

U.S. SENATE COMMITTEE ON  
ENERGY & NATURAL RESOURCES

HEARING ON PUERTO RICO:  
ECONOMY, DEBT, AND OPTIONS FOR CONGRESS

Testimony of Steven M. Fetter  
President, Regulation UnFettered

October 22, 2015

Steven M. Fetter, President  
Regulation UnFettered

Chairman Murkowski, Ranking Member Cantwell, and Members of the  
Committee:

My name is Steven M. Fetter and I am President of an energy advisory firm called Regulation UnFettered. I appreciate the opportunity to testify on the economic issues affecting the Commonwealth of Puerto Rico. Based upon my past experience of serving as Chairman of the Michigan Public Service Commission and head of the utility credit ratings practice at Fitch Ratings, I will direct my comments toward the situation facing the Puerto Rico Electric Power Authority, known as PREPA, though I expect my views will have some relevance on other fiscal issues Puerto Rico is currently facing.

Initially I wish to emphasize that I come at the PREPA issues with the hope that the ultimate resolution will create an environment in which investors will be willing to continue providing funds to the Commonwealth for the wide range of public services they now support well into the future. I believe the best way of achieving that is if stakeholders can reach a consensual settlement agreement under which necessary sacrifices can be shared. This is consistent with my approach at the Michigan Commission where I continually urged our Staff and adversarial parties to attempt to reach agreement on points of difference through settlement, because no matter how thorough a litigated case record is developed, the parties are always in a better position to weigh their areas of dispute and strike a fair balance as to how they wish them to be resolved. Simply put, through settlement, each party is able to dictate the type and extent of sacrifices they feel they can accept.

Toward this ultimate goal, I offer the following thoughts:

The new Energy Commission should expedite PREPA's current base rate case as much as it possibly can, a point that I encourage Congress to emphasize to their counterparts in Puerto Rico as well. My understanding is that rate levels have been inadequate to meet operating expenses and debt obligations, thus leading to PREPA's financial crisis. Adding to the problem, when oil-reliant PREPA received a major positive break with oil prices plummeting down during the past year, those saved funds were flowed back to customers, rather than keeping rate levels the same and using the additional revenues to support operations and required investor payments. My back-of-the-envelope calculation puts those lost revenues during the past year as approaching one billion dollars. I admit, I'm not sure if the Energy Commission had the authority to so direct these fuel savings, but my experience tells me that they could have done what I

did at the Michigan Commission: go to the Michigan Legislature – actually Senator Stabenow was in the legislature back then – and explain to the policymakers why the law needed to change, and that the public interest would be furthered if that change could be made immediately. Such a proactive step would have helped PREPA respect the interests of debt investors while mitigating the financial pain its customers will likely have to face as this crisis proceeds.

Similarly, PREPA should immediately endeavor to operate with substantially increased efficiencies, especially with regard to rate collection practices. I think if I were serving at the Commission or in PREPA management, I would seek the advice of individuals and institutions that have faced similar difficulties in the past. For example, almost every US utility regulator serves in NARUC, their longstanding national association, and utility executives belong to a range of electric and natural gas associations – I expect any of those organizations would be willing to assist PREPA or the Energy Commission. And, of course, relevant experience exists in utility consulting firms across the United States. Expertise is there to be tapped, and I believe Congress could play a role in facilitating such interaction.

In addition, I understand that outside investors are willing to assist PREPA in a range of ways: from new investment aimed at asset modernization all the way up to privatization. At this point, no option should be off the table.

Let me briefly discuss the potential for Chapter 9 bankruptcy filings being permitted for PREPA or other Commonwealth entities, and caution Congress about becoming involved with the issue. Undoubtedly, legal challenges to such an authorization would go on for years with all the uncertainty that such a delay would engender. But, more importantly, if such proceedings were intended to take from debt investors, including insurers of such bond investors, more than they are willing to give, in my opinion the end result might be that the current crisis will morph into a Commonwealth catastrophe.

Let me explain why: debt investors *lent* money to the Commonwealth and its public agencies with the expectation that they would receive their funds back with interest. They are not equity holders, or co-owners of PREPA, subject to making or losing a bunch of money depending upon the ups and downs of the utility's performance. Thus, in my mind, for any resolution of this crisis to succeed going forward, it must keep faith with the debt investment community, because those are the individuals and institutions, along with possible new equity investors, that will be needed to support Puerto Rico's continuing recovery well into the future.

Thank you for your attention.

## **STEVEN M. FETTER**

1240 West Sims Way  
Port Townsend, WA 98368  
732-693-2349  
RegUnF@gmail.com  
www.RegUnF.com

**Education** University of Michigan Law School, J.D. 1979  
Bar Memberships: U.S. Supreme Court, New York, Michigan  
University of Michigan, A.B. Media (Communications) 1974

April 2002 – Present

### **President - Regulation UnFettered- Port Townsend, Washington**

Founder of advisory firm providing regulatory, legislative, financial, legal and strategic planning advisory services for the energy, water and telecommunications sectors, including public utility commissions and consumer advocates; federal and state testimony; credit rating advisory services; negotiation, arbitration and mediation services; skills training in ethics, negotiation, and management efficiency.

Service on Boards of Directors of: Central Hudson (Fortis Inc. subsidiary) (Chairman, Governance and Human Resources Committee); and Previously CH Energy Group (Lead Independent Director; Chairman, Audit Committee, Compensation Committee, and Governance and Nominating Committee); National Regulatory Research Institute (Chairman); Keystone Energy Board; and Regulatory Information Technology Consortium; Member, Wall Street Utility Group; Participant, Keystone Center Dialogues on RTOs and on Financial Trading and Energy Markets.

October 1993 – April 2002

### **Group Head and Managing Director; Senior Director -- Global Power Group, Fitch IBCA Duff & Phelps -- New York / Chicago**

Manager of 18-employee (\$15 million revenue) group responsible for credit research and rating of fixed income securities of U.S. and foreign electric and natural gas companies and project finance; Member, Fitch Utility Securitization Team.

Led an effort to restructure the global power group that in three years time resulted in 75% new personnel and over 100% increase in revenues, transforming a group operating at a substantial deficit into a team-oriented profit center through a combination of revenue growth and expense reduction.

Achieved national recognition as a speaker and commentator evaluating the effects of regulatory developments on the financial condition of the utility sector and individual companies; Cited by Institutional Investor (9/97) as one of top utility analysts at rating agencies; Frequently quoted in national newspapers and trade publications including The New York Times, The Wall Street Journal, International Herald Tribune, Los Angeles Times, Atlanta Journal-Constitution, Forbes and Energy Daily; Featured speaker at conferences sponsored by Edison Electric Institute, Nuclear Energy Institute, American Gas Assn., Natural Gas Supply Assn., National Assn. of Regulatory Utility Commissioners (NARUC), Canadian Electricity Assn.; Frequent invitations to testify before U.S. Senate (on C-Span) and House of Representatives, and state legislatures and utility commissions.

Participant, Keystone Center Dialogue on Regional Transmission Organizations; Member, International Advisory Council, Eisenhower Fellowships; Author, "A Rating Agency's Perspective on Regulatory Reform," book chapter published by Public Utilities Reports, Summer 1995; Advisory Committee, Public Utilities Fortnightly.

March 1994 – April 2002

**Consultant -- NYNEX -- New York, Ameritech -- Chicago, Weatherwise USA -- Pittsburgh**

Provided testimony before the Federal Communications Commission and state public utility commissions; Formulated and taught specialized ethics and negotiation skills training program for employees in positions of a sensitive nature due to responsibilities involving interface with government officials, marketing, sales or purchasing; Developed amendments to NYNEX Code of Business Conduct.

October 1987 - October 1993

**Chairman; Commissioner -- Michigan Public Service Commission -- Lansing**

Administrator of \$15-million agency responsible for regulating Michigan's public utilities, telecommunications services, and intrastate trucking, and establishing an effective state energy policy; Appointed by Democratic Governor James Blanchard; Promoted to Chairman by Republican Governor John Engler (1991) and reappointed (1993).

Initiated case-handling guideline that eliminated agency backlog for first time in 23 years while reorganizing to downsize agency from 240 employees to 205 and eliminate top tier of management; MPSC received national

recognition for fashioning incentive plans in all regulated industries based on performance, service quality, and infrastructure improvement.

Closely involved in formulation and passage of regulatory reform law (Michigan Telecommunications Act of 1991) that has served as a model for other states; Rejuvenated dormant twelve-year effort and successfully lobbied the Michigan Legislature to exempt the Commission from the Open Meetings Act, a controversial step that shifted power from the career staff to the three commissioners.

Elected Chairman of the Board of the National Regulatory Research Institute (at Ohio State University); Adjunct Professor of Legislation, American University's Washington College of Law and Thomas M. Cooley Law School; Member of NARUC Executive, Gas, and International Relations Committees, Steering Committee of U.S. Environmental Protection Agency/State of Michigan Relative Risk Analysis Project, and Federal Energy Regulatory Commission Task Force on Natural Gas Deliverability; Eisenhower Exchange Fellow to Japan and NARUC Fellow to the Kennedy School of Government; Ethics Lecturer for NARUC.

August 1985 - October 1987

**Acting Associate Deputy Under Secretary of Labor; Executive Assistant to the Deputy Under Secretary -- U.S. Department of Labor -- Washington DC**

Member of three-person management team directing the activities of 60-employee agency responsible for promoting use of labor-management cooperation programs. Supervised a legal team in a study of the effects of U.S. labor laws on labor-management cooperation that has received national recognition and been frequently cited in law reviews (U.S. Labor Law and the Future of Labor-Management Cooperation, w/S. Schlossberg, 1986).

January 1983 - August 1985

**Senate Majority General Counsel; Chief Republican Counsel -- Michigan Senate -- Lansing**

Legal Advisor to the Majority Republican Caucus and Secretary of the Senate; Created and directed 7-employee Office of Majority General Counsel; Counsel, Senate Rules and Ethics Committees; Appointed to the Michigan Criminal Justice Commission, Ann Arbor Human Rights Commission and Washtenaw County Consumer Mediation Committee.

March 1982 - January 1983

**Assistant Legal Counsel -- Michigan Governor William Milliken --  
Lansing**

Legal and Labor Advisor (member of collective bargaining team); Director,  
Extradition and Clemency; Appointed to Michigan Supreme Court  
Sentencing Guidelines Committee, Prison Overcrowding Project,  
Coordination of Law Enforcement Services Task Force.

October 1979 - March 1982

**Appellate Litigation Attorney -- National Labor Relations Board --  
Washington DC**

### **Other Significant Speeches and Publications**

The "A" Rating (Edison Electric Institute Perspectives, May/June 2009)

Perspective: Don't Fence Me Out (Public Utilities Fortnightly, October 2004)

Climate Change and the Electric Power Sector: What Role for the Global  
Financial Community (during Fourth Session of UN Framework Convention  
on Climate Change Conference of Parties, Buenos Aires, Argentina,  
November 3, 1998)(unpublished)

Regulation UnFettered: The Fray By the Bay, Revisited (National Regulatory  
Research Institute Quarterly Bulletin, December 1997)

The Feds Can Lead...By Getting Out of the Way (Public Utilities Fortnightly,  
June 1, 1996)

Ethical Considerations Within Utility Regulation, w/M. Cummins (National  
Regulatory Research Institute Quarterly Bulletin, December 1993)

Legal Challenges to Employee Participation Programs (American Bar  
Association, Atlanta, Georgia, August 1991) (unpublished)

Proprietary Information, Confidentiality, and Regulation's Continuing Information  
Needs: A State Commissioner's Perspective (Washington Legal Foundation,  
July 1990)