

**GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC SERVICE REGULATORY BOARD
ENERGY BUREAU**

NEPR

Received:

Sep 26, 2025

3:36 PM

IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW

CASE NO.: NEPR-AP-2023-0003

**MOTION IN COMPLIANCE WITH THE HEARING EXAMINER'S SEPTEMBER 19TH ORDER
REGARDING RATE CASE PANELS AND PREPA'S OBJECTIONS TO THE CONSIDERATION
OF REPAYMENT OF ANY LEGACY PREPA OBLIGATIONS AND "LEGACY DEBT RIDER"**

TO THE HEARING EXAMINER,

COMES NOW, the Puerto Rico Electric Power Authority ("PREPA"), through its undersigned legal counsel and, very respectfully, states and prays as follows:

1. On September 19, 2025, at the Hearing Examiner's direction, the parties submitted proposed witnesses to be included in the rate case's subject matter panels.

2. On that same date, the Hearing Examiner directed the parties to: (a) inform their position on the Hearing Examiner's proposal to limit the amount of panelists per-panel (generally: 2-3 people per party), and (b) submit any other ideas they have to make sure that the panels are efficient and help "educate the Commissioners so that they make the decisions that are best for Puerto Rico." (hereafter, the "September 19th Order").

3. In response to the Hearing Examiner's directive, PREPA respectfully submits its response and recommendations to promote an efficient and focused panel process that will best assist the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") in reaching informed decisions that serve Puerto Rico's interests.

I. Compliance with the September 19th Order

a. PREPA's Position on Hearing Examiner's Proposal to Limit Number of Panelists

4. The Hearing Examiner has asked the parties to state their position on his proposal to limit the number of panelists per panel (generally two to three per party). PREPA's position is that the critical consideration is not the imposition of an identical numerical limit on each party, but rather that all stakeholders be afforded an equal and meaningful opportunity to defend their respective revenue requirements and proposals, and to elaborate on the significant issues that ultimately affect rates. Only by ensuring such a substantive opportunity can the Energy Bureau be fully assisted in reaching the best possible determination regarding just and reasonable rates and the appropriate level and mechanisms of oversight.

5. PREPA is willing to revise its witness list to reduce it. However, it requires additional information to be in a position to complete such endeavor. As such PREPA supports Genera's and LUMA's proposal to require a more detailed list of topics for each panel, which would facilitate the efficient designation of no more than three witnesses per panel, as contemplated by the Hearing Examiner. PREPA requests that this proposal be discussed in the September 29th hearing.

b. PREPA's Initial Procedural Recommendations to Ensure Panel Efficiency and Fairness¹

6. In further compliance with the September 19th Order, PREPA respectfully submits the following procedural suggestions to ensure that the panels and the evidentiary hearing are both fair to all stakeholders and efficient in fulfilling their

¹ PREPA will further elaborate on these procedural recommendations and may present additional recommendations at the September 29th hearing.

objective of assisting the Commissioners in establishing rates that are “just and reasonable, and consistent with good fiscal and operating practices that provide for reliable service at the lowest possible cost.” PREPA reserves the right to further elaborate on, or supplement, these suggestions during the September 29, 2025 hearing, as necessary:

- i. **Applicants’ fact witnesses.** Applicants’ fact witnesses who have not submitted pre-filed testimony should be permitted to testify at the evidentiary hearing, so long as their testimony elaborates on financial data, general descriptions, or other information already reflected in the record—whether through the Rate Application, discovery, or subsequent filings—and they contributed to the development of that material. Such testimony should be limited to clarifying and expanding upon matters already presented; no Applicant’s witness should be permitted to introduce material changes to the Applicants’ Rate Application through live testimony. Applicant’s witnesses’ testimony should also be allowed on important operational issues or topics not fully developed in the Rate Application but that remain relevant to the Energy Bureau’s determination of just and reasonable rates and to assessing the need for ongoing or expanded oversight. These topics may include, for example, conflicts of interest, cooperation among the Applicants, and the use of federal funds. To avoid claims of prejudice or undue surprise, a deadline should be established for the Applicants to identify the witnesses and provide a summary of their expected testimony.
- ii. **Expert witnesses.** Expert witnesses should not be allowed to present new opinions at the evidentiary hearing through live testimony, only to elaborate on their previous opinions.

II. PREPA’s Objections to the Consideration of Repayment of any Legacy PREPA Obligations and any Proposal to Consider a “Legacy Debt Rider” in the Rate Case

7. PREPA respectfully submits that the Energy Bureau should (i) defer consideration of repayment of any legacy PREPA obligations² and any proposal to consider a “Legacy Debt Rider” until after the Title III court issues final determinations

² PREPA legacy obligations include PREPA bond obligations, as well as pre-bankruptcy fuel line loans and other unsecured claims PREPA’s legacy obligations (the “Legacy Obligations”).

on the manner in which Legacy Obligations are to be addressed, and (ii) exclude the repayment of Legacy Obligations from any practicability analysis in the rate case. Both steps are necessary to avoid premature, speculative decisions that could violate the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"),³ undermine the rate-setting process, expose PREPA and the Energy Bureau to unnecessary legal risks.

A. The Energy Bureau is Authorized to Consider Legacy Obligations Only After PREPA's Title III Court Process Concludes

8. The Energy Bureau lacks the statutory authority to address any issues related to the Legacy Obligations at this time, because doing so would violate PROMESA, be inconsistent with the *February 2025 Fiscal Plan for the Puerto Rico Electric Power Authority* ("PREPA Fiscal Plan"), and be highly speculative considering the current state of PREPA's Title III debt restructuring process.

i. Legacy Obligations are Subject to the PROMESA Title III Process

9. On June 30, 2016, the President of the United States signed PROMESA into law to address the Government of Puerto Rico's financial and fiscal crisis, including PREPA's Legacy Obligations.⁴ PROMESA specifically provides that its provisions prevail over any general or specific provisions of inconsistent territory law.⁵ Moreover, under the Supremacy Clause of the United States Constitution, Puerto Rico

³ Codified at 48 U.S.C. § 2101 *et seq.*

⁴ 48 U.S.C. § 2194(m)(1) ("Congress finds [that a] combination of severe economic decline, and, at times, accumulated operating deficits, lack of financial transparency, management inefficiencies, and excessive borrowing has created a fiscal emergency in Puerto Rico"); 48 U.S.C. § 2194(m)(4) ("A comprehensive approach to fiscal, management, and structural problems and adjustments that exempts no part of the Government of Puerto Rico is necessary, involving independent oversight and a Federal statutory authority for the Government of Puerto Rico to restructure debts in a fair and orderly process.").

⁵ 48 U.S.C. § 2103.

law must yield where it is in conflict with federal law.⁶

10. PROMESA's Title III establishes a judicial process for the restructuring of legacy obligations and grants the Title III court⁷ **the sole authority for the restructuring of PREPA's Legacy Obligations pursuant to Title III.**⁸ Determinations related to PREPA's ability to pay its Legacy Obligations are strictly controlled by PROMESA while PREPA is subject to a Title III proceeding.⁹ As a result, the final scope and treatment of these obligations will be determined solely by the Title III court.¹⁰ The Energy Bureau's role is limited to approving the rate necessary to pay any debt issued out of the Title III case *after* the Title III Court makes its determination.

11. With regard to bondholder Legacy Obligations, specifically, although Section 6.3 of Act 57-2014 (as amended, including by Act 17-2019,¹¹ the "Energy Bureau Act") provides for the Energy Bureau to "guarantee that [PREPA] meets its obligations to bondholders," it does not allow the Energy Bureau to determine the amount of recovery to be allowed on account of these Legacy Obligations, which are being restructured in PREPA's Title III case. Section 6.3(q) of the Energy Bureau Act recognizes this in providing that the Energy Bureau's approval is not required for bond issuances "subject to authorization under" PROMESA Title III. Moreover, the

⁶ See U.S. Const. art. VI, cl. 2.

⁷ See 48 U.S.C. § 2168 ("For cases in which the debtor is a territory, [such as Puerto Rico,] the Chief Justice of the United States shall designate a district court judge to sit by designation to conduct the case.").

⁸ See *generally* 48 U.S.C. § 2166 (discussing Title III court jurisdiction).

⁹ See *generally* 48 U.S.C. § 2166 (discussing Title III court jurisdiction); see 48 U.S.C. § 2103 (concluding that PROMESA's provisions "shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with" PROMESA); see *generally* PROMESA Title III.

¹⁰ *Id.*

¹¹ Act 17-2019 ("Act 17") (available at <https://energia.pr.gov/wp-content/uploads/sites/7/2019/05/Act-17-2019.pdf>).

commencement of PREPA's Title III case triggered the operation of the automatic stay under Bankruptcy Code § 362.¹² While the stay is in place, PREPA is protected from creditor debt enforcement actions and Legacy Obligation debtholders are prevented from seeking repayment through rates.

12. **Pursuant to PROMESA, the Title III court is the only forum authorized to decide not only the amount of allowable bondholder claims and allowable unsecured creditor claims, but also the form and the mechanism of any repayment thereof.** Only a confirmed PREPA plan of adjustment can establish the source for the repayment of the Legacy Obligations, which could hypothetically include new bonds, cash payments, contingent instruments, or other non-rate-based repayment structures. Consideration of any level of repayment on account of Legacy Obligations at this juncture is mathematically impossible considering that the amount, structure, and allocation of recovery burden related to Legacy Obligations remain unknown and contingent on the conclusion of PREPA's Title III process.

13. Until these critical issues are resolved in the Title III proceeding, any attempt to account for the repayment of Legacy Obligations in the revenue requirement determination process would be speculative and risk distorting the current rate-setting process with hypothetical scenarios that lack proper evidentiary support.

14. The current revenue requirement needs to center on actual, demonstrable operational costs and expressly exclude any hypothetical debt

¹² 48 U.S.C. § 2161(a) (incorporating 11 U.S.C. § 362); see also 48 U.S.C. § 2194 ("an immediate—but temporary—stay is essential to stabilize the region for the purposes of resolving this territorial crisis").

recovery scenarios. Any recovery on account of Legacy Obligations should be determined in future rate-making process only after the Title III process is complete. This approach ensures transparency and flexibility, avoiding the pitfalls of premature cost allocations or an incomplete and suspect evidentiary record.

ii. PREPA's Certified Fiscal Plan Prohibits the Repayment of Legacy Obligations Through Rate Increases

15. On February 6, 2025, the Financial Oversight & Management Board for Puerto Rico (the "Oversight Board") certified¹³ the PREPA Fiscal Plan.¹⁴

16. PROMESA requires the PREPA Fiscal Plan, among other things, to "ensure the funding of essential public services," to "provide for capital expenditures and investments necessary to promote economic growth," and to "provide for a debt burden that is sustainable in years in which a stay under [PROMESA] is not in effect."¹⁵

17. PROMESA § 314(b) requires that a confirmed plan of adjustment be consistent with the applicable PREPA Fiscal Plan.¹⁶

18. The PREPA Fiscal Plan specifically concludes that in "light of the significant increase in the [fuel and purchased power] costs and PREPA's inability to provide reliable electricity service without addressing the deferred system needs, . . . PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the [fuel and purchased power] costs and maintenance costs."¹⁷ Therefore, in order to exit Title III, PREPA's Legacy Obligations

¹³ 48 U.S.C. § 2174(b)(7).

¹⁴ The PREPA Fiscal Plan is available at <https://drive.google.com/file/d/1WksRhftmoLvaZFb-5pUNkFXGEiT3t6vp/view?usp=sharing>.

¹⁵ 48 USC 2141(b),

¹⁶ 48 USC 2174(b)(7).

¹⁷ PREPA Fiscal Plan at 118 (emphasis added).

cannot be funded through rate increases imposed on customers.¹⁸

19. Deferring consideration of the repayment of Legacy Obligations until the Title III court has confirmed a plan of adjustment is the only approach that is consistent with the PREPA Fiscal Plan's mandates and, thus, PROMESA.

20. The Energy Bureau's current consideration of the repayment sources for Legacy Obligations is not consistent with the PREPA Fiscal Plan and PROMESA, and unnecessarily exposes PREPA and the Energy Bureau to significant legal risks.

B. Any Practicability Analysis of Rate Increases Should Exclude Legacy Debt Repayment

21. Similarly, given the unresolved status of PREPA's Legacy Obligations, any panel on the practicability of rate increases should only address practicability issues as they relate to the operation of the electric system, and **exclude** consideration of any such analysis related to the repayment of any Legacy Obligations.¹⁹

22. The Title III court has not yet determined the allowable amount of Legacy Obligations to be repaid, nor the mechanisms or sources for such repayment. Including Legacy Obligations in the practicability analysis would force the Energy Bureau to rely on a range of hypothetical scenarios, rendering any conclusions highly speculative, unreliable, and unsupported by a proper evidentiary foundation.

¹⁸ See 48 U.S.C. § 2174(b)(7) (mandating that the Title III court shall only confirm a plan of adjust if it "consistent with the applicable Fiscal Plan certified by the Oversight Board").

¹⁹ In its order dated September 4, 2025, the Hearing Examiner indicated that he might require "possible supplemental submissions" to address supplemental topics, including, among others, the practicability of a rate increase and its impact on PREPA's future ability to raise revenues (the "Practicability Issue"). The Hearing Examiner acknowledged the lack of any evidentiary record regarding the Practicability Issue and stated he is considering requiring supplemental submissions" (the "Supplemental Submissions"). The Hearing Examiner has not issued an order regarding the Practicability Issue or Supplemental Submissions. PREPA reserves all rights and defenses to more fully address the Practicability Issue in Supplemental Submissions, but submits this motion in response to the September 25 Order.

23. Furthermore, the breadth of possible outcomes makes any current practicability analysis inherently premature and undeterminable because the Title III process may ultimately allocate the repayment of Legacy Obligations using external sources (as the current PREPA Fiscal Plan mandates) and/or other contingent-based recovery mechanisms.

24. The Energy Bureau's mandate is to set rates based on actual costs and to ensure those rates are just and reasonable, as supported by a robust and demonstrable evidentiary record.²⁰ Introducing a hypothetical practicability analysis that includes Legacy Obligations at this stage would undermine the Energy Bureau's statutory mandate and the mandates of the PREPA Fiscal Plan and PROMESA.

25. Finally, it is important to note that parties in the Title III process could seek to rely on a determination by the Energy Bureau on these matters—even if based on incomplete or speculative information, or rendered without proper legal authority—as persuasive evidence against PREPA in the Title III proceedings. To avoid any such misuse or misconstruction, and to respect the legal order envisioned by Congress, the Energy Bureau should refrain from issuing determinations on these topics until the Title III court has rendered its final decisions.

WHEREFORE, PREPA respectfully requests that the Hearing Examiner (i) **TAKE NOTICE** of the foregoing; and (ii) **GRANT** PREPA's request to defer consideration of the repayment of the Legacy Obligations until the conclusion of PREPA's Title III

²⁰ See 22 L.P.R.A. § 1054x (stating that Energy Bureau "shall ensure that all rates are just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service at the lowest reasonable cost.").

process and to expressly exclude Legacy Obligations repayment amounts from any practicability analysis.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 26th day of September 2025.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and notified via e-mail to the Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record, attorneys of the intervenors of record, and other: LUMA Energy, LLC and LUMA Energy ServCo, LLC; Margarita Mercado margarita.mercado@us.dlapiper.com; Jan Albino, Jan.AlbinoLopez@us.dlapiper.com; Andrea Chambers, andrea.chambers@us.dlapiper.com; Carolyn Clarkin, carolyn.clarkin@us.dlapiper.com; Katiushka Bolanos, katiushka.bolanos-lugo@us.dlapiper.com; Yahaira De La Rosa, Yahaira.delarosa@us.dlapiper.com; Genera PR, LLC, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Gabriela Castrodad, gcastrodad@sbgblaw.com; José J. Díaz Alonso, jdiaz@sbgblaw.com; Stephen Romero Valle, sromero@sbgblaw.com; Giuliano Vilanova-Feliberti, gvilanova@vvlawpr.com; Maraliz Vázquez-Marrero, mvazquez@vvlawpr.com; ratecase@genera-pr.com; regulatory@genera-pr.com; and legal@genera-pr.com; Oficina Independiente de Protección al Consumidor, hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; pvazquez.oipc@avlawpr.com; Instituto de Competitividad y Sustentabilidad Económica, jpouroman@outlook.com; agraitfe@agraitlawpr.com; National Public Finance Guarantee Corporation, epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; robert.berezin@weil.com; Gabriel.morgan@weil.com; Corey.Brady@weil.com; GoldenTree Asset Management LP, lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; iglassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; Assured Guaranty, Inc., hburgos@cabprlaw.com; dperez@cabprlaw.com; mmcgill@gibsondunn.com; lshelfer@gibsondunn.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; Syncora Guarantee, Inc., escalera@reichardescalera.com; arizmendis@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; PREPA Ad Hoc Group, dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; david.herman@dechert.com; michael.doluisio@dechert.com; stuart.steinberg@dechert.com; Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica, nancy@emmanuelli.law; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; monica@emmanuelli.law; cristian@emmanuelli.law; lgnq2021@gmail.com; Official

Committee of Unsecured Creditors of PREPA, jcasillas@cstlawpr.com; jnieves@cstlawpr.com; Solar and Energy Storage Association of Puerto Rico, Cfl@mcvpr.com; apc@mcvpr.com; javrua@sesapr.org; mrios@arroyorioslaw.com; ccordero@arroyorioslaw.com; Wal-Mart Puerto Rico, Inc., Cfl@mcvpr.com; apc@mcvpr.com; Mr. Victor González, victorluisgonzalez@yahoo.com; and the Energy Bureau's Consultants, Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; jorge@maxetaenergy.com; rafael@maxetaenergy.com; RSmithLA@aol.com; msdady@gmail.com; mcranston29@gmail.com; dawn.bisdorf@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com; guy@maxetaenergy.com; Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com; kbailey@acciongroup.com; hjudd@acciongroup.com; zachary.ming@ethree.com; PREBconsultants@acciongroup.com; carl.pechman@keylogic.com; bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com; roger@maxetaenergy.com; Shadi@acciongroup.com.

GONZÁLEZ & MARTÍNEZ

1509 López Landrón, Bldg.
Seventh Floor
San Juan, PR 00911-1933
Tel.: (787) 274-7404

s/ Mirelis Valle Cancel

RUA No.: 21115
Email: mvalle@gmlex.net