Unlike the U.S. mainland, in Puerto Rico environmental activism has a selective agenda. While certain groups oppose projects that would replace old, polluting and noncompliant infrastructure, those same opponents are conveniently silent to the environmental impacts and pollution about maintaining the "status quo"—that is, maintaining the existing/old infrastructure. Adequate and good faith public participation improves the discussion and evaluation of projects. When abused (*e.g.*, litigation without merits), however, it can certainly result in a very effective delay mechanism with detrimental impacts on economic development and additional environmental and health degradation.

³⁵ The 2009 permitting reform was focused on streamlining the local complex permitting system that had placed Puerto Rico in a disadvantaged global competitiveness position. For example, as part of the reforms, a determination on an environmental document was deemed a component of the development or construction approval/permit, and as such it could be challenged together with the determination on the approval/permit. This ensured public participation while consolidating potential challenges to a project, to minimize the historical use of inefficient and delay tactics. See, Act 161–2009.

³⁶ The amendments to Act 161–2009, among other things, returned the challenges to environmental documents and location approvals/permits to the pre-2009 bifurcated path. See, Act 151–2013.

³⁷ It is important to note that the provisions of Act 76 must be interpreted in the broadest sense possible in order to achieve the effective interpretation of the public policy contained therein. Also, the provisions of Act 76 will prevail over any general or special provision of law or regulation that is inconsistent therewith. See, 3 L.P.R.A. Sections 1944 and 1945.

³⁸ Section 15 of Act 76 defines the term "emergency" as: ". . . [a]ny serious abnormality such as a hurricane, tidal wave, earthquake, volcanic eruption, drought, fire, explosion, or any other kind of catastrophe, or any serious disruption of the public law and order, or an attack by enemy forces through sabotage or through the use of bombs, artillery or explosives of any nature, or

issuance of an EO declaring a state of emergency under Act 76, and for the duration of the emergency, the Governor activates: (a) an expedited permitting process under which certain permitting agencies³⁹ can fast track permit applications, related to works that may provide an immediate solution to the situation created by the emergency, which entail the issuing of a permit, endorsement, consultation and/or certification, and approval of an environmental document; (b) the specific and non-deferrable period during which other agencies can file their endorsements or opposition to permit applications; (c) the period for the relevant evaluation of environmental documents; and (d) the period for the evaluation of location consultations by the Planning Board. Although it establishes an expedited permitting procedure, the provisions of Act 76 include public notification mechanism which ensure public participation and establishes the remedies available to a party adversely affected by any resolution or order issued by any agency under the provisions of Act 76.

This legal mechanism helped significantly in the development of multiple renewable projects that today are selling energy to PREPA.⁴⁰ Nevertheless the emergency declaration was discontinued by the current administration.⁴¹

Federal Permitting

Regarding a Federal Role, as in any other state, infrastructure projects will require Federal approvals. The typical agencies include the USEPA, USCOE, USDA (Rural Development), USDOE and the FERC. Yet (Federal) interagency action can also take considerable time to complete.

Congress could consider a structure—like a *temporary Emergency Permitting and Oversight Task Force or Control Board*—to dovetail with a local enhanced permitting structure. This Board could be tasked with expediting the joint review and approval of permits, in addition to grants, loans and loan guarantees from existing programs. It could also ensure, with Congressional authority, that PREPA is in fact reformed—for good.

Program Considerations to Support Puerto Rico Energy Sector Development

1. Maximize the use of existing loan, loan guarantee and grant programs, such as those provided by the Department of Energy and the USDA Rural Utilities Service.⁴² These programs are intended specifically to assist public and private sector energy infrastructure expansion and improvement initiatives and the fund allocations to implement these assistance programs has already been approved and issued.
2. Expedite the required NEPA Review Program by:
 - a. Prioritizing NEPA reviews associated with Puerto Rico project reviews.
 - b. Streamlining the procurement process to obtain additional internal/external support needed to implement these review programs in a timely manner.
 - c. Coordinate local and Federal permitting review programs such that, if they cannot be consolidated and conducted jointly, they are at least conducted simultaneously and not sequentially.

by atonic, radiological, chemical, or bacteriological means, or by any other means that the enemy may use in any part of the territory of the Commonwealth of Puerto Rico, that merits the mobilization and extraordinary use of the damages caused of that could be caused. Likewise, the term “*emergency*” covers any event or grave problems of deterioration in the physical infrastructure for the rendering of essential services to the people, or that endangers the life, public health, or safety of the population or of a sensitive ecosystem. *See*, 3 L.P.R.A. Section 1931(a). (Emphasis added).

³⁹The definition of the term “agency” included in Act 76 includes both central government governmental entities and municipalities. *See*, 3 L.P.R.A. Section 1931(b).

⁴⁰Projects include Pattern Santa Isabel, Punta Lima, AES Illumina and others. Some projects which obtained approvals under the expedited procedure were latter affected by the internal protracted PREPA reviews and approvals (*e.g.*, issuance of final Minimum Technical Requirements, interconnection evaluations and other PREPA technical evaluations). By the time PREPA completed its internal processes, the Authority’s fiscal situation had a detrimental impact on the ability of project developers to obtain financing.

⁴¹*See*, Executive Order No. OE–2013–038 of May 14, 2013 (<http://estado.pr.gov/en/executive-orders/>).

⁴²<http://www.rd.usda.gov/>.

- d. Realizing that time is of the essence in these programs, streamline the Federal legal challenge process by:
 - i. Prioritizing the review of Puerto Rico project proceedings, and
 - ii. Ensuring any opposing petitioners have true standing and are pursuing legitimate concerns, not simply employing delaying tactics to oppose change.
3. Implement the temporary **Oversight Task Force/Control Board** to help ensure that:
 - a. Comprehensive planning is implemented to help minimize the occurrence of additional unanticipated expenses.
 - b. Program implementation is achieved and not unnecessarily delayed or diverted by political influence or other external pressures placed on the process.
 - c. Funds are used efficiently and for the intended purpose.

Strategic Planning—Integrated Resource Plan

The PREPA Integrated Resource Plan (IRP), currently under evaluation by the Energy Commission, should be the footprint and guide for any budget and business plans to be developed by PREPA in order to ensure timely and adequate availability of funds for required investments and to avoid falling back into the existing crisis. The IRP identifies the preferred strategy for satisfying PREPA's electric power requirements over a 20-year planning horizon (Fiscal Years 2016 to 2035, July 1, 2015—June 30, 2035).⁴³ It also provides to PREPA a projection of its long-term electricity needs in a reliable, flexible and cost effective manner under a variety of market, regulatory and economic conditions/scenarios.⁴⁴ The IRP also aims to prepare PREPA for the achievement of compliance with the Mercury and Air Toxics Standards, known as MATS,⁴⁵ and the Clean Power Plan,⁴⁶ two sets of regulations for which the generation fleet is unprepared.⁴⁷

Energy Commission—Rate Procedure

Given the advance status of the negotiations between PREPA and its creditors, the Energy Commission and PREPA should, with all their corresponding ministerial powers, work together to initiate and promptly approve a new rate.⁴⁸ The Energy

⁴³ <http://www.aeepr.com/Aeees/ley57.asp> and <http://www.aeepr.com/Docs/Ley57/Presentación%20IRP%20-%20AEE%2020151106.pdf>.

⁴⁴ Note that there are a multiplicity of interveners in the IRP approval process before the Energy Commission. <http://energia.pr.gov/plan-integrado-de-recursos/>. The participation of the interveners should enable and foster an ample discussion of the IRP's compliance with applicable requirements established in Act 57–2014.

⁴⁵ On June 2015, the U.S. Supreme Court, in *Michigan v. EPA*, ruled that the EPA erred by failing to consider costs when deciding whether it was “appropriate and necessary” to regulate emissions of mercury and other hazardous air pollutants from power plants like those owned by PREPA. The Court, however, did not invalidate the MATS rule, it simply returned the MATS rule to the lower court for it to determine whether the rule should be simply remanded to EPA to correct the deficiencies outlined by the Supreme Court or invalidate the rule completely. Therefore, the MATS rule is in suspense until the lower court makes its final determination. Notwithstanding the foregoing, PREPA has stated that it will continue to work to modernize its power system and achieve permanent, consistent compliance with the Clean Air Act. To comply with emission requirements set by the new Federal regulations, it is estimated that PREPA must burn a minimum of 80% natural gas. For purposes of the IRP, PREPA is considering the MATS to still be in effect and be applicable. See, IRP Volume IV, <http://www.aeepr.com/Docs/Ley57/PREPA%20IRP%20Volume%20IV%20-%20Draft%20for%20PREC%20review%20-%20%20Air%20Quality.pdf>.

⁴⁶ Although the Clean Power Plan is not applicable to Puerto Rico at the moment, it is reasonable to anticipate that its applicability will be extended to Puerto Rico in the future and that PREPA must take it into consideration when replacing its fleet in order to ensure it can achieve compliance with it without significant additional capital investments. *Id.*

⁴⁷ See, IRP Volume IV, <http://www.aeepr.com/Docs/Ley57/PREPA%20IRP%20Volume%20IV%20-%20Draft%20for%20PREC%20review%20-%20%20Air%20Quality.pdf>; <http://www.noticel.com/noticia/165741/epa-anticipa-incumplimiento-ambiental-de-ae-busca-reunion-con-donahue.html>; and <http://www.elnuevodia.com/Intersticial/?oasSitePage=elnuevodia.com/intersticial&oasReturnPage=http://www.elnuevodia.com/noticias/locales/nota/aeapagaravariasplantas-2031648/>.

⁴⁸ Act 57–2014 gave the Energy Commission primary and exclusive jurisdiction to approve rates and charges established by PREPA and established an initial review process in which PREPA files a request to modify its rates to the Energy Commission. This review process should have begun on or before November 28, 2014 and be completed by May 28, 2015, as per the provisions of Act 57–2014. On February 12, 2015, the Energy Commission initiated an investigation to obtain the operations and performance of PREPA, including technical, administrative, financial, accounting, and tax related information to evaluate the existing rates of PREPA. During

Commission should move expeditiously, within the applicable legal framework, to evaluate PREPA's application for such new rate.

The Energy Commission should use all of its available powers to take the necessary temporary rate measures while the application is adjudicated, as per clear and express provisions of Act 57–2014.⁴⁹ The Commission has a key role in the transformation of PREPA. As an independent regulatory entity, it needs to bring an unprecedented transparency and accountability to the PREPA rate setting procedure. The result of this rate setting process should be the establishment of a rate that is fair and reasonable, which in fact must take into consideration PREPA's costs to ensure the quality and reliability of the service.

Implementation

Given the importance of resolving the Puerto Rico energy crisis, the implementation of the IRP and of the solutions proposed by PREPA should be subject to short and mid-term oversight and supervision by a qualified and professional (*e.g.*, a designation similar to the Chief Restructuring Officer) or Federal agency such as the Department of Energy.

CLOSING

- The Federal Government's time and efforts, as well as that of the local government, is best used by focusing on the few action items that remain, in order to finalize a PREPA structural and financial reform. In fact, Federal support may be conditioned upon the prompt completion of such actions on the part of Puerto Rico.
- The revival of the local economy is a pre-requisite for long-term debt repayment. As such, an electric demand elasticity trend correction is a "sine qua non" ingredient for debt restructuring to succeed in the shortest possible time.
- Talk of default and bankruptcy only distracts from the realizable objectives that Puerto Rico and PREPA have within reach—and may otherwise have detrimental long-term effects in Puerto Rico's ability to obtain future financing.

the investigation, which is still ongoing, the Energy Commission issued data requirements from PREPA to which the Energy Commission has stated that PREPA has responded to the most part. All the information provided by PREPA is confidential and thus, not available to the general public. Notwithstanding the foregoing, on May 29, 2015, the Energy Commission initiated the first review proceeding by issuing an order which described the procedural steps the Energy Commission will take to manage the rate case and directed PREPA to file a request for new rates consistent with the requirements therein and the rate filing regulation enacted on July 24, 2015. On December 3, 2015, the Energy Commission issued an order stating that PREPA's rates review process would begin once PREPA files its formal request before the Energy Commission and the latter determines that the request is complete. As of December 31, 2015, PREPA has not filed a request for the review of its rates. On September 17, 2015, National Public Finance Guarantee Corporation (National), successor in interest MBIA Insurance Corporation and the insurance payment of principal and interest of about \$ 1.4 billion of bonds issued by the PREPA filed a request for a revision of PREPA's rates and the establishment of a temporary rate. In its request, National requested that the Rico Energy Commission (i) show cause requiring PREPA to respond to this Petition within fourteen (14) days of service; (ii) consolidating this proceeding for all purposes with the existing rate case initiated by the Energy Commission on May 29, 2015; (iii) requiring that the consolidated rate review proceeding be completed no later than four (4) months after the filing of this Petition and establishing appropriate interim deadlines and procedures therefore; and (iv) establishing a temporary increase in the base electricity rate of at least 4.2¢ per kWh over existing rates while the Energy Commission's rate review is pending. The Energy Commission denied the request on September 30, 2015. With regards to the temporary rate, the Energy Commission held that the request did not meet the standards and requirements of Regulation No. 8620 which established the procedures and information requirements that must be filed before the Energy Commission when requesting a revision of the PREPA current rates and did not provide sufficient evidence to support such request. Regarding the request that the tariff review process be completed within four (4) months from the filing of the request, the Energy Commission held that it could not responsibly establish a specific date for completion of the rate review process because, as established in Order No. 2015–0001–AP–CEPR, once the request from PREPA is received by the Energy Commission and the latter determines that it is complete, the Energy Commission will establish a procedural schedule with dates for technical and public hearings, where all persons or entities wishing to participate in the process can submit a requests to intervene. The Energy Commission urged National to use this mechanism, as intervening party, in order to have active participation in the PREPA rate review process. <http://energia.pr.gov/revision-tarifaria/>.

⁴⁹As per the Energy Commission's own interpretation of Act 57–2014, as amended, under Article 6.3 thereof, the regulatory entity has the authority to establish emergency and/or temporary rates. *See*, Testimony of the President of the Energy Commission before the Puerto Rico Senate, November 10, 2015. <http://www.oslpr.org/2013-2016/ponencias/A3BBMBI3.pdf>.

- Most of the actions required to complete a reform of the utility and the energy infrastructure of the island are local. The Federal Government can provide leadership, structure and oversight—but Puerto Rico has the tools needed to finish the job at PREPA.
- Most of the proposals demanded of, or coming from, Congress do little to address the underlying structural and policy issues that gave rise to our current energy crisis.
- Real legislative help for Puerto Rico should take account of the bigger picture—spurring economic growth and job creation. Only then will we progress toward economic opportunity for residents, a lower cost of living and better quality of life, with higher productivity and job growth. Although most of the responsibility for better energy policy lies with the local government, Congress can help as generally outlined above.

Mr. LAMBORN. Thank you.

The Chair now recognizes Mr. Rivera-Vélez to testify.

**STATEMENT OF CARLOS RIVERA-VÉLEZ, PH.D., PE,
PRESIDENT, PUERTO RICO MANUFACTURERS ASSOCIATION,
SAN JUAN, PUERTO RICO**

Mr. RIVERA-VÉLEZ. Good morning. My name is Carlos Rivera-Vélez, and I am here today on behalf of Puerto Rico's Private Sector Coalition, representing 100 percent of the private sector and comprised of 30 organizations. We thank you, Mr. Chairman and subcommittee members, for today's hearing.

I am also the elected Chair of the Puerto Rico Manufacturers Association, PRMA, which is the largest trade association comprised of approximately 1,200 companies representing the manufacturing sector. Employing almost 350,000 U.S. citizens and over 80,000 Americans stateside, manufacturing alone represents 50 percent of the island's GDP. We pay the highest wages, generate three jobs for every direct job, and provide over one-half of the local government's current tax base.

I am also Vice President of Manufacturing and General Manager of Federal Life Sciences in Puerto Rico, which directly employs approximately 1,000 U.S. citizens.

Recently, the PSC met with a number of your colleagues to recommend a five-point program toward economic development, highlighting energy as a top issue. Energy costs in Puerto Rico far outweigh similar costs on the mainland and hamper our ability to compete globally. We know the current MOU between the DOE and Puerto Rico must be renewed and restructured now. We also ask the Insular Affairs Office of the Interior Department to be funded now to complete the work with Puerto Rico on modeling and implementing a competitive and sustained energy solution.

Locally, we advocate for an agenda intended to transform the electrical system and enable sustained economic development, including things like debt restructuring; the reintegration of renewable energy sources; the modernization of the infrastructure; cleaner and cheaper fuel sources; and the full empowerment of the Independent Energy Commission representing consumers and industry to oversee the whole process of setting utility prices, among others. Dedicated and sound resources are needed to provide robust tools to allow the local commission to impact and do its job on a level playing field.

My main responsibilities as an operational leader include ensuring expected results are met within the planned budget for the year, while reducing costs annually in order to ensure production remains competitive globally. Energy costs play a major role in the daily management of any operation, especially those that are equipment-intensive. Energy costs in Puerto Rico for the last 15 years have been unstable and unpredictable, trending upwards from 11¢ a kilowatt hour in 1999 all the way up to 30¢ a kilowatt hour in 2012. Today, we are almost twice the U.S. average, despite lower oil prices.

To make things worse, there are proposals to increase energy prices even more above the current ones in order to facilitate restructuring and debt servicing. This amount could top an additional 7.8¢/kWh taking the worst case; resulting in average Puerto Rico prices for all sectors combined versus that of the United States to be 3.3 times 2014 prices. Anyone with a simple understanding of operating a business appreciates how devastating this change would be and its consequences to our economy.

As you know, PREPA has depended on oil to power its electricity generators. Since the 1940s, history has taught us that oil prices can change drastically in a short period of time, and Puerto Rico is vulnerable to these price swings. PREPA has been very slow to evolve.

Many local businesses and manufacturers have taken their own initiatives to lower costs. In the case of my facility, as an example, we have invested over \$1 million just to convert to LED lighting and install more efficient equipment as part of an energy cost reduction strategy. Similar large operations in manufacturing, consumer products, and retail markets have actually installed their own electricity generation capacity on site to ensure adequate power at a lower price, like cogeneration with propane, large solar panel arrays, et cetera.

Notably, PREPA has resisted the ability of these companies to sell back to the grid or to initiate the practice of “wheeling” and sell to a neighboring facility. So, small businesses cut costs by turning off the air conditioner or use it partially, use only a portion of the lights in the showroom, and lay off employees. In many cases, energy costs are significantly higher than payroll expenses. In the end, consumers will face higher prices and we look elsewhere, reducing demand, costing jobs for U.S. citizens in Puerto Rico and the mainland.

Let me illustrate the example of a manufacturing plant. Despite our current challenges today in Puerto Rico, we continue to be a manufacturing powerhouse. Every time there are energy cost increases, the following dynamics occur in any manufacturing plant in Puerto Rico: the general manager needs to explain the financial variances and the reasons for it; he or she needs to look at implementing ways to compensate for the cost increase, typically reverting to decisions involving downsizing employment, delaying or canceling new investments or expansions.

Corporations defer from bringing new products to the local plants if they are heavy on capital equipment. Workers at all levels become very aware of the previous challenges in the working place.

When combined with their own energy cost challenges as consumers, it contributes to a suboptimal working environment.

For these and many other reasons, we believe providing a competitive and modern, long-term energy platform and low cost is key to Puerto Rico's economic recovery.

Thank you all, and I look forward to your questions.

[The prepared statement of Mr. Rivera-Vélez follows:]

PREPARED STATEMENT OF DR. CARLOS RIVERA-VÉLEZ REPRESENTING THE PUERTO RICO PRIVATE SECTOR COALITION

Good morning. My name is Carlos Rivera-Vélez and I am here today on behalf of Puerto Rico's Private Sector Coalition (PSC).

I would first like to thank you Mr. Chairman, Ranking Member Lowenthal, and the members of the subcommittee for conducting this hearing this morning and for this opportunity to testify. We have noted in previous visits our availability to collaborate and establish a strong partnership with you so together with the Federal and local administrations we foster the development of practical, effective solutions to the current fiscal situation and the formulation and implementation of medium- and long-term plans that enable a competitive, productive and sustained economy in Puerto Rico. I want to recognize that this is the first invitation in recent times that the Puerto Rico Private Sector Coalition as an entity has formally received from Congress to testify on any issue affecting Puerto Rico and I would like to thank you Chairman Lamborn and Congressman Lowenthal for the opportunity and reiterate our availability to collaborate on this and other challenges.

As a proud Puerto Rican and U.S. citizen living on our island, I also want to thank Chairman Rob Bishop, Congressman Pierluisi, Don Young, and all the Members of the House Resources Committee and their staffs who are tirelessly working to assist our Commonwealth and your fellow citizens in Puerto Rico in finding realistic and practical solutions to the current fiscal situation.

Our 3.5 million U.S. citizens are active participants in the American dream of a better life for our families. Today, Puerto Rico is a key part of the U.S. values and supply chain. In fact, Puerto Rico consumers and business purchased \$20 billion in products and services from mainland suppliers and retailers this past year, being the largest buyer per capita of U.S. goods in the world.

By way of establishing for the record my formal background, I am the elected Chairman of the Puerto Rico Manufacturers Association (PRMA), which is the largest, and one of the oldest trade associations in our Commonwealth, founded in 1928. The PRMA is comprised of approximately 1,200 companies and represents the Puerto Rican manufacturing sector, suppliers, and service providers, which together employs almost 350,000 U.S. citizens on the island and over 80,000 Americans on the U.S. mainland. Manufacturing by itself represents 50 percent of the island's GDP or \$51B and close to 70 percent of GDP when all impacted aspects of the economy are taken into account. It pays the highest average wages, generates three jobs for every direct job, and generates over one-half of the local government's current tax base.

I am also Vice President of Manufacturing and General Manager for Edwards Lifesciences Corp. in Puerto Rico, a global leader in hemodynamic monitoring medical devices, established in the island since 1972, and directly employing approximately 1,000 U.S. citizens.

During my progressive career of almost 30 years, I have occupied diverse professional and executive positions of increased responsibility in the island. I have worked for Digital Equipment Corporation (computers/electronics), Allergan Inc. (pharmaceuticals/medical devices), Advanced Medical Optics Inc. (medical devices), Johnson & Johnson Company (pharmaceuticals/medical devices) and now Edwards Lifesciences Corp.

I have served as an engineer, engineering manager, manufacturing manager, strategic planning director, engineering director, operations director, plant manager, general manager, and now vice president, among others. I have also served as president or board member of several business, academic, and philanthropic organizations.

I have an engineering degree from the University of Puerto Rico; a master's degree in Technology and Business from the University of Pennsylvania; and a doctoral degree in philosophy from the Advanced Studies Center for Puerto Rico and the Caribbean.

I also serve as a founding board member of the Puerto Rico Private Sector Coalition (PSC), which represents 100 percent of the private sector. Some of my fellow board members include: Dr. Jose E. Vazquez-Barquet, President and Chairman of the Board of the Puerto Rico Chamber of Commerce; Ramon A. Perez Blanco, Esq CPCU, President of the Association of Products from Puerto Rico; Zulmarie Urrutia-Velez, CPA, Esq, LLM, President of the Puerto Rico Society of Certified Public Accountants; and Dr. Francisco Montalvo-Fiol, Coordinator of the Private Sector Coalition and Department Chair at the Interamerican University, Bayamon Campus. Together we came to Washington last December 2015 and are the core team of the PSC consisting of almost 30 organizations.

The entire private sector has come together in a united front to work on the issues affecting Puerto Rico, with energy one of the most critical ones, and we look forward to working with you and your colleagues prospectively. The World Economic Forum (WEF), has listed high energy cost and non-competitive electrical infrastructure as a significant challenge for the Island's economy and as a weakness in the WEF'S Global Competitiveness Report for the last 5 years. Business investment decisions have been negatively impacted by Puerto Rico's high energy costs.

Last month, the PSC met with a number of your colleagues here on Capitol Hill and recommended a five-point program toward sustained economic development. At the top of our agenda was energy. As most of you know, energy costs in Puerto Rico far outweigh similar costs on the mainland and are a significant drag on our ability to compete with our neighbors in the Caribbean Basin or even other regions of the World. I will speak more about this next from an operational perspective but the PSC recommends at the Federal level that the current MOU between the Department of Energy and the Government of Puerto Rico be revitalized. We also ask that the Insular Affairs Office of the Department of the Interior is appropriated with the necessary funding to complete work with Puerto Rico on modeling and implementing a competitive, transparent, diverse, and dynamic energy solution that can become a key catalyst toward economic recovery and sustained development.

At the local arena, we have been advocating for the implementation of the following elements intended to enable the beginning of the transformation of the agency and economic development: structured and competitive-conscious debt restructuring; assertive integration of renewable energy sources into the Puerto Rico Electric Power Authority (PREPA) infrastructure; immediate implementation of wheeling; the modernization of the current generation plants network and the incorporation of cheaper and cleaner fuel sources (i.e. LNG); the transparency of information and modernization of the information system platform; and the total empowerment and resourcing of the Energy Commission as an independent body representing consumers, commerce, and industry to oversee the whole process of developing and setting energy tariffs. Dedicated resources are needed to provide robust tools, funding, and technical expertise to the Commission which will allow the Commission to do its job on a level playing field.

I want to offer some of my personal experiences as an operational leader managing a global company. One of my main responsibilities is to ensure expected results are provided within the planned budget for the year within a fair degree of certainty, while improving costs year over year in order to ensure products remain competitive in the global market place. Utility costs are a major component of the cost equation, in which energy prices come to play a major role in the daily management of any operation, in particular if it is relatively capital or equipment intensive. The same analogy applies whether you have a manufacturing plant or a store, at the end the customer pays for it or a portion of it at the risk of being surpassed by cheaper prices from competitors that have managed to achieve lower costs through different cost reduction strategies or better operating conditions, like operating in a place where energy is very cheap.

Energy costs in Puerto Rico for the last 15 years have been unstable and unpredictable, trending upwards from 11¢/kWh in 1999 all the way to almost 30¢/kWh in 2012. Average U.S. prices for all sectors combined in October 2014 were 10.34¢/kWh while in Puerto Rico that figure was 26.70¢/kWh, almost 2.6 times more than in the mainland. When we take the same averages for October 2015, U.S. energy prices for all sectors combined was 10.34¢/kWh while in Puerto Rico we were at 19.66¢/kWh, almost twice that of the United States, the improvement driven mainly from the dramatic drop in oil prices during 2015. To make things worse, there are proposals to increase energy prices even more above the current ones in order to facilitate PREPA's restructuring and debt servicing. This amount could top an additional 7.8¢/kWh taking the worst case; resulting in average Puerto Rico prices for all sectors combined versus that of the United States to be 3.3 times using 2014 prices

or 2.6 times using 2015 prices.¹ Compared to Singapore, Costa Rica, and Dominican Republic, just to take these three competitors, and using 14¢/kWh as a fair point in the combined range at 2015 prices, Puerto Rico will be almost double. Anyone with a simple understanding of operating a business appreciates how devastating this change would be and its consequences to our economy.

As you know, PREPA has depended on oil to power its electricity generators since the 1940s. Thankfully, today's oil prices are low but history has taught us that the price of oil can change drastically in a short period of time and Puerto Rico is vulnerable to these price swings. PREPA has been slow in evolving a significant amount of its infrastructure to LNG and renewable energy sources which have enabled Puerto Rico to stay competitively behind; now things are even worse as a result of the financial challenges at the agency (i.e. Aguirre Gas Port construction is halted).

Many local businesses and manufacturers have taken their own initiatives to lower energy costs. In the case of the facility I personally oversee, we have spent over a \$1 million to change our lighting to LED lighting and install more efficient equipment as part of an energy cost reduction strategy. Several large operations in manufacturing, consumer products, and retail markets, have actually installed their own electricity generation capacity on site to ensure adequate power at a lower price (i.e. cogeneration with propane, large solar panel arrays, and energy cost reduction programs). Notably, PREPA has resisted the ability of these companies to sell back to the grid or to initiate the practice of "wheeling" and sell to a neighboring facility.

Small businesses have also become creative within their limited budget to attenuate energy costs: turn off the air conditioner or use it partially; use only a portion of the lights in the show room; place timers to control ON time on continuous operation electrical devices; lay off employees; among other mitigations. There are instances for many businesses in Puerto Rico where energy costs are significantly higher than payroll expenses.

If we do not turn around these energy cost trends, this will be a disaster for consumers, commerce, and the manufacturing industry. Despite all of our challenges to operating in Puerto Rico, we continue to be a manufacturing powerhouse, as demonstrated by our GDP figures. Any significant increase over current energy prices, that are already less than competitive, will kill the manufacturing industry; local business and manufacturing will be forced to revise its cost structures once again resulting in job reductions to compensate or pass the costs to the consumer. In the end, local consumers will be once again hurt with product cost increases while global customers will look at other product options, reverting in lower demand for Puerto Rico made products, and as a consequence trigger less jobs for U.S. citizens in Puerto Rico and the mainland. We need to focus all our efforts in achieving lower competitive energy costs over a modern, diverse, compliant and agile infrastructure.

Let me now offer more details from the operations perspective by illustrating the example of a manufacturing plant. Every time there are energy cost increases the following dynamics occur in any manufacturing plant in Puerto Rico: the general manager needs to explain the financial variances and the reason for it; he or she needs to look and implement ways to compensate for the cost increase. Typically reverting to:

1. cutting jobs or holding up on other capacity improvement projects or plant expenses;
2. holding up capital investment geared toward new products;
3. holding up capacity or capabilities improvements is held in order to implement energy cost reduction projects;
4. new annual budget for electricity is increased and challenged by corporate officials by its lack of predictability and uncertainty;
5. capital dollar pool is limited in order to provide space for energy saving related projects.

The impact means that no new energy projects could put at risk the plant's future in Puerto Rico; corporations desist from bringing new products to the local plants if they are heavy on capital equipment. Workers at all levels become very aware of the previous challenges at the working place, when combined with their own energy cost challenges as consumers, it contributes to a suboptimal working environment. For these and many other reasons, we believe providing a competitive

¹ Sources: Independent Statistic & Analysis U.S. Energy Information Administration and Estadísticas PREPA Serie Histórica 2015

long-term energy platform is one of the cornerstones toward Puerto Rico's economic recovery.

Other non-energy related recommendations of the PSC from the past December visit included parity with respect to Chapter 9 bankruptcy protection and Medicare/Medicaid reimbursements; establishment of a Federal Fiscal Oversight Board; a preferred partnership with Puerto Rico to promote manufacturing and the export of products and services; the establishment of an economic development board; "do no harm" with respect to international tax reform; and the inclusion of the private sector in crafting workable and effective solutions.

With respect to this last point, the private sector pays a significant amount of tax revenue in Puerto Rico and is our island's largest employer. On that basis alone we hope that the Congress will follow the example demonstrated today by Chairman Lamborn and Ranking Member Lowenthal and this subcommittee and actively solicit the expertise and participation of the private sector in assisting the Congress, the Administration and the government of our Commonwealth in resolving this fiscal situation.

In conclusion, thank you for the opportunity to testify and I would be pleased to respond to any questions you might have. We look forward to working with you in a collaborative and productive fashion.

Mr. LAMBORN. Thank you.

The Chair now recognizes Mr. Rossi to testify.

STATEMENT OF JOSEN ROSSI, CHAIRMAN OF THE BOARD, AIREKO; CHAIR, INSTITUTE FOR A COMPETITIVE AND SUSTAINABLE ECONOMY OF PUERTO RICO, CAGUAS, PUERTO RICO

Mr. ROSSI. Thank you, Chairman Lamborn; and thank you, committee members. I also want to thank you for electing to talk about energy challenges and opportunities facing Puerto Rico. In doing so, I believe you are also talking about the possibility to restructure Puerto Rico's economy for the good if we restructure the energy system, not just PREPA.

I am Chairman of Aireko Enterprises. I was past president of the Puerto Rico Manufacturers Association. We battled to bring a regulatory framework, an independent body similar to what the U.S. states and U.S. citizens enjoy when they consider their future energy plans.

I am happy to say that we have that kind of regulatory framework in Puerto Rico today, thanks to winning those battles politically. It was enacted in 2014 and it started working in 2015. It seems to be disregarded currently, not just by PREPA, but by a lot of our political leadership, as an important tool to legally, morally, and politically restructure our energy system. PREPA should be completely subject—as well as its future plans, including the Integrated Resource Plan that is present in proceedings in our Energy Commission in Puerto Rico—to provide the information and be subject to the scrutiny of our regulatory body.

Additionally, I propose that the Federal Government has a role in this. There have been promises by the White House Task Force on Puerto Rico to do so over the years, as it engages private-sector leadership in Puerto Rico. Similar to Resident Commissioner Pierluisi's comments, the DOI has been tasked with that as well, but Congress has not acted on it.

In early 2015, the DOE started implementation of its playbook with an MOU with the government of Puerto Rico to assist technically with these improvements to our capacity building.

Everybody in the private sector coalesced around the idea that the Federal Government could, through the DOE's technical expertise, improve our regulatory framework. Nothing of any substance has happened with that yet.

In essence, I wanted to convey to the panel and the subcommittee today that Puerto Ricans have tools, legal tools, similar to proven tools that U.S. citizens use every day in the mainland to implement competitive, sustainable energy solutions through participation as I now do chairing the institute that presented testimony to you today to achieve a balance that will favor the most amount of investment in the future to resolve the 50 percent part of the system that is obsolete, does not work, or has no value to us. We should not be paying rates to support that. Nobody here in the states would allow it as an intervener in a regulatory commission to legally pass those costs to us.

From there, we can plan not just a 5-year restructuring plan, but we can plan for a restructuring of the whole system that attracts private-sector capital, competitive-sector capital that is sustainably reviewed by an independent body, not just by PREPA.

In addition, I would like to mention that ideas have been brought forth that I fully support, and many others in Puerto Rico. I just want to comment briefly on them.

Puerto Rico should be excepted from the Jones Act provisions regarding natural gas maritime transports for the reasons mentioned here: Federal debt guarantees, DOE has capacity, legal capacity, or a modification to ITC tax credits for renewable energies in Puerto Rico given the tax situations, cash grants would be a better option to spur the type of investment that Federal and state governments here have spurred in new innovative distributed energy solutions. I would support that.

Additionally, I would support that Federal guarantees be provided to new strategic natural gas storage and distribution infrastructure in Puerto Rico, as long as the Federal Government is not supporting the creation of a new monopoly on key fossil fuel, not just to lowering costs in Puerto Rico to 16¢ a kilowatt hour, which has been the goal that we have been advocating in Puerto Rico Manufacturers Association every year. We also need to make sure we pass on natural gas to businesses and commerce in a competitive manner. Thank you.

[The prepared statement of Mr. Rossi follows:]

PREPARED STATEMENT OF JOSEN ROSSI, CHAIRMAN OF THE INSTITUTE FOR A
COMPETITIVE AND SUSTAINABLE ECONOMY OF PUERTO RICO

In response to the invitation to the hearings of January 12, 2016 by the Subcommittee on Energy and Mineral Resources, I am pleased to offer the following testimony. I am thankful to you, Ranking Member Alan Lowenthal, and fellow committee members beyond the invitation to speak, as you have chosen to focus on "energy challenges and opportunities facing Puerto Rico" and in doing so you also focus on the best opportunity U.S. citizens in Puerto Rico have to actively participate in the renewed investment and economic growth in our beloved island. The White House Task Force report on Puerto Rico of 2010, the Puerto Rico Private Sector Coalition Supranational Goals report of 2008, the promises of our local politicians over the years, others testifying at these hearings and important public forums over the years bear witness to this generally accepted truth that a transparently planned and wisely supervised energy reform that sustainably lowers our electrical energy costs in Puerto Rico is key to our economic, social and environmental well-being.

I begin by stating that in Puerto Rico it is important to first comment on potential conflicts of interest if you are to give or receive opinions on energy reform given the historical, unusual and very detrimental political and big-government heft of our failed electrical energy public monopoly. In my case as Chairman of Aireko Companies I could benefit short term from a shortsighted re-structuring resulting in higher electrical energy prices in Puerto Rico because of our Energy Efficiency and Renewable Energy business.

On the other hand our general construction company, our workers and families can most benefit if the electrical system is reformed to attain the maximum amount of sustainable investments that promptly fix the current system's ridiculous 50 percent dependence on obsolete oil fired generation. Said obsolescence and present incapacity of the system to replace it is the primary challenge to low-cost grid access for competitively priced intermittent renewable energy generation that the Federal and most state governments solidly support.

Given present circumstances in Puerto Rico I believe a well-implemented electrical system reform, with a Puerto Rico Energy Commission (PREC) approved Integrated Resource Plan (IRP) can support, as they regularly do in the rest of the United States and the civilized world, the maximum public and private sustainable investment that consumers and our economy can benefit from. Additionally, the goals of the Institute for a Competitive and Sustainable Economy of Puerto Rico (ICSE-PR) which I chair as Intervener in the PREC's IRP evaluation, are also the goals of the broadest sectors of our specific community to: (1) attain the lowest sustainable base system cost; (2) actively support a robust implementation of our independent regulatory body, the PREC, per State Law 57 of 2014 and all applicable Federal laws and regulations; and (3) unleash the best private and public-private competitive solutions to replace the 50 percent of the system that no longer works.

The local public sentiment and that of most experts I have heard is that fiscal reform must go hand in hand with structural economic reform. For energy reform to become structural reform the diminishing number of ratepayers of unpredictable local electrical bills, as well as the responsible investor must regain confidence in our public policy and institutions. I mean the type participative, open, clear rules regulatory institutions that can replace the obscure and broken public financing schemes that broke our energy system prior to 2015 when we enacted Law 57 and the PREC. As responsible electricity ratepayers Aireko, its more than 600 workers and many more in Puerto Rico can support the financing of a competitive electrical energy system, similar to other modern industrialized islands like Ireland and Singapore which use modern regulatory frameworks to turn their electrical energy into a competitive economic advantage, instead of profit opportunities for the few, the well-connected, or the corrupt.

Puerto Rico is an industrialized archipelago with a 2014 GDP of \$103.6 billion. Manufacturing directly contributes \$49.3 billion (47.5 percent) of total GDP, an unusually high component of our economy when compared with all states of the union. The manufacturing GDP of Puerto Rico is comparable on its own and even higher than the total GDP of many incorporated states like Hawaii's total GDP of 76.17 billion, Alaska's \$56.64, or Vermont's \$29.31 billion. Our very competent hi-tech manufacturing and related services labor which supports 95 percent of our total export capacity, can only make their and Puerto Rico's economic future thrive if strategic energy infrastructure investment, including a modern regulatory capacity result in electrical energy costs which increase productivity and wages for all.

As proposed by the Puerto Rico Manufacturers Association when I presided it in 2008, transparently planning and executing reforms that achieve 16.0¢/kWh energy solutions for our hospitals, industrial manufacturing and similar type base-load ratepayers that underpin a solid electrical system is a requisite starting point to this economic structural reform. I specifically mean a reform that: (1) sustainably lowers energy costs to that of most competitive industrial island-states (presently an industrial intermediate rate in the range of 14¢/kWh); (2) continuously increases grid access to best-cost renewable generation, at all scales, using our natural solar and wind resources; and (3) an institutional reform that eliminates shortsighted partisan politics and big uncompetitive participants in our energy sector.

The type integral energy reform that Law 57 of 2014 began with the 2015 implementation of the PREC and its legal power to act on behalf of the consumer, is presently challenged in our state legislature by some of the same shortsighted politics and a narrative of fear of facing a complete re-structuring of the failed public utility as a needed step to successfully transform the whole system for sustainable success. You must know our public utility has not yet fully complied with court ordered system information pursuant to the PREC's IRP process, and is still engaged in debt negotiations with bondholders that still have not presented for public evaluation the capacity nor the legality of ratepayers and our economy to further finance its

failures thru rate increases. I certainly support our utilities efforts to fairly renegotiate its debt and enact improvements to its operating costs that may require legislative authority. But no one should again accept in Puerto Rico nor the Federal Government that revitalization of this public corporation, our electrical system, nor our economy can occur going back to less, rather than more independent supervision, expert consulting and legal power on behalf of the consumer.

Puerto Rico's modernly regulated Telecom sector is an undisputed competitive tool for the betterment of a key public services infrastructure and thus our local economy. Since inception over 25 years ago, the Puerto Rico Telecommunications Regulatory board has been staffed by Puerto Ricans, and is testament to our capacity to do exactly the same with the electrical system. Correctly valuing the PR Telephone Co as the PRTC Regulatory Board was enacted and new private investment flowed to further productivity and consumer choice, remains a stellar example of our capacity for structural economic reform. What our failed power monopoly is now incredibly proposing to local legislators and the public in its proposed "Revitalization Act"?—to value itself, with no independent expert supervision until it "securitizes" the value and converts it into "a new long-term debt" within a new corporation outside regulatory powers. The consequences of accepting this along with the other good portions of the proposed Act would be the arbitrary limiting of new private investments that could otherwise structurally and competitively reform energy productivity, harness renewable natural resources innovatively, and do it under the independent, modern and legal regulatory scrutiny that our PREC presently requires from anyone interested in doing business in our grid.

In 1999 the Puerto Rico Manufacturers Association and our local Chamber of Commerce publicly criticized the lack of competent planning, procurement and regulation of our electrical energy system as costs started diverging from the more competitive norm of the 60s, 70s and early 80s. By 2000 the average energy cost for Puerto Rico was 11.96¢/kWh and the national (US) average was 6.81¢/kWh, a 75.6 percent higher cost difference. From then on as other local Non-Governmental Organizations clamored unsuccessfully for local implementation of the modern independent energy regulatory structures that became the norm in the rest of the United States in the 80s and 90s, our local energy incompetency became a cause or our general economic incompetency in the past 15 years. During 2015 (January to October) electricity cost 100 percent more at 20.97¢/kWh in Puerto Rico than the equivalent national (US) average same period of 10.45¢/kWh. If we consider the substantial decrease in oil cost during 2015, and our continued dependency on oil for over two-thirds of our generation capacity, Puerto Rico is poised for further economic distress as fossil fuel costs rise again in the future, as they did unexpectedly in 2012 when costs rose above the 30¢/kWh, approximately 250 percent higher than continental United States and 100 percent higher than best-in-class industrialized island-states, unless we valiantly do something about it.

Puerto Rico nor our economy can afford further timid, incomplete energy system reform without broadly understood and competitive future energy costs scenarios and expect to again attract growing industrial investment with well-paying jobs. Even the best scenarios proposed by our more recent public utility leadership with scant system information would have short term energy costs in the range of 24 to 25¢/kWh, in a very low oil cost scenario. Toward the future as oil costs went up, and the proposed and undefined monopoly "Securitization Transition Charges" kicked-in Puerto Rico would be vulnerable to the significant industrial investment and energy consumption losses of the past 15 years and further economic distress that would grow as our energy competitiveness gap grew again.

The continued focus by our failed monopoly to again propose unsupervised financial solutions with limited re-structuring to itself, and incomplete information on future energy cost scenarios, along with lack of understanding of some in our local political leadership regarding implementation of a modern regulatory framework with full legal power is in my opinion the immediate challenges that must be addressed in Puerto Rico for truly sustainable energy system reform. These challenges in my opinion can be overcome if the U.S. Congress and our local leaders present today pay attention to the unfulfilled promises by the Federal and to some extent local Executive branches of government. Unfulfilled promises by the White House Task Force officials that engaged with local private sector leaders, as well as unfulfilled expectations in the DOE implementation playbook of the 2014 MOU with the Puerto Rico government, depict a Federal Government that has timidly shied away from technical assistance and other available efforts at capacity building of our most immediately fundamental infrastructure—the PREC and its expert capacity in valuing the present failed public utility and assessing the best IRP solutions for local energy competitiveness.

Congress must be aware that growing private sector alliances of leading long-standing NGOs as well as new organizations like the ICSE-PR are currently educating the public and engaging our political leaders so that we keep the good of what is proposed to subject future procurement practices to independent scrutiny but we strike out all uncompetitive and non-transparent portions of the monopoly proposed “revitalization law.” Most important going forward are that Congress influences our Executive to rapidly help strengthen the PREC regulatory capacity, the failed public utility disclosures of system information and thus the confidence of local and outside investors that similar to the Telecom re-structuring of long ago we will not shy away from real structural reform this time again in our energy sector.

With regards to additional solutions and ideas which I support, beyond the focus on the emergency capacity building of our regulatory framework, I want to stress the following, with the understanding it is not a complete list:

1. Exempt Puerto Rico from Jones Act provisions regarding Natural Gas maritime transport.
2. Provide Federal debt guarantees for strategic:
 - a. Infrastructure investments in natural gas transport and storage as long as Puerto Rico government and the public monopoly credibly commit to private business access to said infrastructure at competitive natural gas prices. We do not another infrastructure monopoly, this time federally aided.
 - b. Replacement of old thermal generation with new dual-fuel cogeneration capacity specifically procured to provide best-cost access to intermittent renewable generation at all scales of the system.

My deepest thanks to you, Ranking Member Alan Lowenthal, and to this honorable committee for the opportunity to participate in these hearings. I trust you will understand that I expect the alarm and grave concerns that are part of this testimony are directed at a needed awakening from the passivity that has oftentimes accompanied Puerto Rico energy reform and economic reform talks in the halls of power here and locally. We can certainly achieve an awakening of Puerto Rico’s and outside investor’s confidence in our ability to overcome obstacles and responsibly take all opportunities in our energy sector reform if we focus on emergency regulatory framework capacity building and other opportunities where Federal Government can be helpful such as the public-private procurement process options that can be implemented in parallel with the needed regulatory evaluations. In the ICSE-PR and the growing local private sector alliances we are doing our part.

Mr. LAMBORN. Thank you.

The Chair would now recognize Mr. Sanabria-Hernández to testify.

STATEMENT OF JAIME L. SANABRIA-HERNÁNDEZ, CO-PRESIDENT AND GENERAL MANAGER FOR FINANCE AND ADMINISTRATION, ECOELÉCTRICA, L.P., PEÑUELAS, PUERTO RICO

Mr. SANABRIA-HERNÁNDEZ. Mr. Chairman, Ranking Member, and members of the subcommittee, thank you for inviting me to discuss our perspective on some of the energy challenges faced by Puerto Rico.

As you are aware, we submitted a more detailed testimony than what we will be presenting here this morning. I ask that you incorporate that detailed testimony as part of the record in today’s hearing.

I would like to start out by pointing out a few simple facts that underscore the urgency of our work. Electricity is an essential building block of the modern world. Application of affordable and dependable energy makes everything we do better, including food production, manufacturing, health care, transportation, heating and air conditioning, et cetera.

In our experience, there are three important components of any healthy economic sector: profitable companies; satisfied consumers; and confident investors. Profitable companies need satisfied consumers. Consumers need to get a good and dependable product at prices they can afford. Investors need assurances that the company is run well and that political involvement is limited.

EcoEléctrica—and, as you know, I am Co-President at EcoEléctrica—was the first independent power producer to supply clean, reliable, and safe energy at a competitive cost to the Puerto Rico Electric Power Authority under a 22-year Power Purchase Agreement. Our facility includes a 507-megawatt power plant and an LNG terminal with a regasification capability of 366 million cubic feet per day. The 507 megawatts of installed capacity represents approximately 9 percent of the total installed power capacity on the island, but we supply as much as 17 percent of all the electricity consumed in Puerto Rico on a daily basis.

There are a few systemic problems in Puerto Rico's energy sector. First, consumers are paying more for energy than they should because of the unstable business environment. The system could attract new investment if the business environment were better. The financial crisis in Puerto Rico is real and has caused a deterioration of the overall credit environment. Our counterparties are experiencing some erosion of their creditworthiness and that has compromised the certainty of getting paid on time. Because we are a private business, we depend on getting paid.

There is, unfortunately, a lack of certainty in the legal and regulatory framework. Companies, consumers, and investors in the energy sector in Puerto Rico all need and want PREPA to be successful. To achieve a more stable environment that is conducive to investment, we need to see improvements in the following elements of business.

First, independence. We think PREPA should be operated as a private business and divorced from intervention from the Puerto Rico government and its institutions.

Second, we need more stable leadership at PREPA. During the last several years, PREPA has had numerous CEOs—in one particular case, the person was there for no more than 3 days. That has its impact on how the business is run.

Next, having certainty, confidence, and the durability of the legal and regulatory framework is critical. Investor confidence is undermined if that legal and regulatory framework is not structured and does not represent a confident framework on which to operate.

Last, we need an improved credit environment. It might serve Puerto Rico's interest to institute and monitor a program of Federal guarantees as a means toward increased sustainability.

In conclusion, in many respects Puerto Rico faces the same challenges as the rest of the United States. Businesses should be run like businesses, without bureaucracies or political institutions substituting their judgment for those of the people actually trying to operate the business.

At the same time, while we are fixing the current system, we need a bridge. The financial crisis in Puerto Rico is real and will require some time and assistance to be resolved. We look forward to working with you on these issues.

Thank you again for inviting me, and I look forward to your questions. Thank you.

[The prepared statement of Mr. Sanabria-Hernández follows:]

PREPARED STATEMENT OF JAIME SANABRIA-HERNÁNDEZ, GENERAL MANAGER FOR
FINANCE AND ADMINISTRATION, ECOELÉCTRICA

Mr. Chairman and members of the subcommittee, thank you for inviting me to discuss our perspective on some of the energy challenges faced by Puerto Rico.

I would like to start out by pointing out a few simple facts that underscore the urgency of our work.

Electricity is an essential building block of the modern world. Application of affordable and dependable energy makes everything we do—food production, manufacturing, health care, transportation, heating and air conditioning—better.

Nations that have reliable and low cost electricity systems are better able to do things—refrigerate vaccines, grow and transport enough food for their citizens, treat wastewater—that improve life. Their citizens live longer lives and have a greater range of opportunities.

In short, we are talking about something very important today.

In our experience, there are three important components—profitable companies, satisfied consumers, confident investors—of any healthy economic sector. Profitable companies need satisfied consumers. Consumers need to get a good and dependable product at prices they can afford. Investors need assurances that the company is run well and that political involvement is limited.

ECOELÉCTRICA

EcoEléctrica was the first independent power producer to supply clean, reliable and safe energy at a competitive cost to the Puerto Rico Electric Power Authority (PREPA) under a twenty-two (22) year Power Purchase Agreement (PPOA). Our facility includes a 507-megawatt power plant and a Liquefied Natural Gas (LNG) terminal with a regasification capability of 366 million cubic feet of gas per day that could be expanded if the sector is developed properly.

The 507 megawatts represent approximately 9 percent of the total installed power capacity on the island, but supplies up to 17 percent of the total electricity consumed on a daily basis.

The shareholders of EcoEléctrica—Gas Natural Fenosa, Engie (formerly known as GDF Suez) and Mitsui & Co.—are among the largest operators of power plants and gas suppliers, throughout the world. These three shareholders have the combined financial resources to successfully support selected project development commitments made.

The EcoEléctrica tri-fuel combined cycle power plant is one of the cleanest and lowest-cost producers of electricity with the best efficiency and lowest emissions to the environment in the PREPA system.

EcoEléctrica employs eighty (80) highly skilled full time personnel who have worked more than 1 million hours without a lost time accident.

The EcoEléctrica LNG terminal provides the required infrastructure for the supply of natural gas on the island. The above ground LNG tank contains 160,000 cubic meters of storage capacity and is capable of receiving as many as sixty (60) LNG transport ships annually. The terminal currently provides natural gas to the EcoEléctrica power plant and to PREPA for use at Costa Sur, PREPA's largest power plant.

The natural gas imported into Puerto Rico by EcoEléctrica, for use at its power plant, has been mainly sourced from the Caribbean Basin out of Trinidad & Tobago. Today, some of the natural gas received at the LNG terminal destined for use by PREPA is also sourced from the Middle East and Africa.

EcoEléctrica is active in social and community organizations that contribute toward the improvement of public policy with an emphasis on the energy sector, as well as charitable causes close to the community.

EcoEléctrica is proud of the support it provides to neighboring communities through numerous initiatives, including scholarship programs that have provided close to \$700K in grants to university students commencing their first year; the continuing biological monitoring that cares for and protects marine life; and donations to build facilities for the care and custody of manatees found injured, among other things.

With all that in mind, I would like to touch on a few of our challenges.

CHALLENGES

There are a few pervasive and probably systemic problems in Puerto Rico's energy sector.

- Consumers are paying more for energy because the overall system could attract new investment in more efficient and reliable generation if it were part of a stable business environment.
- Capital spending should be focused on reducing consumers' overall costs. An example of this opportunity is the existing LNG terminal, where untapped capacity for greater use can serve to lower the cost of new infrastructure.
- The financial crisis in Puerto Rico is real and has caused deterioration of the overall credit environment. Our industry is going to need an improved credit environment to help get financing at reasonable costs.
- Our counterparties are experiencing some erosion of their creditworthiness. This shows up in variety of ways, including late payments (now averaging around 30 days beyond contract terms). PREPA cash-flow has deteriorated over time, and those of us in the energy sector need PREPA's cash position to be better managed. Without surety of payment, it will be difficult for anybody to justify investment in the Puerto Rican energy sector.
- The Government should not undermine the commercial value of assets through the creation of government regulatory bodies. An example of this is the legislatively created Puerto Rico Energy Commission's Regulations that prohibit the recovery of fees that are reimbursable under the PPOA terms. Our counterparties' efforts to meet contractual obligations should not be impeded by government actions.
- There is, unfortunately, a deficiency of certainty in the legal and regulatory framework. It is pretty simple: when legal and regulatory frameworks are constantly changing, investor confidence is undermined.

SOLUTIONS

We want to see PREPA be successful. Companies, consumers, and investors in the energy sector in Puerto Rico all need and want PREPA to be successful. PREPA itself is attempting to address some of these challenges in their business planning process known as an Integrated Resources Plan.

Along with PREPA's plan, we think that part of Puerto Rico's and PREPA's financial recovery will include finding and relying on expertise in the following areas:

- Expansion of fuel diversification efforts, specially increasing the use of LNG;
- Investments in state-of-the-art modern efficient power plants;
- Investments in renewable energy generation assets; and
- Professional management of power assets and/or the utility.

The elements that should characterize the future state of PREPA and the sector are:

Independence. PREPA's operations have been very closely linked to the agenda of the Puerto Rican government. PREPA should be operated as a private business and divorced from intervention from the Puerto Rican government and its institutions. For example, it cannot continue to provide legislated subsidies for multiple purposes.

Leadership. More stable and predictable leadership from people experienced in operating power grids is needed at PREPA. During the last 8 years there have been six (6) CEOs with one of them remaining at the position for no more than 3 days. Continuity in the roles with a medium to long-term vision is key to providing the stability we all need to succeed.

Certainty. Confidence in the durability of the legal and regulatory framework is also a key element necessary to facilitate strong financial leadership at the utility. Leadership needs to focus on improving the business environment through honoring contractual commitments while protecting the rights and obligations of the parties.

Credit. An improved credit environment throughout Puerto Rico will enable financing at reasonable costs and should also help stabilize PREPA's finances. Because recovering creditworthiness is a high priority and would take time, it might serve Puerto Rico's and PREPA's interests to institute—and monitor—a program of Federal guarantees as a means toward increased sustainability. The liquidity at

PREPA requires special focus in the management of their cash position to facilitate meeting current obligations.

Focus. Long-term fuel supply, power generation and overhaul of the transmission system are business issues that need immediate attention to help PREPA overcome its financial difficulties.

Knowledge. Experienced private investment knowledgeable of the Puerto Rico energy market can serve to accelerate the implementation of the solutions required to overcome the financial recovery.

CONCLUSION

In many respects, Puerto Rico faces the same challenges as the rest of the United States. Businesses should be run like businesses, without bureaucracies or political institutions substituting their judgment for those of the people actually trying to operate the business and, in this case, supplying the affordable, dependable electricity on which Puerto Ricans rely.

At the same time, while we are fixing the current system, we need a bridge. The financial crisis in Puerto Rico is real and will require some time and assistance to be resolved.

EcoEléctrica is a good example—and has the potential to be an excellent example—of how private sector approaches can provide real economic, environmental and social benefits to the citizens of Puerto Rico.

We look forward to working with you on these issues. Thank you again for inviting me, and I look forward to your questions.

Mr. LAMBORN. Thank you. I want to thank all five of our witnesses for your valuable testimony and for being here today on this very important issue. I will start with the first set of questions. I would remind all of the Members that Committee Rule 3(d) imposes a 5-minute limit on questions. I will begin, then we will go with the Ranking Member, and then we will continue on from there.

Ms. Donahue, could you comment—I know you have only been there for a year-and-a-half, but are there decisions or policies in place, previous decisions that have been made on Puerto Rico, on the island, that affect the competitiveness or the strength of the economy that you think should be revisited?

Ms. DONAHUE. Thank you, Chairman. I think, as I mentioned in both my written and oral testimonies, that the PREPA issue was years, probably decades, in the making. And, as other witnesses and Resident Commissioner Pierluisi mentioned, one of the challenges that PREPA has which makes it virtually impossible to do long-term strategic planning, is with every change in administration the top 150 leaders in the company are switched out. So you are starting fresh.

This type of business involves long-term planning and long-term investment, which is one of the reasons why we have a 20- or 30-year IRP plan that we are looking at. You have to make critical, long-term investment decisions. The permitting process is long and those decisions have frequently been completely overturned, in some cases as much as building a pipeline, only to dismantle it.

So, I do think that the structural challenges within PREPA, as a result of the shifting political agendas with subsequent administrations, make it very difficult for a long-term business to actually operate.

Mr. LAMBORN. Do you have any thoughts about employee benefits or wage loss?

Ms. DONAHUE. We did do some benchmarking on the wages; we looked at the baseline salaries; and then, of course, we looked at the benefit packages and compared PREPA to public utilities across the United States, as well as like industries in Puerto Rico.

And we found, as far as salaries were concerned, we were employing a very skilled labor base, so the salaries were fairly in line. It was on the benefit side that we felt that they were higher—in some cases significantly higher—than like utilities across the United States, and like businesses across Puerto Rico.

Mr. LAMBORN. Thank you.

Mr. San Miguel, you talked about privatization of the generation portion, not the transmission and distribution, but the generation portion of PREPA. Could you elaborate on that a little bit? And would that be well received, do you believe, in Puerto Rico?

Mr. SAN MIGUEL. Sure. Thank you, Mr. Chairman. The concept there is really going more to a mainland-based business model. We have sitting here with us the representative from EcoEléctrica. It is one of the two main IPPs, independent power producers, on the island since the 1990s. Both EcoEléctrica and the other IPP base-load operation are the two cheapest sources of our energy into the PREPA grid. I think that is sufficient exhibit as to the efficiencies with which the private sector operates the power generation facilities, not just on the aging component, on the number of employees and so forth, but it is clear that the private market is much more efficient in that.

To the extent that we create the right structure through the IRP that Ms. Donahue has been mentioning, and that has been presented for finalization with the Puerto Rico Energy Commission, that blueprint then sets the stage and the business model for processes to be engaged, like RFPs for long-term concessions or public-private partnerships, or RFPs that allow the private sector to seek the most efficient capital, construct at the greatest speed, and then operate with the greatest efficiency.

So, that is generally what I am alluding to.

Mr. LAMBORN. Are you aware that there may be investors waiting in the wings to make those kinds of investments, should the structure you are talking about be put into place?

Mr. SAN MIGUEL. In fact, I understand there are quite a few. I know from personal knowledge, having been contacted by people who may be interested but are waiting to see if in fact the things I mentioned in my short version, if the Puerto Rico legislature approves the Revitalization Act and then the Energy Commission approves revised rates and the IRP, that is when the private sector has visibility and certainty.

That is why I mentioned credibility as a key factor in this reconstruction of PREPA and our energy infrastructure to propel economic development. There are plenty of world-class and U.S.-class proponents waiting to put together transactions that should be very favorable. My strong emphasis on the private sector carrying the generation component is more so because I think, as Ms. Donahue has explained and the IRP details, most of the assumptions made in the IRP are rather conservative, so they assume that PREPA will be carrying some or a great part of the capital expenditure.

The view I am trying to push is that that should not be on PREPA's back. You let the private sector do that. They do it much more efficiently and those efficiencies are passed on to consumers.

Mr. LAMBORN. Thank you. I would now like to recognize the Ranking Member of this subcommittee, the Delegate from Puerto Rico, Mr. Pierluisi.

Mr. PIERLUISI. Thank you, Chairman. I should say Ranking Member for a day.

[Laughter.]

Mr. PIERLUISI. But I am enjoying it. I would say, for starters, that there is ample consensus in Puerto Rico, believe it or not, that we need more private capital in the energy sector. Even if you poll it, people want to see more companies like EcoEléctrica and AES—who is not here, represented—doing business in Puerto Rico. They want to see more renewable projects like the one has, it is a wind project in the south of Puerto Rico.

The challenge is how you attract that capital to Puerto Rico. These days it is very tough. What is happening is that Ms. Donahue spent 15 months negotiating a debt restructuring deal with the major creditors of PREPA and managed to get a deal from 70 percent of the creditors. The challenge now is how do we enforce it on all, or at least attract all others to be part of this deal?

I have to raise the fact that we did not have Chapter 9 when you started. We still do not have it, and some really do not like Chapter 9 because it is bankruptcy and so on. But bear in mind that when you have Chapter 9, one of the benefits of it is that a Federal bankruptcy judge can enforce the plan on all the creditors, all stakeholders. You would not have the issue that you still have today. So, I raise that and I would like you to comment further as soon as I finish.

The second issue I am going to raise, which has been mentioned before here by several of the witnesses, is that we now have in Puerto Rico an Energy Commission, and that is important. I should acknowledge the presence of the President of the Senate of Puerto Rico, Eduardo Bhatia, who had a lead role in making that happen. It is important to have an Energy Commission, because you need to regulate PREPA. PREPA is pretty much like a monopoly.

So, one concern I am raising, Ms. Donahue, and I want you to deal with it, is that I hear that this deal might not be respecting all the powers of the Energy Commission. I want to make sure that the Energy Commission will be approving any rate increase—and I don't want any, by the way, because it affects the economic development of Puerto Rico—or any other charge. I want the Energy Commission to oversee your restructuring proposal.

Could you comment on both of these angles—the fact that it is hard to attract capital when you are not financially stable, which is PREPA's case, and second, the Energy Commission.

Ms. DONAHUE. Thank you, Commissioner. On the private capital, if I can expand on Mr. San Miguel's comments, we did run a request for expression of interest proposal. We went out and we got enormous interest, both in PREPA and also in the greater Puerto Rico. But, I will say that one caveat from all of the participants is a stable and fixed PREPA as a counterparty.

The people that participated, the people that submitted proposals, were real. They were real financial players, real operational players. We are intending to use the results of that request for expression of interest to help us hone the RFP, to test the market, and see the likelihood of actually getting private capital and getting it into PREPA.

As I mentioned in my written and oral testimonies, we want the best capital for the people of Puerto Rico and we want the fastest capital. The only way we are going to determine the likelihood and really be able to analyze if it makes any sense is to go out for a proposal. So that is point one.

Point two, as far as the Energy Commission—I have enormous respect for the Energy Commission. We have had several formal meetings and informal meetings, and we worked in parallel with them on the CILT Regulation that came out in the fall. What the proposed PREPA Revitalization Act contemplated was not going around the Energy Commission. The only piece to that Act is we did contemplate accelerating their approval process.

We were never contemplating that they would not have full approval over the rate case that will be filed upon ultimate acceptance of the regulation. We had only contemplated changing a 6-month approval process to a 3-month approval process. Part of the reason for that is because of the very real possibility that PREPA will run out of cash in the summer, and because it was relying on the heavily negotiated contributions from the creditors that involved de-leveraging, as well as liquidity, as a means to bridge that rate gap that I had talked about.

So, the Commission is an important element to PREPA and to the people of Puerto Rico and we are intending to continue working constructively with those folks.

Mr. PIERLUISI. Thank you.

Mr. LAMBORN. The Chair now recognizes the representative from the great state of Wyoming, Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. This is my first introduction to this subject, so please bear with me and be kind of creative here. While I have never been to Puerto Rico and I do not speak Spanish, I was my state's treasurer and I worked on energy issues a lot. So, this subject really piques my interest. I want to brainstorm with you a bit, please bear with me.

Let's assume that a Chapter 9 bankruptcy authorization would occur. If it did, presumably, based on what I have heard, it would take very specific milestones as conditions precedent to this Congress allowing Chapter 9 to be entered. So, I want to ask my questions based on that assumption. Let's assume we are going to authorize bankruptcy, but certain conditions would have to be met before it could ever be entered.

Now, some of the things that I have heard—if you thought that was the scenario that Congress was interested in considering, I want to know what some of those steps should be. And I want some of you to tell me what DOI and DOE have started with regard to assisting with improvements. So, somebody be thinking about that question.

I want to know what kind of milestones, specific milestones, we would have to enact prior—as conditions precedent to authorizing

a bankruptcy; how we can separate the Puerto Rican Congress from interference with PREPA; how we can work toward privatizing, so to speak, PREPA; how DOE specifically is discussing debt guarantees or modifications to tax credits.

I know that is a mouthful, but that is only the beginning for me. But since I have blown through half of my time, just please have at it.

Mr. ROSSI. If I was a bankruptcy judge—and I am not a lawyer, and I have never been in bankruptcy court, but a lot of people have been talking about it in Puerto Rico for PREPA, particularly, given the dire situation everybody understands—I would start by saying, going forward, if this is going to be a viable business, under what regulatory framework?

Mrs. LUMMIS. Yes.

Mr. ROSSI. I would say the strongest—

Mrs. LUMMIS. Can I interrupt you? What does the Energy Commission do now? Does it function like a public service commission?

Mr. ROSSI. It battles in court to get PREPA to hand over documentation.

Mrs. LUMMIS. Oh, man.

[Laughter.]

Mr. ROSSI. It asks interveners for help in framing the correct questions regarding the Integrated Resource Plan that would be key to private capital coming in, because they understand that the ratepayers will be able to finance the burden. Eventually, it is going to be on the backs of the ratepayers. Those are the people financing the electrical system anywhere in the world.

I think it is key that you have the strongest regulatory body, because that is where those decisions are made.

Mrs. LUMMIS. May I ask Mr. San Miguel to weigh in on this huge array of questions I have asked?

Mr. SAN MIGUEL. Sure, thank you. A couple of thoughts. I mean the specter of Chapter 9, let me say—and certainly my short and long version into the committee did not touch on that subject, as I did not believe it was part of the jurisdiction or subject matter to be evaluated, but now that it is on the floor, so to speak, and even going to the response that Mr. Rossi provides—I would say that, for example, on the PREPA scenario I would not grant any kind of potential specter or access to Chapter 9 if they do not do the things I have outlined.

The three steps I have outlined are all within Puerto Rico's control; they can happen tomorrow. And I would not come beg, as an American citizen, from the Congress unless I have done everything I can and then I need more. Under that scenario, I would then go ahead and plead for additional support with the credibility and the track record that I have done what I can, some may remain and I need some assistance to finish the job.

Having said that, on the Chapter 9 issue, I think I feel very strongly and I differ a bit from Congressman Pierluisi, who I trust tremendously and have known for over 25 years. On the Chapter 9 issue, as a person who believes in our right to statehood, I cannot think of it unless we resolve the political relations issue with Puerto Rico.

Mrs. LUMMIS. Yes, yes.

Mr. SAN MIGUEL. For that we have H.R. 727, which he has, I think, very properly sponsored.

But I cannot, as a jurisdiction, ask for more stateside rights without the responsibilities. And principally—and certainly Congressman Pierluisi aside, because he also believes in the statehood cause—the principal proponents of this from Puerto Rico are people who do not wish to become a state. They want the goodies of the state, but none of the responsibilities. Fundamentally, I have an issue with that.

Now, from a credibility perspective, you were asking what should the Congress do as precondition. You know, the first precondition is credibility. We are running now into the third fiscal year with no financial audited statements. S&P came out in early January with their own assessment. Our local think tank, the Center for the New Economy, came out publicly in December with that. How can you grant someone the right to go bankrupt if they have not shown you the numbers?

Mrs. LUMMIS. Yes, and I thank you. My time has expired, but this is fascinating. Mr. Chairman, I yield back.

Mr. LAMBORN. Thank you. The Chair now recognizes the Ranking Member of the Full Committee, Mr. Grijalva.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. Ms. Donahue, I have some quick questions.

Would it be easier to raise money to upgrade Puerto Rico's aging energy infrastructure that has been talked about here with or without Chapter 9?

Ms. DONAHUE. Well, with Chapter 9, presumably we would be able to get super-priority financing. So, potentially, that could be used as a bridge.

Mr. GRIJALVA. Would—

Ms. DONAHUE. If I can just expand quickly, though, what we are talking about as part of our plan is trying to fund it just to correct what Mr. Rossi said. Part of the plan is funded by the concessions from the creditors. Part of the upgrade in the system is funded by that. I just want to make sure that people are clear on that.

Mr. GRIJALVA. Thank you. Would ratepayers have lower bills with or without Chapter 9?

Ms. DONAHUE. I don't know the answer to that.

Mr. GRIJALVA. OK. Would manufacturers and other businesses be more likely to invest in Puerto Rico with or without Chapter 9?

Ms. DONAHUE. I can't answer that, but what I can say is—and this goes a bit toward your earlier question—with Chapter 9, at least as it relates to PREPA, I would use it as a mechanism to facilitate the deal that we have on the table. The deal that we have negotiated with the creditors is good with a Chapter 9, without a Chapter 9. It is fair, it is equitable.

So, where a Chapter 9 would make sense for PREPA is to facilitate the deal very quickly. It would pull in the holdouts to the extent that there are holdouts, so we do not have an Argentina problem. It would allow us to very quickly move on to the next phase, and the milestones are outlined in the restructuring support agreement. It involves an RFP, it involves acceptable legislation. It involves—

Mr. GRIJALVA. That wouldn't be begging at that point? You mentioned, Ms. Donahue, in your testimony that the restructuring support agreement does not include the 30 percent PREPA debt. If PREPA had access to Chapter 9, wouldn't any restructuring include 100 percent of that debt and, therefore, mean a bigger savings down the road for ratepayers?

Ms. DONAHUE. Yes, it would.

Mr. GRIJALVA. One concern I have about the restructuring support agreement that you have reached with some of PREPA's creditors is that ratepayers will be left with a lot of the debt, while the hedge funds who paid pennies on the dollar for the debt are guaranteed 85 percent on the dollar under this pending agreement. Wouldn't you get a better deal for Puerto Rican families and PREPA under Chapter 9 than through the RSA, given those numbers?

Ms. DONAHUE. It is not clear to me that the economics of the deal would change in a Chapter 9. The PREPA bonds are arguably special revenue bonds, which is why I have mentioned that I think the deal that we have constructed, independent of the secondary market considerations, is a fair deal. It gets PREPA de-leveraging, as well as liquidity relief in the form of 5 year's interest-only payment.

So, I am not sure that a Chapter 9 would get a better economic deal. It would get a more efficient deal. But as far as the 85 percent, 5-year interest-only, I am not convinced of that, no.

Mr. GRIJALVA. The last question—I notice that, at least in the RSA and the restructuring for PREPA, the heavy reliance on natural gases to replace one fossil fuel. In that plan, was there a look at renewables as part of the portfolio that would be provided, i.e., you know, Hawaii, 20 percent of the island is renewable; Virgin Islands, 20 percent solar powered during peak periods; even Texas, 20 percent wind power.

So my point being, in setting up a portfolio, aren't we begging the question that we are removing one reliance on one fossil fuel, replacing a reliance almost entirely on natural gas, without a portfolio that is ample enough to accommodate renewables?

Ms. DONAHUE. The IRP and the PREPA transformation plan does rely on fuel diversification and, as part of that, does integrate renewables into the system over time—

Mr. GRIJALVA. What percentage of that in the RTA would you say is a renewable part of the—

Ms. DONAHUE. Well, we are going from 200 megawatts of commercial grade up to approximately 1,200 by the end of the IRP.

One of the challenges that a system like PREPA has is, as we mentioned, the age of the fleet.

Mr. GRIJALVA. OK.

Ms. DONAHUE. With the older fleet we have very inflexible units. In order to make sure that we have system reliability, we have to carefully integrate and make sure that the systems, when we get newer units that can power up and down, we can integrate faster.

Mr. LAMBORN. Thank you. The Chair now recognizes Mr. Thompson for questions.

Mr. THOMPSON. Thank you, Chairman. Thank you to the witnesses for being here. I want to talk about or ask questions, get

some clarifications on the Aguirre facility and the conversion to LNG. I am from Pennsylvania and we have had our own economic issues, but one of the things that has been really a godsend for us has been the use of natural gas. Specifically, one of those has been looking at, actually, the construction of even new power plants, using that resource.

So, I wanted to just get a clarification, in terms of what was the situation in Puerto Rico. In 2012, a report by Alvarez and Marshall that was presented before the Government Development Bank of Puerto Rico suggests the future of PREPA depends upon converting to natural gas for power generation.

The findings are furthered in the Integrated Resources Plan that was released by PREPA earlier this year, and indeed, PREPA premises much of its future compliance with environmental regulations, including mercury or toxin standards on the development of the Aguirre facility, which PREPA concludes will provide 900 megawatts of compliant, clean liquid natural gas power.

Ms. Donahue, what is the current status of the Aguirre facility?

Ms. DONAHUE. The Aguirre gas port—our environmental impact study is complete. We are now dealing with comments from the Corps of Engineers that came right before the Christmas holidays. And working with our partners, we are hoping to continue to move that along. Our expectation is to begin construction some time in 2016, second to third quarter, depending on the permitting issues, and have it COD by the end of 2017 or into early 2018.

Mr. THOMPSON. Thank you. In reading the IRP, it appears that much of the future of PREPA is dependent on the approval and the construction of that facility.

Ms. Donahue, what would PREPA do if that facility fails to come on-line?

Ms. DONAHUE. Well, as you know, it is a big piece of our IRP and, therefore, also getting to EPA compliance on mass regulations. However, what we have looked at, because we do need a fallback plan—I have an oil and gas expert as part of my team who has been working with the EcoEléctrica folks to understand the permits, the expansion, et cetera, because, as Mr. Sanabria-Hernández just testified, they have a natural gas terminal and they have gasification.

So, we have looked at that, we have looked at the timing of the permits. That would, of course, require a pipeline to move it beyond EcoEléctrica. That is a fallback that we have been considering, but we are moving forward with the Aguirre gas plant right now.

Mr. THOMPSON. Good. Mr. San Miguel, if this facility is not constructed, what opportunities in the private sector exist to expand electric generation on the island as both environmentally compliant and financially feasible?

Mr. SAN MIGUEL. The first thought on your premise of if the offshore gas plant does not occur was you have to really accelerate any RFP process on the generation side.

I think EcoEléctrica is obviously a natural Plan B, so to speak, although I am a strong believer in, you know, we cannot create another mini-monopoly. Competition is healthy. I like Jaime Sanabria-Hernández very much; he has done a very good job over the years. But I would really press the pedal to the metal to make

sure that we had competing power generation sources and capital that, in competing, makes it more efficient, more cost effective, and less expensive for the customers.

Mr. THOMPSON. Thank you. Mr. Sanabria-Hernández, could the EcoEléctrica facility be expanded to accommodate an increased LNG intake? And if so, by how much and how much potential megawatts could be produced, based on that increased intake?

Mr. SANABRIA-HERNÁNDEZ. The existing LNG facility, EcoEléctrica, in terms of capacity, could expand by 50 percent, as we speak today, subject to authorization from FERC. It is our estimate that authorization would take a year to work with the permits and get FERC comfortable to authorize it; and that expansion does not require any construction at all.

In addition to that, EcoEléctrica has the facility ready for development and construction of a second LNG tank. That second LNG tank could expand by 100 percent the existing EcoEléctrica capacity, should it get the initial 50 percent expanded. We can go from approximately 24 to 26 standard cargoes of LNG, of 119,000 cubic meters each to almost three times that, up to 60 cargoes a year.

That means we would be able to power not only additional power, such as EcoEléctrica and Costa Sur, which together they both represent about 1,300 megawatts. We could power an additional, let's say, 500 megawatts with the 50 percent increase, up to 1,800, and double that capacity with an additional second tank.

The only thing with the second tank is it is another process of its own. It will take probably close to 5 years to initiate all the permitting, go through FERC, then after FERC the financing and constructing of the tank. It will take about 5 years.

Mr. THOMPSON. Thank you. Thank you, Chairman.

Mr. LAMBORN. Thank you. The Chair now recognizes a member of this subcommittee, Mr. Polis, from the great state of Colorado.

Mr. POLIS. Thank you, Mr. Chairman from Colorado, as well. I appreciate that.

Before I jump into my questions, I want to briefly mention how peripheral many of the topics in today's hearings are, in light of the crippling debt crisis facing Puerto Rico. Puerto Rico holds over \$70 billion in public debt that, without access to Chapter 9 and an opportunity to restructure their debt, is effectively unpayable.

While we are discussing energy development, an issue that is important in its own right, I do not see how it is even possible to delink PREPA's financial challenges from Chapter 9, which I think has to be dealt with, in terms of how Puerto Rico can emerge from this crisis, not just with regard to energy policy within Puerto Rico.

Ms. Donahue, your written testimony notes how fragile the restructuring support agreement is for PREPA. Can you expand on how important it is for additional PREPA creditors to join the agreement, and how necessary it is for PREPA to have access to Chapter 9 bankruptcy?

Ms. DONAHUE. Yes. The restructuring support agreement requires that after the exchange only \$700 million of debt of the current existing bonds remain outstanding. So that means, of the \$2.7 billion of debt that is currently not part of the restructuring support agreement, \$2 billion of it must voluntarily exchange. If they do not, then we cannot consummate the deal.

Mr. POLIS. What happens if the outstanding creditors, which are about 30 percent of the debt, are not party to the restructuring support agreement?

Ms. DONAHUE. The deal cannot be consummated unless we get \$2 billion of them to agree. The deal consummates—\$700 million cannot participate, but the other \$2 billion must.

Mr. POLIS. And without debt relief, PREPA is projected to run out of cash in June of this year, so in about 5 months, and default on its debt obligations. What are the short- and long-term impacts of a default, both to PREPA, its customers, and to Puerto Rico?

Ms. DONAHUE. Well, I think that PREPA faced it in July of 2014, which was the inflection point to getting a CRO and actually getting the negotiation point. There was an issue where the main fuel supplier at the time, Petrobras, refused to ship without cash in advance. So, if there are no suppliers that will be willing to supply fuel, then that would mean that they will not be able to generate power, and that would also mean that we would be in a situation where there would have to be blackouts and major, major conservation.

It would be, in my opinion, a disaster if PREPA were to run out of cash, and not have the ability to—

Mr. POLIS. And these are both residential blackouts, as well as businesses that would lose power?

Ms. DONAHUE. It would be blackouts across the island, yes.

Mr. POLIS. Yes, which in terms of maintaining competitiveness and jobs and the tax base, that would evaporate very quickly if there was not a reliable power source.

One thing that I notice in the background is that, unlike most areas in the mainland, Puerto Rico uses quite a bit of fuel oil with regard to power generation. I would like to ask whoever's area of expertise this is, the impact of the reduction of oil prices from about \$90 a barrel down to \$30 a barrel, how much does that lead to cost reduction of electricity on the island of Puerto Rico?

Ms. DONAHUE. It has been a significant factor. The initiatives that the team has implemented have resulted in approximately 1¢. The difference between the high point, in August of 2014, it was about 28, 29, it is now closer to 17 or 18.

Mr. POLIS. I also saw that Puerto Rico has a renewable portfolio standard of 12 percent by 2015 and 15 percent by 2020. To put that in contrast to the state that Mr. Lamborn and I hail from, we have a 30 percent renewable energy portfolio standard by 2020, roughly twice that of Puerto Rico.

Ms. Donahue, would you be able to address how higher renewable portfolio standards can lead to more predictable electricity pricing over time and make the economy less subject to spikes in oil prices?

Ms. DONAHUE. I think it would allow the fuel diversification that we talked about. You would have less reliance; but, until there is stored power, solar still remains intermittent. So, you still would need the reserve power. Unlike the great state of Colorado, we do not have the ability to shed load. We are a closed system.

It is that much more important that we have the reserve power and the backup power to make sure that when the sun does not shine, that the power and the system can still reliably provide.

That is part of the reason why our standards are lower, because of the older systems. Once we have newer systems that can power up and power down much faster, we can integrate much faster.

Mr. POLIS. I thank the Chairman for the time, and hope that we can soon continue our committee's work with the issues surrounding Chapter 9. I yield back.

Mr. LAMBORN. Well, we would, except that is outside the jurisdiction of our committee.

The Chair now recognizes the gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman; and I want to thank each and every one of you for being here today.

Before I begin my questioning, I really want to make an important point, something that I am very concerned about, that nothing said in this hearing, nothing said by the leadership of this conference or this Congress, should in any way be interpreted as encouraging the government of Puerto Rico or PREPA to delay addressing their own fiscal situations. I think that is really, really important.

I, and other Members of Congress, will not support Federal legislative action on this issue if those responsible for the debt do not act in good faith to work to come up with their own viable solutions. You do not need Congress to help you be responsible. There are a lot of things that you can do to become responsible. Significant reforms must be made and serious negotiations with creditors should be undertaken and finalized, including the restructuring agreement that PREPA reached with its creditors in December.

Ms. Donahue, thank you for being here today. If the Puerto Rican legislature fails to pass both the operational and securitization portions of the legislation by January 22, what happens?

Ms. DONAHUE. Two things happen—the restructuring support agreements will no longer be valid, and we have negotiated with our creditors that they will lend back to us \$115 million that we paid in January to help us bridge our liquidity crisis that they will not be required to do that, as well.

Mr. LABRADOR. Thank you. Briefly, could you describe the additional provisions that you are seeking the legislature to approve?

Ms. DONAHUE. We are looking for an ability to actually implement a meritocracy—meaning key performance indicators and bonuses based on performance. We are looking for the ability for PREPA to run an RFP process that would go out and understand the appetite of private capital. We are looking for the securitization, the ability for rate restructure, which we would then go to the Energy Commission for approval on. Those are the main components—

Mr. LABRADOR. OK, it is not a test. I was just trying to get a—
[Laughter.]

Ms. DONAHUE. You had me a little nervous.

Mr. LABRADOR. All right. There has been talk about the need to bifurcate this legislation. Would that work? Why, or why not?

Ms. DONAHUE. At the Puerto Rican level?

Mr. LABRADOR. Yes.

Ms. DONAHUE. I believe it won't work, and I believe the reason why it won't work—and when you say “bifurcate,” I am assuming you mean take the securitization and all the other—

Mr. LABRADOR. Correct.

Ms. DONAHUE. The PREPA transformation is important, in that it deals with operational issues, culture issues, and financial issues. They are all intertwined. I think if we bifurcate and only focus on the securitization, that would only deal with one element of all of the issues that are happening in PREPA. We need to be able to really depoliticize, instill a cultural meritocracy, get the savings that are embedded in other elements of the legislation. I think it is important that the legislation, the elements of it, are together.

Mr. LABRADOR. So, we need to make hard choices is what you are saying, correct?

Ms. DONAHUE. Yes.

Mr. LABRADOR. Mr. San Miguel, Jorge, good to see you. As someone living on the island and having worked with PREPA in the past to negotiate power purchase operating agreements, are these legislative fixes necessary, and would they help PREPA operate in the future?

Mr. SAN MIGUEL. And your reference is to the Revitalization Act?

Mr. LABRADOR. Correct.

Mr. SAN MIGUEL. As I mentioned in my earlier testimony, Congressman, I do not think it is a perfect piece, but it is a move way ahead of where PREPA has been. So, I urge that, yes, it be approved with the amendments that should properly be made without discouraging the creditor group that has already been agreeable to the revitalization draft that we have in front of the legislature.

I think it is important that all of this revolves around the fact of whether Puerto Rico truly wants to reform PREPA. I believe it is a separate issue from Chapter 9, and that is why I would—

Mr. LABRADOR. I do too, by the way.

Mr. SAN MIGUEL [continuing]. Like not to touch that, because I think that Ms. Donahue and the team, the CRO team at PREPA, has done a tremendous job. Fifteen months is a bit misleading, in my opinion from the outside. Ms. Donahue was brought in, and she has not just done debt restructuring work, she has done structural reform work, and has been, I think, assigned additional duties.

What she found there was not as easy as was originally designed or thought. And 15 months under that scenario I don't think is that bad. Any scenario under other legal structures or pathways would have taken probably that much for this size of debt and complexity within Puerto Rico.

Mr. LABRADOR. Real quick, Ms. Donahue, I am really concerned about PREPA's history of not collecting from municipal accounts, and that PREPA has not pursued collection for severely past due accounts. What are we doing now and what else needs to be done? Is there something legislatively, or is it just that PREPA needs to do its job better?

Ms. DONAHUE. I think the legislative component has already been passed with Act 57—that happened 2 years ago—that outlined measures and limits to each of the different municipalities. Then, further to that, the Energy Commission came out in the

fall with regulation that further strengthened the for-profit elements of municipalities and carved them out of the CILT, and also strengthened the ability above the limits that PREPA has the ability to collect the cash.

As far as collections from governments and other customers, my team has been working tirelessly with the folks on the ground, where we have restructured that whole organization, reconciled accounts, and have set up multiple payment plans. And the cash balances that were quoted earlier have been significantly reduced.

Mr. LABRADOR. Thank you very much. I yield back.

Mr. THOMPSON [presiding]. The gentleman's time has expired. The Chair now recognizes Mr. Serrano for 5 minutes.

Mr. SERRANO. Thank you, Mr. Chairman. And thank you to both the committee and the subcommittee for allowing myself and Ms. Velazquez to participate. While we are not members of this committee, we were both born in Puerto Rico, and Puerto Rico is never far from our hearts, our legislative thoughts, or our thoughts in general. So I thank you.

Ms. Donahue, I have a question that concerns me a lot. A recent AP report indicated that PREPA was about to cut off electricity to several hospitals in Puerto Rico. Ms. Velazquez has been saying that this is becoming not a fiscal crisis but a humanitarian crisis. I believe—and I may be wrong, and maybe you can help me—that in New York you are not allowed to shut off heat, purposely, of senior citizens, for instance, in winter time, their lights and so on. So, how does PREPA get away with cutting off electricity to hospitals? And doesn't that just make things worse, from a fiscal crisis to a humanitarian crisis, and a health issue?

And, speaking of health issues, please forgive my throat.

[Laughter.]

Ms. DONAHUE. That is OK. Let me just clarify. PREPA did not actually cut off the power. They posted a notice in the paper, as required by law, that if they did not pay, they would be entitled to cut off power. And what ended up happening is they paid.

Mr. SERRANO. They paid?

Ms. DONAHUE. Yes.

Mr. SERRANO. So this issue, then, is gone?

Ms. DONAHUE. The issue is gone.

Mr. SERRANO. Are there any laws in Puerto Rico at this time—and probably a question if we had the President of the Senate on the panel, but we don't—that prohibit groups like yours or agencies like yours from cutting off power without some sort of negotiating or preventing it totally?

Ms. DONAHUE. I am not an expert on all Puerto Rican laws, I am sorry. But what I will say is—again, in this particular instance—there were many efforts to negotiate. To the extent that we were intending to ever cut off power, we followed the procedure where we are required to notice. And as I said, once we filed the procedure, we were able to get paid.

As far as what other requirements there are, I would have to defer that to my colleagues who were actually in the collection group.

Mr. SERRANO. OK. We would like to know that. And I think, with all due respect, the committee may want to know that.

Last on this part, are there other hospitals, medical institutions, or any schools that are in arrears right now?

Ms. DONAHUE. The Department of Education is definitely in arrears. I am going to have to get back to you on the specifics of individual accounts, but I am aware that we are trying to work out a payment plan with the Department of Education, as well.

Mr. SERRANO. OK. For anyone on the panel who wishes to answer this—and it is a question we ask ourselves here all the time—many would say why, during a fiscal crisis, have a hearing on the energy issue in Puerto Rico. What is, briefly, the relationship between energy issues, the economy, and the fiscal crisis right now? Anyone who really wants to—

Mr. SAN MIGUEL. Thank you, Congressman. One of the things I mentioned in my short piece was the power quality issue. Generally speaking, energy and electricity are the backbone of our society, our island, our homes, and our businesses.

One little item on power quality that has to do with voltage and sustainability of that voltage, for example, is affecting our capacity to attract new manufacturing investment and it is threatening existing manufacturing. There are, for example, 10 manufacturing entities on the island that currently generate almost a third of the revenues, tax collections for the government of Puerto Rico. If we do not take care of that sort of infrastructure ailment, we threaten not just a hospital, we threaten thousands of jobs and 33 percent or 30 percent of our general revenues right now.

There are huge elements behind the importance and significance of this energy infrastructure crisis that we are so near and close to finalizing with the RSA—approval by the legislature, quick action by the Energy Commission, and then letting the CRO and the PREPA team go on to the securitization and the rest of the issues that must be taken care of.

Now, just a footnote. Chapter 9—no judge under Chapter 9 is going to approve the Revitalization Act. They are not going to approve the rates, they are not going to approve the IRP, and they are not going to help with securitization. In fact, Chapter 9 specter could actually lower the possibilities of getting a positive credit rating on a securitization structure.

So, we are very close, without having this dark cloud near us. I think de-linking this from Chapter 9 is critical. We are very close to getting a PREPA transaction done. With respect to the holdouts—I am not privy to the detail of the transaction, but if the offer made onto the RSA is above their current trading price, which is pretty low, it is likely those holdouts will come in. And if they do not come in, the deal does not necessarily fall through. Existing creditors could step in for part of that debt.

I think we need to be very cautious and not introduce into a very advanced negotiating stage something that could be very unsettling and that does not resolve my Revitalization Act approval, my energy rate revisions, and my IRP completion.

Mr. RIVERA-VÉLEZ. I would also like to add, if you allow me, being the representative of the manufacturing sector and the private sector, energy is one of the main components of the equation called operation costs. An example today in the local news, Procter and Gamble, after 30 years, is closing their facility and they are

going to eliminate 130 jobs. One of the reasons stated in the communication was operational cost challenges. You will never hear energy, energy, energy; but when you talk to colleagues, you know that energy is a very important component.

One of the main issues that we have been fighting for the last 15 years is this trend going up, up, up, and the uncertainty that the whole situation brings—holding investments in the manufacturing facilities typically are geared toward improving capacity, bringing new products in. In reality, when you look at the whole scenario, everybody is waiting to see what happens. In reality—now, and not tomorrow—again, cheaper energy costs—when I compare, let's say when I look at Singapore, Costa Rica, and the Dominican Republic, and then I look at Puerto Rico at twice those rates—I cannot compete even inside the manufacturing networks that we already have. So, it is a little bit of a challenge.

And last, I want to say that it is important that whatever we talk about here, sustained economic development is key. Whatever we do in energy is in a sustained way; and we, the private sector, want to work with you doing that. Because, you know what? If not, in 5 or 10 years we will be here talking about the same issue again.

Mr. THOMPSON. Yes, thank you, Mr. Rivera-Vélez.

Mr. RIVERA-VÉLEZ. Thank you, Mr. Chairman.

Mr. THOMPSON. I now recognize the gentleman from Michigan, Dr. Benishek, for 5 minutes.

Dr. BENISHEK. Thank you, Mr. Chairman. I thank you all for being here this morning.

Apparently, PREPA's power generation is a combination of PREPA-owned generation, as well as contracted power generation. What is your opinion as to whether that combination should be changed? Ms. Donahue?

Ms. DONAHUE. I think that, for sure, the EcoEléctrica facilities and the AES facilities, as other witnesses have testified, are more efficient and cheaper energy providers than the outdated PREPA systems. One of the things that we are looking at is the possibility of going out for an RFP to determine the best way to get the most reliable, cheapest form of capital and source of power onto the island. So, we are looking at that, yes.

Dr. BENISHEK. All right. Mr. Sanabria-Hernández, do you have an opinion there?

Mr. SANABRIA-HERNÁNDEZ. Well, I believe and I said it in my testimony, that PREPA should look at privatizing its operations, either through actual privatization or through private management of the utility. The generation piece, obviously, would be more competitive; and it would contribute more in terms of lower cost to Puerto Rico if it were completely privatized to compete, one way or the other.

Dr. BENISHEK. Thank you. Apparently, an Alvarez and Marsal presentation on June 11, 2012, suggested that the future for PREPA depends on converting to natural gas for power generation. But there is very little natural gas infrastructure. They say that there should be either LNG or a pipeline, but neither one of these things has happened.

Can new gas infrastructure be achieved? What is the solution there? Ms. Donahue, do you have an answer?

Ms. DONAHUE. Yes. The Aguirre gas port is the project that is currently under consideration. It has gone through most of the permitting process. We still have some questions with the Army Corps of Engineers, and we are hoping to resolve that shortly so that we can finalize the permitting process, begin construction, and have the Aguirre natural gas port on-line by the end of 2017 or beginning of 2018.

Dr. BENISHEK. Mr. Sanabria-Hernández, do you have any comments?

Mr. SANABRIA-HERNÁNDEZ. We mentioned a little while ago there is capability of expanding, in EcoEléctrica's case, the existing LNG terminal. So, that is an option that PREPA has. Obviously, they have the IRP in process and it is to their best interest to do the most effective and efficient development for PREPA.

But the options are there to increase the intake of LNG into the island and to maximize its use in power generation.

Dr. BENISHEK. All right, thank you. This really emphasizes the importance of energy in our economy—and to me, Puerto Rico is sort of a microcosm of our entire country. We are subject to increased energy costs because we have standards that we want to have a clean environment. Other places around the world do not have those standards, and they are outcompeting us for industry because we are not taking a strong stance on our international partners on making sure we have a clean planet and, really, excessively harming our industry here.

So, Mr. Rivera-Vélez, I really appreciate your testimony as to the struggles of the manufacturing sector and your comments about your competition in the area, and for encouraging us to find solutions so that we are not uncompetitively challenged by our partners and our neighbors. Thank you, I yield back.

Mr. THOMPSON. The gentleman yields back. I am pleased to recognize Ms. Velazquez for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I too want to thank the committee for allowing Congressman Serrano and myself to be here. As you know, we were born in Puerto Rico, and we have almost 5 million Puerto Ricans in the mainland who really care deeply about what is going on in Puerto Rico.

I also believe that PREPA, the monopoly, has to come to an end. We need to diversify the energy sector in Puerto Rico. But, I do agree with my colleague, Mr. Labrador, in saying that Puerto Rico has to take responsibility.

I also will say that Congress has to take responsibility. It was Congress who gave Puerto Rico bankruptcy protection from 1933 to 1984. When the law was reformed, Puerto Rico was excluded. When you check the Congressional Record, there is no reason whatsoever why Puerto Rico was excluded. So that is one.

What about Medicare and Medicaid parity for American citizens who gladly, when they are called to go to war and to participate in every single conflict, show up. So Puerto Ricans, American citizens in Puerto Rico, deserve to have the same parity that we enjoy here in the mainland.

Also is the lack of uniformity when it comes to the territories. When you look at the Virgin Islands and the Jones Act, when you look at how much reimbursement they get compared to Medicaid and Medicare for Puerto Rico, there is a lack of uniformity. Then we provided tax incentives that were taken away to promote economic development in Puerto Rico, and we did not replace that with anything.

But here we are dealing with a fiscal crisis. Ms. Donahue, your testimony and your response to my colleague, Representative Polis, notes how fragile the RSA is. It requires that holders of more than \$2 billion in bonds still come to the table. It requires that the new bonds receive an investment-grade rating. Given that the island's economy is deteriorating rapidly and the creditor holdouts persist, how likely do you believe it is for the RSA to be executed?

Ms. DONAHUE. Thank you. I like to be an optimist. I would like to say that the RSA will be executed, because all of us, not just the PREPA team, but the creditors and their advisors as well, worked very hard on coming up with a fair and balanced solution.

I do think that getting the 2 billion holders, some are retail holders, not all of them are hedge funds, some of them are original issuers, as well, so they are at 100 percent—will be a challenge. I think another challenge is the requirement for the investment-grade rating. That, of course, is needed to get the interest rate savings as part of the deal.

And we cannot look at PREPA as a microcosm. It cannot be looked at stand-alone, because so many of its customers are the government, and also its customers are the manufacturing base in Puerto Rico. So I do think, at least in part, the investment grade rating will depend on what is happening in the macro-commonwealth.

Ms. VELAZQUEZ. Let's assume as a point of discussion, if these conditions are not met, the RSA falls apart. It would fall apart.

Ms. DONAHUE. It would fall apart. We would certainly have to be back at the table with our creditors.

Ms. VELAZQUEZ. OK. So, we recognize how tenuous the RSA is. But many are suggesting that things—RSA is in place, PREPA is in the clear. But, when you look at—from the *New York Times* article to Bloomberg, all the papers—they just look at this as Puerto Rico is coming up and we are going to have a real solution.

The whole discussion is to demonstrate that without Chapter 9 it is going to be an uphill battle. Don't you think so?

Ms. DONAHUE. As I mentioned, I think that for PREPA, we would use Chapter 9 as part of a pre-packaged deal. We have the agreement with our creditors. We would use it to more efficiently accomplish and facilitate the restructuring that is on the table.

I do not think you can say that PREPA is completely done. I think the RSA, although again, is highly negotiated, highly structured, good faith, good intentioned, there are contingencies that must be met. If they are not met, we will be back at the table.

Ms. VELAZQUEZ. And you are going to have thousands and thousands of Puerto Ricans leaving the island, coming here, to the mainland.

Mr. Chairman, I think that it is the responsibility—and I know someone raised the issue that this is not the committee of jurisdic-

tion when it comes to bankruptcy. Well, the Administration sent a proposal here with four pillars, and one of them is territorial bankruptcy. That will fall under the jurisdiction of this committee.

We need to do something. I hope that, collectively, we seek for a legislative solution that will provide the kind of peace to the people in Puerto Rico, the choice and options for Puerto Ricans to deal with their own destiny, and for people to be able to make the choice to stay in Puerto Rico without being forced out of the island to come to the mainland.

Thank you. I yield back.

Mr. THOMPSON. The gentlelady's time has expired. The Chair now recognizes the distinguished Chairman of the Full Natural Resources Committee, Mr. Bishop, for 5 minutes.

Mr. BISHOP. Thank you. Let me ask a couple of questions here, quickly, and I am going to stay within 5 minutes.

Ms. Donahue, if I could ask you, in your testimony you summarize basically that PREPA needs financial restructuring, operational improvements, Federal permits for an LNG facility, energy loan guarantees, government reforms, and the legislative assembly to approve the RSA. I am assuming that all of these are critical to remain a viable entity. But how many of these are in PREPA's control?

Ms. DONAHUE. The operational efficiencies are in PREPA's control, and we are executing on those.

Mr. BISHOP. The rest are simply out of—

Ms. DONAHUE. The rest are—

Mr. BISHOP. You need some assistance to do that.

Ms. DONAHUE. That is—I wanted to think through it, but that is correct.

Mr. BISHOP. Does PREPA have the so-called trust employees? And what are trust employees?

Ms. DONAHUE. PREPA does have trust employees. PREPA has approximately 170 trust employees; and the trust employees are what they sound like, they are trusted people that are put in with the administrative changes.

Mr. BISHOP. All right. Mr. Sanabria-Hernández—I hope I am coming close on your name—EcoEléctrica originally entered into a 22-year contract with PREPA. How many years do you have left on that contract?

Mr. SANABRIA-HERNÁNDEZ. Six years.

Mr. BISHOP. In your testimony you noted, "Without surety of payment, it will be difficult for anybody to justify investment in the Puerto Rican energy sector." How does that statement actually relate to EcoEléctrica?

Mr. SANABRIA-HERNÁNDEZ. EcoEléctrica—and what we want to do is present the facts as they exist today—EcoEléctrica, for the last 8 years, has been collecting from PREPA on a past-due basis. Our receivables are not current. PREPA is not paying on a current basis. But as soon as Ms. Donahue stepped in as chief restructuring officer, we were able to sit and negotiate a scheme for payment. And she has been meeting that for the last year-and-a-half. We have been able to continue to operate and our investors are content with the environment right now, as it stands.

But that does not take away the matter that our receivables, in terms of past due are, on average, around 30 days over the contract terms. And the contract terms itself were 40-some days after the close of the month. So, receivables are collected on a 77-calendar-day basis—

Mr. BISHOP. OK.

Mr. SANABRIA-HERNÁNDEZ [continuing]. Or above that.

Mr. BISHOP. I've got it. Then how do you envision Puerto Rico recovering its creditworthiness? And you have, like, 1 minute to do that. I am sorry.

Mr. SANABRIA-HERNÁNDEZ. There are many steps Puerto Rico needs to take. First of all, to realize that it needs to meet all its commitments. Contractual commitments are signed because you intend to meet them. From that perspective, you need to ingrain and install that framework of mind now.

The way we envision that we may proceed would be if there were some type of assistance or aid, be it in the form of guarantees, be it in the form of other types of assistance that can help EcoEléctrica and any future investor feel confident.

Mr. BISHOP. Would those guarantees then give what you said—deficiency of certainty in legal and a regulatory framework, would those guarantees be part of that process?

Mr. SANABRIA-HERNÁNDEZ. That would be part of the process. But also, the legislature in Puerto Rico needs to realize that they cannot focus on undermining—if that is the right word—the contractual relations that exist whenever legislation is enacted.

Mr. BISHOP. So, you need legislative assistance at the same time.

Let me yield 1 minute to Mr. Labrador, if I could.

Mr. LABRADOR. Thank you, Mr. Chairman.

Just quickly, I completely agree with Ms. Velazquez, that there are a lot of things that we could do. But I agree with Mr. San Miguel, and I think he said it better than anybody else, that in order to get the goodies of statehood, you also need to have the responsibilities of a state. And that only comes through becoming a state.

Really quickly, though—I think something you and I can agree on—I think, if I heard you correctly, Ms. Donahue, can you respond to the issue of the Jones Act? I think in your testimony you state that current impact on the Jones Act on PREPA's operations is in the range of \$3 to \$5 million per year, and that this may increase to \$20 to \$30 million per year. Can you address how reform of the Jones Act would actually help PREPA, and help the people of Puerto Rico?

Ms. DONAHUE. Yes. The Jones Act, as you know, requires American flagged vessels, American-built vessels, and American-crewed vessels. Because at the moment our sources are not uniquely mainland to get number six and number two to run our units—it is minimal—when the Aguirre gas port becomes operational, and we enter into long-term LNG contracts, one of the ways we have been able to save money is by index hedging, different indexes and buying from different parts of the world.

If we do not have the ability or if we source from the United States, that will be increased approximately \$20 to \$30 million

based on usage. So, that would save money and then would ultimately save the ratepayer, as well.

Mr. LABRADOR. Mr. Rossi, can you address that issue, as well. Do you agree with that?

Mr. ROSSI. I think it is important that we have better infrastructure to get LNG, natural gas, into Puerto Rico, and that it be structured in a way that is available to small business and to industrial. [Sound system issues at the end]

[Whereupon, at 12:04 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF JAIME PLÁ-CORTÉS REPRESENTING THE PUERTO RICO HOSPITAL ASSOCIATION

Chairman Lamborn, Ranking Member Lowenthal and members of the subcommittee, thank you for the opportunity to provide this Statement for the Record on behalf of the Puerto Rico Hospital Association. Our organization represents the 69 hospitals serving approximately 3.5 million U.S. citizens residing in the U.S. Territory of Puerto Rico; a population larger than 20 states. Notably, we are particularly proud that not only was our organization founded in 1942 but we are the home of the America's oldest continuously operated hospital: El Hospital La Concepcion of San German, founded in 1524.

We appreciate the interest of the Natural Resources Committee in the energy challenges and opportunities facing Puerto Rico; as well as the current state of Puerto Rico's economy. Unfortunately, our island's high energy costs, weak economy, high level of poverty, record unemployment and troubled government finances are contributing to the challenges we face in managing a health care system designed to provide the best quality care for the U.S. citizens we serve each and every day.

Energy is a major cost for Puerto Rico's hospitals. Today's health care and its technologies are energy intensive. Electricity used to power our medical equipment, lighting and cooling systems generates costs representing up to 5 percent of a typical operating budget; a proportionally higher cost than Mainland hospital budgets.

Unfortunately, Puerto Rico's dependence on using old fashioned technologies and inefficient oil burning generators has kept our electricity costs sky-high. In fact, our electricity rates are two to three times the U.S. average and if they go higher it could further cripple our health care system. Today's costs are subject to change drastically should oil prices climb back to the record highs of recent years.

Energy costs in Puerto Rico for the last 15 years have been unstable and unpredictable, trending upwards from 11¢/kWh in 1999 all the way to almost 30¢/kWh in 2012. Today we are almost twice that of the U.S. average even with recently lower oil prices. To make things worse, there are proposals to increase energy prices even more above the current rates in order to facilitate PREPA's restructuring and debt servicing; resulting in average Puerto Rico prices for all sectors combined versus that of the United States to be 3.3 times 2014 prices. Anyone with a simple understanding of operating a business appreciates how devastating this change in electricity costs would be and its consequences to our health care system and overall economy. Our hospitals will be pushed further into their own financial crisis due to inadequate reimbursements and high operating costs due to energy.

As you consider solutions to Puerto Rico's energy challenges, we encourage you to keep a basic goal in mind of lower electricity rates as high rates have hampered the ability of our economy to grow. We also encourage you to review existing grant and tax incentive programs to ensure that they are applicable in Puerto Rico and available to health care providers such as hospitals.

Frankly, we face an even larger challenge as we work to deliver quality health care. Our Medicaid funding is capped and our treatment under Medicare has been significantly less than that received by identical stateside hospitals. However, we are expected to deliver the same level of quality care for our citizens and visitors as that provided by our sister stateside institutions.

The government of Puerto Rico is behind in its Medicaid reimbursements to the tune of at least \$200 million today. Since 43 percent of our local population is living in poverty, every one of our member hospitals serves Medicaid patients. This combined with our lesser Medicare reimbursement levels has put an incredible strain on the operations of every hospital. We also note that 40 percent of our island's population is Medicare eligible.

We recently surveyed our member hospitals and found that over the past 12 months almost every institution has been forced to scale back operations in some way due to the government of Puerto Rico's delayed Medicaid payments. This reduction in services has resulted in employee cutbacks and reduced hours impacting thousands of employees, with many hospitals reducing beds, closing floors and eliminating specialized services as well as an additional delay in payment of bills and payroll. One hospital has already closed its doors after the local government owned electrical utility cut off its electricity service due to late payment of bills. PREPA has since threatened three other hospitals as well with an electricity cutoff.

The facts show that Puerto Rico's hospital system is in a crisis due to the combination of the government's delay in reimbursing its medical providers and the secondary treatment our hospitals receive under Medicaid and Medicare. We are struggling to maintain our staff and see many of our experienced doctors and other health professionals recruited away with offers of better compensation by stateside hospitals. Overall, Puerto Rico has experienced a net reduction in population of 10 percent over the past 10 years; essentially, 500,000 of our better educated young people and their families have left our island and moved to the mainland in search of a better quality of life.

You've noted in your opening statements as well as through comments by individual Members during this hearing that you wish to focus on solutions that can be enacted under the House Natural Resource Committee's jurisdiction; particularly energy and a potential financial oversight authority to preside over a debt restructuring process. We urge solutions that actually result in lower electricity rates and wish to work with you toward that goal.

We also note that there are many areas in health care where the disparity in treatment can be identified; my intent with this statement is to draw your additional attention to the leading priority initiative where Congress can make a difference in the short term. In fact, this initiative addresses a fairness issue resulting from disparate treatment of Puerto Rico hospitals. This is our immediate priority.

FIX THE IMPENDING MEDICAID CLIFF

Background

Medicaid, the health program for low-income individuals, is funded in part by the Federal Government and in part by the state or territory government. In the states, Federal funding for Medicaid is open-ended, with the Federal contribution-known as an FMAP-ranging from 50 percent for the wealthiest states to 83 percent for the poorest states. By contrast, the amount of funding that the Federal Government provides to support the Medicaid program in each territory is capped.

Puerto Rico has a population of 3.5 million U.S. citizens residing within the Territory. Unfortunately, she also has the Nation's highest poverty level of 46 percent of the population. Due to the high level of poverty, every health care provider serves the Medicaid population.

Through 2009, Puerto Rico's cap was only \$260.4 million a year and the FMAP was just 50 percent. In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA). Rather than simply removing the cap, the bill provided \$6.4 billion in additional Medicaid funding for Puerto Rico. This funding can be drawn down by the territory between the fourth quarter of Fiscal Year 2011 and the end of Fiscal Year 2019.

As a result, Puerto Rico now receives \$1.1 to \$1.3 billion a year in combined Federal Medicaid funding. This is a major improvement but still far less than Puerto Rico would receive if it were a state. Oregon, which has roughly the same number of people as Puerto Rico with a much lower poverty level, receives \$5 billion a year.

Here's The Problem

Notably, this extra funding expires at the end of the Fiscal Year 2019. This has been called the Medicaid funding cliff. The Puerto Rico government has less than \$3.5 billion of its \$6.4 billion allocation in funding remaining, and could deplete this funding in 2018 or even 2017. If this funding is not replenished, Puerto Rico will go back to receiving less than \$400 million a year. This will have a devastating impact on local health care providers including Puerto Rico's hospitals, doctors and health centers. The government of Puerto Rico is already behind by over \$250 million in Medicaid reimbursements to health providers. The impending situation for our health care system is dire.

Potential Solutions

H.R. 2635 and S. 1961, offered by Congressman Pierluisi and Senator Schumer would provide the territories with state-like treatment under Medicaid within well-

defined parameters. Each territory's Medicaid program could cover individuals whose family income is equal to or less than 100 percent of the Federal poverty level, with the Federal Government providing state-like funding for that purpose. In essence, as long as a territory government covers individuals whose household income is within these limits, the Federal Government would fund the territory's Medicaid program as if it were a state Medicaid program. That means that the annual funding cap would be eliminated. Each territory would receive an FMAP based on its per capita income. However, the limiting principle is that if a territory wants to cover individuals earning above 100 percent of the Federal poverty level, it will generally be required to use territory dollars, not Federal dollars.

At a minimum, Congress should address the impending cliff and ensure a floor in Federal Medicaid funds are provided for the foreseeable future equal to the current level provided currently through the Affordable Care Act. While working toward an eventual lifting of the cap, Congress can prevent the "cliff" from occurring as early as April, 2017, as part of the package now being assembled. Failure to provide stable funding could bring about the collapse of our entire health care system.

Next Steps

Speaker Ryan has stated that he is committed to meaningful resolution of the fiscal and economic challenges facing Puerto Rico. These issues involve more than just the Chapter 9 Bankruptcy issue and some form of Federal financial oversight of the government and its debt restructuring. We urge inclusion of meaningful initiatives to bring energy costs down to a much lower level of rate in combination with changes in unfair treatment of Puerto Rico's health care providers under Medicaid. We must not allow the "cliff" from devastating our health care system which serves 3.5 million U.S. citizens.

Again, we appreciate the opportunity to submit our statement to the record for this hearing and look forward to working with each of you to bring about meaningful change which solve our challenges and create an opportunity for a better future for Puerto Rico.

COMISIÓN DE ENERGÍA DE PUERTO RICO
HATO REY, PUERTO RICO

January 12, 2016

Hon. DOUG LAMBORN, *Chairman*,
House Subcommittee on Energy and Mineral Resources
1333 Longworth House Office Building,
Washington, DC 20515.

Dear Chairman:

The Puerto Rico Energy Commission ("Commission", "Energy Commission", "PREC") is the government agency tasked with the regulation and supervision of the electric power industry in the Commonwealth of Puerto Rico and the enforcement of its energy public policy. It is a specialized and independent regulatory body created on May 27, 2014, by virtue of Act 57-2014, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act.

As Puerto Rico's electric power industry regulator, one of the Commission's key functions is regulating the Puerto Rico Electric Power Authority ("PREPA"), the Commonwealth's only electric utility. PREPA, a government-owned corporation, is by far the largest and most important player in Puerto Rico's electric power industry, with a dominant role in the Island's electric generation activities, as well as its sole provider of electricity transmission and distribution services. The following is a brief description of the Commission's duties, functions, and the current challenges it faces, with particular regard to the future of PREPA and electric generation in Puerto Rico.

The Commission's broad mission is to achieve a reliable, efficient, and accountable electric system, capable of providing electric service to all citizens at just and reasonable prices. In order to accomplish this task, the Commonwealth Legislature delegated broad regulatory and adjudicative powers as well as specific duties to the Commission, including for example, the adoption of standards and guidelines necessary for highly efficient electric power generation; to assess, approve, and ensure compliance with the resource and operational plans presented by PREPA and other electric service companies, in order to ensure the orderly development of Puerto Rico's electric system; and to review, set and approve the rates and charges

proposed by PREPA and other electric service companies for their services on the Island.

Likewise, the Commission has the power to certify all electric service companies that intend to offer their services in Puerto Rico, as well as the power to rule in cases and controversies arising by virtue of the laws and regulations related to the electric power industry and service. The Commission has ample power to carry out the necessary investigations to fulfill its duties and responsibilities, and to ensure the utmost adherence with the laws and regulations that govern the electric power industry in Puerto Rico.

It is therefore evident that the Commission has a significant task to carry out, with multiple responsibilities, the performance of which is of vital importance for Puerto Rico. One of the challenges facing the Commission in this task has been the necessary work of creating a new organizational structure, requiring crucial groundwork during the Commission's first months of operation as a newly created entity. This work included adopting the Commission's first regulations, issuing its first orders in compliance with its regulatory functions, the initiation of the necessary investigations for these functions, and the timely and continuous public disclosure of its activities, in order to ensure the utmost accountability and transparency.

The Commission's substantive work has focused primarily on the following major projects: (1) the adoption of the regulation, and the assessment and approval of PREPA's first Integrated Resource Plan ("IRP"); (2) the adoption of the regulation on the contribution in lieu of taxes ("CILT") from PREPA to the municipalities; (3) the adoption of the regulation on information disclosure criteria, the certification requirements and procedures, and annual fees, applying to electric service companies operating—and intending to operate—in Puerto Rico; and (4) the initiation of the first adjudicatory procedure to review PREPA's rates ("rate case"), which is the first formal rate review in over twenty-six years.

The first of these projects, the IRP, has dominated the Commission's agenda in the last several months. Pursuant to the Commission's regulations and resulting from a detailed planning process, the IRP will consider all the reasonable resources to satisfy the demand for electricity services during a twenty year planning period, taking into account both supply- and demand-side electric power resources. In broad terms, the IRP will include an assessment of the planning environment, a careful and detailed study of a range of future load forecasts, present generation resources, present demand-side resources, current investments in electricity conservation technologies, existing transmission and distribution facilities, and the relevant forecast and scenario analyses in support of PREPA's selected plan, upon which the Commission shall issue a ruling. This adjudicative process, in which key stakeholders from both industry and civil society take part, is currently ongoing.

Another key project taken up by the Commission is the establishment of a new regulatory scheme for the CILT. The contribution in lieu of taxes represents a significant part of PREPA's operating costs. It is also a vital component of Puerto Rico's electric power service at the municipal government level. Within a rigorous public participation process that lasted several months, on October 16, 2015, the Commission finalized and enacted the set of rules governing the specific mechanisms, criteria, and procedures by which PREPA shall compensate Puerto Rico's 78 municipalities, pursuant to the provisions of Section 22 of Act No. 83, as amended by Act 57-2014.

Furthermore, the procedures and criteria related to operational plans, annual fees and the certification of electric service companies, has required the Commission to engage in an ongoing rulemaking process. This includes addressing the concerns of industry participants, which the Commission shall take into consideration in the formulation of a forthcoming amendment to its original regulation on this matter, enacted in July 2015. The information requirements for electric service companies, the criteria by which they will be evaluated for certification, and the filings necessary for the assessment of their regulatory fees, are all sensitive matters in which the Commission's role is essential in order for the Commonwealth's energy policy, industry's valid concerns, and the public interest, to be satisfactorily addressed.

Lastly, another major project the Commission has engaged in during its brief period of operational existence is the undertaking of PREPA's first rate case by an independent ratemaking authority. This process, for which the Commission began to formally prepare in February 2015 by initiating an investigation into PREPA's financial and rate structure, and ordering PREPA an extensive information request, is perhaps the most sensitive at this juncture, given the public awareness of PREPA's financial problems and its ongoing negotiations with its creditors. It is especially important to note that PREPA has not yet presented its rate proposal to the Commission, even though the Commission has duly prepared the groundwork for this procedure, adopting a regulation on filing requirements specifically for this

first rate case, as well as several orders pursuant to it. This process has also included a petition by one of PREPA's monoline insurers to initiate a rate case before the Commission, demanding the adoption of a temporary rate increase, which the Commission rejected in its subsequent resolution based on lack of information and failure to follow the Commission's established procedure. The petitioner challenged the Commission's ruling before the Puerto Rico Court of Appeals. The Commission has maintained its work plan in this process and expects PREPA to file its rate proposal within the first quarter of 2016.

As mentioned, this brief summary of the Commission's present work puts into perspective the challenges that this young regulatory entity faces going forward. The Commission welcomes the insight from all points of view with regard to the issues discussed above, as well as any suggestions as to what could be further done to ensure that its regulatory work translates into a strong electric power sector that brings forth the greatest possible benefit for the people of Puerto Rico.

We wish to thank the House Committee on Natural Resources for this opportunity to provide useful insight into our work and our role in shaping Puerto Rico's energy outlook. Once again, we remain at the disposition of this Committee and of this House of Representatives in order to share ideas and proposals that, in unity of purpose, serve the best interests of the Commonwealth of Puerto Rico and its citizens.

Cordially,

AGUSTÍN F. CARBÓ-LUGO,
Chairman, Puerto Rico Energy Commission.

