



The Hon. Pedro R. Pierluisi
Opening Statement for the Record
“Exploring Energy Challenges and Opportunities Facing Puerto Rico”
Subcommittee on Energy and Mineral Resources, House Committee on Natural Resources
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Introduction

Thank you, Chairman Lamborn. And I want to thank Congressman Lowenthal for giving me the opportunity to serve as ranking member for this hearing.

Let me begin by describing the factual backdrop against which the Subcommittee on Energy and Mineral Resources meets today. This is the sixth hearing on Puerto Rico that Congress has held in the past 11 months. Later this month, another subcommittee of the Natural Resources Committee is expected to hold a seventh hearing about Puerto Rico. During the time period in which Congress has debated this matter, but done nothing, the situation in the U.S. territory has gone from bad to worse. Since 2004, when Puerto Rico’s population was at its peak, the territory’s population has fallen by about 10 percent, from 3.82 million to 3.47 million—and preliminary data indicate that, in 2015, the level of migration from Puerto Rico to the states was the highest in the modern era. The Puerto Rico government has been unable to pay hundreds of millions of dollars in tax refunds it owes to taxpayers, in payments it owes to private-sector companies that sold products to or rendered services for the government, and in contributions it is required to make to its various public pension funds. According to a November 2015 report, for every dollar the government of Puerto Rico owes in pension payments to retired workers (former central government employees, municipal government employees, employees of all but one public corporation, public school teachers, and judges), it only has 4 cents, on average, to meet those obligations. Two of the roughly 18 public entities in the territory that issue bonds—the Puerto Rico Infrastructure Financing Authority (PRIFA) and the Puerto Rico Public Finance Corporation (PFC)—have missed scheduled payments to bondholders, and those missed payments led to the filing of a lawsuit against the government of Puerto Rico by two providers of financial guaranty insurance, known as bond insurers or monolines. If the present course continues, it is a virtual certainty that there will be additional—and far larger—defaults on bonded debt in mid-2016, followed by more lawsuits. Apart from lawyers and consultants, it is unclear who will benefit from this pattern of defaults and ensuing litigation. Certainly not my constituents, nor the vast majority of Puerto Rico’s individual and institutional creditors.

Congressional hearings can serve a valuable purpose, providing the evidentiary basis for legislation designed to address a complex problem of national importance—like the situation in Puerto Rico. But hearings can also become a substitute for legislative action or, put differently, a cover for legislative inaction.

Every objective observer recognizes that there is a genuine crisis in Puerto Rico, and that it is the joint responsibility of the Puerto Rico government, whose policies and practices have often been irresponsible and inept, and the federal government, whose policies towards Puerto Rico have been immoral, inequitable, and incoherent. If hearings such as this one lead to legislation—that is, if discussion culminates in deeds—then these hearings will have been worth the effort expended.

However, if these hearings are merely a forum for members of Congress to preach and pontificate about the Puerto Rico government’s shortcomings, while disregarding or downplaying the federal government’s own major contribution to the crisis in the U.S. territory, then all of these hearings will have been a colossal waste of time. This would be the ultimate insult to my constituents, who are truly hurting and who are asking only for a hand-up, not a hand-out, from their national government—in which they have no vote.

On December 16, 2015, Speaker Ryan issued a public statement, noting that he had instructed the committees of jurisdiction in the House to develop a “responsible solution” to the crisis in Puerto Rico by March 31, 2016. Since then, I have spoken with Speaker Ryan, House Majority Leader Kevin McCarthy, House Natural Resources Committee Chairman Rob Bishop, and House Judiciary Committee Chairman Bob Goodlatte. They assured me that they are cognizant of the need for congressional action to tackle this crisis. I thought then—and I continue to think now—that these assurances were made in good faith. I also believe that Speaker Ryan and his fellow Republican leaders recognize that I am a pragmatic legislator that is open to principled compromise and has no agenda other than helping the American citizens I represent, who have received a raw deal from both their local government in San Juan and their national government in Washington, DC.

As I emphasized at previous hearings, it is necessary and appropriate for Congress to enact a legislative package that authorizes Puerto Rico to restructure a reasonable portion of its roughly \$70 billion in debt, while ensuring that Puerto Rico fulfills the obligations to creditors enshrined in our own constitution. Creditors that have opposed a fair and orderly legal framework in which Puerto Rico can restructure some of its debt obligations are making a serious mistake, advocating a position that will not ultimately be in their self-interest. I hope they realize their error in judgment before it is too late. Whether they do or not, it is Congress’s job to legislate in the broader public interest, and not to be dissuaded from legislating by powerful players making poor arguments.

This legislative package should also provide Puerto Rico with more equitable treatment under key federal spending programs like Medicaid and Medicare¹ and federal tax credit programs like the earned income tax credit and the child tax credit, because the cumulative impact of such disparate treatment has been devastating for quality of life in Puerto Rico and for the fiscal situation of the territory government, which has over-spent local funds and over-borrowed in the capital markets in order to

¹ There has been recent progress on the Medicare front. The *Consolidated Appropriations Act for Fiscal Year 2016* (Public Law 114-113), enacted in December 2015, included the language of my bills to provide Puerto Rico hospitals with the same base payment rate as hospitals in the states for treating Medicare patients (H.R. 1417), and to make Puerto Rico hospitals eligible for the same Medicare bonus payments as hospitals in the states for converting to electronic health records (H.R. 1225). Nevertheless, Puerto Rico (and the other U.S. territories) continue to face numerous disparities under Medicare, and I have introduced legislation to eliminate or mitigate each of these disparities. *See* H.R. 2635 (Pierluisi) and S. 1961 (Schumer), *Improving the Treatment of the U.S. Territories Under Federal Health Programs Act*, and H.R. 4163 (Pierluisi) and S. 2342 (Nelson), the *Territories Medicare Prescription Drug Assistance Equity Act*.

compensate for the shortfall in federal support. Given the jurisdiction of this Subcommittee and the narrow scope of today's hearing, I want to emphasize that this legislative package could also include provisions aimed at ensuring that affordable and reliable electric power is available in Puerto Rico. I will describe a number of specific options later in my testimony.

If provisions granting the Puerto Rico government authority to adjust debt and improving the treatment of the territory under certain federal programs are included in the legislative package, I will not oppose a provision establishing a temporary and independent board that would help ensure that the Puerto Rico government complies with sound budgeting standards and fiscal metrics. However, I will adamantly oppose any federal oversight unless Congress provides Puerto Rico with the reasonable tools and the fair treatment we require and deserve. Such a one-sided approach would be a political stunt, not a practical solution to a serious problem.

Energy

I now turn to the specific subject of today's hearing—energy challenges and opportunities in Puerto Rico.²

The most pressing energy-related challenge in Puerto Rico is the high cost of electric power. Puerto Rico is an island jurisdiction that produces no petroleum, natural gas or coal, and that relies heavily on imported fuel—mainly petroleum—to generate electricity. Based on the best available data, the price of electricity for residential customers in Puerto Rico peaked in February 2013 (when the price of crude oil was about \$116 per barrel) at 30.6 cents per kilowatt hour, compared to a U.S. national average of 11.6 cents per kilowatt hour and a Florida state average of 11.3 cents per kilowatt hour. In recent years, as the price of oil has decreased substantially, the price of electricity paid by consumers in Puerto Rico has fallen as well, but remains high relative to the national average. For example, in November 2015 (the last month for which Puerto Rico data is available, when the price of crude oil was about \$44 per barrel), the price of electricity for residential customers in Puerto Rico was 19.3 cents per kilowatt hour, compared to a U.S. national average of 12.7 cents per kilowatt hour and a Florida state average of 11.6 cents per kilowatt hour. Of course, there is no guarantee that the price of oil will remain this low in the future, as oil prices are volatile and can rise or fall depending on events occurring anywhere in the world.

In Puerto Rico, the high price of electricity is compounded by the low ability to pay. Median household income in the U.S. territory is about \$19,500 a year, versus about \$52,000 in the states, and island households have to devote a significant portion of their limited monthly income to pay their electricity bills. This makes it harder for households to purchase other products and services, which serves as a drag on overall consumer demand, business sales, and economic activity. Likewise, businesses of all sizes in Puerto Rico invariably cite the high cost of electricity as one of the major challenges they confront. They emphasize that expensive electricity bills affect their ability to earn a profit, to expand operations, and to retain existing workers and hire new workers. Some larger companies in Puerto Rico have responded by disconnecting from the island-wide electric grid and generating their own electricity on-site, but this is not a feasible option for most businesses.

² See generally Puerto Rico Territory Energy Profile, U.S. Energy Information Administration, U.S. Department of Energy (last updated April 16, 2015), available at <http://www.eia.gov/state/?sid=RQ>.

The goal, then, must be to reduce the cost of electric power for the residential sector, the commercial sector, and the industrial sector in Puerto Rico. The argument that Puerto Rico households and businesses ought to pay *higher* electricity prices—a view I have heard expressed only by individuals who do not live on the island—should be treated with extreme skepticism. Before outlining various steps that can be taken at the local level and the federal level to improve the energy system in Puerto Rico and to provide cost savings to consumers, a bit of background will help frame the discussion.

Background

Puerto Rico’s electricity is supplied by the Puerto Rico Electric Power Authority, known as PREPA, a public corporation established in 1941. PREPA has a governing board consisting of nine individuals, six of whom are appointed by the governor of Puerto Rico with the advice and consent of the Puerto Rico Senate. Senior managers include an executive director, a vice-executive director, and various functional directors. PREPA has about 9,500 employees, including about 6,700 unionized workers affiliated with four separate unions. PREPA has its own employee retirement system, a defined benefit pension plan. About 14,000 individuals are currently receiving benefits under this plan. In 2014, PREPA had operating revenue of about \$4.7 billion. PREPA is in severe financial distress, and the outstanding principal amount of bonds that PREPA has issued exceeds \$8 billion. Like nearly all bonds issued by public entities in Puerto Rico, PREPA bonds have been downgraded by the three main credit rating agencies to non-investment grade—or junk—status.

PREPA owns and operates all but two of the electricity generating stations—power plants—in Puerto Rico. The PREPA system is composed of four main power plants. They are as follows:

- The “Costa Sur” plant in the municipality of Guayanilla, located on southwest coast of Puerto Rico, which consists of four units.
 - Unit 3 and Unit 4 burn Number 6 residual fuel oil (bunker fuel). Unit 3 and Unit 4 would operate on “limited use” status in the event that the Mercury and Air Toxics Standards (MATS), promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Clean Air Act, take effect.
 - Unit 5 and Unit 6 are capable of burning either bunker fuel or, due to a \$60 million investment made in 2012, natural gas.
- The “Aguirre” plant in the municipality of Salinas, located on the southeast coast of Puerto Rico, which consists of four units.
 - Unit 1 and Unit 2 burn bunker fuel.
 - Combined Cycle Unit 1 and Combined Cycle Unit 2 burn Number 2 fuel (diesel fuel).
 - In recent years, efforts to enable the Aguirre facility to burn natural gas were commenced but not completed. Before these units can burn natural gas, a means of delivering natural gas to the facility must be secured. To this end, Excelerate Energy—a Texas-based company—has proposed to construct (1) an offshore berthing platform off the southeastern coast of Puerto Rico to receive LNG from ships, and (2) a four-mile-long subsea pipeline connecting the berthing platform to the Aguirre facility. In July 2015, this proposal was approved by the Federal Energy Regulatory Commission (FERC), but it still requires approval from other

federal agencies. PREPA is seeking a loan guarantee from the U.S. Department of Energy to finance up to 80 percent of the project cost, but DOE has been unable to approve the loan guarantee application due to PREPA's financial condition and the associated risk that the public corporation would be unable to repay the loan. Additionally, I understand that, in order for this offshore project to have maximum impact, replacement—rather than simple retrofitting—of the existing units at the Aguirre plant would be required due to the age and condition of these units.

- The “Palo Seco” plant in the municipality of Cataño, in the San Juan metropolitan area, which consists of four units.
 - All four units burn bunker fuel.
 - Unit 1 and Unit 2 would operate on “limited use” status if MATS take effect.
- The “San Juan” plant located in the municipality of San Juan, which consists of six units.
 - Unit 5 and Unit 6 burn diesel fuel.
 - Unit 7, Unit 8, Unit 9, and Unit 10 burn bunker fuel. Unit 7 and Unit 8 would operate on “limited use” status if MATS take effect.

In addition to the four power plants owned and operated by PREPA, PREPA purchases power generated by two plants owned and operated by private companies.

- A plant in the municipality of Peñuelas, located on the southwest coast of Puerto Rico, which is owned by EcoEléctrica, a Puerto Rico corporation, which has 80 employees. The plant has been in operation since 2000. The plant burns natural gas, which is imported mainly from Trinidad and Tobago, as well as from Belgium, Nigeria, Norway and Spain, and is delivered to Puerto Rico on foreign-flagged ships. I understand that EcoEléctrica's import terminal—which receives LNG from a ship approximately twice a month—could accept up to 12 additional LNG ship deliveries a year. These additional shipments would require at least one federal regulatory action, namely FERC would need to approve an amendment to EcoEléctrica's existing permit to enable the company to go from using two to three of its four vaporizers (which convert natural gas from liquid form to gas form). EcoEléctrica has entered into a power purchasing agreement with PREPA.
 - In addition to purchasing electricity generated from natural gas at EcoEléctrica's plant in Peñuelas, PREPA also purchases natural gas from EcoEléctrica for use at Unit 5 and Unit 6 at PREPA's own Costa Sur plant in nearby Guayanilla. There is a natural gas pipeline connecting the EcoEléctrica facility in Peñuelas and the PREPA facility in Guayanilla.
- A plant in the municipality of Guayama, located on the southeast coast of Puerto Rico, which is owned by AES Puerto Rico, a subsidiary of the AES Corporation, based in Northern Virginia. The plant has been in operation since 2002. The plant burns coal, which is imported from Colombia and delivered to Puerto Rico on foreign-flagged ships. AES Puerto Rico has 110 employees. AES has entered into a power purchasing agreement with PREPA.

According to the latest statistics published by the U.S. Energy Information Administration within the U.S. Department of Energy, in 2013 Puerto Rico generated 55 percent of its electricity from petroleum, 28 percent from natural gas, 16 percent from coal, and 1 percent from renewable sources. In terms of renewables, Puerto Rico enacted legislation in 2010 that established a Renewable Energy Portfolio Standard, or RPS. Under the RPS, PREPA is required to obtain 12 percent of its electricity from renewable sources by 2015 (a standard it failed to meet), 15 percent by 2020, and 20 percent by 2035. Renewable sources in Puerto Rico include solar, wind and hydroelectric. AES Puerto Rico owns and operates the largest solar farm in Puerto Rico, which opened in 2012 in the municipality of Guayama. The electricity generated from this solar farm is sold to PREPA.

In May 2014, the Puerto Rico government approved Law 57-2014, the Puerto Rico Energy Transformation and RELIEF Act. The core of Law 57 is the creation of an Energy Commission, composed of three commissioners appointed by the governor with the advice and consent of the Puerto Rico Senate, to regulate PREPA and any other “energy company” that operates in Puerto Rico. Pursuant to Law 57, electricity rates established by PREPA, which previously had not been subject to meaningful review, must now be approved by the Energy Commission before taking effect. The intent of Law 57 is sound; how effectively the legislation will be implemented remains to be seen.

In August 2014, PREPA entered into “forbearance agreements”—providing a grace period during which PREPA’s creditors refrained from pursuing certain legal actions against PREPA—with fuel line lenders and some bondholders and bond insurers. These agreements were subsequently extended many times, through late 2015.³

In September 2014, PREPA’s governing board appointed Lisa Donahue—one of today’s witnesses—as chief restructuring officer. In this role, Ms. Donahue is charged with crafting and implementing structural and operational reforms at PREPA and negotiating a consensual debt restructuring agreement with creditors.⁴

Because Puerto Rico, unlike every state, does not have access to Chapter 9 of the federal bankruptcy code, the Puerto Rico government did not have the option of enacting legislation to authorize PREPA (or other instrumentalities) to seek the adjustment of its debts in a fair and equitable manner under the supervision of a federal judge. The Puerto Rico government could not even use the *prospect* of a Chapter 9 filing by PREPA as a means to foster swift and successful negotiations between PREPA and its creditors. As a result of Puerto Rico’s exclusion from Chapter 9, the territory government enacted a local law in July 2014 that sought to authorize certain public entities in Puerto Rico—including PREPA—to restructure their debts in the Puerto Rico court system. In February 2015, a federal district court invalidated that law on the ground that it is preempted by Chapter 9 (even though Chapter 9 excludes Puerto Rico) and, in July 2015, a federal appeals court affirmed that decision. However, in December 2015, the U.S. Supreme Court granted certiorari to review the appeals court’s conclusion, and that case will be argued and decided later this year.

³ See http://www.bgfpr.com/investors_resources/prepa.html.

⁴ See Lisa Donahue, Testimony Before the Committee on Energy Affairs and Water Resources, Puerto Rico Senate (April 14, 2015), available at <http://www.aeepr.com/Docs/Lisa%20Donahue%20PR%20Senate%20Statement%204-14-15.pdf>.

Late last year, after a process that can only be characterized as lengthy and laborious, PREPA—led by Ms. Donahue—reached an agreement with fuel line lenders and with bondholders and bond insurers controlling about 70 percent of PREPA’s bonds, called the Restructuring Support Agreement (RSA). Implementation of the RSA is contingent on the completion of a number of steps that must still be taken, including enactment of a bill called the PREPA Revitalization Act by the Puerto Rico Legislative Assembly. I have reviewed the English and Spanish versions of this legislation, but the text of the bill is still undergoing material changes.

In testimony delivered in support of the PREPA Revitalization Act before the Puerto Rico Senate on November 10, 2015, Ms. Donahue stated as follows:

Since entering into the Forbearance Agreements, PREPA has negotiated extensively with its creditors with the ultimate goal of reaching agreement on a comprehensive restructuring plan that addresses both PREPA’s financial and operational challenges. *The lack of an available legal framework within which to restructure its debts has complicated and extended PREPA’s negotiation process. We have no ability to compel anyone to agree or even participate in the process. Therefore the overall solution, which must be consensual, has to be fair, balanced and holistic.*⁵ (emphasis added)

As a matter of principle, I am a strong advocate of consensual debt restructuring negotiations between Puerto Rico’s bond-issuing public entities and their creditors—and I have criticized the current administration in San Juan for not being sufficiently proactive in pursuing such negotiations. As a matter of practice, I have concerns that consensual negotiations—if not backstopped by a legal framework that creates the proper incentives for the parties to reach an accord—can drag on for an excessive period of time, result in an agreement that is unfair or unbalanced, and lack a suitable mechanism to bind “holdout” creditors who disapprove of the terms of the deal. It bears emphasis that Chapter 9 is not intended to *substitute for* consensual negotiations—indeed, a debtor generally cannot obtain Chapter 9 relief unless it demonstrates that it sought in good faith to negotiate an out-of-court accord with its creditors—but rather to *facilitate* such negotiations.

During the question-and-answer session, I will ask Ms. Donahue to explain in simple terms (1) why she believes that the RSA—as embodied in the PREPA Revitalization Act now pending before the Puerto Rico Legislative Assembly—meets her self-imposed test of being “fair, balanced and holistic”; (2) what provisions in the agreement give her the most pause; (3) whether the agreement is in any tension with Law 57, especially the provisions of Law 57 that vest the Energy Commission with the power to approve electricity rates; (4) the practical implications of the fact that creditors controlling 30 percent of PREPA’s bonds have not signed the RSA; (5) whether the agreement will position PREPA financially to make necessary capital improvements to power plants, power lines and other energy

⁵ See Lisa Donahue, Testimony in Support of PREPA Revitalization Act Before the Committee on Energy Affairs and Water Resources, Puerto Rico Senate (November 10, 2015), available at <http://www.aeepr.com/Docs/PREPA%20-%20Donahue%20Statement%20Testimony%20to%20Legislative%20Assembly%20-%20Nov%2010.pdf>. When Ms. Donahue testified on November 10th, PREPA had yet to reach agreement with the three monolines ensuring roughly 28 percent of PREPA’s debt. Since that testimony was delivered, PREPA has reached agreement with two of the monolines, Assured Guaranty Corporation and National Public Finance Guarantee Corporation (a subsidiary of MBIA Inc.), rolling them into the RSA. To date, agreement has evidently not been reached with the third monoline, Syncora Guarantee Inc.

infrastructure; and (6) what impact the agreement is likely to have on electricity rates for island households and businesses in the short, medium and long term.

I am willing to support this agreement, but the burden of proof is on PREPA and its creditors to convince me that the terms of the deal are beneficial for the people of Puerto Rico. I will also ask the other witnesses on the panel for their perspective on the agreement.

Recommended Policy Steps at the Puerto Rico Level

There are four main policy steps that must be taken at the Puerto Rico level in order to improve the delivery of affordable and reliable power to households and businesses on the island.

First, operations at PREPA must be fundamentally reformed. Ms. Donahue’s April 2015 testimony before the Puerto Rico Senate—regarding the welter of deficiencies she found at PREPA—makes for sobering reading. As Ms. Donahue notes: “When I arrived at PREPA [in September 2014], it was clear to me that PREPA was far behind the industry in virtually every respect.” Among the many problems she identifies are: power plants that are old and technologically outdated, result in a high rate of forced power outages, and rely on expensive and environmentally-unfriendly fuel; strategic decisions—like whom to hire and what capital improvement projects to pursue—that are frequently based on political considerations rather than on sound business judgment; the absence of a comprehensive plan to ensure that PREPA’s power plants will be able to comply with federal environmental standards like MATS; a baffling rate structure that requires substantial revision; a lack of institutionalized procedures and processes; outdated information technology systems; the inability or unwillingness to collect payment from customers and to prevent theft of electricity; poor inventory control, procurement practices and customer service; and an unsafe working environment for employees. The situation that Ms. Donahue describes is totally unacceptable. PREPA can—and must—change the way it conducts business. I am heartened that Ms. Donahue has testified that improvements are in fact being made, and I will ask her to describe in more detail what reforms have occurred and what reforms still need to occur.

Second, PREPA must diversify its fuel supply, reducing its reliance on petroleum (which is not used in the 50 states to generate electricity) and increasing its use of natural gas and renewable energy sources. With respect to natural gas, it must be emphasized that the United States became the world’s largest producer of natural gas in 2011, and the first export terminals necessary to deliver that gas to other jurisdictions (whether non-contiguous states like Hawaii, U.S. territories like Puerto Rico, or foreign nations) will come online later this year. Puerto Rico should have the option of purchasing natural gas from the states, rather than from foreign countries, because it may be able to do so more efficiently and at lower cost. However, there are no Jones Act-compliant tankers available to transport natural gas from the states to Puerto Rico, which is why I introduced legislation to authorize modern tankers built outside the U.S. but otherwise compliant with the Jones Act to fill this gap.

Relatedly, if the Jones Act issue is addressed, I think Puerto Rico is well-positioned to serve as a U.S. natural gas hub for the Caribbean region. Specifically, a large tanker could transport natural gas from the states to Puerto Rico, whereupon the natural gas could be placed on smaller vessels for transport (so-called “milk runs”) to other islands in the area. With respect to renewables, I have been disappointed by the lack of progress made by the current administration in San Juan to comply with either the letter or the spirit of the RFS. With strong leadership and smart planning, Puerto Rico can do a much better job harnessing the power of the sun, the wind, and the water. Parenthetically, I also

believe that Puerto Rico has the potential to develop a biofuel industry, and (1) to use biofuels to blend with diesel fuel at those PREPA plants that still rely on Number 2 fuel, and (2) to use biofuels for transportation fuel, as is required in the U.S. mainland pursuant to the Renewable Fuel Standard (RFS) program.

Third, it is absolutely clear that there must be a larger role for the private sector in developing Puerto Rico's energy system—whether it is electricity generation, transmission or distribution. One model is the EcoEléctrica and AES model, in which PREPA enters into a contract to purchase power generated by a private corporation in a more cost-efficient manner than PREPA could generate on its own. Another model worth analyzing would be for a private corporation to generate electricity and then to deliver this electricity using PREPA's transmission and distribution lines (a process known as “wheeling”).

Fourth, PREPA must undertake a smart and serious capital improvement program to modernize its generation, transmission and distribution system. The problem, of course, is that PREPA is in severe financial distress, does not have access to credit markets, and will thus struggle to pay for new infrastructure or to upgrade existing infrastructure. Investors are understandably wary of entering into a contract with a public corporation that is financially unstable and may not be able to fulfill its contractual obligations. Thus, unless PREPA can achieve financial stability, whether as a result of the pending RSA or through other means, it will be difficult for PREPA to finance the capital improvements necessary to benefit consumers.

Recommended Policy Steps at the Federal Level

Hopefully, one purpose of this hearing is to explore ways in which the federal government—both the executive branch and Congress—can help Puerto Rico improve its energy system and provide affordable electricity to consumers. Here, then, are eight constructive steps the federal government could take:

- Appropriate Funds for the Congressionally-Authorized “Energy Action Plan” for Puerto Rico: In December 2014, Congress enacted the *Fiscal Year Consolidated and Further Continuing Appropriations Act* (P.L. 113-235). At my initiative, the law contains a provision requiring the Secretary of the Interior to appoint a team of technical, policy and financial experts to develop an “energy action plan” for Puerto Rico. The plan must include recommendations for how Puerto Rico can: (1) reduce its reliance on foreign fuels; (2) develop and utilize U.S. fuel energy sources; and (3) improve performance of energy infrastructure and overall energy efficiency. To date, the Secretary of the Interior has not appointed the required team, claiming that the Department does not have sufficient funding to prepare the plan. Congress should reassign responsibility for the plan from the Department of the Interior to the Department of Energy, which is better suited to prepare the plan, and then ensure that the Department of Energy prepares the plan without delay.
- Provide Equality for Puerto Rico Under LIHEAP: The Low Income Home Energy Assistance Program (LIHEAP), which is administered by the U.S. Department of Health and Human Services (HHS), helps low-income households pay their electricity bills. Puerto Rico has always been treated unequally under LIHEAP, receiving far less funding than it would if it were a state. Specifically, in the 1981 federal law that established LIHEAP, Congress directed HHS to allocate each year, for the five territories to share, no less than 0.10 percent and no more than 0.50 percent of the total LIHEAP appropriation. According to the law, the percentage annually allocated by

HHS is supposed to be determined on the basis of need in the territories. However, from the inception of LIHEAP until Fiscal Year 2013, HHS provided exactly 0.135 percent for the territories each year, just barely above the minimum level authorized by law. I led an effort by the five territory delegates to persuade HHS to increase the funding provided to the territories to the maximum amount allowed under law—0.50 percent—and this effort was successful. Accordingly, Puerto Rico received about \$15 million in both Fiscal Year 2014 and Fiscal Year 2015, compared to the less than \$4 million that Puerto Rico received under the old formula in Fiscal Year 2013. However, Puerto Rico is still treated unequally under the LIHEAP statute, compared to the states. Congress should amend the LIHEAP statute to provide Puerto Rico with state-like treatment, which—according to one estimate—would result in Puerto Rico receiving about \$24 million a year.

- Extend Federal Renewable Energy and Energy Efficiency Tax Credits to Puerto Rico Households: Congress has enacted various federal tax credits to encourage households to install renewable energy technology and energy efficiency technology. For example, there are federal tax credits for households that adopt solar-electric, solar water-heating, fuel cell, wind energy, and geothermal heat pump technology, and federal tax credits for households that make their homes more energy efficient, such as by purchasing certain appliances or installing insulation. See Internal Revenue Code §§ 25C, 25D, 45L and 45M. However, because Congress has exempted Puerto Rico households from paying federal income taxes on income earned in Puerto Rico, most households in the U.S. territory cannot benefit from these important credits. Therefore, as it has done with respect to other federal tax credits, Congress should amend current law to apply these renewable energy and energy efficiency credits to Puerto Rico through a “cover-over” mechanism. Under this mechanism, the U.S. Treasury Department would authorize the Puerto Rico government to offer these credits to households through the local Puerto Rico tax system, and the U.S. Treasury Department would make an annual grant to the Puerto Rico government to compensate it for the foregone tax revenue.
- Expand USDA Electricity-Cost Reduction Programs in Puerto Rico: The U.S. Department of Agriculture (USDA) administers multiple grant programs aimed at reducing the cost of electricity, including the Rural Energy for America Program (REAP) and the High Energy Cost Grant Program. Under REAP, USDA provides grants up to \$500,000 and loan guarantees to farmers and small businesses to help them purchase and install renewable energy systems or make energy efficiency improvements. While multiple farmers and small business owners in Puerto Rico have received grants under this program, it is clear that more can be done to expand the number of REAP applications from Puerto Rico, and so I urge USDA to enhance its efforts to educate potential applicants in the territory about the program. By contrast, the High Energy Cost Grant Program has not been put to use in Puerto Rico. This program was established in 2000 to provide assistance to communities most challenged by high energy costs. Grants may be used to improve energy generation, transmission or distribution facilities serving eligible communities, or to install renewable energy systems and make energy efficiency improvements in eligible communities. However, under current program rules, grants are only available in communities with annual residential energy costs exceeding 275 percent of the national average. Given that under the PREPA rate structure, a single island-wide rate is charged to customers, Puerto Rico has not been in a position to benefit from this important grant program. I urge USDA and PREPA to meet so that they can review whether there are ways in which this program could be modified in order to assist Puerto Rico communities, given the very high cost of electricity in the U.S. territory.

- Update the Existing Jones Act LNG and LPG Exemption in Puerto Rico: Congress should enact my legislation, *the Puerto Rico Interstate Commerce Improvement Act*, in order to increase the number of maritime vessels authorized to transport LNG and liquified petroleum gas (LPG) from ports in the U.S. mainland to ports in Puerto Rico. The Jones Act has three main pillars. It requires that products transported between ports in the United States be carried on vessels that are predominantly owned by U.S. citizens and registered in the United States, built at shipyards located in the United States, and operated with mostly U.S. citizen crews. In 1996, Congress granted Puerto Rico a narrow exemption from the Jones Act. That 1996 law authorizes two categories of vessels to transport LNG or LPG from ports in the U.S. mainland to ports in Puerto Rico, even though those vessels do not satisfy all three pillars of the Jones Act. The first category are vessels built outside of the United States prior to October 1996. The second category are vessels built in the United States prior to October 1996, but then registered by their owners in foreign countries. Under the Jones Act, once a vessel has been registered outside of the United States, it cannot subsequently be re-registered in the U.S. According to the best available statistics, only about 60 of the 450 or so foreign-built LNG tankers in the world qualify for the 1996 exemption under category one. The average age of those 60 tankers is about 30 years old, while the average age of all LNG tankers in operation is about 12 years old. In addition, there are only about 11 LNG tankers that qualify for the 1996 exemption under category two, and all are at least 35 years old. My legislation would update the 1996 exemption, allowing any vessel built outside of the United States, not merely those built before October 1996, to transport LNG and LPG from a port in the U.S. mainland to a port in Puerto Rico. This will benefit energy producers in the states, who will gain access to an important new U.S. market. It will also provide a direct benefit to consumers in Puerto Rico, who will see their electricity bills decrease and their environment improve.
- U.S. Department of Energy Report on the Potential for Puerto Rico to Become a Transshipment Hub for U.S.-Produced LNG in the Caribbean Region: Either as part of the energy action plan for Puerto Rico mandated by Congress in P.L. 113-235 (described above), or independent of that plan, the U.S. Department of Energy should prepare a report for Congress and the public on the feasibility and desirability of Puerto Rico becoming a transshipment hub for the distribution of U.S.-produced LNG and other energy products throughout the broader Caribbean region. If necessary, Congress should enact legislation requiring this report.
- Sustain and Strengthen USDOE Technical Assistance to Puerto Rico: In October 2014, with my support, the government of Puerto Rico and the U.S. Department of Energy signed a memorandum of understanding that provides a broad framework under which the parties are working together to shape an energy policy for Puerto Rico that is in the public interest and rooted in transparency, efficiency, and strong citizen participation. These efforts complement the process initiated by the Puerto Rico Energy Commission under Law 57 to help PREPA transform itself. USDOE—through subject matter experts in its Office of Energy Efficiency and Renewable Energy (EERE), Office of Fossil Energy, National Energy Technology Laboratory (NETL), and Office of Intergovernmental Affairs—has been periodically meeting with government and private-sector stakeholders in Puerto Rico to review progress, come to a consensus on a common vision, and set realistically-attainable energy diversification goals. Specifically, the Energy Commission is currently reviewing the draft Integrated Resource Plan (IRP)—which PREPA contracted with Siemens to prepare—that addresses generation, transmission, distribution and fuel options.

Stakeholders are providing input on the IRP with USDOE technical assistance. I urge USDOE to sustain and strengthen this technical assistance.

- Appropriate Funding for Energy Independence Grants and Power Line Grants for Puerto Rico: Through Section 251 and Section 252 of the *Energy Policy Act of 2005* (P.L. 109-58), Congress authorized two grant programs—solely for use in the U.S. territories—that could help the government of Puerto Rico improve its energy infrastructure if these programs were actually to be funded by Congress through the annual appropriations process and if the government of Puerto Rico were, in turn, to apply for assistance. First, Congress authorized up to \$500,000 for the U.S. Secretary of Energy to make an annual award to the government of Puerto Rico to study the feasibility of projects to reduce dependence on imported fossil fuels or to enhance the electricity distribution system on the island. While \$500,000 per year would be the maximum grant amount available for a project feasibility study, up to \$4 million is authorized for USDOE to help implement a feasible project. Second, Congress authorized the Secretary of the Interior to annually award up to \$6 million in grants to harden electric power transmission and distribution lines in Puerto Rico and the other U.S. territories against hurricane-related damage. However, neither of these authorized programs has ever received a congressional appropriation since their authorization in 2005. Congress should enact such an appropriation beginning in Fiscal Year 2017 so that Congress’s intent in authorizing these programs can be realized.