

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

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO  
et al.,

Debtors.<sup>1</sup>

PROMESA Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER  
AUTHORITY,

Debtor.

PROMESA Title III

Case No. 17 BK 4780-LTS

(This court filing relates only to Case  
No. 17 BK 4780-LTS)

**UTIER OBJECTION TO INSURERS' MOTION FOR RELIEF FROM AUTOMATIC  
STAY (DKT #975) AND TO PRAY FOR THE APPOINTMENT OF AN INDEPENDENT  
PRIVATE SECTOR INSPECTOR GENERAL ("IPSIG")**

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

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**TO THE HONORABLE UNITED STATES DISTRICT JUDGE LAURA TAYLOR SWAIN:**

On behalf of Unión de Trabajadores de la Industria Eléctrica y Riego Inc., (“UTIER”) we respectfully submit this objection to the *Motion For Relief From The Automatic Stay To Allow Movants To Enforce Their Statutory Right To Have A Receiver Appointed* (“Receiver Motion”) filed by National Public Finance Guarantee Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc., (“Insurers” or “Movants”).

In support of the Objection, UTIER respectfully states as follows:

**I. PRELIMINARY STATEMENT**

Movants to this contested matter are insurance companies that issued policies guaranteeing the revenue-backed bonds issued by the Puerto Rico Electric Power Authority (“PREPA” or “Debtor”). *See* 17-04780-LTS, Dkt. 975, at 29 & 31. On July 18, 2017, Movants filed their first Motion for Lift-Stay, asking this Court to relief them from the stay so they may “commence litigation [in a Court of Competent Jurisdiction] against... [“PREPA”] for the appointment of a receiver.” *See* 17-04780-LTS, Dkt. 74. This was designed to request another court to appoint “a receiver to manage PREPA's operations and seek the approval of rates higher than those PREPA has thus far chosen to charge”. *In re Fin. Oversight & Mgmt. Bd.*, 301 F. Supp. 3d 278, 285 (D.P.R. 2017).

On September 14, 2017, this Court issued an *Opinion and Order* denying Movants original request for relief. *Id.* Said Order was vacated by the U.S. Court of Appeals for the First Circuit in *Fin. Oversight & Mgmt. Bd. v. Ad Hoc Grp. of PREPA Bondholders*, 899 F.3d 13 (1st Cir. 2018). The appellate court remanded the case for further proceedings. In doing so, the appellate court suggested Movants to “file a new and updated request for relief from the automatic stay so that the parties and the Title III court can focus on the merits of that request

free of any thoughts that the request is categorically precluded.” *Id.* at 24. Movants followed the court’s advice and filed a new and updated Motion for Lift-Stay on October 3, 2018. *See* 17-04780-LTS, Dkt. 975.

Movants Receiver Motion is more of a rework of the original motion and less of a new and updated request for relief from the automatic stay. The arguments are substantially the same as those exposed in their first motion. The only significant change is that the new motion is more discrete as to the real reason for appointing a Receiver, namely, seek and increase the rates charged by PREPA. On this end, Movants aver now a Receiver –if appointed– shall not seek an increase in electricity rates without first obtaining either an Order from this Court or the consent of the Financial Oversight and Management Board (“FOMB”). *See* Dkt. 975, at 48 ¶6. That being said, at issue here is whether this Court should relief Movants from the automatic stay and, if it concludes that relief from the stay is allowed, how the Court should tailor such relief.

Movants ask this Court to lift the stay to enable them to (1) file a complaint –presumably– in a Court located in Puerto Rico,<sup>2</sup> to seek the appointment of a Receiver. Per Movants requests, this Receiver would “be nominated by Plaintiffs [here Movants], to ensure compliance with all of PREPA’s obligations under the Trust Agreement, such receiver would have such powers as provided for under the Enabling Act and Trust Agreement” (Dkt. 975, p. 81) and would “assume all powers of the PREPA Executive Director and Board of Directors...” (Dkt. 975, p. 80, ¶103).

In essence, Movants argue that PREPA has a history of mismanagement, listing as examples a set of issues such as PREPA’s undisputed history of Mismanagement and Corruption, which remains unabated to date; the failures of efforts undertaken to reform PREPA;

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<sup>2</sup> Bondholders “shall have the right to apply in an appropriate judicial proceeding to any court of competent jurisdiction in Puerto Rico for the appointment of a receiver.” 22 L.P.R.A. § 207.

the political abuses which –they contend– also remain unabated and that, despite the recent efforts, PREPA’s transformation will likely take years to materialize, thus requiring proper management to shepherd PREPA through the process.

Movants explain that, once appointed, the Receiver “would responsibly manage PREPA to reduce waste and inefficiency and generate revenues; enable [PREPA] to properly function in a manner to provide reliable service and complete the planned privatization; and have such other powers provided for under [in] [PREPA’s] Enabling Act and the Trust Agreement and that the court appointing the receiver may deem appropriate.” Dkt. 975, P. 32.

As representative of thousands of PREPA employees, UTIER is undoubtedly a party in interest in issues related to PREPA’s management of the business activities and revenues. UTIER stresses the burden of Movants to prove the reduction of their collateral’s value before the Court may lift the stay.<sup>3</sup> However, UTIER is more concerned with the lack of analysis of “what, if any, adequate protection PREPA can offer short of a receiver being appointed to manage it if protection is warranted.” *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 899 F.3d 13, (1st Cir. 2018).

Precisely, UTIER’s opposition is tailored to address the aforementioned factor by proposing the **less drastic measure** of appointing an Independent Private Sector Inspector General (“IPSIG”). It is UTIER’s position that this Court should **deny the Receiver Motion** and instead, appoint an IPSIG. **Alternatively**, if this Court grants the relief from the Automatic Stay to appoint a receiver, it should concurrently appoint an IPSIG to create a check-and-balance

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<sup>3</sup> *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 899 F.3d 13, 23 (1st Cir. 2018).

between the powers exercised by the Receiver appointed and the interests of the rest of the stakeholders represented before this Court, including –of course– UTIER and PREPA.<sup>4</sup>

The IPSIG is a third-party from the private sector that ensures compliance with relevant law and deters, prevents, uncovers, and reports unethical and illegal conduct by, within, and against the organization; in this case PREPA. The IPSIG would be named by the Title III Court and would report to said Court, while collaborating with the FOMB and the United States Attorney’s Office for the District of Puerto Rico. An IPSIG is a less intrusive and adversarial alternative to Movants’ proposal to start a parallel litigation in another court to effectively remove PREPA’s appointed officials and replace them with a Receiver nominated *exclusively* by Movants. An IPSIG should be considered to answer the question of: what, if any, adequate protection PREPA can offer short of a Receiver being appointed to manage it if protection is warranted?

## II. ARGUMENT

### A. The Relief Requested by Movants

As mentioned above, Movants are requesting an Order from the Title III Court lifting the automatic stay to allow them to file a complaint before a Court of Competent Jurisdiction to **request the appointment of a Receiver that would “...step into the shoes of PREPA’s current management...”**. Doc. No. 975, pg. 42 & 47, ¶2. [Emphasis added]

The Receiver would be nominated by the Movants and would respond to the Court where the Movants file their complaint. This Receiver would be in charge of ensuring “compliance with

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<sup>4</sup> According to the Court-sanctioned briefing schedule at Dkt. #1064, objections to the lift of stay must be filed on or before March 29, 2019. Thus far this contested matter is in the discovery phase. Respondents and Movants are embroiled in an issue regarding the disclosure of documentation pertaining to the valuation of the Movants collateral and to what extent the collateral is adequately protected. Consequently, Respondents have not filed objections to Movants’ Receiver Motion. Considering the stage of litigation, we understand that UTIER’s opposition is timely and will not cause inconveniences or delays in this contested matter.

all of PREPA's obligations under the Trust Agreement, [and would] ...have such powers as provided for under the Enabling Act and Trust Agreement". *Id.* pg. 81, ¶(a). However, "absent an order from the Title III Court or consent from the FOMB, the receiver will not have the power to initiate a rate proceeding with PREC to enforce Section 502(B)(b) of the Trust Agreement."<sup>5</sup> *Id.* pg. 81, ¶(b).

**B. UTIER's Alternative Proposal to the appointment of a Receiver**

PREPA does not have a problem of lack of laws or regulations. PREPA has a compliance problem. PREPA does not need an entity that comes to enact new rules. It needs an entity that enforces them. An IPSIG is the only real alternative to meet these objectives. Following the Institute for Energy Economics and Financial Analysis ("IEEFA") recommendations,<sup>6</sup> UTIER proposes that the federal bankruptcy court appoint an Independent Private Sector Inspector General ("IPSIG") to oversee, audit and report deviations in the laws and procedures that control PREPA's operations.

Section 105(a) of the Bankruptcy Code (incorporated in PROMESA by 48 U.S.C.S.) provides bankruptcy courts with broad general powers to grant such relief as is necessary to effectuate the provisions of the Bankruptcy Code. *In re Easton*, 882 F.2d 312, 315 (8th Cir. 1989); *Miller v. Farmers Home Admin. (In re Miller)*, 16 F.3d 240, 244 (8th Cir. 1994). Section 105(a) allows this Court to weight in the interest of the different stakeholders and to elaborate a remedy that fits PREPA's difficulties and the rights and interest of all the stakeholders.

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<sup>5</sup> The cited section requires PREPA to charge rates sufficient "to provide an amount at least equal to one hundred twenty per centum (120%) of the aggregate Principal and Interest Requirements for the next fiscal year on account of all the bonds then outstanding under [the Trust] Agreement reduced by any amount deposited to the credit of the Bond Service Account from the proceeds of bonds to pay interest to accrue thereon in such fiscal year."

<sup>6</sup> On August 3, 2017, the Director of Finance for the Institute for Energy Economics and Finance Analysis, Mr. Thomas Sanzillo, recommended the IPSIG alternative for PREPA, in a Letter directed to the FOMB Chairman and Gov. Ricardo Rosselló captioned *Puerto Rico Electric Power Authority ("PREPA") – Debt Structure, Rates and Fiscal Solvency*, (Available at <http://ieefa.org/wp-content/uploads/2017/08/IEEFA-letter-to-Chairman-Carrion-and-Governor-Rossello-080317.pdf>).



### C. What is an IPSIG?

An IPSIG can be defined as an “independent, private sector firm (as opposed to a governmental agency) that possesses legal, auditing, investigative, and loss prevention skills, that is employed by an organization (i) to ensure that organization’s compliance with relevant laws and regulations, and (ii) to deter, prevent, uncover, and report unethical and illegal conduct committed by the organization itself, occurring within the organization, or committed against the organization.”<sup>7</sup> In other words, an IPSIG can be “individuals or entities [charged] with legal, auditing, investigative, and other [powers] [...] to help monitor the activity of specified City vendors [a/k/a Contractors].”<sup>8</sup>

An IPSIG is not a typical receiver. This inspector general focuses on evaluating and recommending the implementation of reliable mechanisms to identify deviations from the law and regulations that create risks that affect an organization and acts aggressively to identify and correct problems of waste, fraud and abuse that prevent the organization from fulfilling its mission.

The primary roles of an IPSIG are to **monitor, audit and investigate** the activities of the organization in order to detect unethical conduct, violations to the laws, regulations or collective bargaining agreements and to report them to law enforcement authorities or other entities with jurisdiction. Also, to design and implement programs to prevent illegal, unethical and wasteful behavior, and to monitor the implementation of these programs.”<sup>9</sup> Consistent with this, the IPSIG must respect the existing collective bargaining agreements in accordance with the constitutional

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<sup>7</sup> Remarks of Hon. Margaret J. Finerty before the Federal Bar Council, Monitorships, IPSIGs and Independent Investigations: The Increasing Privatization of the Investigation and Prosecution Functions in Corporate Oversight, (October 19, 2005).

<sup>8</sup> Center for the Advancement of Public Integrity, The Integrity Monitor Program, The Role of the Private Sector in City Contract Oversight, Issue No. 9, September 2016, page 1.

<sup>9</sup> [http://www.iaipsig.org/media/article\\_15.html](http://www.iaipsig.org/media/article_15.html). See also: [http://www.iaipsig.org/media/article\\_3.html](http://www.iaipsig.org/media/article_3.html)

rights to collective bargaining and to carry out the legitimate concerted activities of the exclusive representatives of PREPA's workers. In addition, the IPSIG will respect the independence and decision-making power of the Employee Retirement System of PREPA.

An IPSIG team is typically comprised of individuals with skills in investigations, auditing and prosecution. An IPSIG team appointed to oversee PREPA would also possess expertise in the operations of a public utility. An organization can either hire an IPSIG voluntarily or an IPSIG can be imposed upon an organization externally, for example by a court order.

Where the culture of the organization is primarily legitimate or amenable to reform, the IPSIG may, in addition to the prevention and control of illegal or unethical conduct, be a major participant with management in enhancing the economy, efficiency and effectiveness of the organization.

The purpose of appointing an IPSIG for PREPA would be to move the agency away from its current state of organizational dysfunction and to an organizational culture that embraces the practice of professional and ethical standards as first principles, at all levels. The simple idea is that "good ethics is good business."

The IPSIG would be authorized by the District Court, working in an innovative way with the FOMB and the Governor of Puerto Rico. As the authorizing entity, the District Court would appoint a company or team to act as the IPSIG. The District Court would be the final decision maker in the selection of the IPSIG team.

The overriding objective of this proposal is to put PREPA on an internal track toward sound management that can support efforts to modernize the electrical system and secure the confidence of the market and public. The IPSIG would not have authority to usurp the

management responsibilities of the currently existing board and management. If working cooperation develops between the IPSIG team, PREPA staff and management, and Puerto Rico's political leaders, the IPSIG would be a source of important organizational and managerial improvements.<sup>10</sup> The IPSIG will monitor the response to its recommendations and look to the entities to which it reports to take appropriate actions if PREPA fails to respond adequately. Also, in the event that PREPA's board and management are resistant to the IPSIG's investigations and proposed reforms, the IPSIG would ultimately have leverage to report perceived misconduct by PREPA for potential federal law enforcement.

The basis of an IPSIG plan of action is usually a compilation of findings and recommendations from existing oversight reports and stakeholder input. Thus, those who have been the biggest critics of the agency become participants in the solution. The IPSIG team would utilize regular access to PREPA's stakeholders, including business partners, labor organizations, individual employees and interested outside organizations, as valuable sources of information. At the end of its tenure the IPSIG would produce a final report including a long list of specific recommendations for administrative, financial and operational changes at PREPA.

**D. The scope of the tasks of the IPSIG team would cover but not be limited to:**

**1. Personnel hiring regulations, practices, controls and supervision assessments:**

- a) Review of all managerial job post needs and justifications, qualifications, supervision, budgetary impacts, political influence, evaluation mechanisms and effectiveness of implementation.
- b) All board and senior management would be assessed as to how they received their appointments, qualifications to hold the positions and contributions made to PREPA.

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<sup>10</sup> [http://www.iaipsig.org/media/article\\_15.html](http://www.iaipsig.org/media/article_15.html)

- c) All political appointees would be similarly assessed.<sup>11</sup>
- d) Recommendations to the District Court, as authorizing entity, regarding the current and future tenure of the agency's managerial employees and appointees.
- e) Upon completion of an initial review and a first round of personnel actions, the IPSIG would make recommendations for structural reforms related to managerial classifications and organizational structure, hiring, managerial personnel evaluations, retention, disciplinary actions and terminations managerial personnel.

**2. Non-fuel procurements:**

- a) Review of the Office of Contract Procurement and Compliance mission, regulations, practices, staffing, budget, controls and supervision.<sup>12</sup>
- b) A review would be conducted of the current scope of procurements and certain contracts would be selected for review related to: internal agency process to identify need for procurement, selection of personnel for contract review and scoring, development of bid solicitation documents, management of bid proposals, scoring or rating sheets, production of lists of bidder scores, formal internal decision making processes, adherence or departures from process, final vendor recommendations to management, award announcement, contract preparation, final contract terms and pricing, contract awards and final documents, any third party reviews of contractor award and selection, authorization for payments under contracts, contractor responsiveness to field condition and other changes and final evaluation of the contractor (where applicable).
- c) A review of all staff and board and formal and informal communications with

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<sup>11</sup> <https://drive.google.com/file/d/19-lauVo3w9MPS03xYVc0SWhQin-Q6FEf/view> : The issue of *empleados de confianza* is addressed in detail in the Kim and Kobre report, most particularly in the PREPA section of the report.

<sup>12</sup> Fiscal Plan, p. 13.

third party entities outside of PREPA including but not limited to the governor and staff, federal funding or oversight authorities, Puerto Rico Comptroller's Office and vendors.

**3. Fuel procurements:**

a) A review of all regulations, practices, controls, processes and supervision related to the preparation of procurement documents, receipt and review of documents, scoring instruments, qualitative assessments, managerial staff recommendations, final signoffs and any external communications between members of formal procurement process and other PREPA and non-PREPA individuals.<sup>13</sup>

b) A review of all regulations, practices, controls, processes and supervision related to the regular delivery of oil and other fuels used by PREPA, system for ordering fuel, receipt of fuel and contract certifications re: fuel quantity, quality, price, management of business relationships with vendors, including review and evaluation of their performance and any external communication between staff and board formally involved and other PREPA and non-PREPA individuals.

c) A review of all regulations, practices, controls, processes and supervision related to the performance of the current portfolio of laboratories and other testing facilities used by PREPA to insure compliance with quality specifications of delivered fuel. This includes, but is not limited to, preparation of procurement documents, review of bid submissions and vendor selection, contract negotiations, submission and payment of invoices, review and signoffs on laboratory certifications and other PREPA and non-PREPA individuals.

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<sup>13</sup> <http://ieefa.org/ieefa-report-effects-of-long-running-oil-purchase-scandal-undermine-privatization-and-contract-reform-initiatives-at-prepa/>

d) A review of all staff and board's documents provided by any individual or unit within PREPA in response to inquiries and reviews regarding the fuel procurement unit including but not limited to Puerto Rico's Senate, Federal Bureau of Investigation, Puerto Rico Comptroller's Office, FOMB or any third party independent investigative oversight or enforcement agency.

**4. Fiscal and accounting:**

a) A review of all regulations, practices, controls, processes and supervision related to the preparation of PREPA's annual budget (including all revenue, expenditure and debt service calculations and analysis and internal control processes), submission of budget to the Governor and FOMB, review of budget and responders to outside inquiries.

b) A review of all regulations, practices, controls, processes and supervision related to the work assignments to establish accountability within PREPA.

c) A review of all hiring of third-party consultants to aid in the preparation of budgets.

d) A review of the role of the FOMB in the preparation, review of budgets, program of compliance review.

e) A review of all budget and savings initiatives prepared by PREPA, FOMB or PREPA's consultants that are currently active, status, reporting (scope, size, timing) and progress toward goals.

f) A review of all regulations, practices, controls, processes and supervision related to the selection of PREPA's independent auditor and the procurement process and internal controls governing selection. A review of all staff and board communications

with the independent auditor involved with the preparation of PREPA's financial audits over the last ten years.

**5. Finance:**

- a) A review of all regulations, practices, controls, processes, supervision related to PREPA's current and future indebtedness: hiring, payments and termination of all financial, legal, energy advisors including but not limited to: Alix Partners, Rothschild, Filsinger, Navigant, Siemens and any companies involved with the underwriting of PREPA's debt issuances.
- b) Any documents created by PREPA, its managerial staff or board to assess the quality of performance of any of the outside advisors and any recommendations.
- c) A review of involvement of all third party individuals or organizations in the selection, evaluation or decisions to hire or terminate financial advisors by the Governor, Legislative leaders or other individuals who are not employees or board members of PREPA or the Puerto Rico government.
- d) A review of the Kim and Kobre report and follow-up investigations.

**6. Capital and energy planning and regulatory oversight:**

- a) A review of all regulations, practices, controls, processes and supervision related to the preparation of PREPA's capital investment and capital maintenance planning, consisting of an evaluation of internal information gathering, evaluation and priority setting and any outside influence.
- b) A review of the FOMB's role in setting PREPA's capital investment priorities.
- c) A review of the evaluation of the performance and selection of the lead consultant for PREPA in the creation of its Integrated Resource Plan (IRP), including how the

current vendor was selected: the managerial staff and board involved, assessment of prior performance of the vendor and the operational role of the vendor with PREPA managerial staff and any external influences on the process.

d) A review of all regulations, practices, controls, processes and supervision related to PREPA's ongoing relationship with the Energy Bureau.

**7. PREPA counsel:**

a) A review of all regulations, practices, controls, processes and supervision related to PREPA's counsel's office and a review of the PREPA board oversight of the Office.

b) A review of the selection, scope of work, payments to and evaluation of any third party law firms or others involved with the provision of legal advice or representation of PREPA.

c) A review of all regulations, practices, controls, processes and supervision related to the counsel's office role in the management of PREPA's compliance with corporate, contract, budget, finance and energy regulatory matters.

**E. Differences between the IPSIG and the Receiver**

Movants' request a Receiver that would "...step into the shoes of PREPA's current management..." Case 17-04780-LTS Doc. No. 975, pg. 42. That is, the Receiver would be vested with the duties and powers to:

1. Assume all powers of the PREPA *Executive Director and Board of Directors*, subject to Act 57-2014 and Act 4-2016;
2. Lead development and implementation of a plan to maintain and operate PREPA's system, including, without limitation, the power to restore PREPA's system and to assist



in prevention of future outages;

3. Implement near term cost-saving and revenue enhancement measures; and
4. Exercise any other rights, powers, and remedies afforded to the receiver under P.R. Laws Ann. Tit. 22 § 207. Case 17-04780-LTS Doc. No. 975, Pg. 79-80, ¶130.

On the other hand, as UTIER proposes, an IPSIG would act more as an independent private auditor. The IPSIG would be vested with authority to review, inquire, and make recommendations based on its findings of PREPA's business practices in areas such as (1) personnel hiring regulations, practices, controls and supervision assessments; (2) procurements (for buying Fuel and to enter into Non-fuel contracts); (3) Fiscal and Accounting; (4) Finance; (5) Capital and Energy planning and regulatory oversight, and (6) the retention of professional counselors and other third-party consultants.

**F. The two main differences between the Receiver and the IPSIG are the following:**

**1. Auditing, instead of replacement:**

Rather than displacing PREPA's duly appointed management, an IPSIG would investigate and review their modus operandi as a matter of fact and as a matter of law. The IPSIG will monitor the response to its recommendations and look to the entities to which it reports to take appropriate actions if PREPA fails to respond adequately. Particularly, the IPSIG would report to and collaborate with the Title-III Court, the United States Attorney's Office for the District of Puerto Rico, and the FOMB, disclosing its conclusions and a series of recommendations.

In contrast, the Receiver will "step into the shoes of PREPA's current management," with the primary focus of protecting assets by assuring competent operations. The IPSIG does not play a managerial role and will not direct PREPA's day-to-day operations. The IPSIG's focus is

to ensure compliance with relevant law and to deter, prevent, uncover, and report unethical and illegal conduct by, within, and against the organization.

## 2. Chain of Reporting

Movants assert that “PREPA must be led by a receiver, free from impermissible political influence, with experience and proven expertise managing public utilities in the best interests of all of its constituents.” Case 17-04780-LTS Doc. No. 975, Pg. 9-10.<sup>14</sup>

However, lifting the automatic stay would allow the Movants to file a Complaint to Appoint a Receiver before a Court of Competent Jurisdiction [in Puerto Rico]. If that Court of “Competent Jurisdiction” concludes that Movants have a right to the relief requested, said Court would be the one in charge of appointing the Receiver **from a list of persons/entities nominated by Movants**. Accordingly, the Receiver would be under such Court “supervision”, and not under the Title III Court. Case 17-04780-LTS Doc. No. 975, pg. 47, ¶2. On the other hand, the proposed IPSIG would be named by, and would report to the Title-III Court. Additionally, as mentioned before, the IPSIG would have a duty to the United States Attorney’s Office for the District of Puerto Rico and the FOMB.

### G. Why an IPSIG is the best option for PREPA?

First, the IPSIG would **not** replace PREPA’s existing management. Instead it would review how said management implements the laws, rules, and regulations governing PREPA’s operations.

Second, the appointment of an IPSIG would avoid frictions with the local Government for displacing its duly named Officials to appoint a Receiver that would respond to a (non-Title-

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<sup>14</sup> Additionally, they contend that “[u]nder the receiver’s stewardship, PREPA would remain subject to t[he] [Title-III] Court’s jurisdiction, just as it is now. **But PREPA’s problems begin in the boardroom, not the courtroom, and the FOMB has no reach there.** As this Court previously held, under PROMESA, the role of FOMB is separate from PREPA’s management and that would remain if a receiver is appointed” *Id.* 9-10.

III) Court, and that would be **exclusively** nominated by the Movants (Insurers and holders of approximately 27% of PREPA's debt). We should keep in mind that, although the Movants may hold close to a third part of PREPA's debt they are not the majority of its stakeholders.

Third, appointing a Receiver necessarily leads to a bifurcation of the ongoing proceedings directed to restructure PREPA's Debt. It is reasonable to infer that other PREPA stakeholders —now bringing their claims before the Title III Court— will move to intervene in the "Receiver Litigation", because they may perceive the Receiver as a risk to their chance of recovering a portion of what PREPA owes them. This duplicative effort is a waste of judicial resources and an absolute contradiction of principles of judicial economy.

Furthermore, subjecting PREPA to two litigations is to allow an unnecessary fragmentation of the procedures before the Title III Court. Necessarily this will bring about additional and costly litigation outside of the Title-III Court purview. Additionally, this could potentially disrupt the other stakeholders' ability to oversee and participate in the restructuring of PREPA's debts. Lastly, said bifurcation could subject PREPA and its Estate to inconsistent judgements.

Given the proposed reporting structure, the IPSIG will act as a force multiplier for the District Court, the United States Attorney's Office for the District of Puerto Rico, and the FOMB. UTIER envisions a multi-disciplinary IPSIG team (legal, audit, investigation, and loss prevention) with an ongoing presence at PREPA, from the boardroom to the work site. The IPSIG will be working with PREPA's management and reporting to the United States Attorney's Office for the District of Puerto Rico and the FOMB regularly, with additional periodic reporting to the Court. The IPSIG will be positioned to provide real-time intelligence on the organization at every level.

**H. Even if the Receiver is authorized, PREPA and its stakeholders could benefit from the appointment of the IPSIG**

Even if the Court Orders a lift of the stay, appointing an IPSIG would still be beneficial to all parties. The IPSIG solution should be pursued whether or not a Receiver is appointed for PREPA. The IPSIG can ensure that the person or entity appointed as a Receiver by the other Court will not use its faculties to exclusively secure the protections of Movants' interests. In sum, the tasks that the proposed IPSIG would be performing are different from, but ultimately complementary to, the managerial functions ordinarily performed by a receiver.

The IPSIG would serve as a watchdog of how the Receiver exercises its managerial powers. The only difference would be that, instead of reviewing the work of a board of directors and an executive director, the IPSIG would assess the person or entity serving as a Receiver. Still, the IPSIG's powers and faculties would be directed toward marshaling all of PREPA's *stakeholders*, working to find common solutions to the organization problems, instead of spending its time and efforts in favoring whoever ends up paying for its fees.

As a general matter, an IPSIG can take one of two basic forms: (i) where the culture of the organization is primarily hostile and illegitimate, the IPSIG has a more limited role of instituting controls, monitoring, and reporting; (ii) where, however, the culture of the organization is primarily legitimate or amenable to reform, the IPSIG may, in addition to the above functions, also take a significant role participating with management to enhance the economy, efficiency, and effectiveness of the organization.

If current management is replaced with a Receiver, there exists the potential for the Receiver and the IPSIG to work together, amicably, to advance PREPA's operations and long-term goals. In that case, the IPSIG will act as a high-level management consultant emphasizing ethical conduct in the service of PREPA's business objectives.

### III. CONCLUSION

PREPA has lost the confidence of the public and lacks access to capital markets. The strain of years of mismanagement and the destruction caused by two hurricanes, created an opportunity to improve and rebuild the agency and the system. Nevertheless, many career individuals who are an asset to the future of the agency and of Puerto Rico work within the organization.

Many promises of reform and change have come from Puerto Rico's political leaders regarding PREPA, but they have never materialized. All of the plans now being put in place will be for naught if PREPA, as the Puerto Rico's lead organization for its electricity system, remains in its current state of dysfunction. An IPSIG could change this by working with management and all of PREPA's stakeholders to develop a culture of economy, efficiency and effectiveness going forward.

UTIER understands that a lift of the stay is a threat to its members' property interest in their jobs and their ability to organize and negotiate directly with PREPA. Moreover, the Court's determination as to the existence of "cause" to lift the automatic stay could affect UTIER members' claims and rights in ongoing adversary proceedings. Hence, UTIER's intervention in this case is necessary to protect the rights of its members to have a due process, and to help the Title III Court in evaluating the merits of the arguments advanced by all parties in interest.

### IV. RELIEF REQUESTED

For the reasons set forth above, UTIER prays to this Court to **deny the Receiver Motion** and instead, appoint an IPSIG. **Alternatively**, if this Court grants the relief from the Automatic Stay to appoint a Receiver, it should concurrently appoint an IPSIG.

RESPECTFULLY SUBMITTED.

In Ponce, Puerto Rico, this March 29, 2019.

**WE HEREBY CERTIFY** that on this same date we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all participants and Standard Parties. Paper copies have been mailed pursuant to Section II of the *Seventh Amended Notice, Case Management and Administrative Procedures*:

- (i) Chambers of the Honorable Laura Taylor Swain (two copies shall be delivered to the chambers):  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St., Suite No. 3212  
New York, New York 10007-1312;
- (ii) Office of the United States Trustee for Region 21  
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