

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.

PROMESA

Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA

Title III

Case No. 17 BK 4780-LTS

**Court Filing Relates Only to
PREPA and Shall Only be Filed
in Case No. 17 BK 4780-LTS**

**THE GOVERNING BOARD'S JOINDER IN THE OPPOSITION OF AAFAF,
ON BEHALF OF GOVERNOR RICARDO ROSELLÓ, TO THE OVERSIGHT
BOARD'S URGENT MOTION FOR AN ORDER CONFIRMING
APPOINTMENT OF A CHIEF TRANSFORMATION OFFICER**

The Governing Board of the Puerto Rico Electric Power Authority (the “Governing Board”)¹, as the party charged with exercising the powers of PREPA and determining its general policy and strategic management pursuant to 22 LPRA § 194, joins the *Opposition of AAFAF, on*

¹ As used in this Joinder, (i) “AAFAF” shall mean the Puerto Rico Fiscal Agency and Financial Advisory Authority; (ii) “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. § 101, et seq.; (iii) “Commonwealth” shall mean the Commonwealth of Puerto Rico; (iv) “CTO” shall mean the so-called Chief Transformation Officer the Oversight Board seeks to appoint; (v) “Government” shall mean the elected government of the Commonwealth of Puerto Rico but not the Oversight Board; (vi) “Governor Rosselló” and the “Governor” shall mean Governor Ricardo Rosselló in his official capacity; (vii) “Legislature” shall mean the Legislature of the Commonwealth of Puerto Rico; (viii) “PREPA” shall mean the Puerto Rico Electric Power Authority; (ix) “PROMESA” shall mean the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101-2241; and (x) “Oversight Board” or “Board” shall mean the Financial Management and Oversight Board for Puerto Rico. Unless otherwise specified, all emphasis is added, and all citations and quotations are omitted.

Behalf of Governor Ricardo Roselló, to the Oversight Board's Urgent Motion for an Order Confirming Appointment of a Chief Transformation Officer [ECF No. 381] (the "Opposition"), and states in support as follows:

1. Under Puerto Rican law, the Governing Board of PREPA is the party charged with leading the strategic management of PREPA's operations including appointing the Executive Director of PREPA and creating and defining the officer roles. 22 LPRA §§ 194, 195. The Governing Board has not created an office of CTO or appointed Mr. Zamot to hold any office at PREPA.

2. The Governing Board of PREPA takes its duties and responsibilities to the people of Puerto Rico seriously and believes that the relief requested by the Oversight Board would only delay the critical restoration and recovery efforts. The members of the Governing Board do not believe that the ultimate transformation of PREPA requires the appointment of Mr. Zamot as CTO. The Governing Board intends to be actively involved in the transformation process working with PREPA management. The members of the Governing Board bring substantial and relevant experience to PREPA's operations and transformation, including experience leading complex organizations through business and operational changes, the modernization and transformation of utilities; and the identification and deployment of cutting edge energy technologies, renewables and other energy solutions. The Governing Board members also have substantial engineering experience in the areas of generation, transmission and distribution. The members of the Governing Board are deeply committed to the restoration of power in Puerto Rico and to the transformation of the enterprise. The Governing Board looks forward to working with the FOMB and Mr. Zamot in his role as Revitalization Coordinator to achieve our common goals.

3. In seeking to install Noel Zamot as a trustee/receiver to take plenary control of PREPA, thereby neutering our authority as the duly appointed Governing Board, the Oversight Board is seeking authority that is directly and expressly prohibited by Section 303 of PROMESA, which provides that Title III “does not limit or impair the power of a covered territory to control, by legislation or otherwise, the territory or any territorial instrumentality thereof in the exercise of the political or governmental powers of the territory or territorial instrumentality, including expenditures for such exercise” This express preservation of home rule for Puerto Rico is subject only “to the limitations set forth in titles I and II” of PROMESA, which do not give the Oversight Board the power to appoint a manager with control over PREPA. Rather, titles I and II of PROMESA provide the Oversight Board solely with fiscal planning powers in an oversight capacity, reviewing and certifying fiscal plans and budgets, and monitoring compliance with such documents.

4. As a creature of statute, the Oversight Board has only the narrowly-tailored powers that Congress granted the Oversight Board in PROMESA, in Sections 104, and 201-205. Nothing in Titles I and II of PROMESA gives the Oversight Board the power to override our authority, create new government offices, supplant the elected Government by seizing its political and governmental powers, or usurp day-to-day control over the Government or any of its instrumentalities.

5. The Oversight Board’s role as the Commonwealth’s representative under PROMESA section 315 is limited to prosecuting the Title III case, not managing the Debtor’s day-to-day operations—which necessarily involve governmental and policy functions. That role is played by the Governing Board and its appointed management team. Nor does PROMESA’s use of the word “trustee” in describing the Board’s limited role as PREPA’s Title III representative in

the Title III case grant the Board plenary trustee powers over PREPA's operations outside of Title III, as a Chapter 11 trustee would have. (*See* Mtn. ¶¶ 32–33.) In incorporating bankruptcy code provisions into PROMESA, Congress selected a specific list of code sections it deemed necessary for the Oversight Board to fill its role. Chapter 11's trustee provision was not among them. This can only mean that Congress did not intend to confer those broad powers on the Oversight Board. In fact, section 301 of PROMESA incorporated only the more narrow section 926 from Chapter 9, which provides only for a trustee to pursue avoidance actions, not to take operational control of the governmental entity.

6. In short, Congress expressly sought to “protect[] the authority of the people’s elected officials and their appointees to direct the restructuring effort” (*see* Opinion and Order Denying Motion of Ad Hoc Group of PREPA Bondholders, et al., for Relief from the Automatic Stay, Case: 17-04780-LTS, Dock. #299, at 12) and reserve to the elected Government all of its political and governmental powers. The Governing Board was appointed by the elected Government to exercise those powers on behalf of PREPA. For the reasons set forth herein and in the Opposition, the Oversight Board’s Motion contravenes the express provisions of PROMESA, which prohibit the Oversight Board from usurping operational control of the Government and Governmental Instrumentalities, including PREPA, and must be denied.

Dated November 3, 2017

Respectfully submitted,

GOVERNING BOARD OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY

By its attorneys,

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