

Written Testimony of James E. Spiotto¹
before the
House Committee on Natural Resources
regarding
Management Crisis at the Puerto Rico Power Authority
and
Implications for Recovery

Chairman Bishop, Ranking Member Grijalva and distinguished Members of the Committee, I am honored to address you at its oversight hearing regarding the electrical utility for Puerto Rico, the Puerto Rico Power Authority (“*PREPA*”). The following remarks are based on my experience in workouts and restructurings of corporate and municipal debt obligations, specifically restructuring and bankruptcy involving electric utilities including the Washington Public Power Supply System, Pacific Gas & Electric, El Paso Electric, Tucson Electric, as well as my prior written testimony to House and Senate Committees on Municipal Bankruptcy and the government finance market including with respect to Puerto Rico in 2015 and 2016.

The Gathering Storm and the Evolution of PROMESA

In late 2015, this Committee was presented with the financial problems and debt crisis the Commonwealth of Puerto Rico and its people were suffering. The territory had over \$70 billion of public debt and pension liabilities of over \$40 billion. PREPA had debt of approximately \$9 billion. Both the overall debt of Puerto Rico and the PREPA debt were viewed as beyond their respective liquidity and the perceived ability to pay as scheduled and created what appeared to be an insurmountable burden to Puerto Rico and its people.

During the first part of 2016, Congress considered what needful rules and regulations would be appropriate. At the same time, the Commonwealth itself enacted in April 2016 the Moratorium Law (Art. No. 21-2016) purporting to suspend payment on the public debt. This caused the expected negative reaction from debtholders and increased the necessity for an effective mechanism for the resolution of financial crisis. This Committee held hearings and Congress enacted the Puerto Rico Oversight, Management and Economic Stability Act (“*PROMESA*”), 48 U.S.C. §§ 2101-2241, signed into law by President Obama on June 30, 2016, which created Financial Oversight and Management Board for Puerto Rico (the “*Oversight Board*” or “*FOMB*”) for supervision and assistance to Puerto Rico. In enacting PROMESA, Congress exercised its power to “make all needful rules and regulations respecting the territory” under the U.S. Constitution (Article IV, §3, cl. 2).

The Oversight Board was charged under PROMESA with being the mechanism to achieve fiscal responsibility and economic and operational recovery from the financial distress

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and debt burdens Puerto Rico was suffering. PROMESA, as is evident from this Committee's Hearing, on February 2, 2016, followed the tradition that states and the federal government have chosen for providing oversight, supervision and an effective mechanism to resolve the grave financial distress of governments such as Puerto Rico and its related governmental entities.

The goal of all these legislative efforts is the creation of a mechanism to encourage consensual resolution as in Title VI of PROMESA. PROMESA is structured to foster such consensus and provide a last resort to use a bankruptcy-like process for involuntary resolution, as Title III of PROMESA does, to effectuate resolution of debt issues that cannot effectively be resolved by agreement.

Unfortunately, PREPA has been the object of accusations of politicization and changing leadership and priorities without an efficient, focused management process and long-tenured, experienced and skilled management. This is attributed to inappropriate political influence in the management and operation of PREPA. These difficulties resulted in the failure to (a) collect desperately needed customer receivables causing liquidity problems, (b) maintain a sufficient rate base and fund needed costs of operation, especially critical improvements for the generation, transmission and distribution of electric power at an acceptable level and (c) manage and operate the electric utility with a stable management team for a reliable, well maintained system with operating procedures to assure uninterrupted electric power to all who desire it in Puerto Rico.

Changing Management Policies and Failure to Collect Receivables Desperately Needed by PREPA

For example, in 2012, after investing \$50 million in a natural gas pipeline, PREPA withdrew its plan for the pipeline amid a storm of controversy, changing leadership and political debate. Further, FTI Capital Advisors PREPA's consultant, report in late 2014 raised serious and disturbing collection failures. Namely, of the approximately \$950 million in outstanding accounts receivable for general (nongovernmental or managerial) customers, more than half were over 120 days old (\$543 million out of a total of \$943 million aged AR), \$400 million in inactive receivables accounts for which there was no collection activity or strategy and \$420 million outstanding accounts receivable from municipalities.

Failure to Maintain a Sufficient Rate Base to Pay Needed Improvements and Costs of Operations

It has been claimed that PREPA failed to increase its rate base (for non-fiscal expenses such as administrative, capital investment and debt service) which resulted in years of inadequate rates to cover PREPA costs. As was evident from the aftermath of Hurricane Maria, PREPA's power grid and aged facilities have long needed immediate attention to be enhanced by improved maintenance and reinvestment to the infrastructure in order to become durable, acceptable and hopefully hurricane proof.

The above were part of the reason why it was necessary for Congress to enact PROMESA. However despite progress being made post-PROMESA, there are still operational

problems for PREPA and gridlock in negotiations of a reasonable and fair resolution of the distressed debt situation. Creditors claim that:

“Despite the progress that was made, there are still operational problems at the utility, including numerous power outages. PREPA suffers from: (1) poor system reliability and availability driven by poor maintenance and operation procedures, (2) poor levels of customer service, (3) poor level of collections and high levels of energy theft, (4) poor worker safety, (5) insufficient budgeting and capital planning rigor, and (6) inefficient procurement processes. HasBrouck Decl. at ¶ 9.

Far from moving to fix these problems, the new Puerto Rico administration is making them worse by destroying PREPA’s hard-won political independence. Shortly after he took office, Governor Rosselló signed into law an act that granted the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) sole authority to negotiate with public corporations’ creditors. Act 2-2017 at § 6(cc). Notably, the Governor appoints the majority of the AAFAF board members, and there are no restrictions on his ability to remove those members. Former President of the PREPA board Luis Benitez testified that “in late 2016, PREPA and its creditors reached an agreement in principle to modify certain terms of the RSA, subject to approval by [AAFAF].... The agreement in principle, however, was not executed because AAFAF assumed responsibility for creditor negotiations on January 27, 2017.”²

While there may be some debate over the level and quality of electric service provided by PREPA, the tragic effects of Hurricane Maria left no room for debate that there is an urgent need for reinvesting in and significant improvement to the power grid, generation, transmission and distribution system for the benefit of Puerto Rico’s social and economic good and the success of any financial recovery plan.³

² See Motion of Ad Hoc Group of PREPA Bondholders, National Public Finance Guarantee Corporate, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. for Relief from the Automatic Stay to Allow Movants to Enforce Their Statutory Rights to Have a Receiver Appointed, *In re Financial Oversight and Management Board for Puerto Rico, as representative of The Puerto Rico Electric Power Authority*, Case No. 17 BK04780 in the United States District Court for the District of Puerto Rico.

³ Hurricane Maria made Puerto Rico the biggest blackout in U.S. history with about 3.4 billion customer hours of lost electricity service. Also, it topped recent global blackouts such as two back to back blackouts in India in 2012 that affected hundreds of millions of people but combined 2.5 billion lost customer hours due to a shorter duration. Rhodium Group, “The World’s Second Largest Blackout”, April 12, 2018, available at <http://rgh.com/research/Puerto-rico-hurricane-maria-worlds-second-largest-blackout/>.

For these and other reasons, in 2018, the Governor of Puerto Rico has recently proposed the privatization of PREPA as a means of addressing the much-needed infrastructure improvements to the aged electric system. However the billing and management problem of the past are reappearing, such as in January some customers left in the dark for months received bills for services rendered. The operational failure of PREPA has negative social and economic effects. As service was restored after Maria, the consequences of the prolonged power shortage continue to be suffered by Puerto Rico and its citizens including “increased crime, business closures and unemployment, a healthcare crisis and exodus to the U.S.” were suffered by Puerto Rico.

The Missed Opportunity for Consensual Resolution by Creditors and PREPA

During 2016 and the first half of 2017, certain public debt creditors and PREPA negotiated a Restructuring Support Agreement (“RSA”). Puerto Rico’s legislature passed legislation authorizing the resolution. There was a change in Governors in Puerto Rico at the beginning of 2017, and the new Governor was able to negotiate in April, 2017 (as a new participant in the process) additional enhancements to RSA that would provide additional and much needed liquidity and further concession to the benefit of PREPA and the people of Puerto Rico. Further, the RSA was negotiated and structured to provide needed improvement in management and operation and had a rate path approved by the Puerto Rico Energy Commission on January 10, 2017. It should be noted that this RSA appears to be in keeping with the intent and spirit of PROMESA and would be a major step in the operational and financial recovery of PREPA. All that was needed was for the Oversight Board to certify the resolution for Title VI court approval. Unfortunately, in June, 2017, the Oversight Board rejected the settlement and refused to certify RSA for Title VI court approval.

The inability to implement RSA due to the Oversight Board’s refusal to certify it for Title VI left PREPA and its creditors without a clear agreed path to recovery and resolution of issues. This created the impasse between PREPA and its major creditors that prevented a resolution and resulted in PREPA being placed under the protection of Title III of PROMESA on July 2, 2017. (PROMESA Bankruptcy Title).

The Recent and Repeated Changes in PREPA’s Management Have Been an Obstacle to Operational Improvements and Successful Resolution of Issues

As previously noted, the changing politics and leadership of PREPA appear to exacerbate an already difficult and distressed utility operation. As news reports have highlighted, there have been five leaders of PREPA over the last 17 months with drama and uncertainty of long term plans.

The following timeline supports the claim that there have been unfortunate changes of leadership of PREPA that have created instability in PREPA’s operations and governance:

Timeline of PREPA Governance Changes

March 2017: Gov. Rosselló appoints **Ricardo Ramos** as executive director of PREPA as part of strategy to “replace the leaders of all Puerto Rico’s public corporations.”

June 26, 2017: Governor signs Act 37-2017, which allows him to appoint three political appointees and three independent board members, all subject to his right to remove them if they disagree with his public policy.

June 28, 2017: Gov. Rosselló appoints three new board members, including an existing member of his administration and the treasurer of his gubernatorial campaign.

November 13, 2017: In response to the FOMB’s motion to install a “Chief Transformation Officer” at PREPA, the Title III Court rules that the FOMB lacks authority to appoint a CTO.

November 17, 2017: Ricardo Ramos resigns following the slow pace of post-hurricane power restoration and criticism of the \$300 million contract he signed with Whitefish Energy.

November 2017: Gov. Rosselló appoints **Justo Gonzalez** as interim executive director.

March 21, 2018: PREPA’s board appoints mainland utility executive **Walter Higgins** as executive director.

July 11, 2018:

- Walter Higgins resigns as executive director, citing family health issues and criticism of the contract under which he served for a salary of \$450,000 per year, with bonus incentives.
- The PREPA board of directors announces the appointment of one of its members, **Rafael Díaz-Granados**, as executive director at a salary of \$750,000 per year.

July 12, 2018:

- In a press release, Gov. Rosselló characterizes Díaz-Granados’ proposed salary as excessive and states that if the PREPA Board does not “temper the salary to what I am proposing” then its members must resign. Díaz-Granados withdraws as executive director the next day.
- Five independent board members, including Rafael Díaz-Granados, resign in a letter stating that “political forces in Puerto Rico” who “want to continue to control PREPA” had been meddling in their decisions. The board is left without a quorum.
- After the board resignations, Gov. Rosselló appoints Elí Díaz, president of the Puerto Rico Aqueduct and Sewer Authority and Ralph Kreil, an engineer, to maintain a quorum.

July 18, 2018: Gov. Rosselló announces that **Jose Ortiz**, a former chairman of PREPA’s board, will serve as executive director.

This history of a revolving door for leadership, along with the lack of operational success of PREPA, combined with the saga of the missed opportunity at peaceful resolution through RSA raise the question of whether there should be different oversight with a less politically influenced leadership and management of PREPA, at least until the resolution of debt issues, the transition to stabilize management and an acceptable recovery plan for PREPA have been attained and implemented.

Is There a Need to Change PREPA Oversight and Supervision from the Current FOMB to Possibly DOE?

Given the purported impasse that the Oversight Board has with PREPA and the public debtholders as evidenced by the rejection of RSA, the question is raised how to resolve this unfortunate gridlock where no or little progress has been made over the last year. Some have proposed the U.S. Department of Energy (“DOE”) or a federal entity under DOE supervision should be considered a good candidate to be substituted for the current Oversight Board in supervising and assisting PREPA to resolution of its operational problems, rate issues and financial distress. On June 20, 2018, the DOE issued its recommendation for Puerto Rico – The Office of Electricity released its “Energy Resilience Solution for the Puerto Rico Grid (“DOE June 2018 Report”). This report details DOE’s vision for rebuilding a resilient energy system in Puerto Rico. It suggested hardening infrastructure, as well as integrating clean energy technologies such as solar and energy storage with the island’s energy portfolio. This report was intended to assist the island’s government in drafting recovery plans and guiding the use of federal aid. DOE appears well suited to provide the oversight, supervision and assistance that PREPA needs and so far has been in search for. It should be noted and recognized that Puerto Rico, its Governor and related entities and the Oversight Board have a tremendous burden in dealing with the totality of Puerto Rico, its instrumentalities, public corporations and its local governments with unpredictable emergencies that demand immediate attention. One might speculate that the burden of the diversity and complexities of these matters is practically too heavy for one Oversight Board and Commonwealth to navigate all at the same time. Perhaps shifting the oversight to a federal entity such as the DOE with some expanded powers might assist PREPA and Puerto Rico and ease the burden and allow the Oversight Board to focus on other items of the Puerto Rico debt adjustment processes that demand more attention. DOE has issued its June 2018 Report and is already working with FEMA and PREPA and is assisting with technical advice and assistance. Further, as the acting Chairman of Puerto Rico Energy Commission has noted on May 8, 2018 to the U.S. Senate Committee on Energy and Natural Resources, “The Commission continues to face unnecessary, avoidable obstacles in carrying out its statutory duties and has continuing disputes with the current Oversight Board that appear to be counterproductive.”

DOE has the expertise, resources and mission to be a substitute oversight to supervise PREPA, navigate the PROMESA process as the Oversight Board for PREPA, and assist in evaluating appropriate rates, selection of appropriate governance and management, and, if appropriate, implementation of the privatization process. Further, DOE is more than capable in assisting PREPA in using PROMESA’s Title V to expedite and implement needed regulatory permits that would allow more efficient and reliable power projects. It could assist in necessary steps to improve PREPA’s infrastructure hardening and to hurricane proof PREPA’s electric grid

and power distribution and generation ability. Since PREPA's future and effectiveness will depend on technical and operational issues that need to be addressed as quickly as possible, it may be superior to the current Oversight Board to have DOE or an entity like DOE with the expertise and resources in the energy field to supervise, and this may eliminate the need for education of the Oversight Board regarding any such initiatives. It also would be a clear break from past disagreement that the Oversight Board and even the Governor have had with PREPA and may foster a new opportunity at rekindling resolution efforts that has been for the most part missing over the last year or so. Further, DOE supervision and oversight also appear to be superior to political influence and changing management as noted above that seem to have impaired PREPA's operation.

Accordingly, PREPA under federal supervision and control with DOE having oversight over PREPA and its rate making efforts may be in the best interest of all. It frees up the current Oversight Board to deal with the never ending list of issues to be resolved in the Puerto Rico financial crisis and allows the Governor and legislature to focus on other pressing problems. At the same time, there is no loss of future momentum because DOE through its past efforts in hurricane relief has been educated to the obstacles and problems facing PREPA. This supervision of power supply system has some precedent support in the Tennessee Valley Authority ("TVA"), 16 U.S.C. §831 *et seq.*, and Bonneville, 16 U.S.C. §832 *et seq.*, and Federal Energy Regulatory Commission ("FERC") where federal assistance enhanced the supplying of power for the benefit of the welfare of citizens and businesses of a number of states.

There are at least three reasons why PREPA would benefit from DOE supervision and oversight:

1. Provide Needed Permanent and Stable Board and Management for PREPA. As noted above, the last 17 months have been subject to no less than five leadership changes, and corporate governance issues related to PREPA include executive retention and stability of management. Even the newly appointed CEO, Jose Ortiz, may face the challenge of having to reverse his past policies and decisions he made.
2. Create a New Opportunity for Voluntary Resolution. Both the Oversight Board and PREPA's current management have past disputes and a political history that could benefit from a change in supervision. A change could re-focus the effort on debt resolution so that needed reforms for PREPA in operation and administration can be addressed, such as renewable energy, and further analysis of fuel supply contracts, capital expenditures, proposed financing, privatization, etc. The positive and constructive attitude can remove the cloud of a bickering and combative relationship between the creditors and the Oversight Board and the Commonwealth.
3. PREPA's Change in Oversight May Open Other Doors under PROMESA. As noted above, PROMESA was intended to provide not only financial debt resolution and fiscal oversight but also infrastructure revitalization under Title V. There is provided in Title V expedited permitting for critical projects and, given DOE expertise, resources and mission, that may be better accomplished with DOE overseeing the process. The current Oversight Board, the Puerto Rico Energy Commission and Governor do not

presently appear to be on the same page. The Governor has sued the Oversight Board over its budgetary decisions and the acting Chairman of the Commission in his testimony to the U.S. Senate in May 2018 appeared perplexed over the perceived lack of cooperation.⁴

In order to resolve this controversy between the current Oversight Board and the Puerto Rico Energy Commission, Congress could transfer oversight and supervision of PREPA to DOE to establish stable and skilled management (thereby curing the past changing leadership and operational difficulties) to establish an appropriate rate path, explore privatization (as the Governor and recent legislation in Puerto Rico have supported). DOE could select appropriate management and oversee rate making in a prudent and fair manner that addresses past failing to set rates for full cost of reasonable and necessary operation and maintenance including fuel and generator costs, debt service, capital expenditures and improvements and administrative expenses that previously have been a problem. PREPA's perceived goal should be to obtain the necessary guidance and financing for the required infrastructure improvements to the electric utility system to assure a durable power generation transmission and distribution without interruption and capable of withstanding any future hurricane. A change in oversight to the DOE may be just the medicine the doctor ordered. It is within the power and province of Congress under the Territorial Clause to the U.S. Constitution (Article IV, §3, cl. 2) to make needful rules and regulations. The change in oversight might be that crucial act that resets debt settlement negotiations and foster a possible consensual resolution that is to be favored over a litigious result.

PREPA Needs a Permanent Fix and Not a Band Aid

Under the current Oversight Board with its disputes with the Governor and the Puerto Rico Emergency Commission, it is doubtful PREPA can promptly and successfully benefit from PROMESA. To date, use of Title VI has been underutilized to virtual non-existence especially with regard to the Oversight Board's rejection of certification in connection with RSA, and Title III as an involuntary resolution process has perhaps been overused to the extent that

⁴ The Acting Commissioner stated:

In addition, FOMB [the Oversight Board] claims in its documents to support independent, strong regulation of monopoly electric services. But its actions are undermining regulation by giving PREPA an excuse to avoid the Commission's orders— PREPA gives as its reason that the Commission's powers are preempted by the FOMB....

FOMB continues its practice, which I summarized in my last appearance, of ignoring every Commission effort to cooperate in the adoption of a set of procedures that would allow the Commission and FOMB to support each other's work. The most recent effort by the Commission was the draft protocols attached to my testimony, which have been shared with FOMB. It is a balanced document, addressing each major area of the Commission's Act 57 authority and describing ways for the FOMB and Commission to mesh their work in that area. FOMB has consistently rejected our offers for cooperation. Instead FOMB argues that it can "substitute" for the Commission, and has provided as much in the certified PREPA Fiscal Plan. Congress did not grant FOMB that authority. Written Testimony of Jose Roman Morales PE, Acting Chairman, Puerto Rico Energy Commission, to U.S. Senate Committee, May 8, 2018, p. 4.

virtually everything is a trial by combat. As any winning baseball team recognizes, a pitcher's effectiveness cannot be assured for every day and every batter, and a change in pitcher to suit the batter and the day may win the game.

Accordingly, DOE may be able to provide just the oversight, technical assistance, expertise and resources that help PREPA and the Commonwealth resolve PREPA's debt and operational issues before another ill wind blows away good intentions and post-constructive efforts. DOE supervision can be premised on establishing stable management, a prudent business plan with necessary enhancements to infrastructure for protection of the power grid for uninterrupted power service. The DOE oversight may better provide consideration of whether there should be the transition of PREPA operation to privatization or other form of continued operation. The goal is to return to Puerto Rico an electric utility worthy of its people and capable of assisting in Puerto Rico's recovery effort and attracting business expansion and development with assured and uninterrupted "hurricane proof" electric power.

Why Is This Important? First, the people of Puerto Rico as U.S. citizens deserve an electric utility that meets their needs and desires without fear of a strong wind changing their fate. Also, utilities are the essence of government services and part of the health, safety and welfare of its citizens. Electric power shines light to prevent crimes, promote business and economic development, light homes, businesses, schools, hospitals and virtually every facet of life. Revenue bond financing has been the financial support for utilities and municipal enterprises. Congress in the 1988 Amendment to the Bankruptcy Code, Pub. L. No. 100-597 (1988) intended to assure the financial market of protection for those who would finance needed utilities improvements and infrastructure renovation by assuring their right to receive timely payment even in a Chapter 9 (municipal bankruptcy proceeding). The 1988 Amendments to the U.S. Bankruptcy Code require that the benefit of their bargain be maintained. Likewise, the failure to address PREPA's operational and financial problems and obtain a prompt resolution can not only generate a cloud over PREPA but also over revenue bond financing that presently makes up about half of state and local government financing. Accordingly, the fate of PREPA and its resolution or lack thereof could not only adversely affect the electric utility the people of Puerto Rico desire but also the capital market response could have consequences for not only Puerto Rico future access to the capital market and borrowing cost but also could affect all who use and benefit from revenue bond financing.

In this regard it should be remembered that revenue bond financing is the major source of infrastructure financing. Revenue bond financing is key to needed infrastructure financing. The American Society of Civil Engineers ("ASCE"), in its 2013 Report, estimates the cost to maintain infrastructure at a passable level will be \$3.6 trillion by 2020 or about four times the annual tax revenues for all state and local governments. In 2009, ASCE's number for the next five years was \$2.2 trillion. Inattention has caused the number to increase by \$1.4 trillion in five years. ASCE's 2017 Report stated the cumulative infrastructure funding need based on current trends extended to 2025, is \$4.59 trillion to have passable infrastructure with an estimated funding gap of over \$2 trillion. In whole or in part, revenue bond financing will be called on to fund the \$2 trillion gap. ASCE discovered in its 2016 economic study "Failure to Act Closing the Infrastructure Investment Gap for America's Economic Future" that the failure to do necessary infrastructure improvements in the U.S.A. will cost the country \$3.9 trillion in losses

suffered to the GDP by 2025, \$7 trillion in lost business sales by 2025 and \$2.5 million in lost American jobs in 2025.

Further, any negative result in the restructuring of PREPA could have a perception of additional risk to revenue bond financing. Perception of increased risk is what makes a form of financing cease to be viewed in the market as strong (assured payment from a solvent enterprise) and to be viewed as a weaker credit. Limited access to the market and the increased cost of borrowing can result from being perceived as a weaker credit. One of the purposes of PROMESA is to have Puerto Rico and in this case PREPA regain market acceptance to provide market access and help lower the cost of borrowing. This negative perception of risk from a failure to promptly resolve PREPA's financial and operational problems may cost Puerto Rico in access to the market for financing or significant increase in future borrowing costs. This negative perception could have a similar effect on some weaker state and local governments.

Traditionally, the spread in the municipal market between strong credits (top investment grade) and significantly weak credits (lower non-investment grade) was 200-300 basis points.

To Puerto Rico, a state or local government, an increase in interest costs (interest rate) of 200 basis points per year or 2 percent more interest cost a year on a 20-year bond with a bullet maturity would be 40% more of the principal amount paid as interest over 20 years. Put another way, on a billion dollar debt issue with a twenty year maturity and a bullet payment of principal at maturity, a 2% additional interest cost per annum would be a present value at a 5% discount of about \$250 million or 25% of the face amount. That is \$250 million not available to Puerto Rico, a state or local government to pay needed infrastructure improvements, public services, worker salaries, retiree benefits or tax relief to its citizens.

Would DOE as Oversight Board for PREPA Violate Puerto Rico's Sovereignty?

The obvious concern of having the U.S. Department of Energy exercise supervision and assistance to PREPA under PROMESA and support prudent and reasonable ratemaking is whether that would be offensive to Puerto Rico's sovereignty. First, this is apparently a no different effect on Puerto Rico's sovereignty than the federally appointed individuals on the current Oversight Board. Second, DOE does have expertise, resources and interest in the PREPA resolution. Third, DOE is already in conjunction with FEMA assisting and cooperating with PREPA, including the DOE June 2018 Report, is knowledgeable of the issues and has provided analysis of possible solution to PREPA's problem. Fourth, Puerto Rico is a Territory of the United States and, while the 1952 Constitution of Puerto Rico gave the Commonwealth of Puerto Rico jurisdiction over its domestic affairs, there was no surrender of Congress's power under the Territorial Clause "to make needful rules and regulations." Accordingly, after careful consideration, the oversight by DOE of PREPA under PROMESA should not be deemed offensive and may well be viewed a positive and constructive turn of events by PREPA and the Commonwealth.

The Time Is Right to Consider Possible Changes to the Oversight and Supervision of PREPA

PREPA continues to suffer from past operational and financial difficulties. These problems have continued despite the enactment and implementation of PROMESA almost two years ago. Further, despite the best intention of the drafters of PROMESA, there are the problems of disputes and disagreements between the current Oversight Board, the Commonwealth, the Governor and PREPA not to mention the creditors. A promising resolution of PREPA's problems in RSA supported by major creditors, PREPA, Puerto Rico legislative action and Energy Commission were dashed by the current Oversight Board rejection and refusal to certify the settlement for Title VI court approval. The resulting Title III insolvency proceeding, commenced about a year ago for involuntary resolution, has not produced any constructive results or helped encourage consensual resolution. In fact, the current situation appears to have produced grid lock and ever-changing leadership at PREPA without further resolution of disputes between the current Oversight Board, Puerto Rico Energy Commission, the Governor and PREPA. There have been and there appear to be no effective restructuring efforts for public debt (except trial by combat in the Title III court proceeding) nor any effective funding of needed infrastructure improvements. DOE appears to be a favored possibility for oversight, supervision and resolution and capable of selecting stable management and considering appropriate operations and alternatives, including privatization. Resolution now or as soon as possible will allow a favorable perception in the capital market to future financing of needed improvements. Failure to in the near term to reach resolution of PREPA's issues may deprive Puerto Rico of the durable electric power needed for a recovery plan and economic development. The failure to reach resolution of PREPA's issues in the near term may also disappoint the capital markets that will adversely affect the cost of future borrowings by Puerto Rico and possibly others. Further, failure to consider change of the Oversight Board may challenge the ability to obtain a successful resolution of public debt.

Accordingly, the proposal for a change in oversight and supervision of PREPA under PROMESA is worthy of this Committee's consideration. Congress has under the Territorial clause of the U.S. Constitution the power "to make needful rules and regulation" for Puerto Rico and to adjust oversight and supervision under PROMESA for PREPA in order to provide Puerto Rico, PREPA and creditors with an enhanced opportunity to find a consensual resolution. Thereby, they all may engage in constructive efforts to provide Puerto Rico and its citizens with the electric utility it needs and desires and demonstrate to the capital markets Puerto Rico and PREPA are responsible and credit worthy borrowers that should have access to the capital market to borrow at reasonable costs for needed infrastructure improvements.