



Hon. Thomas Rivera Schatz  
Presidente

July 25, 2018

Hon. Robert Bishop  
Chairman  
House Committee on Natural  
Resources

Dear Chairman Bishop:

We appreciate the opportunity given by the House Committee on Natural Resources to inform about the transformation of the electric power system of Puerto Rico.

Following the scourge of hurricane María, on September 20, 2017, Puerto Rico suffered catastrophic damages. In particular, the substantial destruction of the electricity grid of the Island left 100% of the clients of the Puerto Rico Electric Power Authority (PREPA) without service. The cost to repair and modernize the existing electric system will reach \$17.6 billion, which will require an electric model that considers, among others, distributed generation systems, the use of microgrids and renewable energy projects.

In the transformation of our system, it is necessary to consider that PREPA has about \$ 9.6 billion in debt and is facing a bankruptcy process. The debt cannot be liquidated with the revenues coming from the public corporation even in the eventuality of a substantial increase of the high existing tariffs. In addition, its pension system has an estimated deficit of \$2 to \$3.6 billion. Such situation, among other factors, affects the ability to improve, maintain and modernize the current centralized system and its infrastructure. Therefore, the electrical system is vulnerable, unstable and inefficient.

In order to reduce government spending and improve the use of funds, the Government of Puerto Rico considered prudent to decrease the size of the government apparatus to reduce its spending, eliminating redundancy, decentralizing services and simplifying processes.

As a result, the Government of Puerto Rico presented Reorganization Plan No. 5 to consolidate and reorganize the Telecommunications Regulatory Board, the Public Service Commission, the Energy Commission, the Puerto Rico Energy Administration, and the Independent Protection Office to the Consumer in three





Bureaus. The Public Service Regulatory Board as a quasi-judicial body of last resort would review the Commissioners' decisions.

In substitution of the Reorganization Plan No. 5, Reorganization Plan No. 8 was presented, taking into account the concerns and consolidating the same agencies, taking care not to affect the powers and faculties of the Energy Commission.

These amendments clearly established the independence of criteria and decisional autonomy of the Energy Bureau in the matters under its jurisdiction. It will be composed of five commissioners, appointed by a fixed term in a staggered manner and in accordance with the requirements imposed by law. These will be appointed by the Governor with the advice and consent of the Senate and may only be removed before the end of their term for just cause. In turn, the Public Service Regulatory Board would not implement the public policy of the regulatory instruments and their respective organic laws. Significant changes were made in ruling out any reference to the fact that the Public Service Regulatory Board had the power to act as a quasi-judicial body of last resort to deal with the affairs of the different negotiated bodies.

With the changes introduced, it is clearly incorporated that the new Plan presented ruled out the power of the Chairman of the Public Service Regulatory Board to attend to adjudicative processes of the Energy Bureau. The language contained in Reorganization Plan No. 8 approved provides that the Chairman of the Board within its functions may **"review the decisions, determinations or final resolutions of the Bureaus as established by Law."** However, this provision cannot be isolated and must be interpreted within the content of all the amendments included in the new Plan. Likewise, it should not be forgotten that for the implementation and validity of Reorganization Plan No. 8 was approved legislation addressing and modifying language that explicit establishes the consensus of every political appointee that the decisions of the Bureau of Energy may only be reviewed before the Court of Appeals. In this way, the Energy Bureau's adjudicative decisions will be maintained with total independence from the Public Service Regulatory Board as currently contemplated by Law 57-2014.

Parallel to these processes, the Government recognized the need to transform the island's electrical system. The experience following Hurricane María, exposed the categorical reality that the service provided by Puerto Rico Electric Power Authority is deficient and expensive for the consumer and constitutes an obstacle to our economic development. On January 22, 2018, the Governor of Puerto Rico, Hon. Ricardo Rosselló Nevares, announced one of the initiatives with the greatest impact for the construction of a new and modern Puerto Rico: the transformation of the energy system.

Then, PS 860 (PC 1481) was presented to create the "Law to Transform the Puerto Rico Electric System". The purpose of the bill presented is to establish the Government's public policy regarding the Island's electrical system; authorize





the legal framework required for the sale, disposal or transfer of assets, operations, functions and services of the Electric Power Authority; establish the necessary safeguards to ensure a fair and transparent process and provide for the applicability of the process contained in Law 29-2009, as amended, known as the "Public-Private Partnerships Act" and other amendments to various statutes related to these purposes.

In summary, the proposed bill considers the public-private partnership process to carry out the sale, disposal or transfer of assets of PREPA, any operation (distribution, transmission or generation of electric power), function or service to a selected proponent or proponents. It also recommends the provisions of law that will not apply to the aforementioned transaction in order to complete them within a specific time schedule. In turn, it declares that the transformation of the electricity system is a priority project and that public policy aims to transform and modernize the island's electricity system into a more reliable, customer-centered, financially viable, resilient and sustainable system.

The Bill establishes a transactional framework and constitutes an authorization necessary to privatize the assets of PREPA. However, everybody agrees that it fails to establish the regulatory framework and the public energy policy for the future.

The project presented determines that the PREPA's assets includes all real estate property, movable property (tangible or intangible), facilities, resources, proprietary interests, rights of any nature, and any assets that it holds directly or indirectly. These transactions would be carried out according to the process established for the Public-Private Partnerships. This process involves the designation of an Alliances Committee to evaluate the proposals and select a proponent who meets certain requirements. Once selected, the Alliances Committee renders a report with the selected proposals for the approval of the Board of Directors of the Public-Private Partnerships and the Board of Directors of the Puerto Rico Electric Power Authority. If approved, the report and the Alliance Contract will proceed for the analysis by the Governor.

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*α* In order to achieve these transactions within a certain timeframe, the project exempts transactions to comply with the requirement to present a desirability and convenience study prior to the RFP, as currently provided by law. In turn, it allows that in any transaction of this nature the alliance contract may exceed the term of fifty-years (50) or its extension of up to twenty-five (25) additional years. In addition, it allows the transfer of ownership and proposes that the transactions contemplated for the transformation of the electric system are subject to the provisions of the Alliance Contract independent of the regulation of tariffs and charges determined by the Puerto Rico Energy Commission (PREC). Likewise, it exempts the proposers from submitting an Energy RELIEF Plan imposed pursuant to Act No. 83 of May 2, 1941, as amended, known as the "Puerto Rico Electric Power Authority Act."





In order to comply with these measures, the Puerto Rico Senate created the Special Committee on Energy Affairs, which immediately began a process of public hearings and the analysis of the legislation proposed. Upon receiving input from the deponents, serious concerns were raised related to the implications of the transformation of the electrical system as presented.

Most of the deponents suggest the creation of a public energy policy regarding the electricity system and with an updated regulatory framework was necessary. They warned that the lack of these elements, could lead to the privatization of a vertical monopoly integrated by an indefinite time with serious repercussions in the cost of energy, will also diminish the duties and faculties of PREC and will contribute to a lack of integration of the transformation model with the Integrated Resources Plan (IRP).

In general, the concerns focuses in the possibility that the bill will serve as a subterfuge to avoid current regulatory processes, arbitrarily impose higher tariffs without being reviewed by a regulatory body and even a disorganized and inefficient transition by exempting proponents from complying with an IRP and the Energy RELIEF Act. After a careful evaluation, the Special Committee on Energy Affairs considered that the statute must be modified to include language addressing the need to condition sales transactions to clear public energy policy and a regulatory framework. That will be necessary in order to provide an energy development that considers the reduction of demand, the use of distributed generation systems, the integration of at least 20% of renewable energy, the microgrids, the net measurement, the transfer of energy, among others. The amendments must avoid having an impact with the PREC's functions. Also, those modifications will avoid the imposition of higher tariffs than those intended to reach at less than twenty cents per kW/hr. Likewise, it was necessary to clarify the differences between the process to be followed for the concession and the sale of assets, requiring the approval of the sales agreements by the Legislative Assembly.

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After considering all the concerns of different groups, the bill was approved with the consensus of all Political Parties and became Law 120-2018 on June 20, 2018. The Special Commission continues to advance all necessary work in order to have a regulatory framework, a public energy policy and a transactional framework within a reasonable time. To do this, we approached different groups that are familiar with the island's energy system, managing to unite a working group of experts that *pro bono* is dedicated to begin the elaboration of a public energy policy and a regulatory framework in order to achieve the objectives to transform the electrical system. The group nourishes with representatives of the College of Engineers and Surveyors of Puerto Rico, Mr. Tomás Torres and Josen Rossi of the Puerto Rico Institute of Competitiveness and Sustainable Economy, the Resilient Puerto Rico Advisory Commission and the Rocky Mountain Institute. Also, it has the participation of all the political components representative of the different visions including a collaborative among different





sectors that has taken place on July 19 and 20 this year and will continue on August.

Likewise, the Special Commission considered that the Department of Energy is working on the creation of an energy model and through a cooperative agreement granted to the Southern States Energy Board (SSEB) allowing for the possibility of privatization of the electric system in Puerto Rico and the reality of the need for federal funds for its reconstruction. The purpose of the federal funding granted to SSEB is to work with the Governor and the Legislative Assembly to cooperate establishing a reliable, sustainable and affordable electricity network to the Island through the development of a public energy policy and a regulatory framework. This reality responds to the need of a complete project that meets all that is necessary to achieve a transaction for the benefit of our community. Thus, the Special Committee on Energy approached the SSEB to consolidate efforts in developing the need of a public energy policy and a regulatory framework before approving any legislation that allows the privatization of the energy system Puerto Rico. We even suggested that the working group be considered as part of the Blue-Ribbon Task Force of SSEB.

Finally, we take the opportunity to express our concerns with some draft proposals to modernize Puerto Rico's electrical system. We are worried that the vision is aimed at the total sale of assets without considering the possible concession of transmission and distribution. Likewise, the language used reflects a priority for the developing of natural gas infrastructure without contemplating an IRP, the need for a system that does not depend exclusively on fossil fuels and considering experiences in our territory. It also gives the impression that it does not consider a market of competitive suppliers, which would result in a private monopoly for an essential service such as electricity.

In conclusion, the complete participation of all members of the Legislature are working to achieve the objective outlined by the Government of Puerto Rico of having a modern, sustainable, reliable, efficient, cost-effective and resilient system that overcomes the global challenges of power generation focused on the benefit of the consumer and that allows economic development by guaranteeing a better service at a lower cost. We are all aware that well-executed privatization can improve service and infrastructure. It is not an option to continue with a vulnerable system, which undermines our economy. For this, it is necessary to delineate the parameters of the public energy policy to which we aspire after the experience that occurred after the impact of a catastrophic hurricane. Today's decisions will affect future generations. We must act with the necessary urgency, but responsibility.

It is up to the Government of Puerto Rico and the Legislative Assembly, with valuable assistance and input from federal agencies and the Congress of the United States of America to design an energy model that meets the needs of the Island with a public energy policy that meets our needs. Nevertheless, important



reform, including a managerial, administrative and operational structure intended to protect it from unwarranted political intervention with the participation of all sectors in order to achieve a secure transformation of the energy system, has begun and will be accomplished in the next months.

Cordially,



Hon. Thomas Rivera Schatz  
President  
Senate of Puerto Rico



Hon. Larry Seilhmaer Rodríguez  
Chairman  
Special Committee on Energy Affairs

