



June 14, 2016

Via Hand Delivery

Puerto Rico Energy Commission
500 Avenue Roberto H. Todd (Parada 18 – Santurce)
San Juan, Puerto Rico 00907

Re: The Puerto Rico Electric Power Authority Revitalization Corporation's Brief in Support of its Verified Petition for a Restructuring Order

Dear President and Commissioners:

The Puerto Rico Electric Power Authority Revitalization Corporation (the "Corporation") herewith submits to this honorable Commission its Brief in support of its Verified Petition for a Restructuring Order ("Verified Petition") filed before this Honorable Commission on April 7, 2016. The Corporation submits the Brief for filing pursuant to Article 6.25A of Act 57-2014, as added by Article 20 of the PREPA Revitalization Act, Act 4-2016 (the "Revitalization Act"); the procedures established by Resolution No. CEPR-MI-2015-0001, Administrative Order on Adjudicative Procedures, Deficiency Notices, Rate Review, and Investigations before the Puerto Rico Energy Commission, issued by this honorable Commission on February 19, 2015; and the Resolution and Orders issued by this honorable Commission on April 22, 2016, June 3, 2016, and June 9, 2016.

An electronic version of this Brief will be provided separately to the Commission.

Sincerely,

Michael Guerra

Enc.

cc: Attached Service List

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COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

IN RE: PETITION FOR APPROVAL
OF TRANSITION ORDER FILED
BY THE PREPA
REVITALIZATION
CORPORATION

PUERTO RICO ELECTRIC POWER
AUTHORITY REVITALIZATION
CORPORATION,

Petitioner.

NO. CEPR-AP-2016-0001

**SUBJECT: BRIEF OF THE
PREPA REVITALIZATION
CORPORATION**

**BRIEF OF THE PUERTO RICO ELECTRIC
POWER AUTHORITY REVITALIZATION CORPORATION**

TO THE HONORABLE PUERTO RICO ENERGY COMMISSION:

Comes now the Puerto Rico Electric Power Authority Revitalization Corporation (the “Corporation”), a special purpose public corporation and instrumentality of the Government of the Commonwealth of Puerto Rico (the “Commonwealth”), and respectfully submits this Brief to the honorable Puerto Rico Energy Commission (the “Commission”) in timely compliance with the procedural schedules established by the Commission’s Resolution and Orders of April 22, 2016, June 3, 2016 and June 9, 2016.

I. INTRODUCTION

During the past several decades, the Puerto Rico Electric Power Authority (“PREPA”) issued substantial debt to fund capital expenditures and, in the case of fuel related credit facilities, operating expenses. In total, PREPA has debt obligations of approximately \$9 billion, including nearly \$735 million currently due under its revolving fuel lines of credit and approximately \$420 million in principal and interest that will be due on or before July 1, 2016,

under its outstanding bonds. Donahue Direct (“Dir.”), Corporation Exhibit (“Corp. Ex.”) 1.00, 12:267–271. PREPA cannot meet these financial obligations absent a financial restructuring and transformative change.

In light of its financial situation, PREPA negotiated with major creditors to arrive at a broad, consensual financial settlement, and has entered into a Restructuring Support Agreement, dated as of January 27, 2015 (as amended or restated from time to time, the “RSA”) with creditors holding or insuring approximately 70% of the face amount of PREPA’s outstanding financial indebtedness. These Creditors include beneficial owners and insurers of existing PREPA bonds, banks (and their transferees) that previously provided revolving lines of credit used to pay for fuel and other expenses, the Government Development Bank (“GDB”) for Puerto Rico (collectively, the “Supporting Creditors”), and others. The Corporation is now also a party to the RSA. The RSA sets forth material terms of PREPA’s financial and operational restructuring. A cornerstone of the restructuring is the issuance, by a special purpose vehicle that was to be created by legislation, of bonds (the “Bonds”) authorized by the Restructuring Resolution¹ to defease, exchange for, and/or effectively refinance certain debt of PREPA. The Bonds include Closing Date Bonds and Post-Closing Date Bonds, and those two categories can be broken down into further categories, as described later in this Brief. Donahue Dir., Corp. Ex. 1.00, 8:154–10:133.

¹ The Corporation attached the original Restructuring Resolution (the “Original Restructuring Resolution”) as Attachment 1.00 to its April 7, 2016, Verified Petition for Restructuring Order (the “Petition”). The Corporation presented a revised Restructuring Resolution as an exhibit filed at the same time as this Brief on June 14, 2016, as Corp. Supplemental (“Supp.”) Ex. 10.01. As discussed herein, the revisions to the Restructuring Resolution were made in response to the Commission’s 5th Clarification Request and Commission and Intervenor inquiries at the Technical Hearings held May 24–27, 2016, and June 9, 2016. In order to avoid confusion, all citations to the Restructuring Resolution refer to that revised document. Where a citation is necessary to the “Original Restructuring Resolution,” this Brief refers to that document filed along with the Petition on April 7, 2016.

The Legislative Assembly of Puerto Rico subsequently enacted, and the Governor on February 16, 2016, signed, Act 4-2016 (the “Revitalization Act” or “PRA”) to address PREPA’s legacy debt and cement PREPA’s transformation for benefit the Commonwealth and its citizens as a whole. The Revitalization Act created the Corporation, which is the special purpose vehicle contemplated by the RSA, and it implements essential terms of the RSA, which is the “Agreement with Creditors” referred to in the Revitalization Act, and authorizes the Corporation to issue the Bonds. The Revitalization Act sets forth, among other things: characteristics of the Bonds and describes the Restructuring Property created to secure, satisfy, and support the payment of the Bonds; the Calculation Methodology² under which Transition Charges are established to fund Upfront Financing Costs and Ongoing Financing Costs and adjusted over time; Transition Charge Revenues; the associated Adjustment Mechanism; and the Servicing Agreement that provides for the administration, billing, and collection of the Transition Charges on behalf of the Corporation. It also provides for the issuance of a Restructuring Order by the Commission.

The plan set forth in the Revitalization Act is premised on the notion that all stakeholders, including PREPA’s creditors, management, employees, governmental instrumentalities, and municipalities, must share the burden to restore PREPA. This filing addresses the portion of the plan related to creditor concessions. In particular, the transaction addressed in this filing restructures a majority of PREPA’s debt of approximately \$9 billion and locks in creditor concessions totaling over \$725 million. Donahue Dir., Corp. Ex. 1.00, 12:267–271, 16:360–17:378; Mace Dir., Corp. Ex. 4.00, 49:1061–50:1084. In conjunction with significant operational improvements and a rate case pending before the Commission in another docket, this

² This Brief uses capitalized terms that are defined previously in the Corporation’s Petition and such capitalized terms are used as defined in the Petition.

transaction will play a significant role in reducing the gap between PREPA's revenues and expenses. Quintana Dir., Corp. Ex. 2.00, 7:128–9:184. It also will provide significant benefits to the citizens of Puerto Rico, and demonstrate concretely the ability of a key institution of the Commonwealth to successfully restructure its debt burden. The benefits to Puerto Rico include:

- **Reduced Costs:** Under the transaction outlined in the RSA, existing PREPA uninsured bondholders that participate have agreed to exchange their power revenue bonds at an 85% exchange rate — or a 15% discount to principal owed under existing uninsured PREPA bonds for new securitization bonds issued by the Corporation with a five-year principal holiday and an agreed-upon weighted-average interest rate pursuant to a pricing grid included in the RSA that is projected to be lower than the weighted-average interest rates on PREPA's existing bonds.³ Donahue Dir., Corp. Ex. 1.00, 13:302-308. While the total net savings to PREPA's customers ("Customers") cannot be precisely quantified in advance because its exact value depends on factors that are not now known at this time, the Corporation estimates that the statutorily identified transactions described in the Restructuring Resolution will result in at least \$725 million of present value savings, which will benefit Puerto Rico and its citizens.
- **PREPA's Modernization:** The Bonds and the transactions described in the Restructuring Resolution will help restore PREPA to financial stability through the restructuring of PREPA's debt burden and enable a capital plan for PREPA to invest in modernization, become more efficient, and comply with environmental regulations,

³ As discussed herein, this transaction also includes the issuance of "Mirror Bonds" to economically defease certain insured PREPA bonds with the Monoline Insurers providing an additional capital commitment in the form of one or more, debt service reserve fund surety policies (each, a "Surety Bond") to provide credit support for the Bonds.

all to the benefit of the Commonwealth and all its citizens. PREPA has implemented a series of operational and administrative changes that have generated savings on many fronts and will generate increasing savings over time. Thus far, PREPA has achieved \$165 million in one-time savings and approximately \$190 million in recurring annual savings. Quintana Dir., Corp. Ex. 2.00, 8:151–155. Without relief from its current debt burden, it will be difficult for PREPA to continue its transformation into a modern, efficient, and environmentally compliant electric utility as called for by Act 57-2014 and the Revitalization Act, and as envisioned by the RSA. *Id.*

- **Investment in Puerto Rico’s Economic Infrastructure:** The revitalization of PREPA will promote investment and economic activity in Puerto Rico. In addition, by enabling PREPA to become a utility that can provide efficient, safe, reliable, and environmentally friendly service at just and reasonable rates, the restructuring of PREPA’s debt will stimulate Puerto Rico’s economic growth. Quintana Dir., Corp. Ex. 2.00, 9:174–184.

Commission approval of the Corporation’s Petition is required in order to realize these benefits. The Revitalization Act provides for an “expedited and extraordinary” process on a defined timetable, under specific statutory criteria, and under statutory procedures.⁴ Article 6.25A enumerates the specific criteria under which the Commission must evaluate the Petition and the findings that the Commission must make to issue the Restructuring Order. In particular, the Corporation must satisfy only two requirements – one procedural and one substantive:

⁴ Under Article 6.25A(f), the Commission must approve this Petition by making certain findings in a Restructuring Order or adopt a resolution rejecting the Petition and stating the reasons for such rejection within seventy-five (75) days of the Corporation Petition Date (as defined therein). If the Commission takes no action, Article 6.25A(f)(4) provides that the Petition will be deemed approved as a matter of law.

First, procedurally, the Corporation must satisfy certain statutory submission requirements enumerated in the Revitalization Act. Specifically: Article 6.25A(c) and (e) set forth detailed requirements regarding what must be included the proposed Restructuring Resolution, the Petition, its attachments and testimony.

Second, and more substantively, the Corporation's request must support the three findings the Commission must make.

1. The provisions of the Restructuring Resolution proposed by the Corporation (the "Restructuring Resolution") (Corp. Supplemental ("Supp.") Ex. 10.01) including the calculation methodology for the Transition Charges and Adjustment Mechanism related to the Bonds are consistent with the criteria set forth in Article 6.25A(d) and are sufficient for and provide for adequate protection of the full and timely payment of the Bonds, in accordance with their terms, and other Ongoing Financing Costs;
2. The Upfront Financing Costs and Ongoing Financing Costs proposed to be recovered from the Bond proceeds or the Transition Charge Revenues are consistent with Article 6.25A and Chapter IV of the Revitalization Act; and
3. The servicing costs proposed to be recovered by PREPA in its role as the initial Servicer (the "Initial Servicer") are necessary, reasonable, and sufficient to compensate PREPA for the incremental costs of performing its functions as the Initial Servicer.

The Corporation has satisfied the requirements of the Act and the record supports the three findings the Commission must make. This Brief addresses each of the Revitalization Act's requirements and is organized as follows:

- **Section II** provides background and describes the transaction and the nature of the proceeding;
- **Section III** addresses how the Corporation has met the statutory submission requirements;
- **Section IV** addresses how the Corporation's filing supports the three findings that the Commission must make pursuant to Article 6.25A(b);
- **Section V** addresses compliance with Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act ("Article 29") and addresses issues raised by Intervenors; and
- **Section VI** sets forth the Corporation's Conclusion and Relief Requested.

II. BACKGROUND

A. The Transaction and Restructuring Resolution

Since its creation in 1941, PREPA has provided electric service to the vast majority of Puerto Rico. PREPA has issued substantial debt in the past several decades to fund capital expenditures and, in the case of fuel related credit facilities, operating expenses. As a result, PREPA has debt obligations of approximately \$9 billion, including nearly \$735 million currently due under its revolving fuel lines of credit and approximately \$420 million in principal and interest that will be due on or before July 1, 2016 under its outstanding bonds. Donahue Dir., Corp. Ex. 1.00, 12:267–272. PREPA cannot meet these financial obligations absent a financial restructuring and transformative change. *Id.*

On June 28, 2014, Puerto Rico enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act⁵, which allowed PREPA to begin restructuring its debt burden. Quintana Dir., Corp. Ex. 2.00, 4:64–84. Shortly thereafter, PREPA entered into the forbearance agreements with creditors holding or insuring approximately 70% of the face amount of PREPA's outstanding financial indebtedness. *Id.*

In December 2015, PREPA executed an initial version of the RSA with Supporting creditors. The RSA sets forth material terms of PREPA's financial and operational restructuring. The RSA provides, in pertinent part and in summary, that the Corporation will issue certain Bonds including bonds to be exchanged for certain existing uninsured PREPA bonds that have greater face value and that impose greater aggregate financial burdens on PREPA and, ultimately, on the citizens of Puerto Rico. For the existing PREPA uninsured bondholders that participate, the RSA provides for an 85% exchange rate — or a 15% discount to principal owed under existing uninsured PREPA bonds — as well as a five-year principal holiday and an agreed-upon weighted-average interest rate pursuant to a pricing grid included in the RSA that is projected to be lower than the weighted-average interest rates on PREPA's existing bonds. Donahue Dir., Corp. Ex. 1.00, 13:302–308. In addition, under the RSA, in return for a commitment to defease certain insured PREPA bonds with Mirror Bonds (as defined in the Restructuring Resolution), certain Monoline Insurers Insurers (as defined in the Restructuring Resolution) will provide an additional capital commitment in the form of one or more debt service reserve fund surety policies (each, a “Surety Bond”) to provide credit support for the Bonds. This credit support provides liquidity relief to PREPA. Donahue Dir., Corp. Ex. 1.00, 14:324–15:331.

⁵ Act 71-2014.

The Revitalization Act contemplates significant operational reforms related to PREPA's operations. Quintana Dir., Corp. Ex. 2.00, 5:87–92. In addition to implementing the essential terms of the RSA, it authorizes the Corporation to issue Restructuring Bonds to restructure many of PREPA's debt obligations. Quintana Dir., Corp. Ex. 2.00, 5:92–95. The Revitalization Act sets forth, among other things: characteristics of the Bonds and the Restructuring Property created to secure, satisfy, and support the payment of the Bonds; the Calculation Methodology under which Transition Charges are established to fund Upfront Financing Costs and Ongoing Financing Costs and adjusted over time; Transition Charge Revenues; the associated Adjustment Mechanism; and the Servicing Agreement that provides for the administration, billing, and collection of the Transition Charges on behalf of the Corporation. In order to issue these Bonds, the Revitalization Act requires the Corporation to submit a request to the Commission asking it to issue a Restructuring Order whereby the Commission shall make certain determinations regarding the Restructuring Resolution, proposed costs, and proposed service charges of the Corporation's securitization transaction. Act 57-2014, Article 6.25A(b).

The Corporation proposes to issue several different kinds of Bonds which are specifically described in the Restructuring Resolution. Corp. Supp. Ex. 10.01, Appendix 2, Findings of Fact 1 – 3. The Bonds may be broadly grouped into two separate categories: the “Closing Date Bonds” and the “Post-Closing Date Bonds.” The Closing Date Bonds are comprised of “Exchange Offer Bonds,” “Mirror Bonds” (including the “Monoline Mirror Bonds”), “Other Mirror Bonds,” “New Money Bonds,” “Cash Offer Bonds,” “Lender Bonds,” and “Closing Date Syncora Bonds.” Corp. Supp. Ex. 10.01, Findings of Fact 1; Donahue Dir., Corp. Ex. 1.00, 8:156–9:210; Mace Dir., Corp. Ex. 4.00, 5:101–7:153. In addition, after the Closing Date, one or more series of Bonds may be issued, including Bonds in voluntary exchange for 2016 PREPA

Bonds, “Post-Closing Date Syncora Bonds,” and “New Money Bonds.” Corp. Supp. Ex. 10.01, Appendix 2, Findings of Fact 1; Donahue Dir., Corp. Ex. 1.00, 9:211–10:228; Mace Dir., Corp. Ex. 4.00, 7:154–1721. Post-Closing Date Bonds shall be payable, on a parity with all Closing Date Bonds, from, and secured, equally and ratably with all Closing Date Bonds, by, the Restructuring Property pledged to the payment of the Bonds in the Trust Agreement. Corp. Supp. Ex. 10.01, Appendix 2, Finding of Fact 1; Donahue Dir., Corp. Ex. 1.00, 10:229–231; Mace Dir., Corp. Ex. 4.00, 7:172–174. Absent the voluntary exchange for Post- Closing Date Bonds, the 2016 PREPA Bonds would remain a liability of PREPA. Donahue Dir., Corp. Ex. 1.00, 10:232–233; Mace Dir., Corp. Ex. 4.00, 8:175–176.

Approving the Petition by making the findings specified in Article 6.25A(b) and issuing a Restructuring Order will, in total and on balance, reduce PREPA’s debt and ultimately reduce the costs of debt service and credit agreements to all Customers. Donahue Dir., Corp. Ex. 1.00, 17:387–389; Mace Dir., Corp. Ex. 4.00, 5:93–96. Further, the Bonds and the transactions described in the Restructuring Resolution will help restore PREPA to financial stability through the restructuring of PREPA’s debt burden and enable a capital plan for PREPA to invest in modernization, become more efficient, and comply with environmental regulations, all to the benefit of the Commonwealth and all its citizens. Quintana Dir., Corp. Ex 2.00, 3:55–57; 9:174–184.

B. Nature of this Proceeding

The scope of the Commission’s jurisdiction and authority in this proceeding is discrete and focused: the Commission must make a determination regarding the completeness of the Corporation’s filing, hold one or more public hearings and providing sufficient public notice of said hearings, make determinations regarding three specific criteria set forth in Article 6.25A(b), and issue a Restructuring Order or adopt a resolution rejecting the request within a seventy-five

(75) day timeframe. PRA Article 6.25A(c); Article 35(b)(i); Article 6.25A(f)(1); Article 6.25A(b); Article 6.25A(f)(2).⁶

The Commission is also guided in its determination by Article 35(b), which sets forth the process for approval of the Corporation's request and states that "the Commission shall review the proposed Restructuring Resolution and such other information to determine whether the Calculation Methodology followed by the Corporation for the Transition Charges and the Adjustment Mechanism to be applied to adjust the Transition Charges is consistent with the cost allocation and other standards set forth in Article 6.25A of Act No. 57-2014, and is not arbitrary or capricious." Article 35(b)(i). The Corporation has supported the Calculation Methodology with detailed testimony demonstrating that it meets the Revitalization Act's arbitrary and capricious standard. Donahue Dir., Corp. Ex. 1.00, 7:140–141. No Intervenor has alleged that the Calculation Methodology is arbitrary or capricious. The Corporation has also satisfied the cost allocation and other standards set forth in Article 6.25A, as described in detail below.

The record fully demonstrates that the Corporation has satisfied all the procedural and substantive requirements established by Article 6.25A and Chapter IV of the Revitalization Act. The Commission determined on April 12, 2016, that the Corporation's Petition was complete. Resolution and Order, April 12, 2016. Technical public hearings were held between May 24-27, 2016, and Technical Clarification Calls were held on June 9, 2016. The three specific criteria under Article 6.25A(b) have been satisfied through the Corporation's Petition and attachments

⁶ The Revitalization Act provides that "[t]he establishment and adjustment of the Transition Charges made by the Corporation in relation with the Adjustment Mechanism shall not be subject to legislative or any other governmental review or approval, except as provided in Article 34, regarding the review by the Commission to correct mathematical errors made by the Corporation, and Article 35(b) with respect to the approval of the Adjustment Mechanism in the Restructuring Order." PRA, Art. 31, para. 23.

thereto, its prefiled direct testimony and exhibits thereto, its submissions of information, and its witnesses' testimony and participation at the public hearing and technical conferences.

C. The Corporation's Alternative Transition Charge Design in Response to the Commission's 5th Clarification Request

Throughout this process, the Corporation has worked in good faith with the Commission and Intervenors to respond to Commission requests for clarification and Intervenors' testimony and comments. As a result of this collaborative process, and particularly in response to the Commission's 5th Clarification Request, the Corporation has proposed a revised Calculation Methodology containing two modifications. *See* Corp. Supp. Ex. 10.01.

First, in response to the Commission's 5th Clarification Request, the Corporation proposed a Calculation Methodology that would impose a Transition Charge on "grandfathered" Customers only with respect to their net energy use. Specifically, as discussed in more detail below, the Calculation Methodology "grandfathers" net metering customers who have entered into, or are eligible to enter into, net metering agreements that satisfy the requirements of Article 29 of the Revitalization Act. In conjunction with this first modification, the Corporation requests that the Commission, in making the required findings concerning the calculation of the Transition Charge, make an additional finding taking notice of the Corporation's treatment of Grandfathered Net Metered Customers and determine that the criteria of Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act, are satisfied. The Corporation also requests that the Commission accept the Corporation's proposal that the load of non-grandfathered net metering Customers for the purposes of distributing Financing Costs among Customer classes and calculating those Transition Charges that are based on kWh usage, be based on estimated total electric consumption as described herein and in the Restructuring Resolution.

Second, the method for calculating Transition Charges for Residential Customers, as authorized by Article 6.25A of Act 57-2014 as amended by Act 4-2016, has been modified to be based upon their historic energy usage (kWh) instead of a per servicing agreement charge as originally contemplated. This modification provides that Customers who under Article 3.9(b) of Law 22-2016 and under PREPA's tariffs, implementing said Article 3.9(b), pay a fixed charge for the applicable consumption-based block of electricity, and will pay the Transition Charge only on their kWh usage beyond the Customer's permitted block of electricity under Article 3.9(b) of Law 22-2016 (as such blocks are established as of the date of this Restructuring Order and as they may be adjusted from time to time in accordance with Article 3.9(b)(4) of Law 22-2016). These Customers are referred to in the Calculation Methodology as Fixed Block Public Housing Customers. *See* Restructuring Resolution (Corp. Supp. Ex. 10.01), Appendix 2.

The calculation of the Transition Charge applicable to Residential Customers is supported by testimony elicited at the Technical Hearing and through information submitted by the Corporation in its Response to 5th Clarification Request. In compliance with a Commission directive at the June 9, 2016, clarification call, the Corporation also filed Supplemental Responsive Testimony on June 14, 2016 contemporaneously with this Brief. It is expected that the Commission will make these additional supplemental testimonies and exhibits part of the record after the filing of this Brief. In this testimony, Corporation witnesses Ralph Zarumba and Gerard Gil-Olazábal describe the changes, confirm that the alternative rate design for Residential Customers as described above meets the requirements of the Revitalization Act, and indicate that the Corporation supports the approval of this modified proposal over the original proposal. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 2:19–28; Gil-Olazábal Supp. Dir., Corp. Supp. Ex. 10.00, 2:33–49.

While the original proposal was consistent with the requirements of the Revitalization Act, this modified proposal made in response the Commission's 5th Clarification Request best meets the law and the concerns expressed by the Commission and the Intervenors in this proceeding. Therefore, the Commission should issue a final and non-revocable Restructuring Order, as provided in Article 6.25A(f), making the findings and determinations requested in the Petition and as modified by the Corporation's Responses to the Commission's 5th Clarification Request that are incorporated into its Supplemental Testimony.

III. THE CORPORATION'S SUBMISSION IS COMPLETE AND MEETS THE REQUIREMENTS OF ARTICLE 6.25A(c) AND (e)

The Corporation has met all requisite requirements of Article 6.25A(c) and (e), which list each of the specific criteria that the Petition, the Restructuring Resolution, and the supporting material must meet and that the Commission must apply in determining whether to issue a Restructuring Order. The Petition, its attachments and its supporting materials, including the Restructuring Resolution, satisfy all of the requirements of, and include the documents and other information listed in, Article 6.25A(c) and (e).⁷ Indeed, the Commission determined through its Resolution and Order of April 12, 2016, that the Corporation's Petition was complete for purposes of Article 6.25A(c) of the Revitalization Act. Moreover, no Intervenor testimony or

⁷ The Corporation submitted its Verified Petition for Restructuring Order and related prefiled testimony and exhibits of its witnesses on April 7, 2016. Notice of the Corporation's Petition and this proceeding was provided in accordance with the requirements of Article 6.25A(f)(1) of the Revitalization Act, which requires the publication of summaries of the Petition in both English and Spanish on the websites of the Commission, the Commission, the Authority, and the Corporation. On six occasions, the Commission issued requests for clarification seeking information to allow the Commission to efficiently evaluate the Corporation's Petition. *See* Resolution and Order of April 13, 2016; Resolution and Order of April 18, 2016; Resolution and Order of May 9, 2016; Resolution and Order of May 19, 2016, Resolution and Order of May 31, 2016, and Resolution and Order of June 9, 2016. In each instance the Corporation filed a timely Submission of Information providing the Commission with the requested files and information and supplemented those submissions when appropriate. *See* PREPARC Submission of Information of April 7, 2016; PREPARC Submission of Information of April 25, 2016, PREPARC Supplemental Submission of Information of May 2, 2016, PREPARC Submission of Information of May 16, 2016; PREPARC Supplemental Submission of Information of May 23, 2016, PREPARC Submission of Information of June 6, 2016; PREPARC Submission of Information of June 7, 2016 and PREPARC Submission of Information of June 10, 2016.

statement disputes that the Petition is complete. The following section addresses the Corporation's satisfaction of each the Article 6.25A(c) and (e) criteria.

- **Article 6.25A(c)** requires the Petition to “include a copy of the initial Restructuring Resolution proposed, which shall be consistent with the provisions of this [Article] 6.25A, [Article] 34, and Chapter IV of the [Revitalization Act,] and shall include the documents listed in subsection (e) of [Article] 6.25A.” (PRA Art. 6.25A(c)). The Restructuring Resolution contains each of the items listed in these sections: 1) it includes the data and elements required by Article 6.25A(b)(1), (c), (d) and (e) as described below in this brief; 2) it satisfies each of the items enumerated in Article 34 including providing details and specifications of the issuance of the Restructuring Bonds, specifying the Calculation Methodology for the Transition Charges and describing the Approved Restructuring Costs to be paid through the issuance of the Restructuring Bonds and recovered through Transition Charges; 3) it is consistent with the definition of a “Restructuring Resolution” as set forth in Chapter IV in that it, among other things, creates the Restructuring Property and approves the imposition and collection of Transition Charges and the financing of Approved Restructuring Costs through the issuance of Restructuring Bonds. (Corp. Supp. Ex. 10.01). This information was also included in the Original Restructuring Resolution (Petition Attachment 1.00).
- **Article 6.25A(e)(1)(i)** requires that the proposed Restructuring Resolution contain “[a] description and documentation supporting the Upfront Financing Costs and the proposed Ongoing Financing Costs, to be recovered from the revenues of the Restructuring Bonds or the Transition Charges, as the case may be[.]” This description and documentation are contained the Restructuring Resolution (Corp. Supp. Ex. 10.01) in the following places: Findings of Fact 10 and 16, Schedule D (also attached to the Petition as Attachment 2.01), and Schedule E (also attached to the Petition as Attachment 2.02). This information was also included in the Original Restructuring Resolution (Attachment 1.00) in Findings of Fact 10 and 16, Schedule D, and Schedule E.

- **Article 6.25A(e)(1)(ii)** requires that the proposed Restructuring Resolution include “[t]he determination of Customer classes among which the Ongoing Financing Costs shall be allocated and the allocation of the Ongoing Financing Costs among Customer classes.” This customer class determination is contained in paragraph 27 of the Restructuring Resolution (Corp. Supp. Ex. 10.01) and the allocation is detailed in clause (1) and (2) of the Adjustment Mechanism (Appendix 2 to Corp. Supp. Ex. 10.01). This information was also included in the Original Restructuring Resolution in in clause (1) and (2) of the Adjustment Mechanism (Attachment 1.00, Appendix 2).⁸
- **Article 6.25A(e)(1)(iii)** states that the proposed Restructuring Resolution must include “[t]he calculation of Transition Charges for Customers (excluding residential Customers) based on energy usage history (kWh) data along with sufficient information to allow the Commission to reproduce said Charges[.]” The Restructuring Resolution describes the mechanism for calculating a uniform Transition Charge for all Customers (Residential, Non-Residential and Governmental) based on “eligible” historic kWh consumption. *See* Restructuring Resolution, Appendix 2 (Corp. Supp. Ex. 10.01).⁹
- **Article 6.25A(e)(1)(iv)** states that the proposed Restructuring Resolution must include “[t]he calculation of Transition Charges for residential Customers based on energy usage history (kWh) data, or at the discretion of the Corporation, based on the number of service agreements, along with sufficient information to allow

⁸ In addition, the determination of customer classes is supported by Mr. Zarumba who confirms that “the determination of Customer classes among which Ongoing Financing Costs are distributed and the distribution of Ongoing Financing Costs among Customer classes is addressed by the Restructuring Resolution and the [Calculation Methodology] (Petition Attachment 1.00 and Appendix 2 thereto). Zarumba Rev. Dir., Corp. Ex. 6.00REV, 7:144-149. The Independent Experts Report (Petition Attachment 6.00) and revised Independent Experts Report (Corp. Supp. Ex. 11.02) also conclude that Transition Charges have been calculated in a matter consistent with Article 6.25A(e)(1)(ii).

⁹In addition, Mr. Zarumba confirms that the Calculation Methodology calculates a uniform Transition Charge for all Customers (Residential, Non-Residential and Governmental) based on “eligible” historic kWh consumption. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 4:58-62. The Independent Experts Report (Petition Attachment 6.00) and revised Independent Experts Report (Corp. Supp. Ex. 11.02) also conclude that Transition Charges have been calculated in a matter consistent with Article 6.25A(e)(1)(iii). Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 13:263-271.

the Commission to reproduce said Charges[.]”¹⁰ The Original Restructuring Resolution calculated transition charges for Residential Customers based on a per service agreement basis. (Attachment 1.00) in pages 2-5. In response to the Commission’s 5th Clarification Request, the Corporation filed an alternative Transition Charge design in the updated Restructuring Resolution with the Residential Transition Charge based on energy usage history (kWh) data. The Restructuring Resolution describes the mechanism for calculating a uniform Transition Charge for all Customers (Residential, Non-Residential and Governmental) based on “eligible” historic kWh consumption. *See* Restructuring Resolution, Appendix 2 (Corp. Supp. Ex. 10.01).

- **Article 6.25A(e)(1)(v)** states that the proposed Restructuring Resolution must include “[a] provision that delinquencies of any Customer class shall be allocated among all Customer classes as provided in subparagraph (ii) of this subsection (e)(1) and included in the Adjustment Mechanism[.]” The Restructuring Resolution provides that delinquencies of any Customers (including Governmental Customers) will be distributed among all Customer classes as previously described and included in the Adjustment Mechanism. *See* Corp. Supp. Ex. 10.01, Appendix 2.¹¹ This information was also included in the Original Restructuring Resolution (Attachment 1.00).
- **Article 6.25A(e)(1)(vi)** states that the proposed Restructuring Resolution must include the Corporation’s determination (with corresponding reasons) of whether it shall include the estimated load served by net metering or estimated distributed generation (‘behind the meter’) in determining energy usage for the calculation of

¹⁰ Mr. Zarumba also confirms that confirms that the Calculation Methodology calculates a uniform Transition Charge for all Customers (Residential, Non-Residential and Governmental) based on “eligible” historic kWh consumption. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 4:58-62. The “[t]he data required to perform these calculations is produced in the normal course of business at PREPA and is readily available.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 30:699-31:702. The Independent Experts Report (Petition Attachment 6.00) and revised Independent Experts Report (Corp. Supp. Ex. 11.02) also conclude that Transition Charges have been calculated in a matter consistent with Article 6.25A(e)(1)(iv). Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 13:263-271.

¹¹ In satisfaction of Article 6.25A(e)(1)(v), these delinquencies are allocated “among all Customer classes consistently with how other Financing Costs are allocated.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 21:499-22:502. In addition, the Independent Experts Report (Petition Attachment 6.00) and revised Independent Experts Report (Corp. Supp. Ex. 11.02) also conclude that Transition Charges have been calculated in a matter consistent Article 6.25A(e)(1)(v).

Transition Charges along with the determination (with its corresponding reason) that the administration of the resulting Transition Charge shall be practicable to administer and that the resulting Transition Charge shall ensure full and timely payment of the Restructuring Bonds. Finding of Fact 28 of the Original Restructuring Resolution satisfies the requirement with the Corporation's determinations (and reasons) that behind the meter load shall be included in determining energy usage and that the administration of the resulting Transition Charge shall be practicable to administer and that the resulting Transition Charge shall ensure full and timely payment of the Restructuring Bonds.¹² Petition Attachment 1.00. In response to the Commission's 5th Clarification Request, the Restructuring Resolution presents an alternative Transition Charge rate design satisfying this requirement in the same manner as the Original Restructuring Resolution, but with the addition of a "grandfathering" provision. Corp. Supp. Ex. 10.01, Finding of Fact 28. This addition is discussed in detail herein at 12. The Restructuring Resolution includes a determination that the administration of the resulting Transition Charge shall be practicable to administer and that the resulting Transition Charge shall ensure full and timely payment of the Restructuring Bonds. Corp. Supp. Ex. 10.01, Finding of Fact 28.¹³

- **Article 6.25A(e)(1)(vii)** requires that the proposed Restructuring Resolution include the Corporation's determination (with corresponding explanations) that the Calculation Methodology meets the previous requirements — namely the calculation of Upfront and Ongoing Financing Costs, Customer Class allocation, calculation of Charges for each Customer Class, allocation of delinquencies, and net metering — and is practical to administer and ensure full and timely payment of the Restructuring Bonds in accordance with the terms thereof and all other

¹² Mr. Zarumba explains the Corporation's reason for originally determining that net metering Customers and Customers using behind the meter generation should not be allowed to bypass Transition Charges to the extent their net load is less than their gross load and that, therefore, behind the meter generation should not be an opportunity to bypass or avoid the applicability of Transition Charges. Zarumba Rev. Dir., Corp. Ex. 6.00REV, 23:546-548.

¹³ In supplemental testimony, Corporation witness Zarumba confirmed that the revised Calculation Methodology meets the requirements of Article 6.25A(e)(1)(vi) and is practical to administer and ensures the full and timely payment of the Restructuring Bonds. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 5:90-6:108.

Ongoing Financing Costs. Finding of Fact 29 of the Restructuring Resolution (Corp. Supp. Ex. 10.01) satisfies the requirement with the Corporation's determinations that the distribution and calculation methodologies are practicable to administer and ensure the full and timely payment of the Bonds. These determinations were also included in the Original Restructuring Resolution (Petition Attachment 1.00) in Finding of Fact 29.¹⁴

- **Article 6.25A(e)(1)(viii)-(xiii)** requires that the proposed Restructuring Resolution include certain commitments, enforceable by the Commission, to file or provide certain documents to the Commission at specified times, including: **(viii)** a report stating the final terms and conditions of the Restructuring Bonds and establishing the final estimate of the Upfront Financing Costs and the estimate of the Ongoing Financing Costs during the effective term of the Restructuring Bonds; **(ix)** a copy of a successor Servicing Agreement and any report prepared by the Servicer; including any notice of any proposed adjustment to the Transition Charges; **(x)** any report that must be filed with the Corporation by the Trustee of the Restructuring Bonds; **(xi)** an annual joint report with the Servicer each year, stating the balance of the principal of the Restructuring Bonds, any sum in connection with said Bonds that was paid during said calendar year, and the remainder of Ongoing Financing Costs payable during said calendar year; and any final accounting reports requested by the Commission after the final and full payment of the Restructuring Bonds and any Financing Costs; **(xii)** any notice of a proposed adjustment to the Transition Charges, including the data or any work product used to calculate the Transition Charge, and any information related to the initial Transition Charge.

Resolution 19 of the Restructuring Resolution (Corp. Supp. Ex. 10.01) satisfies these requirements by enumerating each commitment, to be enforceable by the Commission by specific performance. The Corporation also made these commitments in Resolution 2016-006 (Corp. Supp. Ex. 10.03), and each

¹⁴ In supplemental testimony, Corporation witness Zarumba confirmed that the revised Calculation Methodology meets the requirements of Article 6.25A(e)(1)(vii) and is practical to administer and ensures the full and timely payment of the Restructuring Bonds. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 5:90-6:108.

commitment is confirmed by Corporation Witness Gerard Gil-Olazábal. Gil-Olazábal Supp. Dir., Corp. Supp. Ex. 10.00, 5:88–94. These commitments were also included in the Original Restructuring Resolution (Petition Attachment 1.00) in Resolution 19.

- **Article 6.25A(e)(2)-(10)** identifies certain information and documents that the Corporation must include or attach as part of its request, including: **(2)** the Transition Charge calculation utilizing historic energy usage;¹⁵ **(3)** an independent financial consultant’s report;¹⁶ **(4)** an itemized breakdown of Upfront and Ongoing Financing Costs; **(5)** a demonstration that the proposed transaction will satisfy the savings test set forth in the Revitalization Act; **(6)** the proposed Servicing Agreement and a determination, with support, that the proposed servicing costs are sufficient; **(7)** projections and stress tests provided by the Corporation to credit rating agencies; **(8)** other specific documentary support and estimates; **(9)** written testimony providing certain enumerated information; and **(10)** the request need not contain any other financing document unless requested in accordance with Article 6.25A. All these items, information, or documents were submitted with the Corporation’s Petition, as attachments, testimony exhibits, or through direct testimony, as specifically identified in Attachment 7.00 to the Petition. Additionally, the Corporation’s satisfaction of these requirements is evidenced by the Commission’s determination that the Corporation’s Petition was complete. (Resolution and Order, April 12, 2016).

The Corporation’s Petition and supporting material has met every requirement of Article 6.25A(c) and (e), as evidenced by the Commission’s determination that the Corporation’s Petition was complete for purposes of Article 6.25A(c).

¹⁵ In supplemental testimony, Corporation witness Zarumba sponsored an updated Transition Charge Calculation which also is included in the Restructuring Resolution. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 3:38-12:233; Corp. Supp. Ex. 10.01.

¹⁶ In supplemental testimony, Corporation witness Zarumba sponsored an updated financial consultant’s report provided as Corp. Supp. Ex. 11.02. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 2:33-34.

IV. THE RECORD SUPPORTS THE COMMISSION’S ISSUANCE OF THE THREE STATUTORY FINDINGS UNDER ARTICLE 6.25A(b)

The Revitalization Act provides that in order to approve the Restructuring Resolution, the Commission must make three findings outlined in Article 6.25A(b)(1). These three findings directly correspond to the Commission’s authority in this matter – namely, aside from enforcing the completeness of the submission, the Commission generally must decide whether:

1. The **Calculation Methodology** for Transition Charges is consistent with Article 6.25A(d) and ensures the full and timely payment of the Restructuring Bonds;
2. The **Upfront and Ongoing Financing Costs** proposed to be recovered from the Restructuring Bond or the Transition Charge proceeds are consistent with particular Revitalization Act requirements; and
3. The **Servicing costs** proposed to be recovered are reasonable and sufficient to compensate PREPA for the incremental costs of performing its functions as Initial Servicer.

This section of the brief demonstrates that the record in this case provides the clear support for the Commission to decide these issues and make the three specific findings enumerated in Article 6.25A(b).

A. Finding #1 The Restructuring Resolution and Calculation Methodology are consistent with the Article 6.25A(d) and provide for the full and timely payment of the Restructuring Bonds

The Corporation has provided sufficient evidence to support a Commission finding that the Restructuring Resolution and Calculation Methodology provide proper protection for full and timely payment of Restructuring Bonds (the first criterion of Article 6.25A(d)) and are consistent with the four additional criteria in Article 6.25A(d). Following is a discussion of how each of the five criteria in Article 6.25A(d) is satisfied.

i. In accordance with Article 6.25A(d)(i), the Restructuring Resolution and Calculation Methodology are designed to provide for the full and timely payment of Restructuring Bonds

Article 6.25A(d)(i) requires that the Transition Charges and the Adjustment Mechanism included in the Restructuring Resolution shall “be designed to provide for full and timely payment of Restructuring Bonds, in accordance with the terms thereof, and other Ongoing Financing Costs[.]” PRA Art. 6.25A(d)(1). The record in this proceeding supports a finding that the Corporation’s Restructuring Resolution and Calculation Methodology meet this requirement.

The Corporation provides a detailed description of the Calculation Methodology in the Restructuring Resolution. *See* Petition pp. 20-25, Zarumba Rev. Dir, Corp. Ex. 6.00REV, 30:695–696, 32:724–25; Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 3:38–5:97. At a very high level, the Calculation Methodology defines a revenue requirement for the debt service based on Ongoing Financing Costs, determines the amount of revenue required that should be collected to meet that requirement looking forward one year, determines what amounts need to be charged and billed in order to actually collect the required funds when required (using the “collection curve”), distributes the required billings to Residential and Non-Residential Customers using a specific rate design (whether the original design or the alternate design, this step serves the identical purpose), and then repeats that process at least quarterly in a manner that both captures and automatically adjusts for any actual under- or over-collection and credits Customers for any interest earned on money held pending payment of Financing Costs. *See* Appendix 2.00 to Corp. Supp. Ex. 10.01. As a result, over the entire period during which the Bonds are outstanding, Customers pay only for approved Financing Costs, no more and no less. This ensures that Customers are being treated justly and is designed to ensure the full and timely payment of the Bonds, even though we cannot predict exactly how the number of Customers or their use may evolve. Indeed, it is the iterative, automatic, and mathematical nature of the Calculation

Methodology that provides this assurance to both Customers and Bondholders. Mace Dir., Corp. Ex. 4.00, 75:1622–1627.

Corporation witness Ralph Zarumba provided detail on the design of the Calculation Methodology and confirmed that “the mechanism which has been designed will ensure that the Restructuring Bonds will receive full and timely payment.” Zarumba Rev. Dir, Corp. Ex. 6.00REV, 30:695–696. Mr. Zarumba also testified that the Calculation Methodology “will ensure that the Transition Charge Revenues are sufficient to provide for the timely payment of Ongoing Financing Costs.” *Id.* at 32:724–25. Corporation Witness Stathos testified that self-adjusting mechanisms of this nature “exist in virtually every securitization, and are recognized and accepted by the market.” Stathos Reb., Corp. Ex. 8.00, 5:95–97. Corporation witness Michael Mace further testified that “[t]he Adjustment Mechanism, by its very mathematical nature, provides for and ensures adequate protection for the full and timely payment of the Bonds in accordance with their terms and all other Ongoing Financing Costs during the term of the Bonds by automatically and unconditionally adjusting the Transition Charges — up or down as the case may be — in response to economic perturbations, altered customer behavior, and other potential future changes.” Mace Dir., Corp. Ex. 4.00, 75:1622–1627. Mr. Zarumba confirmed in supplemental testimony that the Calculation Methodology with modifications continues to meet this standard. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 5:98–6:108.

Finally, the Corporation submitted a Report with the Petition (Petition Attachment 6.00) sponsored and prepared by Corporation witness Ralph Zarumba, a Director at Navigant, an independent professional services firm that provides financial and strategic services to companies, legal counsel, and governmental agencies worldwide, and is a recognized expert in financing public electric utilities. (Corporation Ex. 6.00). While the Corporation submitted this

Report in accordance with Article 6.25A(e)(3) requirement, the Independent Financial Consultant's Report also confirms that the Transition Charges have been calculated in a manner ensures the full and timely payment of the Restructuring Bonds in accordance with their terms and all other Ongoing Financing Costs during the term of the Restructuring Bonds. *Id.* In reaching this conclusion, the report sets forth and considers the material assumptions in the Calculation Methodology (historical energy (kWh) usage and the Corporation's rate design determinations) along with a projection of Ongoing Financing Costs and Transition Charges during the term of the Bonds. This Report was updated in light of the changes made to the Calculation Methodology in supplemental testimony and confirms the same conclusion. Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 13:261–273

No Intervenor has challenged a finding that the Corporation Restructuring Resolution and Calculation Methodology meet this requirement.

- ii. **In accordance with Article 6.25A(d)(ii)(1), the share of the Financing Costs to be recovered from each customer class shall be calculated based on the historic energy usage (kWh) data for each class of Customers and in such manner which is practicable to administer and which ensures the full and timely payment of the Restructuring Bonds**

Article 6.25A(d)(ii)(1) requires that: 1) the Calculation Methodology shall distribute Financing Costs among Customer classes and calculate and adjust the Transition Charges based on the energy usage history (kWh) data for each class of Customers during the twelve most recent months for which such information is reasonably available; and 2) the share of Financing Costs to be recovered from each customer class shall be calculated in such manner that is practical to administer and ensures the full and timely payment of the Restructuring Bonds, in accordance with the terms thereof, and other Ongoing Financing Costs. The Corporation has satisfied these criteria.

Corporation witness Ralph Zarumba testified that the Calculation Methodology distributes the Revenue Requirement to determine specific Residential and Non-Residential Revenue Requirements for the Residential Customer Class and Non-Residential Customer Class (including Government Customers) “based upon the share of the total actual historical kWh billed to Residential and Non-Residential (including Government) Customers, respectively, in the previous 12-month period ending with the last day of the most recently completed calendar quarter for which data is available” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 8:163–170.

This historical energy (kWh) usage data was provided to the Commission as Attachment 5.00 to the Petition. Corporation witness Javier Quintana confirmed that “this data was extracted from, and accurately reflects, the records of PREPA” and it includes customers’ historical energy (kWh) usage data for the most recent 12 month period for which such information is reasonably available. Quintana Dir., Corp. Ex. 2.00, 11:230–12:234. Additionally, the Corporation has ensured that municipal installations that are not covered by Contributions in Lieu of Taxes (“CILT”) will pay transition charges like other Non-Residential Customers. PREPARC’s April 25, 2016, Submission of Information, pp. 62–63.

Mr. Zarumba also confirmed that the calculation supporting the distribution of Financing Costs to each Customer class is practicable to administer because it is “is based upon kWh sales adjusted for collections” and “[t]he data required to perform these calculations is produced in the normal course of business at PREPA and is readily available.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 30:697–31:702. Mr. Zarumba confirmed that the share of Financing Costs to be recovered from each Customer class is calculated in a manner which ensures the full and timely payment of the Bonds and Ongoing Financing Costs, further identifying provisions included in the Calculation Methodology to ensure compliance, including: “(1) calculations are based upon

forward looking information; (2) trends in the number of service agreements and kWh sales are captured in the calculation; and (3) periodic reconciliations are performed in order to reduce significant variations from projected costs.” *Id.* at 31:703:711; *see also* Corp. Ex. 11.02.

No Intervenor has challenged the determination that the Corporation used energy usage history (kWh) data in making these calculations. The Calculation Methodology modifications made in response to the Commission’s 5th Clarification Request do not affect the Corporation’s compliance with Article 6.25A(d)(ii)(1).

iii. In accordance with Article 6.25A(d)(ii)(2), Transition Charges are based on the energy usage history (kWh) data for each class of Customers during the twelve (12) most recent months calculated in a manner that is practical to administer and would ensure full and timely payment of the Restructuring Bonds

Article 6.25A(d)(ii)(2) requires that Transition Charges for Customers be based on the energy usage history (kWh) data for each class of Customers during the twelve (12) most recent months for which such information is reasonably available. This section also allows the Corporation the choice to calculate the Residential Transition Charges based on service agreements. Whichever method is chosen, Article 6.25A(d)(ii)(2) also requires that: 1) the Transition Charges are calculated in such manner which is practicable to administer and which ensures the full and timely payment of the Restructuring Bonds in accordance with their terms and other Ongoing Financing Costs; and 2) the allocation of responsibility for the Transition Charge among Customer classes and Customers must not impair the discretion of the Commission when evaluating the allocation of responsibility with respect to the PREPA revenue requirement in any PREPA rate case.

The Calculation Methodology proposed by the Corporation calculates the Transition Charge for Non-Residential Customers based on kWh consumption of each Customer by applying a rate derived from the Non-Residential Net Revenue Requirement and the total

historical kWh usage of Non-Residential Customers. Zarumba Rev. Dir., Corp. Ex. 6.00REV, 14:304–308. This process uses the actual historical billing data for the previous 12-month period ending with the end of the most recently completed calendar quarter for which data are available and is described more fully in Mr. Zarumba’s testimony. *Id.* at 11:211–15:353. The Corporation’s revised Calculation Methodology did not change this calculation for Non-Residential Customers.

For Residential Customers, the Corporation originally elected to propose “a flat charge based on the Residential Net Revenue Requirement and the Residential Service Agreement Count, defined as the average number of Residential Service Agreements used for billing purposes during the previous 12-month period ending with the end of the most recently completed calendar quarter for which data is available as of the date of any calculation.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 14:309–314.

As Mr. Zarumba explains in detail, the main factors in making the original Residential per service agreement determination for Residential customers was that this design “is administratively simple and addressed the fact that PREPA has a legacy flat charge rate design and generally inefficient electric use among these Customers.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 17:397–403. A per kWh charge would “place a significantly higher burden on these Customers than the per service agreement basis.” *Id.*

At the Technical Hearing on May 24-27, 2016, the Commission and its Staff, as well as the Commonwealth Energy Public Policy Office (“CEPPO”) and the Independent Consumer Protection Office (“ICPO”) and other Intervenors, raised questions about the impact of the Transition Charges on low-income customers (including the majority of low-income customers who are also low-use, and low-income customers largely on fixed public housing rates who use a

greater quantity of electricity).¹⁷ In testimony, Intervenors erroneously characterized this charge as a penalty to low energy use customers. Windmar Pre-Filed Testimony, p. 2. These assertions ignore that the design of the Transition Charges affects the division of the total Customer bill between the Transition Charges and the funds belonging to PREPA; it does not simply increase Customers' bills. Zarumba Reb., Corp. Ex. 9.00, 5:97–99.

The Corporation, nonetheless, reviewed its Residential Transition Charge rate design determination in response to these concerns. In response to the Commission's 5th Clarification Request and in order to address Commission and Intervenor concerns, the Corporation submitted a revised Calculation Methodology that assesses Transition Charges for Residential Customers on a per kWh basis, calculated separately from Non-Residential Customers. Corp. Supp. Ex. 10.01. The Residential Customer charges will be based on total gross kWh consumption, with the exception of Fixed Block Public Housing Tier Customers and Grandfathered Net Metering Tier Customers, which are discussed more fully herein. *Id.*

Specifically, the revised Calculation Methodology's method for calculating Transition Charges for Residential Customers is based upon their historic energy usage (kWh) instead of a per servicing agreement charge, provided that each Customer who under Article 3.9(b) of Law 22-2016 and under PREPA's tariffs implementing said Article 3.9(b) pays a fixed charge for its applicable consumption-based block of electricity, will pay the Transition Charge only on their kWh usage beyond the Customer's permitted block of electricity under Law 22-2016, in each case as such blocks are set as of the date on which the Commission approves the Restructuring Order and as such blocks may be modified from time to time as contemplated in Article 3.9(b)(4) of Act 22-2016. These Customers are referred to in the Calculation Methodology as Fixed Block

¹⁷ A transcript of the May 24-27 hearing is not available, but the Commission has made video recordings of the proceedings available to the public at <https://www.youtube.com/channel/UCnwy1xaHYDRbeQrkMB8QkJg>.

Public Housing Customers. *See* Restructuring Resolution, Appendix 2 (Corp. Supp. Ex. 10.01). The revised calculation of the Transition Charge applicable to Residential Customers is supported by: 1) testimony elicited at the Technical Hearing on May 24-27; 2) information submitted by the Corporation in its Response to 5th Clarification Request which supports the determination; and 3) the supplemental testimony provided Mr. Ralph Zarumba that is being provided in response to the Commission request at the Technical Conference on June 9, 2016. *See* Zarumba Supp. Dir., Corp. Supp. Ex. 11.00.

As Corporation witness Mr. Zarumba testifies in supplemental testimony, the alternative rate design also meets the requirements of Article 6.25A(d)(ii)(2). Zarumba Supp. Dir., Corp. Supp. Ex. 11.00,13:263–270; *See also* Corp. Supp. Ex. 11.02. The Transition Charges for Customers are on the energy usage history (kWh) data for each class of Customers during the twelve (12) most recent months for which such information is reasonably available. *Id.* Restructuring Resolution, Finding of Fact 29; Appendix 2 to the Restructuring Resolution, p. 5. These charges are calculated in such manner which is practicable to administer and ensures the full and timely payment of the Restructuring Bonds. *Id.*

Finally, the distribution of responsibility for Transition Charges among Customer classes and Customers will not impair the discretion of the Commission in addressing the allocation of responsibility for the PREPA revenue requirement in any PREPA rate case. Zarumba Rev. Dir., Corp. Ex. 6.00REV, 19:455–16:459; Zarumba Supp. Dir., Corp. Supp. Ex. 11.00,8:167–9:174. Mr. Zarumba testifies that, in future rate cases, the Commission will approve a design for PREPA rates that allocates all total costs billed to Customers, and “[w]hile the decisions in those cases cannot affect the Transition Charges themselves, they can adjust how PREPA costs are

allocated among Customers, preserving the full discretion of the Commission over how the Transition Charges impact Customers.” *Id.* at 16:466–469.

- iv. In accordance with Article 6.25A(d)(ii)(3), the Restructuring Resolution and Calculation Methodology provide that delinquencies of any class of Customers in any period will be added to the revenue requirement of the next period and allocated among all Customers classes as provided in clauses Article 6.25A(d)(1) and (2)**

Article 6.25A(d)(ii)(3) provides that “[d]elinquency of any class of Customers, for any period, shall be added to the revenue requirement for the next period and shall be allocated among all Customer classes” as provided in Article 6.25A(d)(1) and (2) based on historical energy usage of each class of customers. The Restructuring Resolution proposed by the Corporation satisfies this criterion providing that delinquencies of any class of Customers (including Governmental Customers) will be distributed among all Customer classes as provided in 6.25A(d)(ii)(3) and specified in the Adjustment Mechanism. *See* Corp. Supp. Ex. 10.01, Appendix 2. This allocation is based on historical energy usage of each class of customers. Restructuring Resolution (Corp. Supp. Ex. 10.01) Finding of Fact 27(i). Particularly, any charges that are not collected within one hundred and twenty days of billing are re-distributed across all Customer classes “consistently with how other Financing Costs are allocated.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 21:499–22:502. Further, “[n]othing in the Calculation Methodology prevents or interferes with the Commission’s ability to require PREPA (or any subsequent Servicer) to demonstrate that it has been prudent in addressing late payments, past-due bills, and non-payments.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 30:681–685. The Calculation Methodology modifications made in response to the Commission’s 5th Clarification Request do not affect the Corporation’s compliance with Article 6.25A(d)(ii)(1).

- v. In accordance with Article 6.25A(d)(ii)(4), the Calculation Methodology includes the estimated load served by net metering or distributed generation (‘behind the meter’) and is practical to**

**administer, and would ensure the full and timely payment of the
Restructuring Bonds**

Article 6.25A(d)(ii)(4) provides the Corporation with a choice as to whether estimated load served by net metering or distributed generation (“behind the meter”) should be included in the allocation of Financing Costs and calculation of Transition Charges as long as the methodology for such an inclusion is practical to administer and ensures the full and timely payment of the Restructuring Bonds. This section of the Brief discusses how the Corporation has met this criterion. Compliance with Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act (as enacted) requirements are addressed in Section V.A of this Brief.

The Original Restructuring Resolution Calculation Methodology included the estimated load served by net metering or distributed generation, as permitted by Article 6.25A(d)(ii)(4). This reflected the Corporation's determination that net metering Customers and Customers using behind the meter generation should not be allowed to bypass Transition Charges to the extent their net load is less than their gross load and that, therefore behind the meter generation should not be an opportunity to bypass or avoid the applicability of Transition Charges. Zarumba Rev. Dir., Corp. Ex. 6.00REV, 23:546–548. Therefore, the Calculation Methodology defined “Actual kWh Billed,” for this purpose, “without regard to any offset for net-metering and adjusted for estimated distributed generation usage.” Original Restructuring Resolution, Appendix 2. This proposal was based on the Corporation’s determination that if the estimated load served by net metering and distributed “behind the meter” generation were not included, “these Customers could reduce their responsibility to pay Transition Charges, and the responsibility for those avoided charges would be transferred to other Customers.” Zarumba Rev. Dir, Corp. Ex. 6.00REV, 24:568–570. The Corporation’s inclusion of net metering and “behind the meter” generation would not penalize those who use renewable energy because the design of the

Transition Charges affects the division of the total Customer bill between the Transition Charges and the funds belonging to PREPA – it does not simply increase Customers’ bills. Zarumba Reb., Corp. Ex. 9.00, 5:97–99. The Corporation had determined, for the foregoing reasons, that it was proper and equitable to include the estimated load served by net metering or “behind the meter” in its calculations.

In the interests of working collaboratively with the Commission and Intervenors, and in response to the Commission’s 5th Clarification Request, the Corporation proposed a revised Calculation Methodology which imposed a Transition Charge on “grandfathered” Customers only to the extent of their net energy use with some limitations. Specifically, the Calculation Methodology “grandfathers” net metering customers who have or are eligible to enter into net metering agreements that satisfy the requirements of Article 29 of the Revitalization Act. These “Grandfathered Net Metered Customer” are Customers (whether Residential, Non-Residential or Governmental, as specified) who had a net metering agreement with PREPA as of February 16, 2016, when the Revitalization Act became effective, that satisfies the conditions of Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act (as enacted), or (2) who entered or enters with PREPA into a net metering agreement for a new project after February 16, 2016, satisfying the conditions of Article 29 of the Revitalization Act (as enacted), *i.e.*, a Customer (a) who submitted or submits a net metering application for a new project between February 16, 2016 and the date on which the Commission approves the Restructuring Order, (b) has submitted or submits the required deposit to PREPA in accordance with the Revitalization Act, and (c) completes the project and certifies its installation within the required 270 days, and (d) otherwise complies with Article 29 of the Revitalization Act, all as provided in Article 29 of the Revitalization Act. For the avoidance of doubt, any customer that increases the capacity of

the renewable energy system beyond the cap of 20%, as provided in Article 29 of the Revitalization Act, shall cease to be considered a Grandfathered Net Metered Customer from the moment the increase in capacity is completed, in conformity with the terms of Article 29. Act 114-2007, as amended, Article 4(ii).

This revised Calculation Methodology is consistent with Article 6.25A(d)(ii)(4). For non-grandfathered net metering customers, this determination continues to reflect the Corporation's determination that net metering Customers and Customers using behind the meter generation should not be allowed to bypass Transition Charges to the extent their net load is less than their gross load and that, therefore behind the meter generation should not be an opportunity to bypass or avoid the applicability of Transition Charges. Zarumba Supp. Dir., Corp. Supp. Ex. 10.00, 7:133–142. It also recognizes that if the estimated load served by net metering and distributed “behind the meter” generation were not included for these non-grandfathered customers, these Customers could reduce their responsibility to pay Transition Charges, and the responsibility for those avoided charges would be transferred to other Customers.” Zarumba Rev. Dir., Corp. Ex. 6.00REV, 24:568–572; Zarumba Supp. Dir., Corp. Supp. Ex. 10.00, 7:127–132. For Grandfathered net metering customers, the proposal also is consistent with Article 6.25A(d)(ii)(4) because that section gives the Corporation a choice whether to include such behind the meter load. In addition, as discussed in more detail in section V.A below, the revised Calculation Methodology complies with Article 29, which allows for PREPA to propose “just” charges to its net metering customers and contemplates of grandfathering of certain net metering Customers.

While the Corporation’s original proposal was sound, the alternative Transition Charge rate design responds to the Commission and Intervenors’ concerns while still satisfying the

requirements of Article 6.25A(d)(ii)(4). While this section of the brief addresses compliance with Article 6.25A(d)(ii)(4), Section V of the Brief addresses the issue of compliance with Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act. Specifically, in Section V.A of this Brief, the Corporation requests that the Commission, in making the required findings concerning the calculation of the Transition Charge, make an additional finding taking notice of the Corporation's treatment of Grandfathered Net Metered Customers and determine that the criteria of Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act, are satisfied.

B. Finding #2: Upfront Financial Costs and the Ongoing Financial Costs Funded Through the Restructuring Bonds and TC Revenues are Consistent with Article 6.25A and Chapter IV (6.25A(b)(2))

The Commission should make the determination that the Upfront Financial Costs and the Ongoing Financial Costs funded through the Restructuring Resolution and the Transition Charge revenues are consistent with Article 6.25A and Chapter IV of the Revitalization Act. The Upfront and Ongoing Financing Charges proposed by the Corporation are within the statutory purposes and are properly within the authority of the Corporation under Chapter IV. Per Chapter IV:

Upfront Financing Costs include, without limitation, Trustee (or similar fiduciary) fees and expenses, legal fees and expenses, accounting fees and expenses, Servicer set-up rates or expenses, calculation agent, depository or other manager or fiduciary placement fees and expenses, underwriting fees and expenses, printing and marketing fees, filing or listing and compliance fees, fees and expenses of the Corporation's other consultants, if any, credit rating agency fees, collateral fees and expenses, and any other cost approved by the Board of the Corporation as necessary or desirable to achieve the purposes of this Chapter and shall include reimbursement to any Person of amounts paid in advance to cover such costs.

PRA, Article 31(14). Ongoing Financing costs include "Financing Costs other than Upfront Financing Costs and any excess of actual Upfront Financing Costs incurred over the

Corporation's estimate of Upfront Financing Costs that are payable from the proceeds of the issuance of Restructuring Bonds." PRA, Article 31(16). Chapter IV provides a permissive list of what costs may be financed through the Restructuring Bonds and Transition Charges, and also gives the Corporation discretion to determine which additional costs are as necessary or desirable to achieve the purposes of the securitization.

Corporation witness Mace provides support for the estimated Upfront Financing Costs and Ongoing Financing Costs included in Attachment 2.01 to the Petition. Mace testified that the Corporation and its advisors had exercised due diligence in making such estimates, and that the Corporation will update the actual costs pursuant to the Corporation's commitment under Article 6.25A(e)(1)(viii). Mace Dir., Corp. Ex. 4.00, 32:694–704. He further testified that the Upfront Financing Costs proposed to be recovered from the Bond proceeds or the Transition Charge Revenues are necessary in order to "complete the transaction, deliver its substantial net present value and cash flow savings, and enable PREPA to restructure into a more modern, efficient utility on the path to providing more cost-effective electric service to its Customers." Mace Reb., Corp. Ex. 8.00, 7:152–8:154. He testifies that the services included in the Upfront and Ongoing Financial Expenses are necessary and appropriate to ensure that the transaction is completed efficiently and correctly especially given that this is a multi-billion dollar securitization involving securitized public debt, complex debt exchanges, tax issues, and multiple classes of creditors with different interests, positions, and rights. *Id.* at 7:146–149. As the first proceeding of its kind in Puerto Rico, the participation of experienced advisors and consultants was, and will continue to be, necessary to complete the transaction. Simply put, "[t]here is no possible way to execute a major restructuring of this size and complexity without incurring transaction costs of this nature." *Id.* at 7:148–149.

Corporation witness Mr. Mace concludes that, in his professional opinion, the Upfront Financing Costs proposed to be recovered from the Bond proceeds or the Transition Charge Revenues are consistent with Article 6.25A and Chapter IV of the Revitalization Act. The Upfront Financing Costs are reasonable and necessary to issue, support, and service the Bonds.” Mace Dir., Corp. Ex. 4.00, 40:879–885.

Certain criticisms of the amount of professional fees are based on an incorrect interpretation of the Upfront Financing Costs. OIPC Prefiled Written Testimony, p. 7. The estimate of Upfront Costs includes the reserve account deposit fund, which are not professional fees to be collected through the Transition Charge. In fact, approximately 2/3 of the estimated Upfront Financial Costs are for a reserve account deposit, which “is expected to remain an asset of the Corporation until such time as it is no longer required and will then be available to offset debt service payments on the Bonds.” Mace Reb., Corp. Ex. 8.00, 7:140–142.

In addition, the Revitalization Act specifically provides that, with the exception of the mathematical accuracy of the Transition Charges, “none of the provisions of [Article 6.25A] shall authorize the Commission to [...] approve, reduce, or alter any Upfront Financing Costs or Ongoing Financing Costs or to interfere with the payment thereof.” PRA, Article 6.25A(f)(5). Although the Commission is tasked with making a determination regarding whether these costs are consistent with Article 6.25A and Chapter IV of the Revitalization Act, it is not given the authority to approve, reduce, or alter these costs in practice or interfere with the payment thereof. Therefore, Intervenors’ proposals regarding specific costs or fee amounts should be reviewed in the context of the Commission’s purview in making the determination regarding whether these costs are consistent with the provisions of the Revitalization Act.

The Corporation respectfully requests that the Commission make the finding that Upfront Financing Costs and Ongoing Financing Costs proposed to be recovered from the Bond proceeds or the Transition Charge Revenues are consistent with Article 6.25A and Chapter IV of the Revitalization Act, in accordance with the requirements of Article 6.25A(b).

C. Finding #3: Payments to PREPA as Initial Servicer are Necessary, Reasonable, And Sufficient To Compensate The Authority For The Incremental Costs Of Discharging Its Functions As Servicer (6.25A(b)(3))

The Commission should make the determination that payments to PREPA as Initial Servicer are necessary, reasonable, and sufficient to compensate PREPA for the incremental costs of discharging its functions as servicer. The Corporation determined, taking into account analysis performed by Navigant Consulting, Inc. and data produced by PREPA, that “the servicing costs proposed to be recovered by PREPA as Servicer are reasonable and [...] are sufficient to compensate PREPA for the reasonable incremental costs of performing the servicing functions as set out in the proposed Servicing Agreement.” Gil-Olazábal Dir., Corp. Ex. 3.00, 14:281–286.

The payments to PREPA as Servicer were determined using estimated costs for PREPA to develop and implement the initial capability to bill and collect the Transition Charge, depicted in Corporation Ex. 5.03, and an estimate of ongoing costs PREPA will incur to maintain the billing and collection process, as well as to monitor, calculate, and allocate transfers to the Trustee. Stathos Dir., Corp. Ex. 5.00, 9:187–12:237. In order to ensure that these costs are sufficient, these estimated costs take into account special factors that will affect PREPA’s ability to perform the Servicing functions. Stathos Dir., Corp. Ex. 5.00, 5:172–186. Additionally, the provision for escalation addresses the risk of nominal inflation in the future. Quintana Dir., Corp. Ex. 2.00, 11:216–218; Stathos Dir., Corp. Ex. 5.00, 13:271–275. These cost estimates

include only incremental costs created by PREPA's performance as the Initial Servicer, such as dedicated full or part time billing and IT employees and bank charges, and not non-incremental shared costs. Stathos Dir., Corp. Ex. 5.00, 12:238–244.

The Corporation has proposed a servicing fee of .05% of the initial principal amount of the Bonds, subject to annual CPI adjustment. This servicing fee is reasonable, as demonstrated by its consistency with servicing fees for other servicers in comparable transactions, which typically range from 0.03% to 0.25% of the principal amount of the Bonds. Mace Dir., Corp. Ex. 4.00, 60:1317–1322. No Intervenor has presented contrary information to dispute the Commission's determining that the servicing costs proposed to be recovered by PREPA as servicer are necessary, reasonable, and sufficient to compensate PREPA for the reasonable incremental costs of performing the servicing functions as set out in the proposed Servicing Agreement.

The Corporation respectfully requests that the Commission find that the servicing fee of .05% of the initial principal amount of the Bonds, subject to annual CPI adjustment, is necessary, reasonable, and sufficient to compensate PREPA for the incremental costs of performing its functions as the Initial Servicer, then the Corporation requests the Commission make that finding. Otherwise, the Corporation asks the Commission to make the same finding with respect to any alternative fee the Commission approves.

V. THE RECORD SUPPORTS A COMMISSION FINDING THAT THE REQUIREMENTS OF ARTICLE 29 ARE SATISFIED WITH RESPECT TO NET METERING CUSTOMERS

A. The Record Supports a Finding that the Corporation has Satisfied the Criteria of Article 29

Section IV of this Brief above discussed compliance on the subject of net metering with respect to Article 6.25A(d)(ii)(4). This section of the Brief addresses compliance on the subject

of net metering in relation to Article 29 of the Revitalization Act. As an initial matter, to the extent that any provisions of Act 114-2007, as amended by Act 4-2016, are inconsistent with Chapter IV of Act 4-2016, those provisions are superseded by Chapter IV of Act 4-2016. Chapter IV contains the provision that “[i]n the event of conflict between this Chapter and any other law, the provisions of this Chapter shall prevail.” (PRA, Article 42(b)).

Article 29 amends Section 4 of Act 114-2007 to provide that the Commission shall “... evaluate and determine which rates will be applied to the net metering customers, such as the Contribution in Lieu of Taxes, Grants, Securitization, and Subsidies.” In making this evaluation, the Commission must determine whether: (i) the charge is “just” and has the purpose of covering the operating and administrative expenses of the grid services that receives a customer that entered into a net metering agreement; (ii) said charge is excessive or constitutes an obstacle to the implementation of renewable energy projects; and (iii) net metering customers that have either entered into a net metering agreement or are in the process of evaluating or developing a new renewable energy project, subject to some limitations, are exempted or “grandfathered” from charges approved by the Commission during a 20-year grace period. Act 114-2007, as amended, Article 4.

The Corporation has satisfied the criteria set out in Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act. The Corporation has demonstrated both with its original and revised net metering determinations that the resulting Transition Charges “will be just and ... will cover operational and administrative costs of network services that the consumer received with the Net Metering Agreement” and that the Transition Charge will “never will be excessive or established in such a way that it becomes an obstacle to the deployment of renewable energy projects.” *See Zarumba Supp. Dir., Corp. Supp. Ex. 11.00, 8:152–166.*

When read in harmony with other sections of the Revitalization Act, Article 29 provides criteria that must be considered for net metering charges to be approved, but it does not allow any customers to bypass the Transition Charges. It does not prohibit imposing charges that are applicable to all Customers of the Authority, which charges are not exclusively in connection with net metering but in connection with a restructuring of debt of the Authority, used in part to finance capital projects that benefitted all Customers, including net metering Customers. In addition, the Revitalization Act would not give the Corporation a choice in Article 6.25A(d)(ii)(4) to include the estimated load served by net metering or estimated distributed generation ('behind the meter') in determining energy usage for the calculation of Transition Charges if the Legislature had meant to also create an exemption, without discretion to the Corporation, elsewhere. Our interpretation of the interaction of these two provisions is that they are meant to address different circumstances and they can be harmonized, as the Corporation has done in good faith.

The Corporation has revised the Calculation Methodology to exempt "grandfathered" Customers who have or are eligible to enter into net metering agreements that satisfy the requirements of Article 29 of the Revitalization Act. This change is consistent with the grandfathering provision of Article 29 and, in addition, with Article 6.25A(d)(ii)(4), which allows the Corporation the flexibility to determine whether to include the estimated load served by net metering in determining energy usage. This grandfathering is the only change to the Calculation Methodology pertaining to net metering customers. In the Calculation Methodology, as revised, these Grandfathered Net Metered Customers would pay a Transition Charge only on their net energy kWh usage (*i.e.*, excluding behind-the-meter output—whether consumed by the Customer or exported to the PREPA grid). The non-Grandfathered Net Metered Customers

(whether Residential, Non-Residential or Governmental) will pay a Transition Charge calculated and adjusted based on gross usage (kWh) as discussed in more detail in section IV.A.v of this Brief.

Accordingly, the Corporation requests that the Commission, in making the required findings concerning the calculation of the Transition Charge, also make a finding taking notice of the Corporation's determinations and evaluate and determine that the criteria of Article 29 are met. The Commission should also accept the Corporation's proposal that load of Customers who are net metered or have other "behind the meter" generation, for the purposes of distributing Financing Costs among Customer classes and calculating those Transition Charges that are based on kWh usage, be based on estimated total electric consumption as described herein and in the Restructuring Resolution.

Certain intervenors took issue with the impact that the Transition Charge might have in net metering and distributed generation clients, and that the charge could outweigh the benefits of installing renewable energy systems. State Office of Public Policy ("OEPP") Pre-Filed Testimony, pp. 3-4; Windmar Pre-Filed Testimony, p. 2. Specifically, Windmar Group in the afternoon legal Technical Conference on June 8, 2016 apparently takes the position that Article 29 does not give the Commission any option but to exempt all net metering customers from the Transition Charges.¹⁸ In addition, Windmar Group apparently also takes the position that "any increased charge" that is not avoidable by a solar developer is an obstacle to the implementation of renewable energy projects. Furthermore, the interpretation of Windmar's counsel with respect to the criterion of Article 29 that the charges shall be "just", is that they shall be "just" to the net metering Customers without reference to the rest of the PREPA Customers and the impact that

the bypassing by net metering Customers will have in the rate for the rest of the Customers.¹⁹

The Corporation addresses these positions in the following sections.

i. **Windmar Group's Position is Inconsistent with Rules of Statutory Construction**

In the afternoon legal Technical Conference on June 9, 2016, Windmar Group took the position that the Revitalization Act prohibits this Energy Commission from approving any Transition Charge for Net Metering Customers.²⁰ Windmar's interpretation would render the relevant language of the Revitalization Act meaningless. In exercising its role to interpret the Revitalization Act, the Commission has the obligation to harmonize as far as all of its provisions, in order to achieve the most sensible, logical, and reasonable result. *Andino v. Fajardo Sugar Co.*, 82 D.P.R. 85, 94 (1961). Interpreting Article 29 to exempt net metering charges would conflict with the following other provisions of the Revitalization Act: 1) Chapter IV establishes that the transition charges shall be paid by all customers²¹ (Article 31(19) of Law 4-2016) which are defined to include any person connected to PREPA's system; 2) Article 33 makes clear that the Transition Charge is "non-bypassable; and 3) Article 6.25A(d)(ii)(4) gives the Corporation a choice to as to whether to include the estimated load served by net metering in determining energy usage for the calculation of Transition Charges. To read Article 29 as exempting net

¹⁹ Direct citation to the record is difficult due to audio quality. This reference is to statements made by Marc Roumaine, attorney to Windmar at the Legal Panel on May 27, 2016.

²⁰ Direct citation to the record is difficult due to the absence of a transcript. This reference is to statements made during the legal Technical Conference on June 9, 2016.

²¹ According to Law 4-2016, a "Customer" is "any Person that *is connected to or takes or receives electric power service*, within the Commonwealth of Puerto Rico, from the electric power generation, transmission, or distribution facilities that are part of the System Assets, whether or not those electric power generation, transmission, or distribution facilities are owned by the Authority. The Authority shall not be considered a Customer. Each municipality of the Commonwealth of Puerto Rico shall be considered a Customer to the extent that the dollar value of its electric power service usage in any fiscal year (including, when determining such value, the dollar value of the Transition Charges, which would otherwise be imposed on such municipality, and the Authority charges) exceeds the dollar value owed by the Authority to such municipality as a contribution in lieu of taxes for such fiscal year." (See Article 31(7) (emphasis added)).

metering customers from Transition Charges would make these other sections of the law meaningless. A law must never be interpreted taking into consideration an isolated section, but rather by fully taking into consideration its entire context. *Municipio de San Juan v. Banco Gubernamental de Fomento*, 140 D.P.R. 873 (1996); *Delgado v. D.S.C.A.*, 114 D.P.R. 177 (1983); *Marina Ind. Inc. v. Brown Boveri Corp.*, 114 D.P.R. 64, 90 (1983); *Cirino v. Fuentes Fluviales*, 91 D.P.R. 608, 616 (1964). If the Legislature had meant to exempt net metering customers from Transition Charges in Article 29, it would have included express language to that effect in the provisions of Chapter IV.

Moreover, the plain language of Article 29 does not call for the exemption of net metering customers from Transition Charges. Simply put, Article 29 of the Revitalization Act enables PREPA to impose just and reasonable charges to its net metering customers – expressly including “securitization” – subject to prior evaluation and approval by the Energy Commission. Additionally, if Windmar Group’s assertion was correct, then there would be no need for the Legislature to include the criteria set forth in Article 29 of the Revitalization Act that guide the Energy Commission to evaluate any proposal filed by PREPA for the approval of charges to net metering customers. Windmar Group seeks to interpret Article 29 of the Revitalization Act in a manner that removes this discretion from the Commission and the Corporation. This is not how this law is written. If the Legislature intended to exempt net metering customers – it would not have provided these criteria for the Commission to consider. Furthermore, the inclusion of a reference to “securitization” should be interpreted as the intention that even under a securitization structure an additional charge to net metering Customers would not be imposed by PREPA in connection with their net metering agreement without being evaluated by the Commission under the listed criteria.

Finally, the Revitalization Act must be interpreted and applied in accordance with its purpose, which is – among other things – to enable PREPA to comply with its obligations and its transformation. The Legislature has expressly stated that this includes: reducing its debt burden; reforming its operations and governance structure; implementing significant savings in its operations; creating the conditions for investments in electric power infrastructure, cleaner energy, and diversification of energy sources (which includes renewable sources); maintaining reasonable and accessible rates; and complying with applicable laws. PRA Statement of Motives, Section A. These are fair and equitable solutions for the benefit of all interested parties, including renewable energy clients. Because these legal dispositions are plain, clear, and simple, their letter provides guidance to interpreting the Revitalization Acts and shall not be disregarded.

ii. **The term “Just” in Article 29 Should be Interpreted as Just for all Customers.**

Article 2 of the Revitalization Act recognizes that the charges shall contribute to PREPA’s compliance with its obligations and “benefit all customers with a just, reasonable, and transparent rate”; “[f]or such purposes, the Puerto Rico Electric Power Authority Revitalization Act [was] approved.” (Emphasis added). The problem is that Windmar Group's interpretation of “just” in Article 29 only applies to benefit renewable energy customers. However, by its nature, the term “just” should be viewed and applied with perspective. Windmar’s reading is detrimental to other Customers and would impose on them the burden of paying larger amounts of money to cover the Transition Charge. Many of these customers cannot practically install renewable energy resources or simply cannot afford to do so. *See Zarumba Supp. Dir., Corp. Supp. Ex. 11.00.* The Corporation submits that it would not be “just” to burden those Customers with the larger amounts of money necessary to cover the Transition Charges not paid by net

metering Customers. Windmar Group has not provided the Commission with evidence on how the proposed Transition Charges will not be just to every Customer, including renewable energy sectors. The statute is clear: the Revitalization Act mandates that the Transition Charge shall be just for each and all Customers of PREPA.

iii. Windmar did not Support its Position

During the hearings, Windmar Group argued that the imposition of a Transition Charge on renewable energy clients is an obstacle to their implementation. Its position appears to be that any increase in costs will affect the development of these projects. Windmar does not support its arguments with substantial and relevant evidence, which would provide the Commission with the elements to evaluate whether or not the imposition of the Transition Charge is “just” or constitutes an obstacle to the implementation of renewable energy projects. Windmar Group only argued that any increase in costs will affect the development of these projects. Said intervenor did not provide the Commission with any relevant information or evidence to demonstrate the correctness of such assertion. Currently, the administrative record of the instant case lacks any substantial evidence that could make this honorable Commission determine that the Transition Charge could be an obstacle to the implementation of renewable energy projects.

VI. CONCLUSION AND RELIEF REQUESTED

This transaction is a significant step in one of the three pillars of PREPA’s recovery plan. In order to approve this restructuring and enable PREPA’s recovery, the Commission must make certain legislatively mandated findings. The Corporation’s initial request and its alternative rate design satisfy the procedural submission requirements set forth in the Article 6.25A(c) and (e) and substantively support the findings that the Corporation requests the Commission determine

pursuant to Article 6.25A(b). The Commission's entry of a Restructuring Order as requested by the Corporation is vital to PREPA's survival and the improved economic infrastructure that a revitalized PREPA will be to the citizens of Puerto Rico.

WHEREFORE, based on the record, including testimony and exhibits submitted by the Corporation, and for all the reasons stated in this Brief, the Puerto Rico Electric Power Authority Revitalization Corporation respectfully requests that this honorable Commission approve the securitization plan proposed in the Petition, issue a Restructuring Order, substantially in the form proposed by the Corporation, approving the Calculation Methodology specified in the Restructuring Resolution and, without limitation, finding and determining:

- a. the provisions of the Restructuring Resolution (Corp. Supp. Ex. 10.01) including the Calculation Methodology for the Transition Charges and Adjustment Mechanism related to the Bonds are consistent with the criteria set forth in Article 6.25A(d) and are sufficient for and provide for adequate protection of the full and timely payment of the Bonds in accordance with their terms and other Ongoing Financing Costs;
- b. the Upfront Financing Costs and Ongoing Financing Costs proposed to be recovered from the Bond proceeds or the Transition Charge Revenues are consistent with Article 6.25A and Chapter IV of the Revitalization Act; and
- c. the servicing costs proposed to be recovered by PREPA in its role as the Initial Servicer are necessary, reasonable, and sufficient to compensate PREPA for the incremental costs of performing its functions as Servicer; and grant such other and further relief as the Commission finds just and reasonable for accomplishing the securitization transaction.

- d. Additionally, the Corporation requests the that the Commission make an additional finding taking notice of the Corporation's treatment of Grandfathered Net Metered Customers and determine that the criteria of Article 4 of Act 114-2007, as amended by Article 29 of the Revitalization Act, are satisfied. The Corporation also requests that the Commission accept the Corporation's proposal that the load of non-grandfathered net metering Customers for the purposes of distributing Financing Costs among Customer classes and calculating those Transition Charges that are based on kWh usage, be based on estimated total electric consumption as described herein and in the Restructuring Resolution.

WE HEREBY CERTIFY that the foregoing was sent via email to: Jose Perez-Velez, Esq., (jperez@oipc.pr.gov); Coral M. Odio-Rivera, Esq., (codiot@oipc.pr.gov); Marc G. Roumain Prieto, Esq., (mgrprcorp@gmail.com); Fernando Agrait, Esq., (agraitfe@agraitlawpr.com); Edwin J. Quinones Porrata, Esq., (edwin.quinones@aee.pr.gov); Jose G. Maeso Gonzalez, Esq. (jose.maeso@aae.pr.gov); Victor Luis Gonzalez, Esq., (victorluisgonzalez@yahoo.com); Alicia P. Perez Caballero, Esq., (aperez@fgrlaw.com); and Melissa Hernandez Carrasquillo, Esq. (mehernandez@fgrlaw.com); and Dr. Guillermo M. Riera, PE (guillermo.m.riera@gmail.com).

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 14TH DAY OF JUNE, 2016

**PUERTO RICO ELECTRIC POWER
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By: _____

By: _____

VERIFICATION

The undersigned, MELBA ACOSTA FEBO, Esq., CPA, of legal age, single, attorney, Certified Public Accountant and executive, and resident of San Juan, Puerto Rico, in her capacity as Chairperson of the Board of Directors of the Puerto Rico Electric Power Authority Revitalization Corporation, states that the facts stated in the foregoing Brief are true and correct to the best of her knowledge and belief.

IN WITNESS WHEREOF, I have hereunto signed my name this 13 day of June 2016.



MELBA ACOSTA FEBO

Chairperson
Board of Directors
Puerto Rico Electric Power Authority Revitalization Corporation

Affidavit No. 754

Acknowledged and subscribed before me by Melba Acosta Febo, Esq., CPA, of the personal circumstances above mentioned, in her capacity as Chairperson of the Board of Directors of the Puerto Rico Electric Power Authority Revitalization Corporation, who is personally known to me, in San Juan, Puerto Rico, this 13 day of June 2016.




Public Notary