

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i></p> <p>Debtors.¹</p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 3283-LTS (Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO</p> <p>as representative of</p> <p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p>Debtor.</p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 4780-LTS</p>
<p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of PUERTO RICO ELECTRIC POWER AUTHORITY, and PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY,</p> <p>Movants,</p> <p>v.</p> <p>OFFICIAL COMMITTEE OF UNSECURED CREDITORS, <i>et al.</i></p> <p>Respondents.</p>	

**REPLY IN SUPPORT OF CONGRESSMAN RAÚL GRIJALVA, CHAIRMAN OF THE
HOUSE COMMITTEE ON NATURAL RESOURCES, CONGRESSWOMAN NYDIA
VELÁZQUEZ, MEMBER OF THE HOUSE COMMITTEE ON NATURAL**

¹ 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). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

**RESOURCES, AND CONGRESSMAN DARREN SOTO, MEMBER OF THE HOUSE
COMMITTEE ON NATURAL RESOURCES, REQUES FOR FOR LEAVE TO
PARTICIPATE IN THIS CASE AS *AMICI CURIAE* "PLUS"**

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TO THE HONORABLE COURT:

COMES NOW movant, REP. RAÚL M. GRIJALVA, in his official capacity as CHAIRMAN OF THE U.S. HOUSE NATURAL RESOURCES COMMITTEE, REP. NYDIA M. VELÁZQUEZ, in her official capacity as MEMBER OF THE U.S. HOUSE NATURAL RESOURCES COMMITTEE, and REP. DARREN SOTO, in his official capacity as MEMBER OF THE U.S. HOUSE NATURAL RESOURCES COMMITTEE, represented by the undersigned attorney, and respectfully submit this reply to Memorandum of Law of The Government Parties in Opposition to Request of Congressman Raul M. Grijalva, Congresswoman Nydia M. Velazquez and Congressman Darren Soto for Leave to Participate as *Amici Curiae* “Plus”. [Dkt #9152] [“Opposition to *Amicus Curiae*”] In support thereof, Rep. Grijalva, Rep. Velázquez, and Rep. Soto state and allege as follows:

PRELIMINARY STATEMENT

The Definitive Support Agreement (“RSA”) dated as of May 3, 2019, by and among the Puerto Rico Electric Authority (“PREPA”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), the Puerto Rico Fiscal Agency and Financial Authority (“AAFAF”), (“collectively, the “Government Parties”), the members of the Ad Hoc Group of PREPA bondholders, Assured Guaranty Corp. and Assured Guaranty Municipal Corp., and Uninsured Bondholders, proposes a transaction that consists of an exchange of existing PREPA bonds for Securitization Bonds.

The Government Parties assert, and this Honorable Court has agreed, that the 9019 motion is limited in scope. However, by approving the allowance of the asserted secured claims of the Supporting Holders who are parties to the RSA, the approval of Settlement Payments required by the RSA prior to plan confirmation hearing, and ordering the Supporting Holders of

the RSA to vote in favor of a plan consistent with the RSA, this Honorable Court will approve other aspects of the RSA, such as the imposition of a Transition Charge and a Settlement Charge, without hearing arguments in favor or against of such charges. This is because the asserted claims of the Supporting Holders, that the Government Parties seek approval of, will be secured by the Transition Charge **to the extent set forth in the RSA**. Also, because the Settlement Payments made before the plan confirmation will be funded from a Settlement Charge imposed on PREPA's customer bills. Furthermore, the Increased Settlement Payment entails PREPA adding a charge to PREPA's customers' bills equal to the full initial Transition Charge under the RSA, if a Plan with the provisions set forth in the RSA has not been confirmed by March 21, 2021. As such, to determine the RSA's reasonability, it is imperative for this Honorable Court to assess the repercussions of the Transition Charge. Consequently, the 9019 hearing warrants the evidence proffered by the *Amicus Curiae* which demonstrates such effects upon PREPA and Puerto Rico.

The RSA, as the base for the plan of adjustment, has to be feasible in order to be reasonable. The *Amicus Curiae* provides a thorough explanation of the RSA's unfeasibility. Moreover, the RSA is not a settlement agreement solely between PREPA and its bondholders. Rather, as PREPA is the sole provider of energy in Puerto Rico –an essential service– the RSA affects PREPA's customers, which are PREPA's source of revenue, as well. Also, the RSA impairs Puerto Rico's economy and the Government as a whole. Therefore, to determine the RSA's reasonability, the paramount interests of ALL parties in interest –including the Puerto Rico's population– has to be evaluated. The *Amicus Curiae* proffers exactly this panoramic analysis.

In addition, the *Amicus Curiae* explains to this Honorable Court why it is probable that the RSA will be unsuccessful, leading PREPA to another default, and thus future litigation. Subsequently, keeping PREPA in Title III. Moreover, the *Amici* explains why the RSA will affect PREPA's viability as a going concern with severe consequences upon Puerto Rico's economy and the wellbeing of its population, which is PREPA's source of revenue.

Furthermore, the main point of the *Amicus Curiae* brief is that due to several factors such as Puerto Rico's declining economy, outmigration, and demographic issues, the RSA's Transition and Settlement charges will exacerbate PREPA's difficulties in collecting revenues. Therefore, PREPA would not be able to pay its bondholders and other creditors. As the RSA will make unlikely to fully collect the transition charge, it will affect PREPA's financials and its ability to provide essential services for Puerto Rico.

In addition, the RSA would represent complex litigation at the expense of PREPA's customers, which are the source of revenue for PREPA. Furthermore, since the Transition Charge will be implicitly imposed without litigation at the Rule 9019 stage, it would moot any dispute regarding the Transition Charge.

A person or entity that wishes to file an *Amicus Curiae* does not have to prove standing. Rather, it has to demonstrate that it has a special interest in the outcome of the controversy. The appearing parties participated in the drafting of and supported the enactment of PROMESA, with the intention of granting relief to Puerto Rico for its outstanding debt. Accordingly, it is of interest to the appearing parties that the FOMB, on behalf of Puerto Rico and its entities, acts on the best interest of PREPA and Puerto Rico as a whole, rather than impairing its capability of economic growth.

The RSA constitutes a settlement agreement that is of general public interest, as it entails

the restructure of the debt of PREPA –the sole provider of energy, which is an essential service– with its bondholders. In addition, the RSA is a settlement that affects Puerto Rico’s economic growth and population wellbeing. As such, it is of interest to the appearing parties that any reached settlement agreement between PREPA and its bondholders, is reasonable, in the best interest of PREPA’s estate, and does not exacerbates Puerto Rico’s socio-economic crisis. As such, the appearing parties request for this Honorable Court to allow their participation as *Amicus Curiae* “plus”.

ARGUMENT

1. The relief that the Government Parties seek at the 9019 hearing warrants attending the macroeconomic effect that the RSA will have upon Puerto Rico.

Among the relief sought by the Government Parties are (a) the allowance of the asserted secured claims of the Supporting Holders who are parties to the **RSA to the extent set forth in the RSA**; (b) the approval of Settlement and Adequate Protection Payments required by the RSA prior to plan confirmation; and (c) an order requiring the RSA’s Supporting Holders to vote in favor of a Plan consistent with the RSA.² Moreover, the Government Parties assert that the relief they seek does not include the approval or implementation of rate increases, the imposition of the Transition or Settlement Charge, nor make any determinations of whether any aspect of a future plan is confirmable.³ Although the Government Parties allege that they do not seek the approval of the entirety of the RSA, according to the standard of reasonability, the relief sought by them entails considering the macroeconomic effects that the RSA will have upon Puerto Rico.

² *Supplemental Memorandum of Law And Facts in Support of Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(A)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement and Tolling Certain Limitations Period*, filed by the Government Parties [Dkt. 1245] at 3-4. [*hereinafter* Supplemental Memorandum of Law in support of 9019 Motion].

³ *Id.* at 4.

For instance, by allowing the asserted secured claims of the Supporting Holders to the extent set forth in the RSA, the Government parties seek for this Honorable Court to indirectly approve the Transition Charge. This is because the Supporting Holders claims are going to be secured by the Transition Charge that will be added to PREPA's customers' bills starting in FY2021.⁴ As to Settlement Payments, the Government Parties express that "[t]he Supporting Holders will receive monthly cash payments...of their pro rata share of an amount equal to the number of kilowatt hours billed by PREPA in the prior month, multiplied by .92 cents. These payments shall be funded from a charge of 1 cent per kilowatt hour added to PREPA's customers' bills"⁵ –the Settlement Charge⁶ that the Government Parties purportedly do not seek Court approval of. Furthermore, the Government Parties allege that "[i]f a Plan has not been confirmed by March 31, 2021, PREPA (subject to any required legislative and regulatory approvals) [will] put into effect a charge on customers' bills **equal to the full initial Transition Charge under the RSA**....These increased payments would be funded by the addition of this incremental Transition Charge to customer bills..."⁷

Although the Government Parties further allege that is not asking this Court to approve this transition charge, and only the payment of Increased Settlement Payments, these Increased Settlement Payments will be equal to the full initial transition charge of 2.768 c/kWh under the RSA.⁸ Therefore, by approving the Increased Settlement Payments, this Court will be implicitly approving the full initial transition charge. For instance, PREPA Fiscal Plan, as certified by the FOMB on June 27, 2019, expresses that through the RSA, "[n]ew Securitization Bonds will be

⁴ RSA, Exhibit C, Recovery Plan Term Sheet.

⁵ *Id.* at 15.

⁶ See *Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(A)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement and Tolling Certain Limitations Periods*, Filed by The Government Parties. [Dkt. 1235] at 19-20. [*hereinafter* 9019 Motion].

⁷ Supplemental Memorandum of Law in support of 9019 Motion, at 16. [emphasis added].

⁸ 9019 Motion at 21.

secured by a capped securitization charge to customers on a cent per kilowatt hour (c/kWh) basis, known as the “Transition Charge” that will flow to the securitization vehicle.”⁹ Further, it states that the transition charge, “will start at 2.768 c/kWh and will increase gradually over a period of 24 years to 4.552 c/kWh.”¹⁰ This Fiscal Plan was submitted **after** the Government Parties filed a *Supplemental Joint Status Report* (filed on June 18, 2019), where the Government Parties alleged for the first time that their 9019 Motion relief was limited in scope and did not include the approval of a Transition Charge.¹¹ However, PREPA’s Fiscal Plan considers the entirety of the RSA, which proves that the RSA has to be analyzed as a whole to determine its reasonableness.

In sum, the RSA’s macroeconomic repercussions have to be considered as the Supporting Holders’ claims are going to be secured by the Transition Charge, the Settlement Payments are funded from a Settlement Charge, and the Increased Settlement Payments will be funded from the Transition Charge. All those amounts will be funded from PREPA’s customers. Therefore, the 9019 hearing warrants the evidence proffered by the *Amicus Curiae* which makes this Honorable Court and all parties in interest aware of the macroeconomic effects of the RSA upon Puerto Rico.

2. The AMICUS CURIAE shows that the RSA is unreasonable.

Government Parties expressed in their Opposition to the *Amicus Curiae* that this Court stated that the scope of what it will consider when deciding the 9019 Motion is strictly limited to the question whether the settlement included in the RSA falls within the range of reasonableness. This Court ruled that in evaluating the reasonableness of the settlement, it will consider (i) the

⁹ PREPA Fiscal Plan, June 27, 2019 at 105. Available at [https://aeepr.com/es-pr/Documents/Exhibit-1-FiscalPlan_\(PREPA\)-20180801.pdf](https://aeepr.com/es-pr/Documents/Exhibit-1-FiscalPlan_(PREPA)-20180801.pdf) (last visit Nov. 16, 2019).

¹⁰ *Id.* at 106.

¹¹ *Supplemental Joint Status Report*, filed by the Government Parties [Dkt. 1361] at 4-6.

probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of the disputed funds; (iii) the complexity of the litigation involved and the expense, inconvenience, and delay attending it; and (iv) the paramount interest of creditors and proper deference to their reasonable views. Status Conference on July 11, 2019, Tr., at 8:11-19 (citing *Jeffrey v. Desmond*, 70 F.3d 183-85, (1st Cir. 1995)). The Government Parties allege that the *Amicus Curiae* does not connect what it proposes to any of the four *Jeffrey* factors to assess reasonableness. Furthermore, the Government Parties contend that the arguments raised in the *Amicus Curiae* brief fall squarely within the category of macroeconomic and energy policy issues. However, these “macroeconomic and energy policy issues” constitutes evidence of the unreasonableness of the RSA, which is squarely inside the scope of the standard of review of a 9019 motion.

It is important to highlight that the RSA is not a common and simple settlement agreement between an individual debtor and its creditors, or a corporation debtor and its creditors. Rather, the RSA settles the \$8 billion debt of PREPA –the sole energy provider in Puerto Rico– with its bondholders. As such, the RSA constitutes a settlement between PREPA’s ratepayers in Puerto Rico’s declining economy, with PREPA’s bondholders. Therefore, the RSA is compromising the Puerto Rican population as well. The feasibility of the RSA, as the base for PREPA’s plan of adjustment, has to be assessed, to determine its reasonability.

- a. PREPA’s bondholders are not the sole creditors of PREPA. The Amicus Curiae considers the paramount interest of ALL creditors and parties in interest to the RSA and stakeholders.¹²**

With regard to the *Jeffrey* factor as to the paramount interest of creditors, the *Amicus Curiae* brief proffers evidence as to the paramount interest of ALL parties in interest to the RSA. The *Amicus Curiae* brief explains in detail, the RSA offers a high bond recovery rate in an economy with low or negative growth, and in an economy that is suffering massive population outmigration. This will automatically lower demand and electricity consumption amongst its customers, which will result in PREPA failing to generate sufficient revenues to pay for Transition Charge indebtedness, and to other creditors and stakeholders. Therefore, keeping PREPA in Title III indefinitely.

Furthermore, the *Amici Curiae* explains that unlike the 1974 Trust Agreement, the RSA privileges the repayment of legacy debt above the payment of PREPA’s current expenses. This will likely result in a continuation of the problems that have plagued PREPA in the last decade as the economy has declined –including crowding out of capital investments, cuts to maintenance, and inability to mount a professionally sound re-staffing and reorganization of the authority.

As the *Amicus Curiae* states, PREPA requires major capital investment for its maintenance, which will require the issuance of more debt. The RSA requires future indebtedness to be funded by another transition charge or other dedicated revenue stream. However, the RSA creates uncertainty around the priority of repayment between the Securitization Bonds and new debt needed for the electrical system to function, when PREPA or its successor falls into financial difficulty again. Therefore, the probabilities of future litigation to

¹² Due to the importance and characteristic of the RSA, this would affect, not only creditors, but also, parties in interest and stakeholders. *See* 11 U.S.C. § 1109.

settle these claims are high. Again, not allowing PREPA to get out of Title III. Consequently, it will affect PREPA's viability as a going concern with severe consequences upon Puerto Rico's economy and the wellbeing of its population, which is PREPA's source of revenue.

b. Under the RSA, it is unlikely that PREPA will be able to collect the Transition Charge, thus PREPA would not be able to pay its bondholders, creditors, and stakeholders.

As to the *Jeffery* factor referring to the difficulties to be encountered in the matter of collection of the disputed funds, the *Amicus Curiae* explains how the declining economy of Puerto Rico makes unlikely the collection of the disputed funds. The main point of the *Amicus Curiae* brief is that due to several factors such as Puerto Rico's declining economy, outmigration, and demographic issues, the RSA's transition and settlement charges will exacerbate PREPA's difficulties in collecting revenues. Therefore, PREPA would not be able to pay its bondholders, other creditors, and stakeholders.

The *Amicus Curiae* brief explains in detail how the RSA's transition charge relies on consistent energy consumption, which depends upon the population of Puerto Rico to not keep decreasing, and proportional household incomes with electricity rates. With the rate increases that the RSA pursues, PREPA expects to collect 45.5% of such rate increase from the three groups of lowest income –around 60% of the population– while they only make 22.8% of total income in Puerto Rico. This is assuming that there will be consistent electricity consumption, which at the same time, assumes that there will not be hurricanes such as Irma or Maria along the way that interrupts electricity power service, and that Puerto Rico's population will not continue to decrease. However, outmigration has been massive in the past ten years. Consequently, it will

be very difficult for PREPA to collect sufficient revenues, which will affect PREPA's ability to pay its debt.

Also, the *Amicus Curiae* offers a detailed explanation of the effect that the RSA will have on renewable energy in Puerto Rico, and thus, PREPA's capability of revenue. The RSA establishes that the Transition Charge, besides being implemented on regular customers' bills, it will be applied to energy generated by renewable energy systems owned by individuals that are connected to PREPA's system ("BTGM Customers"). For the Transition Charge not to be applied to BTGM Customers, they have to permanently disconnect from PREPA's electrical grid. Thus, people that choose to generate their own electric energy are excluded from the utility service unless they accept to carry the full burden of a debt originally not guaranteed by their privately generated electric energy provider. As paying for renewable energy will be significantly cheaper, the increase in rates that the Transition Charge pursues will provoke BTMG customers to seriously consider permanently disconnecting from the electrical grid –the "grid defection". Also, it can lead more customers to move to renewable energy generation and disconnection from PREPA as well, as besides being cheaper, it is more resilient. Thus, resulting in increasing revenues loss for PREPA, which will affect PREPA's ability to pay its debt.

Moreover, after this Court hired an independent fee examiner, it was found that the RSA will force PREPA's customers to pay "largely, unspecified, apparently unlimited and wholly unchecked professional fees and expenses."¹³ Besides putting PREPA's customers "on the hook for the fees of legal and technical consultants used by PREPA in negotiating the deal," the RSA establishes that PREPA's customers "will also be paying the legal and professional fees of all the

¹³ Tom Sanzillo, *IEEFA Puerto Rico: Court Examiner Finds PREPA Bond Deal Fees are Out of Control*, IEEFA (Nov. 14, 2019) Available at: <https://ieefa.org/ieefa-puerto-rico-court-examiner-finds-prepa-bond-deal-fees-are-out-of-control/> (last visit: Nov. 16, 2019).

other parties to the deal as well, **namely PREPA’s bondholders and insurance companies.**”¹⁴

As a matter of fact, the RSA, “does not specify what those fees are, nor does it place any upper limit on them. Government parties to the RSA alone have incurred more than \$530 million in professional fees in the bankruptcy case.”¹⁵

In sum, the *Amicus Curiae* evidences that the RSA will make unlikely the collection of the transition charge, which will affect PREPA’s financials, and its ability to provide essential services for Puerto Rico.

c. The RSA will generate further complex litigation at the expense of PREPA’s customers.

As to the *Jeffrey* factor regarding the complexity of the litigation involved and the expense of attending it, the *Amicus Curiae* makes this Honorable Court aware that the RSA will keep PREPA in Title III indefinitely. Thus, increasing the probabilities of future litigation at the expense of PREPA and its customers, which are PREPA’s main source of revenue.

The Government Parties have asserted several times that the RSA is the base for the plan of adjustment. Also, in their Supplemental Memorandum of Law in Support of the 9019 Motion, where the Government Parties “limit” the relief sought, the Government Parties admit that they seek from this Court and order requiring the RSA’s supporting holders to vote in favor of Plan consistent with the RSA if PREPA is in compliance with the RSA.¹⁶ As the base for the Plan of Adjustment, the feasibility of the RSA has to be assessed, which entails considering the entirety of the RSA.

If the Transition Charge is not considered in the 9019 hearing, postponing its consideration to the confirmation hearing will be futile, because by approving the allowance of secured claims,

¹⁴ *Id.* [emphasis added].

¹⁵ *Id.*

¹⁶ Supplemental Memorandum of Law in support of 9019 Motion at 44.

the Court would be implicitly approving the transition charge as well. Waiting for the plan confirmation hearing to consider the transition charge would moot the controversy impairing the rights of creditors and stakeholders to challenge the Transition Charge. This in turn, certainly will cause several parties to appeal any ruling on the 9019 motion.

The RSA represents unsound financial policy that creates indebtedness for PREPA that cannot be supported by the economy of Puerto Rico. The cost imposed by the RSA will be a major contributor to the high cost of electricity in Puerto Rico at a time when the Island needs affordable electricity to support the recovery of its economy, and it will undermine efforts to create and maintain the electricity system in a state of good repair. It will frustrate efforts to rebuild the grid and impede necessary investments in the organizational infrastructure that provides electricity to the Island's residents and businesses. Thus, it will keep PREPA indefinitely in Title III, which translates into worsening its estate due to unsustainable litigation cost. Therefore, the RSA is far from being reasonable, it is not in best interest of PREPA's estate nor the Commonwealth's, and it is not feasible.

3. The *Amicus Curiae* proffers evidence of probative value for the 9019 hearing.

Federal Rule 401 of Evidence provides that “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) **the fact is of consequence in determining the action.** [emphasis added]. Federal Rule 403 of Evidence establishes that “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” As this Honorable Court expressed, what is at the core of this 9019 motion is whether the RSA

falls within the range of reasonableness. As such, proffered evidence assessing the reasonableness of the RSA is relevant, and thus, admissible under Federal Rule 402 of Evidence.

As explained, the Government Parties seek approval of the asserted secured of the Supporting Holders –secured by the Transition Charge. Also, an order requiring the Supporting Holders to vote in favor of a Plan that is consistent with the RSA, the approval of Settlement Payments required by the RSA prior to plan confirmation, which will be funded from the Settlement Charge, and the approval of Increased Settlement Payments, which puts into effect a charge on customers’ bills **equal to the full initial Transition Charge under the RSA** if a Plan has not been confirmed by March 31, 2021. Subsequently, the Government Parties assert that the 9019 Motion is limited in scope and it only seeks approval of some aspects of the RSA, but in reality, it is seeking approval of the entirety of the RSA, including the Transition Charge and Settlement Charge. Consequently, the RSA does not present narrow issues. As such, the *Amicus Curiae* brief explains the macroeconomic effects of the RSA upon Puerto Rico, which proves the unreasonableness of the RSA. Therefore, the *Amicus Curiae* proffers evidence of probative value for the 9019 hearing.

4. The appearing parties, Chairman and Members of the U.S. House Natural Resources Committee, are entitled to participate as *amicus* in the 9019 motion.

The Government Parties’ allege that the appearing parties have no standing. However, a person or entity does not have to prove standing when submitting an *Amicus Curiae* brief. Rather, the *Amicus* has to prove that it has “a special interest that justifies his having a say, or unless the court feels that existing counsel may need supplementing assistance.” *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970).

The acceptance of *amicus* briefs is within the discretion of the Court. *Id.* An *amicus* is not a party and “does not represent the parties but participates only for the benefit of the court.” *Resort Timeshare Resales, Inc. v. Stuart*, 764 F. Supp 1495, 1500 (S.D. Fla. 1991) (quoting *News and Sun–Sentinel Co. v. Cox*, 700 F.Supp. 30, 31 (S.D.Fla.1988)). The district court retains “the inherent” authority to appoint *amicus curiae* “to assist it in a proceeding.” *Id.* at 1500. Furthermore, the Court has discretion to determine “the fact, extent, and the manner of participation by the amicus.” *Alliance of Auto. Mfrs. v. Gwadowsky*, 297 F.Supp. 305, 307 (D.Me. 2003). However, participation as *amicus curiae* is commonly granted “when there is an issue **of general public interest**, the *amicus* provides supplemental assistance to existing counsel, **or the amicus insures a complete and plenary presentation of difficult issues so that the court may reach a proper decision.**” *Id.* [emphasis added], (granting a party permission to act as *amicus curiae* “plus” with restrictions –as the degree of participation as *amicus* lies within the discretion of the court– by letting *amici* to present legislative facts, file its own briefs, participate separately in oral arguments on dispositive motions, receive notice and service of all documents as it were a party to the case).

The appearing parties are Chairman and Members of the U.S. House Natural Resources Committee (“Natural Resources Committee”), and as such, Representatives of the United States Congress. The Natural Resources Committee has jurisdiction upon the Commonwealth of Puerto Rico. Also, Rep. Grijalva and Rep. Velázquez participated in the drafting of and supported the enactment of PROMESA, with the intention of granting relief to Puerto Rico for its outstanding debt, and thus, allow the island to regain access to the capital markets. Accordingly, it is of special interest to the appearing parties that the FOMB, on behalf of Puerto Rico and its entities, acts on the best interest of PREPA and Puerto Rico as a whole, rather than impairing its

capability of economic growth.

According to the responsibility of overseeing and investigating matters under its jurisdiction, the Committee on Natural Resources, held one hearing on PREPA's reconstruction and privatization status in June, 2019.¹⁷ As such, it is of special interest to the Committee on Natural Resources PREPA's financial future and what are the steps taken by the FOMB for the benefit of PREPA.

The RSA constitutes a settlement agreement that is of general public interest, as it entails the restructure of the debt of PREPA –the sole provider of energy, which is an essential service– with its bondholders. In addition, the RSA is a settlement that depends on Puerto Rico's economy and population. As such, it is of special interest to the appearing parties that any reached settlement agreement between PREPA and its bondholders, is reasonable, in the best interest of PREPA's estate, and as PREPA provides an essential service, does not exacerbates Puerto Rico's socio-economic crisis.

Furthermore, the RSA is a complex settlement agreement, which has to be analyzed as a whole to determine if it is reasonable. As such, this *amicus* provides a thorough panoramic analysis of the RSA to demonstrate to this Honorable Court that the RSA represents unsound financial policy, that will worsen Puerto Rico's ability of getting out of Title III.

As shown, by allowing the asserted secured claims of the Supporting Holders, this Honorable Court is approving the transition charge as the collateral of the asserted secured claims. As such, the RSA has to be analyzed as a whole to determine its reasonability. The *Amicus Curiae* brief provides exactly that analysis for this Honorable Court.

¹⁷ Full Committee Hearing: The Status of the "Rebuilding and Privatization of [PREPA]" Available at: <https://naturalresources.house.gov/hearings/the-status-of-the-rebuilding-and-privatization-of-the-puerto-rico-electric-power-authority-prepa1> (last visit: Oct. 20, 2019).

As the RSA is of general public interest, the appearing parties request for this Honorable Court to allow their participation as *Amicus Curiae* “plus”.

CONCLUSION

For the foregoing reasons, REP. RAÚL M. GRIJALVA, in his official capacity as CHAIRMAN OF THE U.S. HOUSE NATURAL RESOURCES COMMITTEE, REP. NYDIA M. VELÁZQUEZ, in her official capacity as MEMBER OF THE U.S. HOUSE NATURAL RESOURCES COMMITTEE, and REP. DARREN SOTO, in his official capacity as MEMBER OF THE U.S. HOUSE NATURAL RESOURCES COMMITTEE, respectfully pray from this Honorable Court to GRANT movant’s petition and, accordingly, order that the Chairman and Members be accorded amici curiae “plus” status in this matter. As such, that they be allowed to file memoranda and briefs on motions before the court, participate in oral arguments on dispositive motions, and in accordance with *Daggett v. Commission on Governmental Ethics and Election Practices*, 172 F.3d 104, 112 (1st Cir.1999), present those facts within their preview to aid the Court in its determination.

In this 20 day of November 2019.

WE HEREBY CERTIFY that on this same date I 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 *Tenth 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
Edificio Ochoa, 500 Tanca Street, Suite 301
San Juan, PR 00901-1922

s/Wilbert López Moreno
USDC: 202707
wilbert_lopez@yahoo.com

Legal Counsel to
REP. RAÚL M. GRIJALVA
Member of Congress

OFFICE OF CONGRESSMAN RAÚL M. GRIJALVA
🌐 1511 Longworth House Office Building
Washington, DC 20515
☎ 202-225-2435
💻 Cristina.Villa@mail.house.gov

Legal Counsel to
REP. NYDIA M. VELÁZQUEZ
Member of Congress

OFFICE OF CONGRESSWOMAN NYDIA M. VELÁZQUEZ
🌐 2302 Rayburn House Office Building
Washington, DC 20515
☎ 202-225-2361
💻 Mory.Garcia@mail.house.gov

Legal Counsel to
REP. DARREN SOTO
Member of Congress

OFFICE OF CONGRESSMAN DARREN SOTO
🌐 1507 Longworth House Office Building
Washington, DC 20515
☎ 202-225-9889
💻 Angela.Brown@mail.house.gov