FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO

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BY ELECTRONIC MAIL

July 18, 2022

The Honorable Pedro Pierluisi Urrutia
Governor of Puerto Rico

Honorable José Luis Dalmau Santiago
President of the Senate of Puerto Rico

Honorable Rafael Hernández Montañez
Speaker of the House of Representatives of Puerto Rico

Dear Governor Pierluisi Urrutia, President Dalmau Santiago, and Speaker Hernández Montañez,

We are writing with respect to House Bill 1383 ("HB 1383" or the "Bill"), which was recently passed by the Legislative Assembly and sent to Governor Pierluisi Urrutia to be signed into law.

HB 1383 would amend Acts 83-1941, 57-2014, and 4-2016 to establish mandatory conditions on the restructuring of PREPA debt. The Bill, among other things, requires regulatory approval of any debt restructuring for PREPA, including its Title III case. Pursuant to the Bill, such approval cannot be granted unless the restructuring meets a series of conditions, including that: (i) consumer rates never rise above 20 ¢/kWh, (ii) PREPA's bondholders receive no more than 25% recovery, (iii) PREPA's pension system is not subject to any reform or adjustment, and (iv) PREPA's collective bargaining agreements are not rejected (effectively preventing any renegotiation of these agreements).

HB 1383 is inconsistent with the certified 2022 Fiscal Plans for both PREPA and the Commonwealth of Puerto Rico (the "PREPA Fiscal Plan" and "Commonwealth Fiscal Plan," respectively and, collectively, the "Fiscal Plans"), and if signed into law, the Oversight Board would likely determine that it impairs or defeats the purposes of PROMESA. The Bill negatively impacts the Oversight Board's exclusive authority under PROMESA to file a plan of adjustment, exercise control over property of the debtor, and establish the terms of debt restructuring. Through the Bill, the Legislative Assembly purports to exercise power, through itself and through the Puerto Rico Energy Bureau ("PREB"), that neither of them has.

PROMESA Title III empowers PREPA to issue debt without the Legislative Assembly or PREB's approval. The Bill nevertheless requires PREB's approval of any bonds issued in connection with the debt restructuring and conditions such approval on a list of requirements that would limit recovery by creditors, while preventing pension and labor reforms. As such, the Bill prevents PREPA from exiting its Title III case, contrary to the purposes of PROMESA.

In addition, as mentioned above, HB 1383 imposes a 20 ¢/kWh cap on consumer rates, well below the PREPA Fiscal Plan's rate projections, even without any increase for debt service.[1] The requirement to impose a perpetual cap on rates may jeopardize the proper operation of the electric system. It also strips PREPA of its main tool (i.e., rate increases) to keep up with rising costs (which in large part are beyond PREPA's control), and hinders fundraising for any necessary investments in the future.

Moreover, HB 1383 prohibits the operation and maintenance of PREPA's assets through a GenCo Operation and Maintenance Agreement as outlined in the Fiscal Plans.[2] It also mandates that PREPA's pension system be maintained as a defined benefits plan with no reforms essential to ensuring adequate funding of the system, which is currently underfunded by more than $3 billion.[3]

Based on the foregoing, HB 1383 is inconsistent with the Fiscal Plans and, if signed into law, the Oversight Board would likely determine that the Act impairs or defeats PROMESA's purposes. As such, PROMESA section 108(a)(2) would bar the Bill's implementation and enforcement.

The Oversight Board reserves its rights, including those under PROMESA sections 104(k), 108(a), 204, 207, 312, and 405, to take such actions it deems necessary, including seeking remedies, to prevent the implementation and enforcement of the Bill. We hope such actions will be unnecessary.

We look forward to continuing working together for the benefit of the people of Puerto Rico.

Sincerely,

Jaime A. El Koury
General Counsel

CC: Hon. Omar Marrero Díaz

[1] Certified PREPA Fiscal Plan at 138-140.
[2] Certified PREPA Fiscal Plan at 61-62; Commonwealth Fiscal Plan at 145.
[3] Certified PREPA Fiscal Plan at 175.