

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

<p>In re;</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, et al</p> <p>Debtors</p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 3283-LTS</p> <p>(Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p>Debtor.</p>	<p>PROMESA Title III</p> <p>Case No. 17-BK-04780 (LTS)</p>

**OBJECTION TO THE CONFIRMATION OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY'S PLAN OF ADJUSTMENT**

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title Case numbers are listed as Bankruptcy Case numbers due to software limitation.)

**TO THE HONORABLE COURT:**

**COMES NOW PV PROPERTIES/WINDMAR RENEWABLE ENERGY**, as party in interest, pursuant to 11 U.S.C. § 1109(b), represented by Counsel and respectfully requests that the Court deny the confirmation of the *MODIFIED SECOND AMENDED TITLE III PLAN OF ADJUSTMENT OF THE PUERTO RICO ELECTRIC POWER AUTHORITY*, (the “Plan”) (ECF No. 3296).

**PRELIMINARY STATEMENT**

1. The appearing party is a party in interest in the Puerto Rico Electric Power Authority's ("PREPA") Title III Bankruptcy Case. **See 11 U.S.C. § 1109(b)**<sup>2</sup>.

2. The appearing party is a creditor, having various Power Purchase and Operating Agreements (“PPOA’s”) with PREPA and is the biggest installer of rooftop solar in Puerto Rico.

3. Therefore, the appearing party is a party in interest that may raise and may appear and be heard on any issue in a Title III Case 11 U.S.C. § 1109(b)<sup>2</sup>.

4. As provided by Section 1129(a)(3),(a)(6) and (a)(8), the Plan has to be proposed in good faith and not by any means forbidden by law; any governmental; any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval; and with respect to each class of claims or interests:

**(A)** such class has accepted the plan; or

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<sup>2</sup> Applicable to PREPA’s Title III case by Section 301 of PROMESA.

**(B)**such class is not impaired under the plan.

5. Moreover in order for the cram down provisions of the Bankruptcy Code to be applicable as provided in Section 1129(b)(1) of the Bankruptcy Code, in the event that each class of claims has not accepted the Plan or is not impaired thereunder, as required by Section 1129(a)(10) of the Bankruptcy Code of a class of claims impaired under the Plan, at least one class of claims that is impaired under the Plan must have accepted the Plan, determined without including an acceptance of the Plan by any insider.

6. And then the Plan must not discriminate unfairly and be equitable and fair, with respect to each class of claims that is impaired under, and has not accepted the Plan, meaning with respect to a class of unsecured claims:

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim any property.

7. Assuming that PREPA's assets are of little or no value, due to the amply demonstrated deterioration of the system, the truth is that unsecured creditors would receive practically nothing in the event of a liquidation, excepting those bonds which are guaranteed with particular sinking funds.

8. In a theoretical liquidation of PREPA, creditors would receive practically nothing. Consequently, the Plan could be approved with practically no payments to unsecured creditors or payment of just a minimal amount thereto per dollar of credit.

9. The Court can't impose on a debtor whose plan conforms with the aforesaid liquidation analysis standards, to increase its estate available assets for payment to creditors by

forcing an increase in the price the debtor charges for its goods and services.

10. If the Court can't force a debtor to increase its revenues by increasing the price of its goods, why would the Court or PREPA itself be able to force, in the Plan, PREPA to increase its tariffs. This is particularly important because PREPA cannot unilaterally increase the same, since that is of Puerto Rico Energy Bureau's ("PREB") exclusive jurisdiction.

11. It is PREB who has to approve the just and reasonable tariffs needed for PREPA's operations, but PREB will not need to include in the tariffs the payment of unsecured claims which can be legally discharged under PROMESA.

### **PROCEDURAL BACKGROUND**

12. For over a decade, Puerto Rico's economy has been in trouble and, by 2016, its massive debt became unsustainable. On June 30, 2016, PROMESA was signed into law. 48 U.S.C. § 2101 et seq. it created Title III for territories to have access to bankruptcy relief for its instrumentalities. On July 2, 2017, the Financial Oversight and Management Board for Puerto Rico ("Oversight Board") initiated PREPA's Title III case. On December 16, 2022, the Oversight Board filed *PREPA's original plan and* on February 9, 2022, its first amendment. The current version of the Plan was filed on March 1, 2023.

13. The Title III court shall confirm a plan of adjustment so long as the requirements discussed above are met, including that: the debtor is not prohibited by law from taking any action necessary to carry out the plan; ... the obtention of any legislative, regulatory, or electoral approval necessary under applicable law in order to carry out any provision of the plan , or such provision is expressly conditioned on such approval; ... [and] the plan is feasible. Fin. Oversight & Mgmt. Bd. for P.R. v. Federacion de Maestros de P.R., Inc. (In re Fin. Oversight & Mgmt. Bd. for P.R.), 32 F.4th 67, 76 (1st Cir. 2022) (citation omitted).

14. "Under PROMESA, a plan of adjustment must be supported by financial

projections that are 'reasonable and demonstrate a probability that the debtor will be able to satisfy its obligations under the Plan.'" In re Fin. Oversight & Mgmt. Bd., 637 B.R. 223, 30203 (D.P.R. 2022). This means asking: "Is it likely that the debtor, after the confirmation of the Plan of Adjustment, will be able to sustainably provide basic municipal services to the citizens of the debtor and to meet the obligations contemplated in the Plan without the significant probability of a default?" *Id.*

### **SUMMARY OF OBJECTIONS TO THE CONFIRMATION OF THE PLAN OF ADJUSTMENT**

15. The Plan should not be confirmed for it fails to:

i. Take into consideration Puerto Rico Public Policy on Energy and the Laws that codified the public policy.

a. It doesn't include the operating costs associated with the purchase of Renewable Energy Certificates ("RECs") needed to meet the % of renewables of the Resources Plan System ("RPS").

b. It doesn't include the penalty, an operating cost, for not meeting the RPS.

c. It doesn't allocate for the payment of the pre-petition and post-petition RECs as to which PREPA has claimed ownership.

ii. Take into consideration the technological changes that have rendered obsolete PREPA's generation, transmission, and distribution of assets.

a. The debt incurred was for the operation and maintenance of a classical vertically integrated central electrical grid, that is not where technology is today.



b. The current distributed energy technology, in particular solar panels tied into battery storage of energy to provide on-site power 24/7, has a lower cost; and is more reliable and resilient. Legacy charges will increase the price gap between on-site electricity systems and the grid, accelerating grid defection.

iii. Take into consideration that PREPA is no longer a self-regulated monopoly; and that technological changes allow current customers to either be consumers, prosumers or grid defectors. PREPA monopolistic power based on technology and the benefits of a grid are no longer true and will become less true as time goes by. PREPA is no longer self-regulated. The Puerto Rico Energy Bureau (PREB) is the regulator.

iv. Fails to explore other mechanisms to collect the Legacy Charge, such as a tax on carbon emissions, an additional IVU on electrical appliances and equipment, or the payment of PREPA's debt by the central government.

v. Provide that any rate change to pay for Legacy Charges must be decided by the Regulator, PREB, through the regulated rate case process, not to be imposed by Oversight Board or the Court.

vi. Address the underlying reasons for PREPA's failure as an ongoing business enterprise.

a. Outdated grid model with inefficient and obsolete generation assets.

- b. An expensive “cost plus” management and labor structure. LUMA and GENERA are more of the same.
- c. Disregard of market trends- the move toward energy efficiency and toward self-generated and consumed electricity.
- d. Doesn’t address customers’ needs for reliable and resilient electricity.
- e. Always looking at the Federal Government, FEMA, USACOE and DOE, for a bailout.

16. As stated above, unsecured creditors have no right to payment over what they would receive in a liquidation of the debtor.

17. There is no basis in law to force a debtor to raise the price of whatever product or service it sells or provides, to produce more money to pay unsecured debts. Forcing PREPA to raise the rates to pay unsecured creditors is simply not within the Court powers. Such a remedy is not available.

### **THE PUERTO RICO ENERGY BUREAU POWERS**

18. All PREB actions must comply with applicable laws (Law 57-2014; Law 17-2019).

19. Referring to contracts to be approved by PREB. In its Resolution NEPR -AP-2020-0017, Irradia Morovis, LLC, PREB stated:

"In evaluating each proposed contract between the electric service companies, the Energy Bureau has the duty to ensure that it is consistent with the energy public policy established in Act 17-2019, as well as with the approved Integrated Resources Plan ("IRP"). The Energy Bureau will not

approve any contract that is inconsistent with the IRP, especially with respect to the renewable energy, distributed generation, conservation and efficiency goals established in both the IRP and the energy public policy.

It concludes:

"Therefore, in evaluating proposed power purchase contracts, the Energy Bureau must primarily determine (i) whether the proposal is consistent with the Approved IRP;<sup>3</sup> [61] (ii) whether the proposal is consistent with the energy public policy of Puerto Rico; (iii) whether the proposed fee structure is fair, reasonable and protects the public interest and the treasury; (IV) whether the interconnection of the proposed project puts the reliability and stability of the system at risk; and (v) whether the parameters regarding profit and price escalators are based on parameters normally used by the industry." [ see PRE case NEPR AI 2020-0017 Irradia Morovis LLC]

Such standards, we repeat, apply to all of PREB's actions, in particular establishing or altering rates and charges, which is of its exclusive power.

### **THE RENEWABLE PORTFOLIO STANDARD; LEGAL REQUIREMENTS:**

20. Puerto Rico is very far from achieving the 20% RPS required for 2022.

21. On this issue, of PREB's authority vis a vis PREPA's powers, on December 2, 2020, on its Final Order on Reconsiderations, NEPR2018-0001, PREB stated:

"134. The Energy Bureau **CLARIFIES** that the RPS requirements, including for near-term dates (20% for 2022) will be met whether or not market prices arising from procurement processes are equal to, greater than, or less than the solar PV pricing assumptions used in the IRP for planning, either those associated with Scenario 3 or the prices associated with Scenario 4 (and the ESM Scenario).

135. Paragraph 15 of the Final Order statement that "...increased deployment solar PV and battery resources should be pursued... if market pricing of those resources aligns with S3S2", refers to the *difference* in total solar PV quantities and deployment schedules that would result under S3S2B versus either the ESM Scenario or S4S2B. The Energy Bureau CLARIFIES that Paragraph 15 does not condition deployment of solar PV and battery resources on market prices equal to (or less than) the cost assumptions in PREPA's filed IRP for Scenario S3S2B. Paragraph 15 refers to the incremental quantities of solar PV in S3S2B (above that of S4S2 or ESM) which reach 1,800 MW by 2030. The early year (*i.e.*, 2021-2025) deployment schedules for solar PV and battery resources differs by relatively small amounts across the scenarios, and reaches a 240 MW

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<sup>3</sup> [61] See Final Resolution and Order on the First Integrated Resource Plan of the Puerto Rico Electric Power Authority, In Re: Integrated Resource Plan for the Puerto Rico Electric Power Authority, Case No. CEPR-AP-2015-002, September 23, 2016 ("IRP Final Resolution")

difference by 2025, as seen in the chart below. The detailed manner PREPA and the Energy Bureau will evaluate the results of competitive procurement processes for solar PV, assess the effect of PREPA's creditworthiness status on the RFP pricing outcomes, and determine deployment quantities and schedules over the Action Plan period (through 2025) will be addressed in the Energy Bureau's Procurement Plan proceeding.

...

136. The IRP pricing benchmarks for solar PV, battery energy storage, and potentially new gas-fired combined cycle technologies assumed PREPA was a creditworthy counterparty. However, the Energy Bureau DETERMINES that final market pricing will emerge from the competitive bidding process the Energy Bureau designed and PREPA is required to follow. Such competitive bidding process will take into consideration current data and conditions, which includes the fact that PREPA is still subject to the Title III process. As current conditions change, including PREPA emerging from the Title III process, the Energy Bureau expects a comparable effect on the competitive bidding process. The tranche schedule established in the Final Order for the procurement of renewable resources will capture such changes.

...

139. The Energy Bureau further elaborates that PREPA is required to use competitive market forces to procure resources at the lowest cost to ratepayers. It is essential to benchmark market prices against costs and prices seen elsewhere (and as collected by resources such as the NREL technology baseline) as part of an approach to establishing that procurement processes have been competitive. If market prices offered in response to a solicitation are unduly higher than expected (after accounting for PREPA's creditworthiness, local factors such as the cost of interconnection, and other appropriate factors), it could be a prudent course of action for PREPA to select fewer resources than expected, and defer capacity to a future procurement within the scheduled tranches as detailed in the Final Order. Indeed, the offered prices from solar PV and storage resources, and their relation to those expected from the IRP, will inform the Energy Bureau's assessment as to whether to approve fossil fuel resources to be developed at Palo Seco. It is in the interests of both PREPA's ratepayers and developers of solar PV and storage for PREPA to attract a vibrant and competitive set of proposals through its procurement processes."

22. In a statement before the US Congress the Oversight Board has exalted the virtues of having PREB rather than "a self-regulated government own monopoly" as responsible for the implementation of the Commonwealth's energy public policy. It claimed that PREB gave certainty and recourse to businesses willing to invest in the sector. After all, one of the purposes of

PROMESA is to foster economic development.

23. The Oversight Board specifies in the Plan tariffs to be established, how the same are to be implemented and when the increase in tariffs are not going to apply?

All of these actions are exclusive prerogatives of the PREB.

24. Professor Skeel, Chairman of FOMB admitted in its deposition, that it is in PREB's powers to establish the rates. But still the allegedly needed rates are in the Plan, as an essential component thereof.

25. How can the Oversight Board propose a Plan that its wholly dependent on a Puerto Rico Energy determination, when PREB's action is independent of and not controlled by the Plan?

Being a regulated industry, the lowest possible rate is the target. But it is not necessarily the lowest rate. The reason is that under any regulated industry, apart from consumer price, there is "fair and reasonable return on investment" requirement. From the analysis of both factors, the "lowest possible price" is reached as determined by an independent regulatory entity, in Puerto Rico, PREB.

The environmental benefits and renewable legal mandates are also factored in on the Public Policy, not just consumer price.

### **RENEWABLE ENERGY POLICY**

The Policy is pellucidly clear.

26. The Puerto Rico Energy Transformation and Relief Act, Act No. 57-2014, 22 P.R. Laws Ann. § 1051 *et seq.* ("Act 57"), established the public policy of integrating clean and efficient energy into Puerto Rico, through diversified energy sources and high efficiency electric power generation from a balanced and optimum energy portfolio.

26. Pursuant to the public policy, Section 6.3 of Act 57, 22 P.R. Laws Ann. § 1054b, authorized the PREB to formulate and implement strategies to achieve the objectives of

the statute by, for example: a) addressing cases and controversies related to its compliance, b) modifying rates, c) conducting inspections, investigations, and audits, d) ensuring continuous communication and information sharing between PREPA and electric power companies, and e) issuance orders and granting legal remedies.

27. With respect to the legal mandate on Renewable Energy, Dr. Agustin Irizarry has rendered an expert report (Docket 24082) that states:

Conclusion 1 - The proposed Plan of Adjustment (PAD) fails to analyze, or willfully ignores, the current rate of adoption of distributed energy.

Conclusion 2 - Renewable energy adoption policy is harmed by taxing only the growing renewable energy sector for the sake of paying an uninsured debt.

Conclusion 3 - Bondholders are experiencing a technological change they did not foresee.

Failure to foresee technological change while investing is not cause to change the bonds guarantee whether the bondholders' claims are secured or not. Nor is it cause to tax the new technology as the proposed PAD does. Technological change is an investment risk.

Conclusion 4 - Based on Levelized Cost of Energy (LCOE) calculations the proposed "legacy charge" is designed to tax the adoption of residential solar energy and it penalizes net metering adoption of solar photovoltaic rooftop generation.

Conclusion 5 - The LCOE of residential rooftop solar photovoltaic systems, including batteries and using equipment of good warranty and LiFeP04 batteries, already cost less than the cost of electricity from the grid after applying the proposed legacy charge.

Conclusion 6 - Contrary to what is assumed in Exhibit P of the proposed PAD significant grid defection could become a reality in Puerto Rico if the proposed legacy charge is implemented, thus rendering the proposed PAD useless.

Conclusion 7 - Distributed energy systems are currently less or equal in cost but not in reliability to the electric grid, the electric grid being less reliable. Lack of reliability from the electricity supplied by the electric grid further drives the adoption of rooftop solar PV systems.

Conclusion 8 - The proposed legacy charge will increase the cost of electricity from the electric grid, but will not increase the reliability of this service, thus accelerating the adoption of distributed renewables and probably increasing grid defection, or partial grid defection.

Conclusion 9 - Residents of Puerto Rico require a cost effective and resilient alternative to generate electricity and the proposed PAD is an obstacle to achieve this much needed goal.

...  
Dr. Irizarry continues:

"I believe the public policy of Puerto Rico is that we should move away from fossil fuel generation to renewable energy generation and that we should move away from a centralized grid to a more divided grid or even self-sustaining microgrids."

"I understand Puerto Rico public policy is established by law and that law has -- it says that we should facilitate and endeavor to have more renewable energy"

"The latest law was Law 17. There was some laws before that that established -- that were amended. There was first the law that established the whole process of net metering. And there were laws 82 and 83 which were actually signed at the solar farm that I was building in Ponce by the governor at that time. The signing ceremony was carried out there. And those were further amended by other laws and I think the one that summarizes the whole thing now is Law 17."

#### **PLAN OF ADJUSTMENT NEGATIVE IMPACT ON RPS AND NET METERING**

28. The Plan does not analyze its impact on the Public Policy. It fails to analyze, for example, not only the impact on RPS, but also on net metering.

As stated by Mr. Víctor Luis González, principal of PV Properties/Windmar's principal during his deposition

"Net metering (which is part of Puerto Rico Energy Public Policy) is the process that was established basically in the U.S. and Puerto Rico to incorporate the desire of people to have in their rooftop of their homes generation of energy so that they will lower their carbon footprint by this system, which was the one used at that time in the U.S. It's different from the system that was done in Europe at that time." "Europe had a system where you would do the same thing where you will send the electricity to the grid and the grid will pay you a certain amount of money.

The U.S., the way it was done and that's what Puerto Rico was to do, was this net metering where you will produce green solar hours or you could also have a small windmill if you wanted and you would generate the energy and whatever part of that energy you did not use yourself, you would send it to the grid and then the grid will bank it for you, they will give you a credit and say that you had supplied that much amount of energy, and then you could take that amount that you supplied to the grid, they would return it to you when you needed it. Basically, if you had a solar system, you will not be producing at night, so sometimes you'll take it at night. It just so happened that the main consumption or the peak consumption of energy in the grid in Puerto Rico now has changed, but the peak hours were usually do in the midday, which is when most of the energy from a net metering system is produced. And then if you had any excess when the law was passed at that time, the government said that they will give you a fixed price, which at that price the cost of energy to the consumer was twelve cents, so they said the fixed price would be ten cents. Of those ten cents, seven and a half cents will go to you and two and a half cents will go to education, to the Department of Education. That number has not changed since then. It was fourteen, fifteen years ago, and it was based on what energy costs were at that time. So if you produce more than what you consume, you will only get seven and a half cents currently. That's the net metering arrangement."

"Law 82 and Law 83 are the laws that establish that net metering public policy, and it's based on what is known as the renewable portfolio standards, the RPS, and that's also what is done in the U.S. and it's done in Puerto Rico, which is a way to try to have more and more of the portfolio of the energy provided to the consumers coming from renewable energy. And that is done through an old portfolio standard that requires a certain percentage of the energy generated by a grid, by the generators who were providing energy to the grid to come from out of a renewable source, and that percentage is established as X plus one, X plus two depending on the year. As the years go by, it's supposed to have more and more -- a higher percentage of renewable energy in the generation that is provided in the grid. And that's the policy. It's known as the renewable portfolio standard, and the renewable portfolio standard has a mechanism to verify compliance and that mechanism is the renewable energy credits."

29. Mr. González also addressed that the Public Policy issue is much more than the price of a Kwh or RPS. Among others are the environmental attributes of renewable energy, for example, it does not generate CO<sub>2</sub>. It does not generate trace gases. It does not generate NO<sub>x</sub> or SO<sub>x</sub> or some of the other pollutants. It also -- in a way, makes for a healthier environment as there are not emissions of particulates affecting neighboring



facilities. It does not heat up the water from the discharge of the power plants. Most of Puerto Rico's large power plants are next to the ocean and they discharge heated water into the ocean. All of these things you might not say are attributes of the renewable energy per se, but it is the avoidance of those environmental impacts that is also an environmental impact of renewable energy.

30. In his deposition Mr. González also considered the social and environmental impacts, for example by stating:

We are having to go to war to secure oil and gas saves lives, saves bounty to the U.S. and to Puerto Rico. As you are aware, when we are doing renewable energy fifteen years ago, at the same time to protect the supply of oil and gas into the U.S., it was required to engage in foreign wars. So that's also another of the aspects of self-generated renewable energy brings to the table. Plus it also gives you price stability. The investment that you're making today, you know what it is, you don't have to worry about what the price is going to be of the fossil fuel next year or ten years now. You already know what the cost is. So you also have a stability of cost, so the social and economical and environmental benefits, it provides for much better both environmental, social, and economic climate for Puerto Rico.

None of these costs are factored in the Plan. The avoidance of these costs is part of the Puerto Rico Energy Policy.

31. One area of particular concern is the absence in the Plan of any resources to have PREPA acquire the REC's created by law, which are the only mechanisms PREPA has to comply with the RPS, absent enough self-generated renewable energy or enough private generated renewable energy with PPOA's that provide for PREPA to pay for the RECs. Mr. González continues:

"Renewable energy credits are the equivalent of one thousand kilowatt hours of energy. The grid, depending on which of the different fossil fuel plants they use to generate one kilowatt of energy that the consumer uses,

right, they usually will generate about a hundred -- if it's a thousand, they generate a thousand two hundred kilowatts at the generation facility because twenty percent of the energy that is generated is lost before it gets to the consumer. So that's -- that REC will represent a thousand kilowatt hours."

"The different generating facilities -- that's basically what the REC is. The pricing of the RECs sometimes is tied to the pollution that is generated by each specific generation source. The amount of CO2 generated by a coal-fired power plant is different from a diesel-fired or a bunker-fired or a natural gas-fired power plant. So that establishes the CO2 intensity of each of the RECs, okay, for the pricing of them. But for the actual measurement is based on a thousand kilowatt hours of electricity generated is the equivalent that will be a REC."

The source of this obligations are laws 82 and 83, the renewable portfolio standards. They basically used the methodology used in the continental U.S. for RECs, and also Hawaii and Alaska, which is that for every one thousand kilowatts of electricity that is generated or that is sold to our customer by an electric grid, okay, of renewable energy, they will -- or if somebody generates the equivalent -- generates one thousand kilowatts of electrical energy, that person is entitled to a REC. Then the grid, in this case PREPA, has a legal obligation to let's say this year that twenty percent of the energy that it generates, okay, has to be from renewable energy and they're going to prove that percentage that they generated, they prove that the percentage that they generated is the acquisition of the RECs from the prosumers or from the utility-scale operators like myself. PREPA has a legal obligation with or without a regulation being in place to acquire all available RECs in the Puerto Rican market up to the twenty percent in this case threshold. So if the utility-scale projects that PREPA has among them -- two from me -- they only contributed 1.8 percent of the total energy that was generated by the grid, that means this they still have to acquire 8.2 percent of RECs from one of the generators in Puerto Rico, and those are the RECs -- some of those RECs will come from the generation that I'm doing. I'm generating energy at ten facilities that belong to PRASA, the Puerto Rico Aqueduct and Sewer Authority."

"So the energy that I'm generating there and giving to PRASA, they generate RECs. I also generate RECs at two facilities that I have at two pharmaceutical companies. One of them is called Haleon now, it used to be GSK, it used to be Pfizer Guayama. The other is Viatris; it used to be Pfizer Vega Baja. So at these facilities, solar facilities there that generate energy, and those facilities generated RECs and they have been doing that since

2015. And those RECs available in Puerto Rico and PREPA had an obligation to buy them from us according to law and they have not purchased those RECs from us. They even went so far as to claim that they -- those facilities exported -- that's why there is a distinction between self-consume and exported. The ones that were exported, PREPA has said, has published documents in which it says that they were used to meet the requirements of the RPS. In other words, they took possession of my RECs, that part of the RECs that they measured, right, based on what was exported and claimed that those belonged to them and that they were part of the RPS, but they never paid them. The other ones, the ones that were self-consumed and also those, I recorded them, according to the law, on the North American Register and they are there, the same way that I put in the North American Register the RECs from my utility-scale projects and then PREPA goes to the North American Register and acquires the RECs from my utility-scale but they are refusing to acquire the RECs from my commercial -- the PRASA RECs, the Pfizer RECs, they were not willing to buy them, even though they claim some of them already belong to them. The other ones that they are not claiming that belong to them that I have offered to them and that, according to law, they have to buy them, they have refused to buy them now."

"That is both a residential home or this commercial, industrials, they are generating electricity. For everyone thousand kilowatts of electricity that they are generating, it's being measured, it's metered so you know exactly how much those solar produce. Then the part that is exported to the grid is measured by a meter that measures whatever amount of kilowatt hours went from the prosumer renewable energy facility into the grid, and those are the RECs that are exported to the grid and are measured not only by the meter of the prosumer but is also measured by the meter of the grid to establish what is the amount of kilowatt hours. For each one thousand of those kilowatt hours that are measured a REC needs to be acquired, needs to be purchased by PREPA if they do not have sufficient RECs from someone else or from themselves to meet the twenty percent threshold. And does PV Properties or any of the other entities in the Windmar Group generate RECs?

"Law 82 and Law 83, the RPS, the renewable portfolio standard, I think it's crystal career. And then the amendments that happened to that law that might be now part of Law 17, it continues to state it. And it clearly says that whether there is a regulation or not regulation in place, the RECs need to be purchased."

There are significant economic consequences of not complying with the RPS's the imposition of fines which are higher than the price of REC's, and the Plan does not

provide for such payment.

"The same way they are also saying to PREPA, if there are RECs available, if you choose not to buy them, they are going to penalize you and now you're going to have to pay double what they cost. So by PREPA acting also in this way and not buying the RECs, they are exposing themselves to having to pay a penalty, and that is detrimental also for the clients because PREPA is not a for-profit company where for profit investors lose their money. Here, the consumers have to ante up for the mistakes, the errors, and the failures to act on the law by PREPA."

In Summary, by not providing for the purchase of the REC's, PREPA will not comply with the RPS and will end up, paying higher fines which are higher than the costs of the REC's.

Mr. González added:

"...that they were meeting the RPS standard by including the kilowatt hours from net metering besides the kilowatt hours that they purchased from the PPOAs. There were two columns. They added the two of them and they said with this total amount of RECs, we are complying with three percent, four percent of -- or we are doing three or four percent of the twenty percent that we had to comply. And we are saying now this is different. Before they said one thing in the commission. Now we went again and said look, now they are saying it belongs to them. We don't think they can claim something belongs to them that they have not paid for.

Q. You said a few times that in doing so, PREPA's -- in reporting these RECs which you said you were unpurchased as part of the RPS that PREPA is saying that they -- those RECs belong to them. What's the basis for that statement that they belonged to PREPA because they reported them?

A. The law not only in Puerto Rico but also in U.S. so that there is no conclusion on energy -- is one thing is energy and another thing is renewable energy. Where there is an RPS, for you to say that you are generating renewable energy, you have to purchase or generate yourself the renewable energy credits that that renewable energy produced. You cannot just simply say that that is renewable energy.

Because what you have is energy. The renewable entities are separate and they're distinct, and that's how the law and the framework has been done. So they, when they report that they had this renewable energy from these net metered sources to be part of their RPS requirement, they are misleading, they are providing false information to the public because they are claiming for themselves and we said okay, you claim and you say it's yours, okay. Now pay it to us because it's not yours, it's ours, because

you have already told the public, unless you were purposely misleading the public, that you had that renewable energy from the prosumers generated as part of your RPS requirement.

. . .

“PREPA reported on the public record that those RECs were used to meet the RPS requirement of a specific year by PREPA. That's what they say. PREPA said that those RECs, who belonged to me and nobody paid them to me that I had offered to tell them to them and they did not purchase, they went ahead and publicly stated that those RECs now were part of the compliance and they certified that they had complied with the RPS at a specific percentage base on RECs that they had bought, like the ones they bought from me, and the RECs from the prosumers that they also now say that they belong to them.”

This cost has not been considered in the Plan.

WHEREFORE it is respectfully requesting the Plan of Adjustment be rejected.

In San Juan, Puerto Rico, on June 12, 2023.

I HEREBY CERTIFY: that on January 12, 2018, we caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all counsels of record.

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