

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MASTEC RENEWABLES PUERTO RICO, LLC,

Plaintiff,

v.

MAMMOTH ENERGY SERVICES, INC. and
COBRA ACQUISITIONS, LLC,

Defendants.

Case No. 20-cv-20263-RNS

DECLARATION OF CARLOS D. TORRES

Pursuant to 28 U.S.C. § 1746, I, Carlos D. Torres, declare as follows:

1. I am currently self-employed, serving periodically as a consultant on issues relating to disaster preparedness and operational solutions in the utilities industry. I also serve as a member of the Board of Directors of Disaster Tech, a public benefit corporation that offers data science and decision science technologies to emergency managers.

2. Beginning in 1985, I worked for 32 years at Consolidated Edison of New York, including over nine years as Vice President for Emergency Preparedness and Business Resilience (2008-2017). In that position, I oversaw the institution of emergency management principles for all of Con Edison's operations. I retired from Con Edison on October 31, 2017.

3. On or about November 1, 2017, I was retained as a consultant by the Edison Electric Institute to provide advice and assistance in connection with restoring the power grid in Puerto Rico after Hurricane Maria hit the island on September 20, 2017. In that capacity, I traveled to Puerto Rico to assess the damage, including through discussions with various agencies and individuals, including Ricardo Rossello, who was then the Governor of Puerto Rico. I also met

and discussed the conditions with Rick Scott, who was then the Governor of Florida, on one or two occasions.

4. In or around the third week of November, Governor Rossello appointed me Power Restoration Coordinator (“PRC”) for the emergency restoration of electrical power in Puerto Rico. I served as PRC from late November 2017 until late May 2018. As I understood it at the time, this was not an official governmental office created by law or regulation with powers like that of a government agency. Rather, I understood that it was created by the Governor in his office to assist him in coordinating restoration efforts.

5. As PRC, I put in place an incident command structure to organize the restoration effort. One element within this structure was the Unified Command Group (“UCG”), which consisted of myself and representatives of the Puerto Rico Electric Power Authority (“PREPA”)—the power utility in Puerto Rico—the Federal Emergency Management Agency (“FEMA”), and the U.S. Army Corps of Engineers (“USACE”). The purpose of the UCG was to oversee and coordinate the entire emergency restoration effort, through a consensus-driven approach.

6. Another element of this structure was the establishment of the Incident Management Teams (“IMTs”) to oversee the day-to-day work of the restoration effort. Each IMT included an incident commander, operations section chief, planning section chief, and logistics section chief, as well as others, who were sent to the island by their respective companies to assist with the restoration effort. They worked alongside the PREPA operations personnel in the regions, as well as at the central office. Each IMT was responsible for overseeing one of seven regions of Puerto Rico; there was also an eighth, Central IMT. In general, contractors and other resources were assigned to specific regions. PowerSecure, for instance, operated mainly in the Southwest, while Cobra worked mostly in the Eastern part of the island. As tasks were completed, or as one

contractor (or other resource) completed its work and left the island, another contractor (or other resource) would be assigned to address any remaining outages.

7. The IMTs were responsible for daily review of the restoration work, and took primary responsibility for assigning projects on the island based on the IMTs' understanding of available resources (including contractors), their ability to mobilize, and work priorities, among other factors. The IMTs regularly reported to me through the Central IMT Operation Section Chief and other chiefs and officers. I was responsible for the overall coordination of work assignments for the restoration, and reporting back as to what was complete to ensure that projects were assigned efficiently and effectively, as per the plans.

8. Prior to my arrival, PREPA developed the transmission restoration plan. After I arrived on the island, the IMTs, in collaboration with PREPA, updated the transmission restoration plan. The IMTs also worked with PREPA to create the distribution/sub-transmission restoration plan. The IMTs worked with PREPA to develop a list of projects and prioritized critical ones—such as restoring power to hospitals and facilities that provided drinking water. The IMTs relied on PREPA to identify and prioritize individual projects. The UCG provided support and direction for the entire restoration process for all the plans.

9. An additional management tool that was created were Stakeholder Meetings. The Stakeholder Meetings were generally (though not always) attended by members of the UCG, representatives of the Commonwealth of Puerto Rico, and PREPA staff, among others. The main purpose of the Stakeholder Meetings was to provide a forum for sharing information about the status of the recovery, to spot issues or obstacles to completion of the work, and to establish a process or method for resolving those issues.

10. I first met Dr. Ahsha Tribble sometime around 2014 or 2015, in connection with my work in the utilities industry, and prior to our work in Puerto Rico. Dr. Tribble was FEMA's representative in the UCG.

11. In or around February 2018, the USACE was preparing to demobilize its resources from Puerto Rico. At the same time, resources from certain power utilities were also on the island through mutual aid agreements. It is my understanding that the USACE was paid directly by FEMA; the mutual aid utilities were paid through PREPA (via FEMA cost recovery dollars). The UCG understood that the USACE was planning to demobilize, and that PREPA would assume sole responsibility for the restoration with its resources and contractors. As a result, it was the UCG's view that PREPA should issue an RFP to bring additional contractor resources to the island to complete the restoration work and commence the reconstruction work, because the UCG believed it would be inefficient for PREPA to proceed with a single contractor, which as of February 2018 was Cobra. Based on my discussions with Dr. Tribble and others, and at UCG meetings, it was my understanding that Dr. Tribble shared this view.

12. In the context of the work in Puerto Rico, the UCG used the term "emergency" work to describe work relating to immediate, life-saving needs, such as restoring basic power to residences, hospitals, and water supplies. The UCG would use the term "permanent" or "reconstruction" to refer to work intended to reinforce Puerto Rico's power generation, transmission, and distribution assets by making them more resilient and resistant to damage in future disasters.

13. The UCG preferred an RFP that focused mainly on "permanent" work (as well as the remaining "restoration" work), because with approximately 80% of power restored by February 2018, and the belief that approximately 90%-95% of power would be restored by May

2018, the “emergency” phase of the work was coming to a close. (In fact, by the time I left the island in late May 2018, 99% of the power had been restored.) None of the UCG members, including Dr. Tribble, resisted or objected to bringing additional contractors to the island. In fact, it is my recollection that all of the members of the UCG, including Dr. Tribble, expressed in numerous meetings that they favored bringing multiple contractors to the island. Most of the work we had in mind for these contractors to perform fell under “permanent” or “reconstruction” work.

14. An example of the UCG view that more contractors should be brought to the island (and properly funded) is contained in Exhibit A. That document appears to be a May 5, 2018 e-mail in which Dr. Tribble asks representatives of FEMA and PREPA, and consultants retained by PREPA, about the status of the RFPs for both Cobra and MasTec and the Project Worksheets for those contractors. This e-mail is consistent with my recollection that the UCG, including Dr. Tribble, spoke about the work that both Cobra and MasTec would perform once the RFP process was complete.

15. Another example, which is Exhibit B to this declaration, is an e-mail from Dr. Tribble to Nathan Pollack, who worked for Filsinger Energy Partners, a PREPA consultant. I am copied on the e-mail. The memo attached to the e-mail is Dr. Tribble’s draft memorandum to PREPA’s Board of Directors seeking to increase the funding cap for work to be performed in connection with PREPA’s RFP from \$300 million to \$1.7 billion. The draft memorandum also reflects the potential distribution of work, including \$250 million of work to be performed by MasTec. Again, the substance of this justification was discussed at UCG meetings, which reflects that the members of the UCG, including Dr. Tribble, discussed how work under the pending RFP should be distributed. My recollection of these discussions is consistent with Exhibit B. Exhibit C, which is an e-mail from Dr. Tribble to various individuals including myself, includes Dr.

Tribble's statement that a contractor with equipment staged in Jacksonville, Florida (which appears to refer to MasTec) could already have had resources in Puerto Rico by the time of the e-mail. That is consistent with my recollection of these circumstances, and similarly reflected the UCG's view, including Dr. Tribble's, that it was important to bring additional contractor resources to Puerto Rico quickly.

16. It was my impression and belief at the time that PREPA's RFP process was very slow and, in my discussion with others at the UCG meetings, there were concerns about the RFP process taking too long. Between February 2018, when the RFP was issued, and late May 2018, when Cobra and MasTec executed the contracts awarded through this RFP process, the UCG, including Dr. Tribble, regularly pressed PREPA to follow through with its RFP process to bring additional contractors to the island. Exhibit C is also an example of challenges that PREPA had in, among other things, advancing the restoration process.

17. As a result of PREPA's delays in its RFP process, on May 24, 2018, in a phone call to Noel Zamot of Puerto Rico's Federal Office of Management and Budget ("FOMB"), I expressed my view that FOMB should review the Cobra contract first, unless both the Cobra and MasTec contracts could be reviewed and approved simultaneously without causing further delays. I recommended that FOMB review the contracts in that order out of concern that PREPA's delays would continue, and cause further delays to Puerto Rico's recovery. Since Cobra was already working on the island, had mobilized its crews, was familiar with the work, was still performing work under its original contract with PREPA, and could continue seamlessly to do the work without interruption, it made sense first to get Cobra's new contract in place quickly so that it could continue working, and then work on the MasTec contract.

18. Although I frequently observed Dr. Tribble interacting with representatives of PREPA, I never observed Dr. Tribble exert what I would consider to be pressure or influence, or issue threats or ultimatums designed to compel anyone, including PREPA, to give Cobra preferential treatment in work assignments, contract terms, payment, or anything else.

19. I had a productive working relationship with the IMTs. I do not recall ever receiving a report that Dr. Tribble, or anyone from FEMA, was pressuring the IMTs to assign work to Cobra. To the best of my knowledge, based on my personal attendance at certain IMT meetings, other meetings I attended, and on the reports I received in the ordinary course of business as the PRC, the decisions about who would be assigned what work were made in the best interests of restoring electrical power to the people of Puerto Rico as safely and quickly as possible.

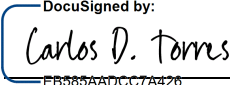
20. In or about March or April 2018, I learned that PREPA Engineering was considering a return to addressing routine service work. I informed Jose Sepulveda, of PREPA, that PREPA Engineering staff was still needed for the emergency restoration work.

21. Exhibit D is another example of difficulties with PREPA. The author was Thomas Holden, who worked for the Army Corps of Engineers. His comments in the bottom e-mail are consistent with my view of PREPA at the time as having transparency and accountability issues. I also recall, as described in Exhibit D, that the Governor of Puerto Rico told Justo Gonzalez, the Interim Executive Director of PREPA at the time, that he should attend Stakeholder Meetings (and UCG meetings) on time and should be prepared to participate. The message is consistent with my and the UCG's frustrations about PREPA's apparent inability and/or unwillingness to work with other stakeholders, and to accomplish tasks necessary to support work on the island, including proceeding expeditiously with the RFP process and preparing an inventory of available materials.

22. My impression was that Cobra generally performed good restoration work. I do not recall reports of any significant deficiencies in Cobra's work during my time in Puerto Rico. I also found that Cobra demonstrated a strong commitment to safety. In fact, Cobra invited me to speak to its personnel at a safety "stand down"—a safety training day for Cobra's employees. I recall that Dr. Tribble spoke at this event as well.

23. I know and worked with Mireya Rodriguez, who was PREPA's Director of Transmission Operations during at least some of the time that I was present in Puerto Rico. As reflected in Exhibit E, an e-mail chain that includes Dr. Tribble, me, and a few others, some of Ms. Rodriguez's actions had the effect of slowing down the restoration effort, including in particular her reassignment of transmission line assignments contrary to the overall plan that was being implemented. Todd Filsinger, who was a PREPA consultant, told me that he agreed with Dr. Tribble's and my assessment of Ms. Rodriguez, and with that of other individuals involved in transmission restoration efforts, that Ms. Rodriguez should be moved to another position at PREPA.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed on April 8, 2021.

DocuSigned by:

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Carlos D. Torres

4/8/2021