

November 7, 2025

BY ELECTRONIC MAIL

Maria J. DiConza
O'Melveny & Myers LLP
mdiconza@omm.com

Re: Case No. NEPR-AP2023-0003 (the "Rate Case")

Dear Maria:

We write on behalf of the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") as Title III representative of the Puerto Rico Electric Power Authority ("PREPA") regarding statements made by Mr. Scott Hempling, in his capacity as Hearing Examiner ("Hearing Examiner"), in orders and during hearings in the Rate Case before the Puerto Rico Energy Bureau ("PREB").¹ The Hearing Examiner's statements have suggested PREB must consider imposing a rate or rate rider as part of PREPA's permanent rates for the purpose of paying some amount of PREPA's legacy bond debt obligations, or setting aside funds to do so, while its Title III case is still pending and prior to any final determination by the Title III court (or any appellate court) regarding the restructuring of such debt. We have also reviewed *PREPA's Response to Hearing Examiner's Order Regarding Consideration of Legacy Obligations in Rate Case Hearing* filed by PREPA in the Rate Case on October 27, 2025. We write to inform PREPA of the Oversight Board's position on this issue. Although PREB serves an essential role as PREPA's independent regulator, and will have authority over any required rate component for restructured debt established by a confirmed Title III plan of adjustment for PREPA pursuant to Section 314 of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA")², the Oversight Board agrees with PREPA's position that PREB cannot take actions that are the sole responsibility of the Oversight Board, as any such action will stand in contradiction to PROMESA.

¹ Illustrative, but not exclusive, examples of these include: *Hearing Examiner's Order on Objections to Testimony and Miscellaneous Prehearing Matters* (November 1, 2025) at 1 ("the Title III case does not preclude the Energy Bureau from requiring PREPA to set aside funds to pay something toward what the Title III outcome will require"); Order at 2 ("The Energy Bureau can determine the form of a [legacy debt] rider, and any amount in it, without questioning a panel."); September 29 Conference ("We can talk about the debt and what may or may not go into the revenue requirement and you are not going to try to keep us from having that conversation"); *Hearing Examiner's Order Establishing (a) Agenda for the September 29 Conference, and (b) Certain Procedures for the Evidentiary Hearing*, III.D. (September 29, 2025) ("The Energy Bureau has already stated, via the filing requirements, that it will consider whether to include in the revenue requirement an estimated proxy for legacy debt."); *Id.* ("Of course, any estimated debt amount included in the rates would be subject to reconciliation with what becomes the actual debt amount.")

² PROMESA is codified at 48 U.S.C. §§ 2101–2241.

Prior to PREPA filing for relief pursuant to Title III of PROMESA, PREPA had approximately \$8.5 billion of bond debt as well as billions of dollars of other obligations, including unfunded pension obligations. PREPA availed itself of Title III as it could not pay its obligations and was in dire need of restructuring its debt. Under these circumstances, while PREPA is a debtor under Title III, the “normal” rules of rate making that may require inclusion of cost of debt capital are no longer applicable.³

The law controlling PREPA’s Title III case is modeled on, and incorporates myriad provisions of, federal bankruptcy law. The Title III Court has exclusive jurisdiction over PREPA’s property⁴ and is the sole forum to determine the terms under which PREPA’s legacy bond or other unpaid prepetition obligations are repaid, restructured, or otherwise adjusted. As explained below in more detail, it is well settled that bankruptcy law (including Title III of PROMESA and provisions of Title 11 of the United States Code (the “Bankruptcy Code”) incorporated therein) preempts all conflicting state laws, including those regarding creditors’ rights generally or requiring the repayment of debt. That preemption applies here to override any authority PREB may have under territorial law to set a rate for PREPA to generate revenue for payment of legacy bond (even on temporary or “placeholder” basis) while the Title III case is pending. When the amount of PREPA’s restructured debt is established by a confirmed plan of adjustment, PREPA will petition PREB to implement any rate component necessary to service such debt pursuant to Section 314 of PROMESA.

Moreover, Titles I and II of PROMESA vest the ultimate authority to certify PREPA’s budgets and fiscal plans in the Oversight Board. The budgets and fiscal plans for PREPA certified by the Oversight Board since the commencement of PREPA’s Title III case have not provided for the payment of any debt service or establishment of any reserve to do so. Thus, despite the fact that the Oversight Board has certified budgets for PREPA approved by PREB, any budgetary or other authority PREB may have under Puerto Rico law that conflicts with the Oversight Board’s powers under PROMESA with respect to a fiscal plan or budget is preempted. This preemption applies equally to any supposed PREB requirement that PREPA set rates to provide for the payment of any prepetition debt in its budgets or revenue requirement.

Pursuant to sections 362(a) and 922 of the Bankruptcy Code, any attempt to collect on prepetition debt absent consent of the Oversight Board would be a violation of the automatic stay. In addition, PREPA has no obligation to make any payments on account of its legacy debt while its Title III debt restructuring case remains pending. The Hearing Examiner asserts PREB would not be requiring PREPA to pay legacy debt but rather “determining what amount PREPA should set aside to pay toward what the Court determines.” There is, however, no material difference between requiring payment of debt during the Title III case and requiring PREPA to set aside funds for payment of debt during the case. The Oversight Board has determined, in every certified budget

³ Setting aside any issue of preemption, discussion of debt repayment in the context of an insolvent utility’s rate case is misplaced, as the appropriate “cost of capital” necessarily differs between a utility in an insolvency proceeding and one that remains solvent.

⁴ PROMESA § 306(b).

since 2017 (including the current FY2026 budget also approved by PREB), that no debt payments will be made, to creditors or to a reserve for creditors, until the debt is restructured under a confirmed and consummated plan of adjustment. In addition, PREPA's current certified Fiscal Plan clearly states there is insufficient "headroom" to raise rates to provide for debt service. Debt service therefore may not be included in PREPA's revenue requirement for purposes of current rate setting, and PREB has no authority to impose a rate component or rider that would require PREPA or its ratepayers to pay (or even provide for a placeholder amount regarding) any legacy debt service or to set aside funds for this purpose while its Title III case remains pending.⁵ If the Title III court confirms a plan of adjustment providing that PREPA will pay any of its adjusted debts from its revenue, PREPA will then be required to obtain regulatory approval from PREB of any rate adjustment required to generate such revenue pursuant to section 1129(a)(6) of the Bankruptcy Code and section 314(b)(5) of PROMESA.

I. Any Authority PREB Has Under Commonwealth Law to Impose a Rate or Rider to Pay Legacy Debt is Preempted by Title III of PROMESA

Congress enacted PROMESA to provide a comprehensive framework to restructure the debts of the Commonwealth of Puerto Rico (the "Commonwealth") and its instrumentalities. Title III of PROMESA is modeled upon chapter 9 of Title 11 of the Bankruptcy Code.

On July 2, 2017, the Oversight Board submitted a petition for relief under Title III of PROMESA for PREPA, commencing its Title III case. Case No. 17-bk-4780-LTS, ECF No. 1. The Oversight Board is PREPA's sole Title III representative in its Title III case. PROMESA § 315(b). The Title III court has exclusive jurisdiction over PREPA's property, which includes its revenues from rates. PROMESA § 306(a), (b). PREPA's Title III case remains ongoing. No plan of adjustment specifying the adjustment or repayment of PREPA's legacy bond debt—or any other prepetition debt—has been confirmed by the Title III court.

The filing of PREPA's Title III case imposed an "automatic stay" on all debt collection efforts. PROMESA § 301(a); 11 U.S.C. §§ 362(a), 922(a). Because of the operation of the automatic stay, PREPA is not required to pay or reserve funds for payment of its prepetition debts during the Title III case. *See, e.g., Ambac Assur. Corp. v. Puerto Rico (In re Fin. Oversight & Mgmt. Bd.)*, 927 F.3d 597, 603–05 (1st Cir. 2019) (Title III debtor cannot be required to make debt payments during Title III case). For this reason, among others, PREPA has not paid any bond debt during the Title III case.

During rate case proceedings as described above, the Hearing Examiner has asserted PREB's authority to set a rate or rate rider designed to provide for repayment of PREPA's legacy bond debt under Commonwealth territorial law prior to confirmation of a Title III plan, even as a placeholder

⁵ LUMA has requested inclusion of a rider to pay the PREPA retirement system monthly amounts sufficient to fund pensions on a pay-as-you-go basis as part of its rate petition. This rate component was affirmatively requested by LUMA on behalf of PREPA, is consistent with PREPA's certified fiscal plan, and has the support of the Oversight Board. This relief is therefore not stayed or preempted by PROMESA.

for further determination. Similarly, the Hearing Examiner asserted PREB must set some rate for debt service even if the final number is unknown, based on his unsupported belief that the amount of the restructured bond debt must be greater than zero.⁶ It is well settled that PROMESA Title III, like federal bankruptcy law, preempts all state and territorial law that might otherwise require a debtor to repay its legacy, prepetition debts. *See, e.g., In re Fin. Oversight & Mgmt. Bd.*, 637 B.R. 223, 288 n.32 (D.P.R. Jan. 18, 2022) (“PROMESA permits the impairment and discharge of prepetition debts . . . [t]o the extent that Commonwealth law is inconsistent with such impairment and discharge, it is preempted by PROMESA.”); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 588 F. Supp. 3d 191, 201 (D. P.R. 2022) (“PROMESA permits debtors to reject contracts and discharge debts, and section 4 of PROMESA provides that the exercise of those statutory powers provided by federal law prevails over inconsistent territorial and state laws”); *In re Sanitary & Improv. Dist. No. 7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989) (state law requiring payment of bondholders preempted by chapter 9 of Bankruptcy Code, because “[i]f a municipality were required to pay prepetition bondholders the full amount of their claim . . . the whole purpose and structure of Chapter 9 would be of little value.”); *cf. In re City of Vallejo*, 403 B.R. 72 (Bankr. E.D. Cal. 2009) (holding state labor law did not control the rejection of debtor’s CBAs because it was preempted by chapter 9 of the Bankruptcy Code), *aff’d sub nom. In re City of Vallejo, CA*, 432 B.R. 262 (E.D. Cal. 2010).⁷

These principles mandate that any authority PREB may claim to have under Commonwealth law to set a rate designed to pay prepetition bond debt before implementation of a plan of adjustment is preempted, and any action PREB takes to impose such a rate (via a placeholder or otherwise) would be *ultra vires* and contravene federal law. Whether and to what extent PREPA’s bondholders will receive payment on account of their bond debt claims will be decided by the Title III court in connection with confirmation of a plan of adjustment, which might then require PREB’s approval of a rate adjustment if needed to generate revenue to service such debt. Until then, and while PREPA’s case is pending, PREB has no authority to effect directly or indirectly the treatment of any prepetition debt, including by adding debt to PREPA’s rates or revenue requirements.

II. Any Authority PREB Has Under Commonwealth Law to Impose a Rate or Rider to Pay Legacy Bond Debt is Also Preempted by Titles I and II of PROMESA

⁶ *See Hearing Examiner’s Order Establishing (a) Agenda for the September 29 Conference, and (b) Certain Procedures for the Evidentiary Hearing*, (September 29, 2025) (“PREPA is correct that we don’t know what the final number will be. Any number could be right or wrong. **Any number, that is, except zero.** PREPA wants the Energy Bureau to adopt for debt the one number that everyone knows is wrong. Where’s the logic for that? Yes, the Commonwealth Government might provide the funds. And for the next three years there might be no hurricanes and no storm costs. Still, we must consider the possibilities and set rates accordingly.”) (emphasis added).

⁷ It changes nothing that the Hearing Examiner indicated that the rate related to debt service will include a statement that the Title III court will determine the magnitude of the debt to be included in a later time. When Congress enacts a bankruptcy law that covers a particular entity, it preempts other laws or regulations that simultaneously attempt to cover that same entity as it pertains to core bankruptcy issues such as payment of prepetition debt.

PROMESA § 4 expressly preempts any territorial law that is “inconsistent” with PROMESA. *See* 48 U.S.C. § 2103 (“The provisions of this Act shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this Act”). As relevant here, PROMESA provides the Oversight Board is empowered to certify fiscal plans for PREPA in its “sole discretion.” PROMESA § 201(c)(3). The Oversight Board also is empowered to certify budgets for PREPA in its “sole discretion.” PROMESA § 202(c)(1). Once certified by the Oversight Board, budgets are deemed “in full force and effect.” PROMESA § 202(e)(4)(C). Moreover, the Oversight Board’s certification decisions are not subject to any challenge in federal courts. PROMESA § 106(e).

The First Circuit and District Court have repeatedly confirmed that the government of Puerto Rico cannot alter the terms of or violate the budgets certified by the Oversight Board. *Vázquez-Garced v. Fin. Oversight & Mgmt. Bd. for P.R.*, 945 F.3d 3, 8 (1st Cir. 2019) (PROMESA subsection 202(e)(4)(C) “precludes the territorial government from reprogramming funds . . . and any Puerto Rico law to the contrary is preempted by virtue of PROMESA section 4.”); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 32 F.4th 67, 74-75 (1st Cir. 2022) (“PROMESA established the Board as a creature of the territorial government, . . . and empowered the Board, even absent agreement from the Governor and the Legislature, to develop, review, approve, and certify fiscal plans that would in turn dictate the bounds of any annual budgets adopted by the Commonwealth... .”); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 7 F.4th 31, 40 (1st Cir. 2021) (“PROMESA insulates FOMB’s certification determinations from judicial review in the federal courts.”); *Nevares v. Fin. Oversight & Mgmt. (In re Fin. Oversight & Mgmt. Bd.)*, 330 F. Supp. 3d 685, 704 (D. P.R. 2018) (holding that a “prior year authorization for spending that is not covered by the budget” but that Commonwealth government sought to access “is inconsistent with PROMESA’s declaration that the Oversight Board-certified budget for the fiscal year is in full force and effect, and is therefore preempted by that statutory provision by force of Section 4 of PROMESA”).

As noted (and from the outset of its work), the Oversight Board consistently certified budgets for PREPA, many of which have been approved by PREB (including for FY2026), that do not provide for any payment of PREPA’s legacy debt service.⁸ Any rate component intended to pay or set aside funds for payment of legacy bond debt would be inconsistent with PREPA’s certified budget and, concomitantly, the budgeting authority PROMESA empowers the Oversight Board to exercise in its “sole discretion.” As a result, any debt component in a rate order that is contrary to a certified budget that does not include debt payments would violate PROMESA, and any authority PREB may point to under Commonwealth law to justify its actions is preempted by Title II of

⁸ *See* PREPA, [Budgets - Financial Oversight and Management Board for Puerto Rico](#); *See, e.g., Second Revised FY2026 PREPA Budget, FY2026 - PREPA Budget Second Amendment (October 24, 2025); *See, e.g., Fiscal Year 2026 Budget for the Puerto Rico Electric Power Authority, FY2026 - PREPA: Budget, Compliance Certification, and Resolution, (June 30, 2025); *See, e.g., Fiscal Year 2025 Budget for the Puerto Rico Electric Power Authority, FY2025 - PREPA Budget, Compliance Certification, and Resolution (June 28, 2024); *See, e.g., Fiscal Year 2024 Budget for the Puerto Rico Electric Power Authority FY2024 - PREPA Budget, Compliance Certification, and Resolution* (June 30, 2023).***

PROMESA. *Vázquez-Garced*, 945 F.3d at 8. In addition, Section 201(b)(I) of PROMESA provides that a Fiscal Plan must include “a debt sustainability analysis.” The PREPA 2025 certified Fiscal Plan clearly states there is insufficient “headroom” to raise rates for debt service. See e.g. PREPA 2025 Fiscal Plan at § 8.3 (“the Oversight Board concludes PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs.”), [Fiscal Plan for the Puerto Rico Electric Power Authority](#), (February 6, 2025). Any contrary position taken by PREB will improperly impede the power of the Oversight Board under PROMESA.

Furthermore, PROMESA § 108 expressly prohibits the Governor and Legislature from exercising “any control, supervision, oversight, or review over the Oversight Board or its activities,” or from enacting or enforcing “any statute, resolution, policy, or rule that would impair or defeat the purposes of [PROMESA], as determined by the Oversight Board.” See 48 U.S.C. § 2128(a)(1), (2); see also *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 616 B.R. 238, 254 (D.P.R. 2020) (finding the Oversight Board’s authority pursuant to § 108(a)(2) allowed it to determine that a law which eliminated the obligation of municipalities to contribute to the Commonwealth government health plan was not enforceable). Any attempt by PREB to impose a debt service obligation on PREPA pursuant to its rate-making authority would seek to control and override the Oversight Board’s exclusive fiscal and restructuring powers and would therefore be in direct conflict with the Oversight Board’s exclusive authority. Such significant impairment would directly “defeat” PROMESA’s purpose—to provide a uniform federal mechanism for achieving fiscal responsibility and restructuring Puerto Rico’s public debts—and is therefore preempted or precluded by the provisions outlined above, as well as § 108(a)(2). *Id.*; see *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 634 B.R. 187, 204 (D.P.R. 2021) (“The Oversight Board’s section 108 determinations have been upheld ... when government actions impair[] the functioning of financial measures approved by the Oversight Board in the exercise of powers explicitly conferred upon it by PROMESA.”) (internal quotations and citation omitted); see also *Vázquez Garced II*, 616 B.R. at 254 (enjoining Commonwealth’s act when “discrepancy [with fiscal plan] necessarily impairs the functioning of financial measures approved by the Oversight Board in the exercise of powers explicitly conferred upon it by PROMESA”). PROMESA’s text makes clear that no territorial action may directly interfere with or constrain the Oversight Board’s discretion in determining when, how, or whether PREPA’s revenues are allocated toward debt repayment.

For all these reasons, any authority of PREB under territorial law to establish, approve, or compel a “Legacy Debt Rider” of any kind or otherwise seek to direct or influence the amount of PREPA’s repayment of legacy debt obligations is preempted, both as a result of Title III of PROMESA and by Titles I and II of PROMESA. The Oversight Board reserves all rights regarding the issues



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raised in this letter and any other matters that arise, which impede or conflict with the Oversight Board's powers and obligations under PROMESA.

We look forward to continuing to work together for the benefit of the people of Puerto Rico.

Sincerely,

/s/ Ehud Barak

cc: Mr. Robert Mujica
Jaime El Koury, Esq.