

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

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY
("PREPA"),

Debtor.

PROMESA

Title III

No. 17 BK 4780-LTS

**Court Filing Relates Only to PREPA
and Shall Only be Filed in Case No.
17-BK-4780 (LTS)**

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**LIMITED OBJECTION OF WHITEFISH ENERGY HOLDINGS, LLC TO SECOND
INTERIM FEE APPLICATION OF FILSINGER ENERGY PARTNERS, INC.**

Whitefish Energy Holdings, LLC ("WEH"), by and through its undersigned counsel, hereby files this limited objection to the Second Interim Fee Application (the "Fee Application") of Filsinger Energy Partners, Inc. ("Filsinger") [Dkt. No. 777], and respectfully states as follows.

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations 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) 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); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

BACKGROUND

1. On May 3, 2017, the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) filed a voluntary petition for relief pursuant to PROMESA section 304(a) (the “Title III Case”). Following this, the Oversight Board filed Title III cases for various entities, including the Puerto Rico Electric Power Authority (“PREPA”) on July 2, 2017.

2. On September 26, 2017, after Puerto Rico was struck by two hurricanes, which severely damaged its electric grid, PREPA entered into a contract with WEH for the repair of the electrical system’s “backbone” of approximately 200 miles of transmission lines and towers, many of which were located in the mountains of Puerto Rico’s rugged interior (the “WEH Contract”). PREPA understood, that the WEH team had the necessary experience to repair the 230kV transmission lines in remote areas with no access roads.

3. WEH arrived on the Island on October 2, 2017. By October 7, 2017, WEH had 80 employees and subcontractors on the Island, performing repairs.

4. The WEH Contract, as amended, had a ceiling value of \$300 million. WEH was only paid for work PREPA asked it to perform and work actually performed on a time-and-materials basis.

5. On October 31, 2017, PREPA terminated the WEH Contract, with a termination effective date of November 30, 2017. Such termination was unrelated to WEH’s performance under the WEH Contract.

6. Prior to the November 30, 2017 termination date, WEH completed all of the work that was requested by PREPA including, *inter alia*, the repair of the five (5) transmission line

segments assigned by PREPA to WEH, which constitutes part of the backbone of the transmission system in the area. (See chart² attached hereto as Exhibit A).

7. Todd W. Filsinger of Filsinger was appointed PREPA's Chief Financial Officer on December 1, 2017. As part of his appointment, he uses the services of other professionals at Filsinger to perform his tasks, upon approval of PREPA's governing board.

8. WEH has submitted invoices to PREPA for work performed and for mobilization and demobilization costs totaling approximately \$141 million. To-date, WEH and its subcontractors are still owed over \$100 million.

9. WEH has provided all of the documentation requested by PREPA in order to prepare Project Worksheets and other necessary documentation to request reimbursement and/or payment of WEH's invoices from the Federal Emergency Management Agency ("FEMA"). However it has been over five (5) months since the termination of the WEH Contract, and PREPA and its professionals have *still* not submitted that documentation to FEMA.

10. It is now apparent from the Fee Application that Filsinger is not devoting the resources that are even minimally necessary to complete the FEMA submission of WEH's invoices, which in turn will represent a reimbursement to PREPA; this is not in the best interests of the estate and its creditors.

11. Even though WEH was the first on the island to begin repairs to Puerto Rico's transmission and distribution lines, PREPA's professionals have not dedicated the necessary time and resources to prepare the documentation required to seek FEMA reimbursement for WEH's work. Yet PREPA submitted the necessary documentation for PREPA's other contractor, Cobra Acquisitions, LLC ("Cobra"), leading to FEMA's approval of that contract in December 2017.

² This chart is part of PREPA's April 2, 2018 disclosure to bondholders and other parties in this case. The entire disclosure may be found here: <https://emma.msrb.org/ES1133133-ES886774-ES1288166.pdf>.

Specifically, Cobra reported, “FEMA reviewed our original contract with PREPA and our rates of service. In a letter dated December 23, 2017, FEMA determined that PREPA awarded our contract in compliance with emergency procurement provisions of the Commonwealth of Puerto Rico and Executive Orders issued as a result of the disaster, and also determined the costs under the contract to be reasonable.”³

12. If PREPA also obtains similar approval from FEMA for WEH’s contract, then not only will PREPA be able to pay WEH the over \$100M currently owed to WEH thereby eliminating one of PREPA’s largest administrative claims, but PREPA also will be able to restore to its Emergency Fund the \$36.9 million that PREPA previously paid WEH.

13. WEH’s counsel has attempted to work with PREPA and its professionals, including Filsinger, to ensure the timely preparation of the documents required by FEMA. Submission of this documentation and payment by FEMA for WEH’s emergency repair work will greatly benefit the estate in two ways: (1) PREPA will receive reimbursement of the \$36.9 million it has already paid WEH, which will increase its liquidity; and (2) PREPA can pay the outstanding invoices to WEH, which will reduce dollar-for-dollar the amount of WEH’s significant administrative claim against PREPA, which will inure to the benefit of all unsecured creditors. However, PREPA and its professionals, including Filsinger, have refused to dedicate the necessary resources to prepare the documentation required for FEMA’s approval of WEH’s invoices, and have not been forthcoming with WEH as to the timeline for such submission.

14. On March 20, 2018, Filsinger filed its Fee Application, seeking \$2,326,893.30 in fees and \$201,691.48 in expenses for the period from December 17, 2017 through January 31, 2018 (the “Application Period”). There are 24 pages of time detail included in the Fee Application.

³ <https://www.cnbc.com/2018/01/29/globe-newswire-cobraas-puerto-rico-contract-increased-to-approximately-445-million-update-on-puerto-rico-activities.html>

Entries regarding WEH and submission of its invoices appear approximately 5 times. By contrast, entries related to Cobra appear approximately 140 times.

LIMITED OBJECTION

15. WEH does not dispute that Filsinger has undertaken significant work to assist PREPA during this case. However, WEH believes it is important for *all* stakeholders in this case to be made aware of the failure of PREPA's professionals to devote adequate time and attention during the Application Period to activities which would provide a significant benefit to the estate.

16. WEH has provided all of the information requested by PREPA and its professionals for submission to FEMA. WEH has repeatedly offered to assist with whatever is necessary to complete the submissions. WEH has, at its own considerable expense, reworked documentation at PREPA's request for the FEMA submission, even when PREPA's professionals had the necessary documentation in its possession. WEH committed these resources and incurred these expenses under assurances from PREPA and its professionals that doing so would expedite PREPA's preparation of the FEMA submission. Additionally, PREPA's professionals requested that WEH provide copies of 292 invoices that WEH had previously submitted to PREPA rather than seeking such invoices from PREPA's own records. Despite WEH's prompt cooperation with the requests for information and documentation from PREPA's professionals, PREPA and its professionals have not completed the necessary documentation for submission of WEH's invoices to FEMA and have not even committed to give WEH a date by which the submissions will occur.

17. Section 316 of PROMESA requires that compensation sought by professionals be of benefit to the estate and the creditors, and be reasonable. It is not in the benefit of the estate nor reasonable for professionals to neglect doing work which would pay immediate and significant dividends to the estate and its creditors. As reflected in the Fee Application, Filsinger has pursued

a course of action which is to the detriment of the estate and the creditors, preventing PREPA from obtaining reimbursement of \$36.9 million which it could use for any one of the pressing financial issues it has detailed to this Court. Furthermore, if WEH is not paid by PREPA with FEMA funds, then it will be forced to file an administrative claim against the PREPA estate, which would have to be paid in full upon confirmation of a Plan of Adjustment, and would be paid before general unsecured creditors. Submission of the WEH invoices to FEMA will eliminate this \$100+ million plus claim from the PREPA estate, and should be done timely.

18. WEH requests that this Court hold the Fee Application in abeyance and order that no amounts be disbursed to Filsinger until PREPA has provided WEH with a certification regarding (i) a timeline for its preparation of the necessary FEMA documentation for WEH's invoices; (ii) a commitment to dedicate the necessary resources at PREPA, Filsinger, and other professionals to complete the FEMA submission process for WEH's invoices; (iii) a communication plan to ensure transparency with WEH regarding the FEMA submission process; and (iv) a deadline for PREPA's submission of the necessary documentation to FEMA for the reimbursement and/or payment of WEH's invoices (the "Certification").

19. While WEH's request is somewhat unusual, WEH has been unable to resolve this issue with PREPA and its professionals over the last several months, despite WEH's submission of all information sought by PREPA and its professionals needed to submit the request to FEMA, and its repeated commitments to assist in any way it can with the FEMA submissions. WEH believes that this remedy will help expedite the process of having WEH's invoices submitted for reimbursement and/or payment by FEMA, which will benefit all of the parties in this case.

CONCLUSION

WHEREFORE, for the foregoing reasons, WEH respectfully requests that this Court (1) hold in abeyance the application by Filsinger, (2) order that none of the fees sought in the Fee

Application be paid to Filsinger until PREPA provides the Certification; and (3) enter such other relief as is just and proper under the circumstances.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of April 2018.

I 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 the participants appearing in said record including the US Trustee, counsel for AAFAF, counsel for the Oversight Board, Counsel for the Creditor's Committee, Counsel for the Retiree Committee and the fee examiner.

/s/ Ann Marie Uetz

Ann Marie Uetz (pro hac vice)
FOLEY & LARDNER LLP
500 Woodward Ave., Suite 2700
Detroit, MI 48226
Telephone (313) 234-7100
Facsimile (313) 234-2800
auetz@foley.com
Counsel for WEH

and

C. CONDE & ASSOC.

/s/Carmen D. Conde Torres

Carmen D. Conde Torres, Esq.
USDC 207312

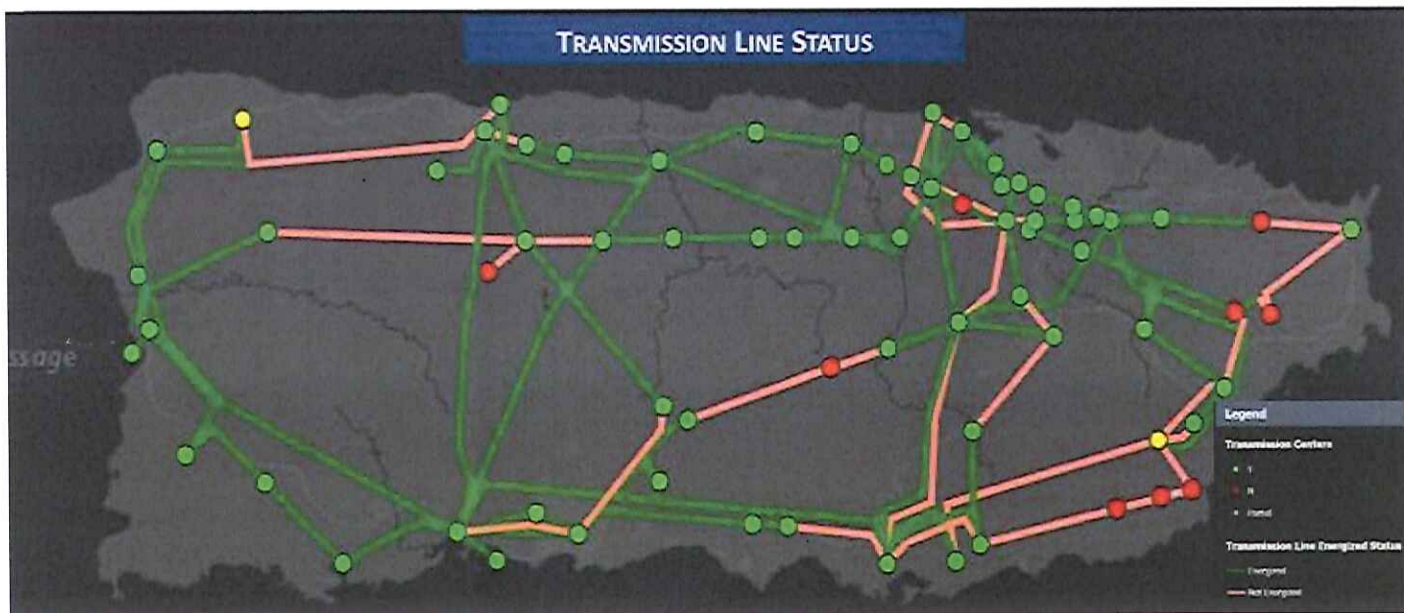
/s/Luisa S. Valle Castro

Luisa S. Valle Castro, Esq.
USDC No. 215611
254 San José Street, 5th Floor
Old San Juan, Puerto Rico 00901
Telephone: 787-729-2900
Facsimile: 787-729-2203
E-Mail: condecarmen@condelaw.com
ls.valle@condelaw.com
Counsel for WEH

Exhibit A

Transmission Restoration Progress Report – As of March 28, 2018

- Overall progress on transmission line restoration is 75%, calculated as completed line segments divided by total line segments
- Progress on structure and component repair is 71%



75%

OVERALL PROGRESS
(As per completedTasks)

TOTALS BY kV

(kV)	LINE SEGMENT	COMPLETED
230	17	14
115	86	63
Totals	103	77

TOTALS BY RESOURCE

	LINE SEGMENT	COMPLETED
PREPA	58	55
WHITEFISH	5	5
COBRA	12	4
NYPA	3	3
Fluor/PIKE	6	6
Fluor/ARC	1	1
Fluor/MasTec	0	0
Fluor/SEC	1	1
USACE/PowerSecure	3	2
Pending	14	0
Totals	103	77

	STRUCTURES (Towers/Poles)		DAMAGES (Conductors/Insulators)		Overall Repairs/Restoration %
(kV)	DOWN	REPAIRED	DEFICIENCY	REPAIRED	
230	107	103	404	317	82%
115	648	420	833	578	67%
Totals	755	523	1237	895	71%



Puerto Rico
Electric Power
Authority