



July 22, 2014

PUERTO RICO AND PREPA VIGOROUSLY DEFEND THE CONSTITUTIONALITY OF THE RECOVERY ACT

IN MOTIONS TO DISMISS BONDHOLDERS' COMPLAINT

San Juan, P.R. – The Commonwealth of Puerto Rico and the Puerto Rico Electric Power Authority (“PREPA”) vigorously defended the constitutionality of the Commonwealth’s recently passed Public Corporation Debt Enforcement and Recovery Act in motions filed today in federal court seeking dismissal of a lawsuit brought by two funds invested in PREPA bonds.

The Recovery Act was enacted on June 26, 2014 to provide an orderly, statutory process for certain public corporations that are experiencing severe financial stress to overcome their financial obstacles and allow them to handle their debts in a fair and equitable manner, while also ensuring the continuity of essential services to citizens.

“The Recovery Act is a carefully considered, constitutional law, designed to protect the creditors’ collective interests through an orderly procedure for adjustment of a public corporation’s obligations while enabling it to continue providing critical services to Puerto Rico’s residents and businesses,” said Puerto Rico Secretary of Justice, César R. Miranda Rodríguez. “The U.S. Supreme Court has clearly established a sovereign’s right to pass debt enforcement laws when such relief does not conflict with federal law, and that is exactly what Puerto Rico has done in enacting this law. We stand behind the Act and will defend it as a reasonable and necessary measure to protect the interests of everyone associated with our public corporations and the Island as a whole.”

The motions set forth the numerous reasons why the Plaintiffs’ constitutional challenges fail:

- **U.S. Supreme Court precedent makes clear that state and local governments retain the power to pass their own restructuring statutes**, so long as they do not conflict with federal law. Puerto Rico’s public corporations are not eligible to address their financial challenges under either Chapter 9 or Chapter 11 of the United States Bankruptcy Code, and so there is no conflict between the federal and Commonwealth statutes. The Recovery Act protects the interests of a public corporation’s customers, employees, suppliers and other financial creditors by filling a gap in existing law.
- **The U.S. Supreme Court has repeatedly upheld laws impacting creditors’ contractual rights when those laws are reasonable and necessary to achieve a sufficiently important government interest.** The Recovery Act clearly meets this test because the Commonwealth’s ability to maintain essential public services would be severely compromised if creditors were permitted to exercise their remedies outside of an orderly process.
- **The U.S. Supreme Court has long recognized a sovereign’s authority to enact legislation that affects creditors’ property provided that certain requirements of fairness and justice are met.** Even in the event the Recovery Act is invoked by a public corporation, the Recovery Act would prevent the taking of any property without just compensation through specific provisions that seek to maximize the returns of all stakeholders. Specifically, Chapter 2 of the Recovery Act protects creditors’ property rights by requiring that a supermajority of debt holders approve the debt relief amendments and by specifying that all creditors in the same class receive the same treatment. Similarly, Chapter 3 of the Recovery Act protects creditors’ interests by requiring that each creditor receive

at least the value it would receive if all creditors were allowed to simultaneously enforce their claims and by providing additional value based on the public corporation's future cash flows. In short, the provisions of Chapters 2 and 3 of the Recovery Act provide protections that are similar to— and potentially better for creditors than — those provided by the federal Bankruptcy Code.

The Recovery Act provides a constitutional, rational and reasonable solution to the potential public harms caused by financial emergencies involving corporations that perform critical public functions. It preserves the public good by guaranteeing the continued delivery of essential public services, including the delivery of electricity and clean water, and by protecting the interests of all of the corporation's creditors and other stakeholders. And finally, it seeks to secure a sustainable future for Puerto Rico and its public corporations by restoring their credit and stabilizing their financial condition.

The Commonwealth is represented in this case by the Puerto Rico Department of Justice and Kirkland & Ellis LLP, and PREPA is represented by Gonzalez, Machado & Roig, LLC and Cleary Gottlieb Steen & Hamilton LLP.

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