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

In re: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	Case. No.: NEPR-AP-2023-0003

PREPA'S MOTION TO THE ENERGY BUREAU TO VACATE HEARING EXAMINER'S ORDERS REGARDING CONSIDERATION OF LEGACY BOND DEBT IN RATE CASE

TO THE HONORABLE ENERGY BUREAU,

COMES NOW, the Puerto Rico Electric Power Authority ("PREPA"),[1] through its undersigned legal counsel, and, very respectfully, states and prays as follows:

RELIEF REQUESTED

1. PREPA hereby requests a ruling from the Commissioners of the Puerto Rico Energy Bureau (the "Energy Bureau") to clearly delineate that the scope of this proceeding (the "Rate Case")—including relevant subject matter for testimony, cross-examination, and all related submissions and panels—**excludes** PREPA's legacy bond debt (the "Legacy Bond Debt").[2] The

[1] The Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") consents to PREPA's filing pursuant to AAFAF's authority under Act 2-2017 to enforce compliance by the Government of Puerto Rico, its instrumentalities, and public corporations, with the mandates of the fiscal plans and budgets certified pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA").

[2] The Energy Bureau should also exclude PREPA's other legacy obligations that are subject to the Title III proceedings and automatic stay, including pre-bankruptcy fuel line loans and other asserted unsecured claims. The payment of pension obligations as requested in the Rate Case is different. The Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") has required that pensions be paid through rates. Moreover, PROMESA favors continued pension payments and such payments are consistent with the PREPA Fiscal Plan and have been included in every plan of adjustment for PREPA the Oversight Board has proposed. *See*, *e.g*., 48 U.S.C. § 2141(b)(1)(C) (requiring fiscal plans to "provide adequate funding for public pension systems."); PREPA Fiscal Plan (defined *infra* note 3) at 125 (noting that including pension cost into the revenue requirement as part of the base rate or a rider is a possible funding source for pension obligation); Fifth Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority at Article VI, *In re The Financial Oversight & Management Board for Puerto Rico, as representative of Puerto Rico Electric Power Authority*, No. 17-BK-4780-LTS, Docket No. 5881 (D.P.R. Mar. 28, 2025) (addressing

path the Energy Bureau-designated hearing examiner (the "Hearing Examiner") has established puts the Energy Bureau in conflict with PROMESA, PREPA's certified fiscal plan,[3] the pending restructuring of the Legacy Bond Debt and other obligations pursuant to Title III of PROMESA (the "Title III Case").

2. Moreover, it may well put PREPA squarely (and needlessly) in the middle of litigation between the Oversight Board and the Energy Bureau. On November 7, 2025, PREPA's counsel received the communication attached hereto as **Exhibit A**, from counsel for the Oversight Board (the "Oversight Board Letter"). The Oversight Board Letter states clearly, (consistent with the concerns raised by PREPA's prior motions),[4] that:

> . . . any authority of [the Energy Bureau] 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.[5]

3. When the Energy Bureau issued its provisional rate order on July 31, 2025, it stated that: "In the current legal context, with PREPA in bankruptcy under Title III of PROMESA, PREPA

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the treatment of pension claims); *see also In re Fin. Oversight and Mgt. Bd. for Puerto Rico*, 637 B.R. 223, 282 (D.P.R. 2022) (concluding, in the Commonwealth's Title III case, that cutting "pensions actually could destabilize Puerto Rico's economic prospects, lead to greater out-migration, and make it harder for Puerto Rico to obtain credit in the future, and the savings from pension cuts do not justify the damage those cuts would cause to the economy."); Financial Oversight & Mgmt. Bd. for P.R., Letter to Orlando C. Rivera Berríos, Dir., P.R. Office of Mgmt. & Budget, and Mary C. Zapata Acosta, Exec. Dir., P.R. Elec. Power Auth. (Mar. 25, 2025) (available at https://drive.google.com/file/d/1SmGSf2Z84MyrbPjYkY_4DFHwCDxxsdcP/view?usp=sharing) (requiring a temporary rate adjustment for pensions costs). Accordingly, PREPA's inclusion of pension-related payment obligations in its rate review petition is fully consistent with its legal position regarding Legacy Bond Debt.

[3] *February 2025 Fiscal Plan for the Puerto Rico Electric Power Authority* ("PREPA Fiscal Plan") (available at https://drive.google.com/file/d/1WksRhtfmoLvaZFb-5pUNkFXGEiT3t6vp/view?usp=sharing).

[4] *See* 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", *In re Puerto Rico Electric Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Sept. 26, 2025) (setting forth the legal and factual bases for excluding Legacy Bond Debt); Puerto Rico Electric Power Authority's Response to Hearing Examiner's Orders Regarding Consideration of Legacy Obligations in Rate Case Hearing, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Oct. 27, 2025).

[5] Oversight Board Letter at 6 (emphasis added).

is under a stay of debt payments and currently has no enforceable obligation to pay its legacy debts."[6] No relevant fact or law has changed.

4. As explained below, proceeding with including Legacy Bond Debt in the Rate Case will be a superfluous and costly waste of time.[7] As a matter of law and prudence, PREPA respectfully submits the Energy Bureau should not let this occur. The Energy Bureau's expert consultants agree as a prudential matter:

> . . . we urge heightened caution by the Energy Bureau in addressing amounts for a Legacy Debt Obligation, and advise and recommend that the Energy Bureau not "front run" the Title III Court in identifying a non-zero amount for inclusion in the revenue requirement. In our professional judgment, the most prudent course of action for the Energy Bureau would be to simply await the determination of the Title III Court on what the Legacy Debt Obligation is, and once that is known, to then proceed with designing a revenue requirement and related rate design to address the collection of that amount from ratepayers. In summary, we recommend that the Energy Bureau await the outcome of the Title III bankruptcy process prior to including an amount for PREPA legacy debt or related debt service coverage in base rates.[8]

5. Therefore, the Energy Bureau should affirmatively exercise its exclusive authority to determine substantive questions of law reserved to it under the Designation Order (defined below), and direct that no testimony, cross-examination, witness statements, or other submissions will be considered on Legacy Bond Debt-related issues, including in any panels.[9]

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[6] *See* Resolution and Order on Establishment of Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau July 31, 2025)(the "July 31 Provisional-Rate Order") at 31–32.

[7] *See* 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", *In re Puerto Rico Electric Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Sept. 26, 2025) (setting forth the legal and factual bases for excluding Legacy Bond Debt); Puerto Rico Electric Power Authority's Response to Hearing Examiner's Orders Regarding Consideration of Legacy Obligations in Rate Case Hearing, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Oct. 27, 2025).

[8] *See* Hearing Examiner's Order Submitting Expert Reports of Energy Bureau Consultants, Exhibit 62 at 27, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Oct. 6, 2025) (Ralph C. Smith & Mark Dady [("Energy Bureau Experts")], Expert Report on Overall Revenue Requirement ("Smith & Dady Expert Report") at 27.

[9] To the extent that the Energy Bureau's statements in the July 31 Provisional-Rate Order were intended to mandate

PROCEDURAL POSTURE

6. On February 12, 2025, the Energy Bureau designated the Hearing Examiner for the Rate Case.[10]

7. The Energy Bureau specifically designated (the "Designation Order") the Hearing Examiner's authority to the following limited purposes:

- resolving all discovery disputes between the parties;
- establishing and modifying procedural schedules;
- determining witness sequence and logistics for evidentiary hearings;
- addressing any other procedural or logistical matters that arise during the proceeding; and
- issuing any procedural orders to facilitate the orderly conduct of the proceeding.[11]

8. Moreover, the Designation Order expressly preserves the Energy Bureau's exclusive authority to decide all substantive matters, and to reconsider any Hearing Examiner determination. In relevant part, it provides:

> All Hearing Examiner decisions are subject to appeal to the Energy Bureau. The Energy Bureau retains full authority over all substantive matters and final determinations in this proceeding.
>
> . . .
>
> Direct submission on all other matters to the Energy Bureau.[12]

9. During the Rate Case, the Hearing Examiner has issued several rulings regarding the treatment of Legacy Bond Debt that are clearly substantive, wrong, and set PREPA and the

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that Legacy Bond Debt be considered in the Rate Case, PREPA hereby requests that this Motion be treated as a motion for reconsideration of that order. At the time the July 31 Provisional-Rate Order was issued, it was still possible that the Title III case would have been resolved before the hearings on the permanent rate. It no longer is possible. When the restructured debt is set through a confirmed plan of adjustment for PREPA, however, the Energy Bureau will have authority to implement any rate component for such restructured debt, pursuant to PROMESA § 314.

[10] Resolution and Order Establishing Scope and Procedures for Rate Case, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Feb. 12, 2025) at 8.

[11] *Id*.

[12] *Id*.

Energy Bureau on a collision course with the Oversight Board on issues that must be decided by the Title III Court. Specifically, on September 29, 2025, the Hearing Examiner stated that he will conduct "debt" and "practicability" panels that include testimony related to PREPA's Legacy Bond Debt. He further expressed his view that the Energy Bureau should provide for funds for repayment of Legacy Bond Debt in the revenue requirement and permanent rate with a placeholder amount that ***will not be zero***.[13]

10. Subsequently, on October 15, 2025, the Hearing Examiner issued another order—*less than twenty-four hours before the scheduled technical hearing*—where he set the agenda for the technical hearing and raised the following substantive questions:

> PREPA's preemption argument aside: On including debt in the revenue requirement: What is the PREB's statutory obligation and what is its discretion? Is PREP [*sic*] required to include some amount? Prohibited from including any amount? If neither, what discretion does PREB have?[14]

11. On October 17, 2025, the Hearing Examiner issued an order that, while acknowledging that parties seemed in agreement that "until the Title III process ends, there should be no debt amount in the revenue requirement," asserted that counsel had not provided him with sufficient substantive argument on preemption.[15]

12. On October 27, 2025, PREPA filed *PREPA's Response to Hearing Examiner's Orders Regarding Consideration of Legacy Obligations in Rate Case Hearing*,[16] whereby PREPA

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[13] Hearing Examiner's Order Establishing (a) Agenda for the September 29 Conference, and (b) Certain Procedures for the Evidentiary Hearing, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Sept. 29, 2025) at 7 (stating that "[a]ny 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.").

[14] Hearing Examiner's Order Setting Agenda for Conference of October 16, 2025, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau October 16, 2025) at 2.

[15] Hearing Examiner's Order Summarizing Results of October 16 Conference, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau October 17, 2025) at 2.

[16] PREPA's Response to Hearing Examiner's Orders Regarding Consideration of Legacy Obligations in Rate Case Hearing (the "<u>October 27 Motion</u>"), *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Oct. 27, 2025).

submitted for the benefit of the record, a detailed legal and factual discussion of PROMESA's preemptive effect on the Energy Bureau's ability to consider and make a determination relating to the payment of Legacy Bond Debt.

13. On October 29, 2025, the Hearing Examiner issued an Order on various matters related to the Rate Case panels in which he canceled that Debt Panel, but provided that (a) witnesses on debt would be made available for cross examination and (b) legacy obligations are relevant to practicability and therefore "[t]o the extent that practicability panelists want to discuss the role of particular costs in determining rates that will actually produce what the electric system needs, they can; every cost is on the table."[17]

14. On November 3, 2025, the Hearing Examiner issued an order partially overruling PREPA's objection to the PREPA bondholders' debt expert and set forth his current view on how the Energy Bureau should address Legacy Bond Debt in the Rate Case (the "<u>November 3rd Order</u>"). In pertinent part, the Hearing Examiner's November 3rd Order provides as follows:

> As to Title III, I have already ruled that (a) debt is relevant to the cost of electric service, and (b) 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*. Setting rates to include debt costs neither enters the Title III Court's exclusive field (which is to determine the debt, not to set rates); nor conflicts with any future Title III Court decision (because the Energy Bureau will have to reconcile whatever figure it chooses now—including a zero, which is a number like any other number—with whatever figure emerges from Title III. The Energy Bureau would not be determining the debt; it would be determining what amount PREPA should set aside to pay toward what the Court determines. Such an Energy Bureau decision would actually support the Court's actions by making PREPA more ready to comply with the Court's commands.
>
> PREPA cites the Court's stay against forcing PREPA to pay its creditors. No one is suggesting such an action. That the Court has stayed PREPA's debt obligation does not prevent PREPA from collecting funds to pay whatever obligation emerges after the stay ends. Similarly, PREPA's argument that the certified Fiscal Plan prohibits

[17] Hearing Examiner's Order on Various Prehearing Matters, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Oct. 29, 2025) at 3.

> debt payments goes nowhere because the Energy Bureau would not be ordering debt payments.
>
> The Energy Bureau will address my ruling, i.e., on whether it has authority to include debt in rates, taking into account Commonwealth law and federal law, in its final decision. Parties may brief that subject in their post-hearing submissions. Until then, we must develop a record that helps the Energy Bureau make its decision.
>
> . . .
>
> Unsecured Creditors then remain free to argue to the PREB for whatever outcome they wish—recognizing, of course, that there at present is no evidentiary submission that states any amount reflecting their claims.
>
> In their submission, Unsecured Creditors have performed an important service of reminding the parties, and the tribunal, that "debt" and "legacy debt" comes in many forms. They should be satisfied that on the need to consider unsecured debt, they have gotten the Energy Bureau's attention.[18]

15. On November 4, 2025, the Hearing Examiner issued another order allowing the official committee of unsecured creditors in PREPA's Title III Case to submit rebuttal testimony on debt and noting that he may reconsider holding a debt panel during the Rate Case after he receives that testimony.[19]

16. On November 7, 2025, the Hearing Examiner issued another technical conference agenda—*this time with less than two hours' notice*—that included additional determinations regarding the composition and sequencing of panel agendas, including one regarding debt:

> *Legacy debt*
>
> a. Handle cross during ARR panel, except cross Tierney on debt in the Practicability panel. (SREAEE: That solution cover the five that you want to cross: (i) Andrew Smith; (ii) Alejandro Figueroa; (iii) Susan Tierney, Ph.D.; (iv) Ralph C. Smith; (v) Mark S. Dady.)

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[18] Hearing Examiner's Order on Objections to Testimony and on Miscellaneous Prehearing Matters*, In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Nov. 3, 2025) (emphasis added).

[19] Hearing Examiner's Order Addressing Rebuttal Testimony on Debt, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Nov. 4, 2025) ("I will revisit that question after I see the Unsecured Creditors' submission. If we have a debt panel, it likely will not last more than two hours, probably around December 8-11 when R. Smith, Dady, and Tierney would likely be in town. We will discuss the possibilities when we have more information").

b. Legal issue: What is the PREB's discretion? What is its obligation?[20]

ARGUMENT

17. The Energy Bureau plays a vital role,[21] but its role exists within the framework established by federal law, which preempts local or state law when a conflict exists. The Energy Bureau cannot act in a manner inconsistent with federal law, which here requires compliance with the PREPA Fiscal Plan and deference to PREPA's Title III Case in matters related to the Legacy Bond Debt. Thus, the Energy Bureau may establish a rate to cover legacy obligations ***only*** if such action is consistent with the certified PREPA Fiscal Plan or a confirmed Title III plan of adjustment or other order of the Title III Court—**none of which currently authorizes PREPA to charge rate-based funding for those obligations or to collect monies to pay them in the future**.

18. As PREPA explained in its September 26 and October 27 motions, federal law—specifically PROMESA—preempts any attempt by the Energy Bureau to require PREPA to charge rates directly on account of PREPA's Legacy Bond Debt in the revenue requirement or permanent rates at this time. In enacting PROMESA, Congress found that a "comprehensive approach to [Puerto Rico's] fiscal . . . problems . . . is necessary . . . to restructure debts in a fair and orderly process."[22] PROMESA Titles II and III together make up that comprehensive approach to PREPA's debt restructuring, which preempt local laws on these issues.[23]

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[20] Hearing Examiner's Order Setting Agenda for November 7 Conference, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Nov. 7, 2025).

[21] *See* Act No. 57 of May 27, 2014, as amended, known as the "Puerto Rico Energy Transformation and RELIEF Act", Section 1.2, 22 L.P.R.A § 1051 ("It is hereby declared as the public policy of the Government of Puerto Rico that an independent electric power regulatory entity with broad powers and duties shall be created to ensure compliance with the public policy on energy, the provisions of this Act, and to ensure that energy costs are just and reasonable by overseeing and reviewing the rates of electric power service companies.").

[22] 48 U.S.C. § 2194(m)(4).

[23] *Centro de Periodismo Investigativo v. Fin. Oversight and Mgt. Bd. for Puerto Rico*, No. CV 17-1743 (JAG), 2018 WL 2094375, at *9 (D.P.R. May 4, 2018); *see also Centro de Periodismo Investigativo*, 2018 WL 2094375, at *11 ("Field preemption is reserved for areas of the law and public administration where the federal government has traditionally held exclusive authority like, for example, . . . *bankruptcy*.") (emphasis added); s*ee also* Oversight Board Letter at 3–4 (setting forth the Oversight Board's reasoning as to legal reasons PROMESA Title III preempts the

19. Title III establishes a judicial process for determining what PREPA's obligations to bondholders are and the manner in which Legacy Bond Debt will be adjusted, and grants the Title III Court the sole authority for the restructuring of PREPA's Legacy Bond Debt. PROMESA protects Title III debtors from debt-enforcement or collection actions[24] and supersedes state laws requiring repayment of such obligations, unless the debtor consents to such repayment or a court permits creditors to obtain such relief.[25] PROMESA's objective of restructuring PREPA's debts in the "fair and orderly" manner Congress intended cannot be fulfilled if the Energy Bureau attempts to enforce a local law requiring that PREPA meet its prepetition obligations to bondholders while the Title III case is still pending, the automatic stay remains in effect, and the Title III Court has not ruled on the allowed amount of the Legacy Bond Debt or the manner in which it is to be paid.[26]

20. PREPA's bondholders have recognized on multiple occasions that efforts to raise rates on account of Legacy Bond Debt are subject to the automatic stay.[27] The stay has never been

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Energy Bureau's authority to impose a rate or rider to pay Legacy Debt).

[24] Bankruptcy Code § 362(a) (incorporated into the Title III case by 48 U.S.C. § 2161(a)).

[25] *See In re Fin. Oversight and Mgt. Bd. for Puerto Rico*, 637 B.R. 223, 288 (D.P.R. 2022) (preempting various Puerto Rico laws and regulations that required the payment or satisfaction of indebtedness as inconsistent with the Central Government's plan of adjustment's discharge of Central Government obligations); *see also Training v. Bos. Reg'l Med. Ctr., Inc. (In re Bos. Reg'l Med. Ctr., Inc.)*, 291 F.3d 111, 126 (1st Cir. 2002) (state law preempted to the extent it purported to alter priority of obligation in bankruptcy)).

[26] PREPA's October 27 Motion sets forth the bases of this preemption in detail, which is summarized herein; s*ee also In re Fin. Oversight & Mgmt. Bd. for P.R.*, 635 B.R. 201, 213–14 (D.P.R. 2021) (concluding that the "automatic stay protects the debtor from collection of such payments upon commencement of a bankruptcy case, and the [debtor] benefits from the ability to use resources that would otherwise be used for the timely satisfaction of prepetition unsecured claims.").

[27] *See e.g*. Motion of Ad Hoc Group of PREPA Bondholders, National Public Finance Guarantee Corp., Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. for Relief from the Automatic Stay to Allow Movants to Enforce Their Statutory Right to Have a Receiver Appointed, *In re Fin. Oversight & Mgmt. Bd. for P.R. (PREPA)*, No. 17 BK 04780-LTS (D.P.R. July 18, 2017) (Doc. 74) (requesting relief from the automatic stay to appoint a receiver to seek an adjustment of rates); Motion of National Public Finance Guarantee Corp., Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. for Relief from the Automatic Stay to Allow Movants to Enforce Their Statutory Right to Have a Receiver Appointed, *In re Fin. Oversight & Mgmt. Bd. for P.R. (PREPA)*, No. 17 BK 04780-LTS (D.P.R. Oct. 3, 2018) (Doc. 975) (stating that while Bondholders' automatic stay relief request sought did not include the right to seek rate increases: "PREPA Bondholders could have sought [relief from the automatic stay to appoint] a receiver to immediately enforce the rate covenant by initiating a rate

lifted to permit them to do so. The bondholders have been consistently right in their understanding that the automatic stay bars them from getting a receiver to ask the Energy Bureau for rate increases on account of Legacy Bond Debt. And what a receiver cannot ask for without violating the automatic stay, the Energy Bureau has no power to grant.[28] Thus, the Energy Bureau may not ignore the automatic stay and impose new rates on account of Legacy Bond Debt.

21. But even if Title III did not exist, PREPA is bound by Titles I and II of PROMESA and the financial aspects of the PREPA Fiscal Plan.[29] And so is the Energy Bureau. The PREPA Fiscal Plan, developed and certified pursuant to PROMESA Title II, prohibits the Energy Bureau from setting rates to pay Legacy Bond Debt. As part of a broader framework aimed at achieving fiscal responsibility and access to capital markets, PROMESA § 201 requires certified fiscal plans to establish "a debt burden that is sustainable" and include a debt sustainability analysis.[30] Congress granted the decision to certify a fiscal plan to the sole discretion of Oversight Board.[31]

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proceeding with the Puerto Rico Energy Bureau, which is an essential part of this municipal financing. But, this Motion does not seek that relief."); Motion of the Ad Hoc Group of PREPA Bondholders, Assured Guaranty Corp., Assured Guaranty Municipal Corp., National Public Finance Guarantee Corp., and Syncora Guarantee Inc. to Dismiss PREPA's Title III Case, or for Relief from the Automatic Stay to Enforce Their Right to a Receiver, *In re Fin. Oversight & Mgmt. Bd. for P.R. (PREPA)*, No. 17 BK 04780-LTS (D.P.R. Sept. 19, 2022) (Doc. 2973) at 29–35 (arguing that Bondholders should be granted relief from the automatic stay to force the Energy Bureau to raise rates "not only to pay debt, but also to pay expenses to 'maintain, restore, insure, and keep insured' PREPA's infrastructure"); [Alternative Proposed] Order Granting Motion for Relief from the Automatic Stay to Enforce Right to a Receiver, *In re Fin. Oversight & Mgmt. Bd. for P.R. (PREPA)*, No. 17 BK 04780-LTS (D.P.R. Sept. 19, 2022) (Doc. 2973-2) (seeking order that states: "automatic stay is vacated to permit the movants . . . to allow [any appointed] receiver to exercise its powers and take all actions permitted under the Enabling Act and the Trust Agreement, under the supervision of the court of competent jurisdiction, including but not limited to, setting rates, seeking approval from the Puerto Rico Energy Bureau ("PREB") if necessary, and challenging any action or decision by PREB, debtors, or the Government Parties to interfere with or prevent the receiver from implementing the rates it seeks to set. . .").

[28] To be clear, if the Oversight Board includes a rate increase for the Legacy Bond Debt in PREPA's plan of adjustment, Bankruptcy Code § 1129(a)(6), as incorporated by 48 U.S.C. § 2161(a), requires the Energy Bureau's independent approval before the plan can be effective. The timing is critical: the Oversight Board must first propose the rate increase—on account of PREPA's Legacy Bond Debt as restructured through a confirmed Title III plan of adjustment—before the Energy Bureau can act.

[29] *See* Oversight Board Letter at 5–6 (setting forth the Oversight Board's reasoning as to why any authority the Energy Bureau has under Commonwealth Law to impose a rate or rider to pay Legacy Bond Debt is preempted by Titles I and II of PROMESA).

[30] 48 U.S.C. § 2141(b)(1).

[31] *Id*. at § 2141(c)(3).

To that end, the Oversight Board considered PREPA's debt burden sustainability and certified a PREPA Fiscal Plan that provides:

> ***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. [32]

22. If the Energy Bureau were to include a Legacy Bond Debt amount in the revenue requirement—under the guise of its PREB Act[33] §§ 6.3(m) and (p) duties—**it would be making a determination that is <u>inconsistent</u> with the PREPA Fiscal Plan**.

23. Because the above-mentioned federal provisions fully occupy the field of determining and repaying the Legacy Bond Debt (and the raising of revenues for that purpose), PREB Act §§ 6.3(m) and (p)—which purport to require the Energy Bureau to ensure PREPA meets its bondholder obligations—**are preempted**. Any rate mechanism or "rider" for Legacy Bond Debt repayment or consideration of Legacy Bond Debt in deciding the practicability of rates necessary to pay operating expenses, would directly conflict with the certified PREPA Fiscal Plan and contravene PROMESA's allocation of authority. And, as the Oversight Board Letter emphasizes:

> 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 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. [34]

24. The Hearing Examiner's substantive orders and proposed debt panels seek to substitute the Oversight Board's determination on PREPA's inability to impose any additional rate

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[32] *See* PREPA Fiscal Plan at 118 (emphasis added).

[33] "<u>PREB Act</u>" refers to of Act 57-2014 (as amended, including by Act 17-2019).

[34] *See* Oversight Board Letter at 2–3. The Hearing Examiner's conclusion that nothing prevents "PREPA from collecting funds to pay whatever obligation emerges after the stay ends," similarly violates the PREPA Fiscal Plan. *See* Hearing Examiner's Order on Objections to Testimony and on Miscellaneous Prehearing Matters, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Nov. 3, 2025).

increases for debt service with the Energy Bureau's determination. That is precisely what the preemption doctrine prohibits. This would force PREPA into an intolerable position of being stuck between a state regulatory entity demanding it act in a manner inconsistent with its certified fiscal plan and the Oversight Board. Putting PREPA in this situation will only lead to wasteful litigation—especially when a forum exists precisely to determine what bondholders are entitled to be paid on account of the Legacy Bond Debt, and what the form and sources of any required payments will be.

25. Consistent with this statutory framework, the Energy Bureau Experts correctly opined that "the most prudent course of action for the Energy Bureau would be to simply await the determination of the Title III Court on what the Legacy Debt Obligation is, and once that is known, . . . proceed with designing a revenue requirement and related rate design to address the collection of that amount from ratepayers."[35] PREPA agrees. Waiting for the Title III court's decision before including any debt-service component in rates is not only prudent, but also legally required.

26. The question of whether the Energy Bureau is preempted from requiring: (a) the payment of Legacy Bond Debt and/or (b) PREPA to collect funds to pay whatever Legacy Bond Debt emerges after the stay ends must be adjudicated as a threshold matter and prior to the evidentiary hearings in the Rate Case; not after the evidentiary hearings, as the Hearing Examiner has ordered.[36] Accordingly, PREPA respectfully requests the Energy Bureau to rule on this substantive, threshold issue.

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[35] Smith & Dady Expert Report at 27.

[36] The Puerto Rico Supreme Court has consistently warned that the courts must be zealous guardians of their jurisdiction and that they have no discretion to assume jurisdiction where it does not exist. *S.L.G. Szendrey Ramos v. F. Castillo*, 169 D.P.R. 873, 882–83 (2007); *Morán v. Martí*, 165 D.P.R. 356 (2005). Questions concerning a court's jurisdiction are threshold issues that must be addressed and resolved in preference to all others. *Autoridad sobre Hogares v. Sagastivelza*, 71 D.P.R. 436 (1950). This principle is extensive to administrative forums.

CONCLUSION

27. PREPA respectfully requests that the Energy Bureau issue an order that Legacy Bond Debt, specifically, and PREPA's legacy obligations,[37] in general, will not be considered in the Rate Case and so direct the Hearing Examiner. Moreover, PREPA respectfully requests that (a) the Debt Panel be eliminated in its entirety and (b) no testimony or witness statements be admitted with respect to Legacy Bond Debt (and therefore no cross examination is required), including in the practicability, rate design, revenue requirement, or other panels. Instead, PREPA requests that the Energy Bureau address the Legacy Bond Debt in a separate rate case, if necessary, only after the Title III Court's determinations. This will promote procedural efficiencies and reduce the risks associated with the expected legal challenges, while allowing the Energy Bureau to fulfill its statutory mandate to set rates for PREPA's ongoing, post-petition operational costs.

[*Remainder of this page intentionally left blank.*]

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[37] This does not include pension obligations, as noted *supra* note 2.

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San Juan, Puerto Rico

Respectfully submitted,

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CERTIFICATE OF SERVICE

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 others: *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; Carlyn Clarkin, carolyn.clarkin@us.dlapiper.com; Katiushka Bolanos, katiuska.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.

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