

TESTIMONY
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BEFORE THE COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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*“Management Crisis at the Puerto Rico Electric Power Authority
and Implications for Recovery”*

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Chairman Bishop, members of the Committee, thank you for inviting me to testify on this important matter. My name is Eduardo Bhatia. I am a former president of the Senate of Puerto Rico (2013-2016), and currently its minority leader. I have spent years addressing poverty issues and carefully crafting, advocating and promulgating energy policy for the people of the island.

Access to energy is a life or death issue. Hundreds of Puerto Ricans died in the aftermath of hurricane María due to the lack of access to electricity. Thousands more developed medical conditions after drinking unsanitary water. Lack of access to reliable and affordable energy is also a “life or death” issue for business and industry.

What brings us here today is essentially one question: how do we use our legislative resources and rulemaking authority to create a robust, resilient and cost-efficient energy system in Puerto Rico. We are not here today, and should not be here today, discussing how to fix PREPA. If PREPA wants to exist it should compete on equal terms with modern, clean, cheaper providers of energy. The time has come for a coalition of forces to jointly do three things:

First: Privatizing PREPA without realizing the enormous opportunity to create a new open energy market is akin to privatizing a pay phone company in the 1990s. New technology has replaced the need for PREPA. A well-regulated open energy market must be created in Puerto Rico where innovation, cost structure and choice work in favor of the consumer. Citizens have been hostages for too long of an outdated state-owned monopoly. They deserve to be liberated. And Congress can help. That liberation cannot happen if we substitute the control of the state by a privately-owned monopoly. PREPA is the largest public electric utility in the United States. Its size and centralized control over one million plus customers make it an unbearable company to run when so many mistakes can and have disrupted the energy service to everyone for days and even months. Among public utilities in the United States, PREPA is number 1 in served customers and number 1 in revenues. Also number 1 in the size of its debt.

- The island must be divided into manageable, independent yet interconnected micro-grids. The establishment of personal, cooperative, community-based and third party

micro-grids, as recently allowed by the Puerto Rico Energy Commission, must be encouraged.

- Emphasis should be placed in the abundant sun and water that Puerto Rico has as a source of energy. The time has come to evolve from fossil fuels into solar and hydroelectric energy. We are already working locally on a clear schedule to phase in renewable energy and phase out fossil fuels. I am sure the local public policy being designed in the Puerto Rico Senate by a group of local legislators will include such transition. Puerto Rico should be the showcase in America –*la vitrina*- of renewable energy.
- Hawaii is a great model for this committee to understand the nuances of island challenges. The Hawaii 2045 energy plan does exactly what I have just proposed. I encourage you to hold a serious dialogue with Hawaii’s policymakers and stakeholders to understand their evolution.
- One of Puerto Rico’s economic strengths today is its cooperatives and the power of private, yet sustainable economic structures through a democratically controlled enterprise. Here in the mainland United States there are hundreds of rural energy cooperatives that could very well serve as a model for the future energy system of Puerto Rico. The nation’s consumer-owned, not-for-profit electric cooperatives are unique within the \$391 billion U.S. electric utility industry. More than 900 cooperatives in 47 states provide electric service to almost three-quarters of the nation’s landmass. Co-ops serve more than 19 million businesses, homes, schools, churches, farms, irrigation systems and other establishments in 2,500 of 3,141 counties in the U.S. They are governed by a board of directors elected from the membership which sets policies and procedures that are implemented by the cooperatives’ management. A bipartisan bill filed in the Puerto Rico Senate by senator Larry Seilhamer and myself (S.B. 984) will be considered soon to enable local legal recognition for electric cooperatives.
- Recent technological innovations have transformed multiple industries in the United States and the world. Citizens are no longer just consumers, but the new, open economy is allowing them to be small producers. Think of taxis and Uber; think of hotels and Airbnb; think of payphones and new cell phone technology. Consumers have assets that can be used to produce and obtain revenues. The new term is PROSUMER. Well, energy innovations with photovoltaic devices and semi-conductors are now allowing consumers to use their roof-tops as solar energy producers and/or solar farms to produce energy at a smaller scale. Batteries for energy storage have also evolved and are now affordable. An interconnection of these prosumers in Puerto Rico could very well create in the future an abundant amount of energy without the need for large investments in massive generators and a desire to get off the grid.
- Since Congress and the Administration are and will continue to appropriate resources for Puerto Rico’s recovery, I encourage this Committee to study a proposal to assign a portion

of those funds to the “Green Energy Fund” created under Puerto Rico’s Act 83-2010. The idea is to appropriate significant funding to assist low and moderate-income families gain access to solar energy. Through green energy credits, the Department of Energy should work with Puerto Rico officials to open the market for the innovation and participation of thousands of local renewable energy prosumers. We have the rooftops, we have sun: what we lack are the resources. Distributed generation is key to transform our energy model.

- Wheeling must be regulated soon by PREC. It is a key element for the industrial sector, but it could also be useful for the development of a distributed model for other private generators. For years, PREPA ignored the mandate of Act No. 73-2008 to regulate wheeling. Act 57 transferred that responsibility to PREC. It is time to act.

Second, as I mentioned earlier that new energy market must be well-regulated. I am the author in 2014 of the law that created the first ever energy utility regulator in the history of Puerto Rico. Let me be clear: many of the problems that PREPA has come from decades of internal decisions that went unquestioned. The Puerto Rico Energy Commission (“PREC”) was established under Act 57 as the very first non-partisan, independent energy regulator, with fiscal autonomy from the government. Notwithstanding its limited budget and resources, PREC has done an amazing job as an independent regulator. In four years, PREC:

- Approved the utility’s first ever integrated resources plan (IRP);
- Presided over its first ever rate case;
- Provided significant and strong oversight over PREPA, against their will, and even challenged in the courts;
- Approved a “transition charge” to deal responsibly with PREPA’s “legacy” debt;
- Initiated inquiries and investigations on key operational, performance, and financial issues at PREPA;
- Enacted new net metering regulation standards;
- Presided over customer disputes against PREPA and private energy companies;
- Enacted the first ever regulation on micro-grids in the United States;
- Congress, under Title V of the PROMESA Act, delegated on PREC the authority to determine if energy projects which aspire for “critical project” designation are compatible with the IRP.

I respectfully submit that PREC must be strengthened with additional resources. Its budget must be doubled, and recent passed legislation which appears to limit their oversight powers must be further reviewed. Independent energy regulation is here to stay.

It angers me that the Puerto Rico Fiscal Oversight and Management Board has found the existence of this independent regulator somewhat of a problem. Just three weeks ago the Oversight Board reduced the budget of the PREC from \$7 million in 2017 to \$1,836,00 in the new budget, a reduction of over 70% of its budget. The most absurd part of this decision is that the budget of PREC does not come from the struggling state general fund on the island, but from a formula based on the regulated entities. We designed it that way in 2014 to avoid this problem. My ask is that this decision must be reversed. A well-funded, robust and independent PREC is essential in the development of the new energy market in Puerto Rico.

Third, the reckless governance of PREPA and the lack of serious leadership as we move forward has been the issue. It is what brings us here today.

The Puerto Rico Electric Power Authority (PREPA) was created in 1941. Its main objective was to provide access to reliable, cost effective electricity to the people of Puerto Rico, as well as manufacturing and retail. During its heyday, PREPA was the “jewel of the crown” of all locally state owned public corporations.

While achieving its initial objectives (by providing full access to electricity), its identity as a government-owned corporation exposed PREPA to the negative dynamics of bureaucracy, patronage, corruption, political intervention, and special interests in key procurement areas such as oil purchase, legal, financial and other types of consulting services. Both majority parties in the Island are active and organized inside PREPA, and its employees have raised thousands of dollars for political campaigns. PREPA’s corporate culture is adamant in failing to embrace innovation and change. Lack of transparency has characterized PREPA’s day-to-day operations and decision-making. PREPA assumed, for years, that laws and regulations on energy policy were mere “suggestions”, not legal mandates. For decades, PREPA accumulated an obscene amount of political power which made effective oversight impossible by the local legislature. Also, significant energy decisions were taken, for decades, from the Governor’s Office, using the utility’s governing board and executive directors as mere proxies.

In the summer of 2013, I summoned PREPA to an oversight hearing in the Senate. Back then, PREPA announced what would become their last bond issue before they became insolvent (for \$673 million). To my knowledge, the legislature had never questioned PREPA over a bond issue. Testimony from PREPA officials convinced me that they were lying. Right there and then, I decided that the time was ripe for significant change and reform of the utility, as well as the energy policy of Puerto Rico.

After significant opposition from PREPA’s management, its union leaders, the then minority party (now majority party), and even members from my own political party, we approved what became known as Act No. 57-2014, the “Puerto Rico Energy Transformation and Relief Act” (“Act 57”).

Amongst other pieces of legislation to transform our energy system and the utility itself, we also approved Act No. 4-2016, known as PREPA's "Revitalization Act" ("Act 4").

As the sponsor of Act 57, and as a champion of energy reform, I am convinced that the years between 2014 and 2016 were the period of most significant change in energy policy since the creation of PREPA in the 1940's. Since we are discussing the current management crisis at PREPA, I must stress the fact that legal mandates and institutions created during that period were designed precisely to transform PREPA's governance. The main concept of Act 57 is that PREPA and other energy stakeholders on the Island must conduct themselves in accordance with applicable energy policy and regulation; **not** by the seasonal wishes or "public policy" of the administration from any political party in power.

Act 57 also created an independent energy consumer advocate ("OIPC", its acronym in Spanish), a proposal from the AARP, and strengthened the state energy office of the Commonwealth.

Pursuant to Act 4, the legislature included several mandates that go to the heart of the management crisis at PREPA, the subject of this hearing. First, PREPA's governing board was reorganized in order to be composed of independent, non-partisan, members, and the elected representatives of the customers. This, to pursue the path towards getting politics out of PREPA's decision making processes. The independent members of the board would be selected by the governor from a list of candidates prepared by an executive research firm. In fact, the Senate confirmed those independent members to PREPA's board in December 2016.

Second, and this is crucial: Act 4 contained a strong mandate to prohibit all kinds of political intervention in PREPA. Inspired by the federal "Hatch Act", Act 4 prohibits political intervention in appointments, management decisions, contracting, and other internal matters of the utility. It even prohibits the political and fundraising activities of the so-called "Energéticos" (political organizations which operate inside PREPA, representing both majority parties).

The process for the transformation of PREPA's governance was on its way.

Fast forward to 2018. A year and a half after a new administration took office in Puerto Rico, PREPA has had five (5) executive directors and two (2) different governing boards. Forget that PREPA is an electric utility: no company in the world, private or public, is able to operate with efficiency while undergoing similar frequent and erratic changes in leadership. *Who's in charge?*

I respectfully submit that the current management crisis at PREPA is the direct consequence of deviating from the energy reform process initiated in 2014. First, in November 2016, the chairman of the transition committee characterized the energy regulator as an "obstacle" to the "interconnection of renewable energy, energy diversification, and the Aguirre Gas Port project" (a \$500 million boondoggle promoted by PREPA for years, which the PREC severely questioned its financials for years). For more than a year, the government failed to appoint the chairman of the PREC. Also, legislation was filed to dismantle PREC or significantly reduce its role as an energy regulator.

Further, legislation was enacted in early 2017 to dissolve the short-lived governing board of PREPA, appointed in 2016, and composed by independent directors and elected representatives of its customers. Act 37-2017 expressly stated on its Statement of Motives that PREPA's governing board had to be composed by members committed to implement "the public policy dictated by the current Administration". Hence, the new governing board would include, as happened before Act 4, members from the government of Puerto Rico. This was the same PREPA board which failed to prevent the Whitefish mess during the aftermath of María; approved controversial salaries and illegal bonuses for a former executive director; approved multimillion dollar consulting fees (even when the utility is undergoing bankruptcy), and which recently resigned *en masse* after a public controversy over its approval of a \$750,000 yearly salary for its executive director.

Governance at PREPA must be completely revamped. After a year and a half of erratic decisions, the government of Puerto Rico must be encouraged to reverse decisions which deviate from the mandates of Act 57 and Act 4. As stated, PREC must be strengthened, and the design of the governing board of PREPA must return to the independent model of Act 4. Also, I encourage this Committee to insist on PREPA doing a full, comprehensive report, on possible violations, since 2016, to the "Hatch Act" provisions of Act 4, which prohibit political intervention and political activism inside the utility. Let's drain the swamp, and finally extract politics from PREPA's management and decision making.

Locally we are in that process. Puerto Rico Law 120 of 2018 orders that as we create an energy market, a new energy public policy with specific mandates be instituted on the island. Under this bipartisan initiative, the local Senate has 180 days to finish the process before opening up the phase of request for proposals in an open market for generation. My ask here is for Congress to work closely with the Senate of Puerto Rico, with the US Department of Energy, with the Southern States Energy Board, with the Rocky Mountain Institute, with the Institute of Competitiveness and Economic Sustainability, with the Puerto Rico Manufacturers Association, with the College of Engineers and Land Surveyors of the island, with university professors, with cooperatives, with non-government organizations like Casa Pueblo, and with a broad range of stakeholders who are now part of the ongoing discussions.

Finally, I must address possible rumors and/or proposals for a possible federal takeover of PREPA. I understand the frustration of this Committee, and other stakeholders, with the lack of proper governance at PREPA. I share it and live it every day. However, more than proposing a takeover of PREPA by the US Department of Energy, I submit that the DOE should commit itself to a more active role of jointly developing specific mandates and deadlines for the transformation of PREPA. Currently, the DOE (through an agreement with the Southern States Energy Board), is assisting the government and legislature of Puerto Rico in the process of drafting the new regulatory framework under law 120 for the energy model of the territory.

As for PREPA's \$9 billion debt with bondholders, I believe that under Articles III and VI of PROMESA, negotiations are under way. But a federal takeover of PREPA would also have

significant effects on the responsibility to honor the debt. Just like I have done in the past, I am ready to be part of the conversation to find the right mechanism to implement the appropriate agreement reached by the parties and sanctioned by the federal Judge.

In closing, let me add that there is also a serious issue of democracy and self-government in this whole process. Even now, as we speak, violations to the right of self-government of the people of Puerto Rico are being debated in federal court. Based on my experience as an active advocate for energy reform, I trust that we, the people of Puerto Rico, have the willingness to design an energy model that will help us prosper and liberate our collective strengths.

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