

Congress of the United States

Washington, DC 20515

February 1, 2018

The Honorable Ricardo A. Rosselló Nevares
Governor of Puerto Rico
La Fortaleza
P.O. Box 9020082
San Juan, PR 00902-0082

Dear Governor Rosselló Nevares,

On January 22, 2018, you made an announcement highlighting an intention to privatize the Puerto Rico Electric Power Authority (PREPA).¹ Prior to this announcement, your Administration proposed consolidating into a new agency the following public entities: the Telecommunications Regulatory Board, the Public Service Commission, the Independent Office of Consumer Protection, the Energy Administration of Puerto Rico, and the Puerto Rico Energy Commission (PREC).² We are writing to follow-up on these recent announcements and request additional details on the implications of these changes.

It is evident to us that the current structure of the Island's utility provider is not ideal. The longstanding disregard and mismanagement by PREPA's executives of infrastructure and organizational needs has resulted in intermittent service and extraordinary electricity costs. These known inefficiencies have caused businesses on the Island to be less competitive while fostering widespread disdain for PREPA among individuals and businesses alike. Even now, four months after Hurricanes Irma and Maria first made landfall on Puerto Rico, over 30 percent of the population is still experiencing the vestiges of these inefficiencies.

Your message makes numerous promises that are attractive to Puerto Rican businesses and individuals. You indicate that consumers would be able to choose between several options.³ You have also committed to designate part of the income generated by the privatization of PREPA to capitalize the retirement funds of employees.⁴ Most importantly, your message predicts that by privatizing PREPA, Puerto Rico can achieve an unambitious 30 percent renewable energy generation standard and faster responses to natural disasters.⁵ While we appreciate you prioritizing these issues, the public needs more detail about how these claims will be realized.

¹ <http://www.fortaleza.pr.gov/content/message-people-energy-transformation> (last visited January 24, 2018).

² Puerto Rico Senate Bill 808.

³ See *infra* note 1.

⁴ *Id.*

⁵ *Id.*

Two previous attempts to privatize a utility in Puerto Rico in order to achieve similar benefits have failed. The Puerto Rico Aqueduct and Sewer Authority (PRASA) pursued privatization twice between 1995 and 2004 to improve services and address deep infrastructure issues. The benefits that were promised to ratepayers to justify the privatization did not come to pass. Instead, they resulted in significant costs to the ratepayers who were left to deal with fines, legal fees, unmaintained infrastructure and other costs. A detailed study from the University of Iowa concluded that “Regarding greater efficiency or access to resources which will improve water services, there is no indication that either (contractor) PSG or Ondeo were more efficient, better managers or improved water services more than PRASA. In fact, the opposite was true... There is no indication that either private company that operated in Puerto Rico had access to monies that lead to investments and improvement in the delivery of water services.”⁶ Both contracts ended prematurely; the second ended 18 months into a 10-year contract. According to the former head of PRASA’s Board of Directors, PRASA lost \$1.1 billion during the first contract alone.⁷

Given the persistent opacity in PREPA’s operations and its management’s historic resistance to external oversight, we fear that the risks to ratepayers that come with utility privatization efforts could be multiplied in the absence of proper, independent regulatory oversight and consumer protections. Since you have already formally moved to significantly overhaul the Island’s current energy regulator,⁸ we would like more clarity on the guardrails you intend to put in place to prevent any loss of transparency or oversight authority, and how you will ensure the new umbrella agency will follow the direction the PREC has already traced.

We are also concerned that the full text of the privatization legislation would come after the Energy Commission is dissolved, enabling private companies and other entities to place superficially attractive bids on PREPA before proper scrutiny and analysis, and before consumers are able to fully assess the impacts of such a proposal. Accordingly, after a careful study of this issue, we request that you respond to the following questions before moving forward with privatization efforts:

1. What analysis of the conditions at PREPA indicate that the failures at PRASA will not be repeated and that promised benefits will be achieved this time? How would those goals be achieved? If the attempts to privatize are unsuccessful or otherwise fail to achieve the promised benefits, how will you ensure the ratepayers of Puerto Rico will not be asked to absorb the resulting costs? Which other models for PREPA reform were considered?
2. How will the Puerto Rican government prioritize transparency during the public-to-private transition, ensuring that the details of all relevant transactions, and execution of all such transactions, are fully and fairly disclosed to the public in a publicly and readily accessible manner?

⁶ <http://ir.uiowa.edu/cgi/viewcontent.cgi?article=2326&context=etd> (Last visited Jan. 28, 2018)

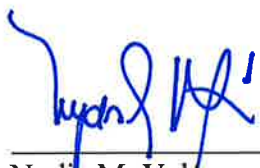
⁷ *Id.*

⁸ *See infra* note 2.

3. Who will be the persons negotiating the public-to-private transactions on behalf of the Puerto Rican government?
4. How will Puerto Rico ensure it has an enforceable oversight mechanism in contracts with private entities who assume PREPA's role over energy pricing and other contractual terms governing consumers?
5. Please describe in detail how the new umbrella agency will be an independent, regulatory, oversight body. Please include the ways in which it will absorb the duties of the PREC and regulate the private market for energy in Puerto Rico - much how energy is regulated at the state level - and establish cost controls and efficiency standards, while promoting clean and sustainable energy development in a way that is at least as effective as PREC.
6. Will the government agency contemplated in Question 5 also perform consumer protection duties, or establish an independent office therein whose primary mission is to protect potentially vulnerable and powerless consumers?
7. How will the private entities be required to coordinate and cooperate with water protection, environmental, and public health groups to ensure environmental and health impacts of privatization are minimized?
8. Will the customer contracts with the private entities who assume PREPA's role contain either: a) arbitration clauses limiting/barring a customer's right to pursue legal action in court; or b) clauses limiting/barring the right of the customers to bring class action lawsuits?
9. What will be the status of the existing employee union during and after the privatization process? Will the private entities who assume PREPA's role guarantee employees' right to organize? Will prior collective bargaining agreements be honored?
10. Please explain in detail how your Administration will ensure that pensioners' life savings are righteously safeguarded.
11. What is the impact to the Contributions in Lieu of Taxes under a privately-owned model? What is the impact to individual municipalities?
12. Will your privatization legislation contain provisions protecting federal taxpayer funds designated for Hurricane Maria recovery from being diverted to the private entities who assume PREPA's role?

As you can see, Congress has many questions regarding this process and we respectfully request that your Administration provides us with the necessary information. We must make sure that you will have an open and transparent process that informs the people of Puerto Rico about the different options available and that provides safeguards for the environment, collective bargaining, pensions, lower utility rates, and investments for a renewable and resilient energy system. We encourage you to fully and accurately address these concerns publicly so that the people of Puerto Rico can be fully informed about how privatizing one of the Island's most important public resources would impact them.

Sincerely,



Nydia M. Velazquez
Member of Congress



Raúl M. Grijalva
Member of Congress

José E. Serrano
Member of Congress