

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

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CASE NO.: NEPR-AP-2023-0003

IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW

SUBJECT: SREAEE'S REPLY TO
BONDHOLDER'S INITIAL POST HEARING
BRIEF ON THE REVENUE REQUIREMENT

**SREAEE'S REPLY TO BONDHOLDER'S INITIAL POST HEARING BRIEF ON THE
REVENUE REQUIREMENT**

COMES NOW the Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica (henceforth "ERS" or "SREAEE"), through its undersigned legal representatives, and respectfully **states and informs** the Hearing Examiner and the Puerto Rico Energy Bureau as follows:

I. PRELIMINARY STATEMENT

This Reply responds to the Bondholders' Initial Post-Hearing Brief on the Revenue Requirement as it relates to the funding of pension obligations associated with the SREAEE. The Bondholders' arguments mischaracterize the legal nature of PREPA's pension obligations, disregard controlling provisions of PREPA's Trust Agreement, and ignore the evidentiary record developed in this proceeding.

The Bondholders erroneously argue that PREPA's pension obligations may not be treated as current operating expenses or included in rates, and that any funding of such obligations must be deferred to PREPA's Title III case or assumed by the Commonwealth of Puerto Rico. As explained herein, while amounts due and unpaid as of the Title III petition date may constitute prepetition

claims,¹ PREPA's current and future pension funding obligations arise post-petition and constitute non-discretionary operating expenses. Under the 1974 Trust Agreement, "Current Expenses" expressly include payments to pension or retirement funds, placing pension costs within PREPA's first-tier operating obligations.

The Bondholders further claim that PREPA failed to substantiate the pension-related amounts included in its proposed revenue requirement. The record demonstrates otherwise. The pension funding amounts for Fiscal Years 2026 through 2028 are based on detailed cash-flow projections derived from current census data, historical benefit payment experience, and actuarial analysis. The evidence explains the composition of pension benefit payments, the methodology used to project total annual pension-related outflows and inflows, and the resulting net PayGo funding requirement included in PREPA's revenue requirement. These projections were reviewed and supported by sworn actuarial testimony.

Finally, the Bondholders' assertion that pension obligations should be funded through continued borrowing from the Commonwealth ignores the record evidence showing that such loans were approved as temporary, emergency measures and were expressly intended to bridge to a permanent, rate-based funding solution. The record further reflects that PREPA's pension obligations have been recognized as non-deferrable expenses and that a dedicated rate mechanism has been approved to ensure their payment.

¹ SREAEE is vigorously challenging all measures that the current Plan of Adjustment—and any future plan—has presented or may present to restructure pension obligations. The grounds supporting those positions are set forth in the docket of PREPA's Title III case under PROMESA, and it is unnecessary to repeat them here. Through this motion, we clarify that there is no waiver, in any manner—direct or indirect—of any arguments previously advanced in the Retirement System's objections to the Plan of Adjustment.

The Bondholders seek to ensure that the Retirement System receives a reduced amount—or no funding at all—of the revenue requested, thereby leaving retirees who devoted their entire working lives to public service without a dignified pension. They further aim to deprive the Retirement System of the funds necessary to provide the services to which pensioners are entitled. All of this is done while elevating their own interests as PREPA creditors in the Title III case above those of the retirees. Notably, the Bondholders have not requested any revenue requirement before this Bureau and, in essence, have no legitimate stake in this proceeding beyond their attempt, at all costs, to diminish the rights of pensioners for their own benefit.

Accordingly, the Bondholders’ objections lack legal and evidentiary support while their arguments are premised on erroneous legal assumptions and, therefore, must be rejected.

II. PROCEDURAL BACKGROUND

On December 22, 2025, the Hearing Examiner ordered the parties to submit their briefs on the Revenue Requirement. On January 24, 2026, the Bondholders filed their Initial Post-Hearing Brief on the Revenue Requirement, in which they advance erroneous arguments against PREPA and the Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica (“SREAEE” or “PREPA-ERS”). On that same date, the Hearing Examiner issued a notice extending the deadline for the filing of Reply Briefs to February 9, 2026.

Pursuant to the Hearing Examiner’s Order governing the submission of Reply Briefs on the Annual Revenue Requirement, SREAEE hereby submits this Reply to the Bondholders’ Initial Post-Hearing Brief on the Revenue Requirement.

III. ARGUMENTS

A. Future and current pension contributions are current expenses.

In their Revenue Requirement Brief, the bondholders argue that PREPA's prepetition pension obligations are legally subordinate to legacy bond debt and therefore cannot be paid ahead of the bonds:

[L]egacy pension liabilities and debts arising from pre-bankruptcy employment contracts may not lawfully be paid ahead of PREPA's legacy bond debt. Prepetition pension liabilities are not Current Expenses (as defined in the Trust Agreement) and therefore are junior to PREPA's legacy bond debt. Whether pensions will ultimately be paid – and in what priority – is a matter for PREPA's Title III case. Payment of legacy pension obligations also likely violates the automatic stay.²

The Bondholder's argument is incorrect, given that amounts that were due and unpaid as of the petition date may constitute pre-petition claims under Title III. **However, the current and future pension contributions are current operating expenses.**

The inclusion of pension obligations within PREPA's base rate is both legally justified and consistent with the statutory "just and reasonable" standard governing electric utility rates. These payments are not discretionary transfers, but mandatory operational expenses directly tied to the provision of electric service and the maintenance of a qualified workforce. *See Informative Motion Presenting SRAEE's Responses to October 27th, 2025 Hearing Examiner Order, Section II, subsection D answer to question 2, at p. 7.*

The unfunded liability of SREAEE is distinct from PREPA's ongoing pension funding obligations. Amounts that were due and unpaid as of the petition date (July 2, 2017) may constitute pre-petition claims under Title III. However, the current and future pension contributions, that is, the normal cost and amortization of annual funding requirements arising after the petition, are current operating expenses of PREPA's ongoing operations and as per the 1974 Trust Agreement. As SREAEE has explained before, Current Expenses, as defined in section 101 of the 1974 Trust

² Bondholder's Initial Post Hearing Brief on the Revenue Requirement, Case: NEPR-AP-2023-0003, Jan 24, 2026, Page 92.

Agreement, includes, *inter alia*, “**any payment to pension or retirement funds**”, establishing pension costs as non-discretionary, first-tier operating expenses. *See Trust Agreement, Exhibit A, at p. 20.*

This distinction is critical. PREPA remains a functioning public utility providing essential services. Under PROMESA §305, the Authority retains control over its revenues and property to operate in the ordinary course. Therefore, current pension contributions are part of the cost of service and must be treated as operational expenses required to maintain a qualified workforce and to comply with statutory and fiduciary duties toward its retirement system. Additionally, the Oversight Board in PREPA’s Fiscal Plan of 2025 recognized pension payments as an operational expense due and not affected by the pendency of the PROMESA Title III case.³

Also, in February 2025, the Energy Bureau issued an order establishing requirements for a rate review to address PREPA’s structural budget deficit, including evaluating a specific charge on customer’s bills to pay for retiree’s monthly benefit payments. In its July 31, 2025, Resolution and Order, the PREB determined that PREPA’s “pension obligations must be treated as a non-deferrable expense.”⁴ Under that framework, pension benefits are to be supported through a dedicated funding mechanism.

In summary, the Bondholders’ position rests on a mischaracterization of PREPA’s pension obligations. As previously stated, pre-petition liabilities and unfunded actuarial balances are legally distinct from PREPA’s post-petition pension funding requirements, which arise from

³ *See* Financial Oversight and Management Board for Puerto Rico, **Certified Fiscal Plan for the Puerto Rico Electric Power Authority (PREPA)** (May 3, 2025), at Exhibit 17, “Consolidated Forecast Expenses by Category, Excluding Debt Service Expenses” (classifying “Pension Expenses” as part of PREPA’s projected operating costs following implementation of the PayGo system).

⁴ *See* PREB Resolution and Order: Establishment of Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget.

ongoing operations and are expressly classified as Current Expenses under the 1974 Trust Agreement. As a continuing public utility, PREPA is authorized under PROMESA §305 to incur and pay such expenses in the ordinary course, and both the Oversight Board and the Puerto Rico Energy Bureau have confirmed that pension obligations are non-deferrable components of PREPA's cost of service. The Bondholders' assertion that these obligations are subordinate to legacy bond debt, or otherwise impermissible, is therefore without legal or factual support.

B. Evidence supporting projected pension liabilities.

The Bondholders contend that PREPA failed to meet its statutory burden to justify the inclusion of pension-related costs in rates, because it seeks to recover hundreds of millions of dollars without any supporting actuarial or documentary evidence:

[E]ven assuming pension liabilities could be included in rates – they cannot – PREPA has failed to meet its statutory burden. PREPA proposed a rate that accounts for aggregate pension liabilities of \$307.5M (FY2026), \$298.7M (FY2027), and \$298.4M (FY2028). Yet PREPA has not provided an evidentiary basis for these alleged costs. The largest component of the FY2026 request is over “\$282 million in regular retiree and surviving spouse benefits.” However, despite repeated opportunities at the hearing and an admonition by the Chairman, Rivera-Rodríguez could not point to any evidence supporting that figure or even explain “how this number was arrived at,” other than to note it is comprised of monthly ~\$23M costs. Nor is there *any* record evidence for the projected pension liabilities for FY2026 and FY2027 – no actuarial reports, statements of accounts and liabilities, or explanations of the number, identity, and current employment status of the pensioners to whom payments are assertedly owed....⁵

The proposed rate and pension funding amount included in PREPA's revenue requirement is not a policy estimate or a contingency reserve, but a cash-flow-based projection derived from current census data, observed benefit levels, and expert report of José Fernandez. *See Fernandez Expert Report, Oct. 27, 2025*. Furthermore, they were endorsed in the FOMB's September 2025 PREPA Employee Retirement System Report. *See PREPA Exhibit 85.03 PREPA PREB -Letter re*

⁵ Bondholder's Initial Post Hearing Brief on the Revenue Requirement, Case: NEPR-AP-2023-0003, Jan 24, 2026, Page 93.

pension questions and FOMB report, p. 24 (November 18, 2025). Therefore, it provides a lawful and rational basis for rate setting under Act 57.

a. Basis for proposed rates

Operating expenses encompass all costs necessary to render safe and reliable service. PREPA's pension contributions fall squarely within this definition. PREPA's enabling statute, Act No. 83 of 1941 (Puerto Rico Electric Power Authority Act), authorizes the Authority to fix rates sufficient to cover all expenses of operation and maintenance and such reserves as are necessary for the proper conduct of its business. Consistent with this statutory mandate, pension costs are part of the total compensation package that PREPA must pay to attract and retain qualified personnel essential to providing continuous electric service. Thus, the pension system is not an external or gratuitous liability but a contractually and statutorily required element of the Authority's cost of service. *See Informative Motion Presenting SRAEE's Responses to October 27th, 2025 Hearing Examiner Order, Section II, subsection D answer to question 2, at p. 7.*

Contrary to the Bondholder's believe, SREAEE has already demonstrated the basis for the costs. The Bondholders' assertion that PREPA and SREAEE failed to provide an evidentiary and factual basis for the proposed pension funding is demonstrably incorrect and is contradicted by the record as a whole. Their argument rests on an artificial narrowing of the evidentiary standard and an intentional disregard of the detailed cash-flow methodology, documentary exhibits, and expert testimony submitted in this proceeding.

The \$307.5 million PayGo funding requirement for Fiscal Year 2026 is not an unexplained aggregate figure, nor a policy-driven estimate. It is the product of a bottom-up cash-flow projection grounded in current census data, historical benefit payment experience, and actuarially sound assumptions regarding mortality, eligibility, benefit commencements, terminations, and payment

timing. The record contains ample documentary evidence identifying the number of pensioners and beneficiaries, their average benefit levels, and the multiple categories of legally mandated pension-related payments that must be satisfied throughout the fiscal year. *See PREPA Exhibit 85.03, p. 28 (November 18, 2025); see also SREAAE' Legal Brief on Revenue Requirement, p. 13 (January 23, 2026).*

The Bondholders' fixation on a single average monthly benefit figure ignores the undisputed reality that pension obligations are not limited to static monthly annuities. As the evidence shows, PREPA's PayGo projections properly incorporate surviving spouse benefits, death benefits, refunds and rollovers of member contributions, disability pensions, disability lump-sum payments, funeral benefits, statutory bonuses, and automatic cost-of-living adjustments. *See PREPA Exhibit 85.03, FOMB Report, PREPA Retirement System.* These obligations arise pursuant to governing plan documents, collective bargaining agreements, and duly adopted regulations, and they generate material cash outflows that cannot be captured through a simplistic multiplication of average monthly benefits.

Equally unavailing is the Bondholders' claim that there is "no actuarial evidence" supporting the projections. The projected inflows and outflows, and the resulting net funding requirement, were independently reviewed and validated by SREAAE's actuarial expert, José Fernández, who concluded under oath that the PayGo funding levels for Fiscal Years 2026 through 2028 are reasonable and sufficient to meet the System's benefit obligations. *(Fernández Expert Report, Oct. 27, 2025).* These projections are further consistent with the figures reflected in the Fiscal Oversight and Management Board's reports and with the revenue-requirement analyses prepared by PREB's independent consultants, confirming methodological alignment across PREPA, the Oversight Board, and external regulatory experts.

b. Legal Status of PREPA and SREAEE

The Bondholders' attempt to cast doubt on the projections by invoking the separate legal status of PREPA and SREAEE, and that argument fails. While distinct legal entities, SREAEE is an employer-sponsored retirement trust created through collective bargaining and incorporated into PREPA's regulatory framework. *See PREPA Exhibit 85.03, at p. 3, ch. 2.1 (Creation of PREPA-ERS) (November 18, 2025); See also FOMB PREPA Fiscal Plan 2025, p. 120.*

The SREAEE was established pursuant to Section 15 of Act No. 83 of May 2, 1941, known as the Puerto Rico Electric Power Authority Act, and by PREPA Governing Board Resolution No. 200, adopted on June 25, 1945, and effective July 1, 1945. *See Informative Motion Presenting SRAEE's Responses to October 27th, 2025, Hearing Examiner Order, Section I, answer to question 1, at p. 2.* The Resolution formalized a retirement system for PREPA employees, building an arrangement that had originated under a 1942 collective bargaining agreement with Unión de Trabajadores de la Industria Eléctrica y Riego ("UTIER"). *Id.*

Legally, SREAEE operates as an autonomous fiduciary trust with assets and governance distinct from PREPA. Its funds are legally separated from PREPA's operational accounts and may be used only to provide member benefits and pay plan-related expenses. The Board of Trustees, composed of representatives from PREPA management, active employees, and retirees, serves as the governing body of the System. *Id.*

The SREAEE's existence and independence have been reaffirmed through subsequent legislation, including the Reciprocity Act (Act No. 59-1953) and Act No. 34-2005, which recognized the System as a lawful public trust with its own patrimony. As such, SREAEE is distinct from PREPA in legal identity but remains functionally and operationally connected to it as

PREPA's sponsored pension plan and as a current operational obligation under Puerto Rico law and the PREPA Trust Agreement. *Id at p. 3.*

Accordingly, the record establishes that the SREAEE is a legally distinct public trust with its own patrimony, while simultaneously constituting a mandatory, ongoing operational obligation of PREPA as the plan sponsor.

The pension obligations at issue arise directly from PREPA's employment relationship and constitute a mandatory component of its cost of service. The PayGo transfers reflected in PREPA's revenue requirement are not discretionary subsidies or inter-entity largesse, but the mechanism through which PREPA satisfies its legally enforceable pension obligations as they come due.

c. Administrative costs

Finally, the Bondholders' criticism of the projected administrative costs reflects neither the record nor economic reality. The evidence demonstrates that the administrative budget supports the ongoing administration of thousands of active benefit payments, statutory compliance, loan servicing, beneficiary determinations, and fiduciary obligations. *See PREPA Ex. 85.01, p. 8, lines 3-12 (Dec 8, 2025); see also Informative Motion Presenting SRAEE's Responses to October 27th, 2025, Hearing Examiner Order, Section IV, question B, at p. 19; PREPA Exhibit 35 and 36 (under Retirement system colum).* PREPA serves as the plan sponsor, contributes to the system, and pays all administrative costs associated with the operation of SREAEE, which totals approximately \$11.9 million annually and is budgeted separately from the PayGo pension funding request. *PREPA Ex. 85.01, p. 8, lines 3-12.* The absence of new entrants does not eliminate, and in many respects intensifies, the administrative complexity of managing a mature defined benefit system with a large retiree population.

In summary, the Bondholders' assertion that PREPA failed to meet its statutory burden is unsupported and legally untenable. The \$307 million pension funding amount included in PREPA's revenue requirement is firmly anchored in record evidence, actuarially validated cash-flow projections, and undisputed benefit obligations imposed by contract and statute. Accordingly, the record provides a lawful, rational, and fully substantiated basis for including SREAEE's PayGo pension funding within PREPA's revenue requirement under Act 57 and the "just and reasonable" standard governing rate setting.

C. PREPA's customers are the only source of payments to PREPA-ERS

The Bondholders argue that PREPA has failed to demonstrate that pension obligations must be recovered through rates because the record reflects viable alternative funding sources, namely Commonwealth loans and historical cash infusions:

[E]ven assuming PREPA had substantiated its proposal – it has not – PREPA has not shown pensions cannot be covered by the Commonwealth to alleviate ratepayer burden. And they can. The record shows that PREPA recently, and repeatedly, borrowed significant funds from the Commonwealth to satisfy pension obligations on "favorable terms," including "low or no interest, and very low principal payments paid over a long period of time." That loan has been amended and may be amended again to eliminate the need for payments from a bankrupt entity to a super-solvent one.

However, PREPA's **customers are the only source** of payments to PREPA-ERS. That is because funding PREPA-ERS is an operating expense financed, like all operating expenses, by PREPA's charges to customers. The loan agreement approved by the Oversight Board was done on an **emergency basis** and was provided as a bridge to the implementation of a long-term solution through electricity rates.

The Bondholders insist that there are other funding options available and that PREPA should keep borrowing money from the Commonwealth to satisfy pension obligations. On this matter, SREAEE has answered the question: “SREAEE has proposed funding mechanisms that would reduce reliance on ratepayer revenues. In its proposal submitted to the Financial Oversight and Management Board (FOMB) on February 15, 2024, and later presented during mediation on March 13, 2024, SREAEE identified the use of accrued employee contributions and potential coordination with the Commonwealth Government as possible funding sources for its proposed new plan for active members.” *Informative Motion Presenting SRAEE’s Responses to October 27th, 2025, Hearing Examiner Order, Section VI, question A, at p. 22.*

However, the FOMB has stated that the only other available source of funding for PREPA’s obligations to PREPA ERS is PREPA’s own cash, which is currently insufficient for this purpose. *See PREPA Exhibit 85.03 PREPA PREB -Letter re pension questions and FOMB report, p. 4 (November 18, 2025).* The loan agreement approved by the Oversight Board was done on an **emergency basis** after the Legislature approved a Commonwealth of Puerto Rico budget amendment to ratify the appropriation. As the loan **was provided as a bridge to the implementation of a long-term solution** through electricity rates, the Oversight Board included a covenant requiring PREPA to take necessary actions to implement a permanent solution by June 15, 2024. *See FOMB PREPA Fiscal Plan 2025, p. 124.*

Also, the FOMB has added, in his FOMB’s September 2025 Report for the PREPA Employee Retirement System, that “[a]bsent significant funding outside of PREPA, funding PREPA-ERS is an operating expense financed, like all operating expenses, by PREPA’s charges to customers. That is, **PREPA customers are the only source of payments to PREPA-ERS.**” *See PREPA Exhibit 85.03 PREPA PREB -Letter re pension questions and FOMB report, Sec. 5.1, p. 35 (November 18,*

2025) (*Emphasis supplied*). FOMB also stated that PREB has discretion as to how to structure any rate component to cover funding of PREPA ERS's pension obligations on a PayGo basis, but full payment of accrued benefits to participants in the plan is an essential revenue requirement under its fiscal plan. *Id. at page 4.*

Additionally, in February 2025, the Energy Bureau issued an order establishing requirements for a rate review to address PREPA's structural budget deficit, including evaluating a specific charge on customer's bills to pay for retiree's monthly benefit payments. *Id. at page 12.* On July 31, 2025, the Energy Bureau approved a dedicated pension cost recovery rider for PREPA to fund the ERS. The pension rider will initially be billed at a volumetric rate based on per kWh consumption, but LUMA must transition the approximately 1.92 cents-per-kWh rate to a fixed per-customer charge as soon as feasible. *Id.*

The Bondholders' suggestion that PREPA has viable alternative funding sources is contradicted by the Oversight Board's express findings that PREPA's own revenues are the only sustainable source of funding for PREPA-ERS and that prior Commonwealth loans were temporary emergency measures conditioned on the implementation of a permanent rate-based solution. Consistent with that mandate, the Energy Bureau has exercised its regulatory authority to approve a dedicated pension cost recovery rider, confirming that full payment of pension benefits on a PayGo basis is an essential revenue requirement. These determinations foreclose the Bondholders' attempt to recharacterize pension funding as optional, deferrable, or externally financeable, and confirm that pension obligations must be addressed through PREPA's rates as part of its ordinary operations.

IV. CONCLUSION

For the reasons set forth herein, the Bondholders' objections to the inclusion and funding of PREPA's pension obligations in the Revenue Requirement are legally and factually unfounded. The record clearly demonstrates that PREPA's current and future pension funding obligations to SREAEE constitute non-discretionary operating expenses expressly recognized under the 1974 Trust Agreement and repeatedly affirmed by the Energy Bureau and the Financial Oversight and Management Board.

The evidence further establishes that the pension funding amounts included in PREPA's Revenue Requirement for Fiscal Years 2026 through 2028 are supported by detailed cash-flow projections grounded in current census data, historical payment experience, and sworn actuarial testimony. These projections reflect the full scope of required pension-related payments and provide a rational, reliable, and lawful basis for rate setting under Act 57.

Finally, the record confirms that continued reliance on temporary Commonwealth loans is neither sustainable nor consistent with the approved fiscal and regulatory framework. Instead, pension obligations must be funded on a permanent, rate-based basis, as recognized by the Energy Bureau through the approval of a dedicated pension cost recovery mechanism.

Accordingly, SREAEE respectfully requests that the Puerto Rico Energy Bureau reject the Bondholders' arguments in their entirety and uphold the pension-related components of PREPA's proposed Revenue Requirement.

WHEREFORE, the Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica, through its undersigned legal representatives, **respectfully submits** the foregoing Reply to Bondholder's Initial Post Hearing Brief on the Revenue Requirement, and requests that the same

be taken into consideration by the Puerto Rico Energy Bureau as part of the record of these proceedings.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on February 9, 2026.

WE HEREBY CERTIFY that pursuant to the Hearing Examiner's Order dated January 27, 2026, that this Reply Brief is part of the undersigned party's affirmative briefing in this proceeding and that the total word count across all three affirmative briefs, taken together, does not exceed the maximum of 52,000 words authorized by the Hearing Examiner.

WE HEREBY CERTIFY that this Brief was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Notice will be sent to:

Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys and advisers of the parties of record

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