

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

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In re:

PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW

Case. No.: NEPR-AP-2023-0003

PREPA'S BRIEF ON RATE DESIGN

TABLE OF CONTENT

I. INTRODUCTION 3

II. LEGAL AND POLICY FRAMEWORK..... 4

 A. PROMESA and the PREPA Fiscal Plan Prohibit Rate
 Recovery for Legacy Debt at this Stage..... 4

 B. The Energy Bureau's Own Order and the Evidentiary Record Support..... 5

III. ARGUMENT 6

 A. The Bondholders' Proposal: An Empty Legacy Debt Rider..... 6

 1. Bondholder Proposal Description 6

 2. Testimony and Cross-Examination on the Record..... 7

 B. The LDR is Premature, Unnecessary, and Contrary to Sound
 Administration..... 8

 1. No Administrative or Practical Benefit to Including an Empty LDR..... 8

 2. The Record Shows No Harm from Waiting..... 9

 3. Potential for Confusion and Legal Risk 10

IV. CONCLUSION 11

CERTIFICATE OF SERVICE 13

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TO THE HONORABLE ENERGY BUREAU,

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

I. INTRODUCTION

The Puerto Rico Energy Bureau ("Energy Bureau") should not adopt a Legacy Debt Rider ("LDR")—placeholder or otherwise—unless and until a confirmed PROMESA Title III Plan of Adjustment provides for the issuance of bonds that are secured by revenue derived from rates.¹ As the Energy Bureau recognized in its November 13, 2025 resolution and order,² the evidentiary records contain no support for including any amount for legacy obligations. Moreover, the current certified PREPA Fiscal Plan prohibits rate-funding for legacy debt.³

¹ PREPA joins the following sections in the *Initial Brief on Rate Design of the Official Committee of Unsecured Creditors of PREPA*: II.B; II.C.1 (except for the implication that the LDR should account for general unsecured claims); II.C.2; and III.

² Resolution and Order, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Nov. 13, 2025) ("Debt Order").

³ LUMA Ex. 1.01 ("PREPA Fiscal Plan") at 118 ("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.").

Inserting an empty LDR now would create confusion and legal risk without any administrative benefit. The purpose of this rate proceeding is to set a rate design that is consistent with applicable law, including the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and that reflects PREPA’s lawful revenue requirements for ongoing operations. Any rate design must be grounded in the existing legal framework and evidentiary record. PREPA’s position—supported by the Energy Bureau expert consultants and the existing record—is that the Energy Bureau should defer any consideration of legacy debt, including the implementation of an LDR, until the Title III process has concluded.⁴

II. LEGAL AND POLICY FRAMEWORK

A. **PROMESA and the PREPA Fiscal Plan Prohibit Rate Recovery for Legacy Debt at this Stage.**

In lieu of restating the full legal and factual analysis here, PREPA incorporates by reference its motion titled *PREPA’s Motion to the Energy Bureau to Vacate Hearing Examiner’s Orders Regarding Consideration of Legacy Bond Debt in Rate Case*, filed November 10, 2025.⁵ That motion explains in detail why

⁴ See, e.g., PREPA’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*, Case No. NERP-AP-2023-0003 (P.R. Energy Bureau Oct. 27, 2025); PREPA’s Objection to Testimony of Dr. Susan A. Tierney, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NERP-AP-2023-0003 (P.R. Energy Bureau Oct. 31, 2025); PREPA’s Motion to the Energy Bureau to Vacate Hearing Examiner’s Orders Regarding Consideration of Legacy Bond Debt in Rate Case, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NERP-AP-2023-0003 (P.R. Energy Bureau Nov. 10, 2025).

⁵ Moreover, the Hearing Examiner ordered the parties to brief the following issues in the legal and policy issue brief due on March 6, 2026: “Does PROMESA preempt the Energy Bureau from creating a placeholder rider with a zero amount? Does the answer differ depending on whether the debt is bondholder debt or unsecured debt?” While PREPA incorporated its argument by reference on this issue in this brief, it expressly reserves the right to provide a more fulsome analysis in the

PROMESA's integrated framework—through Title III's exclusive allocation of authority to the Title III court over legacy bond obligations and Title II's certified PREPA Fiscal Plan—preempts any effort to require rate recovery for legacy bond debt at this stage. As set forth therein, the automatic stay and the Title III process reserve the determination and treatment of legacy bond claims to the Title III court, and the PREPA Fiscal Plan independently bars additional rate increases for debt service beyond amounts necessary for fuel, purchased power, and maintenance. For these reasons, Energy Bureau may not lawfully include any amount for legacy bond debt in the revenue requirement now, nor may it adopt a rider, placeholder, or other mechanism aimed at funding such debt prior to a Title III determination and plan of adjustment confirmation.⁶

B. The Energy Bureau's Own Order and the Evidentiary Record Support Deferral.

The Energy Bureau's Debt Order determined there is no legal basis to prohibit discussion of the design, advantages, disadvantages, or timing of a legacy-debt rider, but explicitly barred testimony or cross-examination on any amount of legacy debt or methods for determining such amount, and on the role of legacy debt in practicability analysis, given the lack of a factual foundation.⁷

Although LUMA had previously filed its rate case petition with the "Legacy Debt-

forthcoming legal issues briefing.

⁶ The same motion also addresses and distinguishes pension-related funding, which PROMESA favors and the PREPA Fiscal Plan contemplates through rates.

⁷ Debt Order at 2.

Low Scenario" and the "Legacy Debt-High Scenario" in compliance with prior procedural order,⁸ that filing preceded the Debt Order's definitive ruling that no factual foundation exists to support consideration of any specific legacy debt amounts in this rate case. Accordingly, the legacy debt scenarios set forth in LUMA's petition should be disregarded, as the Energy Bureau has now expressly determined that such figures cannot properly be considered in this proceeding.

The Debt Order further confirms that the record contains no recommendation to include any amount of legacy debt in rates at this time, and no party can responsibly propose a rate design structure without knowing whether there are actual rates or revenues that must be recovered.⁹

III. ARGUMENT

A. The Bondholders' Proposal: An Empty Legacy Debt Rider.

1. Bondholder Proposal Description.

The Bondholders propose to include a "placeholder" LDR in the tariff book, with no amount, to be activated only after the Title III process concludes and a compliance filing is made.¹⁰ There is no evidence in the record as to what that placeholder LDR would look like (*i.e.*, what rate classes it applies to, whether it will

⁸ LUMA Schedule B-3, Debt Service Requirements, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NERP-AP-2023-0003 (P.R. Energy Bureau Nov. 13, 2025); see generally Order Establishing Scope and Procedures for Rate Case, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NERP-AP-2023-0003 (P.R. Energy Bureau Nov. 13, 2025) ("Procedures Order"); Procedures Order at 24.

⁹ See Debt Order at 2 ("No testimony or cross-examination shall be permitted on any amount of legacy debt, nor on any principle or method for determining such amount.")

¹⁰ Answering Testimony of Susan Tierney, Ph.D., NERP-AP-2023-0003 (P.R. Energy Bureau, Sept. 2, 2025) at 6:8 ("Tierney Testimony"); Dec. 9, 2025 PREB Hr. Tr. at 417:3-7 (Q: "[Y]ou are proposing a legacy debt rider without an amount included in it. Did I get that right?" A: "Yes.").

include a fixed or volumetric charge, etc). Dr. Susan Tierney, the Bondholders' expert, acknowledged she was not offering testimony on when debt service might resume or what the costs may be, and she did not provide empirical analysis regarding how Puerto Rico customers would react to such a placeholder.¹¹ In short, her proposal admits that material terms—including amounts, categories, allocations, and exemptions—would only be set later.¹²

2. **Testimony and Cross-Examination on the Record.**

The Energy Bureau's expert consultants agree that the Energy Bureau should not "front run" the Title III court by including any non-zero amount for legacy obligations at this stage: "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."¹³ They recommend awaiting the Title III court's determination and then proceeding, as needed, to design rates to collect any allowed legacy amount in accordance with law.¹⁴ The record thus contains no recommendation to include any amount for legacy debt at this time

¹¹ Dec. 9, 2025 PREB Hr. Tr. at 373:15-20 (Q: "[Y]ou're not offering any testimony on when the costs of servicing PREPA's existing debt will begin or resume, are you?" A: "No"); 375:18-23 ("Q: "[A]re you making any recommendation or proposal about what types, categories, or classes of PREPA's legacy debt should be repaid via a legacy debt rider?" A: "No."); 417:9-14 (Q: "Did you conduct any research about how Puerto Rico ratepayers might react to a legacy debt rider without an amount included in it, as you have proposed in this case?" A: "No, I did not.").

¹² See *id.*

¹³ 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) (Expert Report of Ralph C. Smith & Mark Dady) (Smith and Dady together, the "Energy Bureau Experts" and their report, the "Smith & Dady Expert Report") at 27.

¹⁴ See *id.*

and, critically, there is no factual foundation upon which to structure a lawful debt-recovery mechanism within the current rate design. Effectively, the Bondholders' own witnesses acknowledge the LDR is an empty shell, with all material terms to be determined later, undercutting any claim of present administrative efficiency.¹⁵

B. The LDR is Premature, Unnecessary, and Contrary to Sound Administration.

Assertions that early inclusion of an LDR would signal timely recovery of funds to capital markets are speculative and risk misleading investors if Title III outcomes differ. Creating a placeholder further risks confusion among ratepayers and stakeholders and imposes an unnecessary administrative burden, all without a lawful basis for collections.

1. No Administrative or Practical Benefit to Including an Empty LDR.

The asserted "administrative efficiencies" of inserting a placeholder are speculative and unquantified, with no evidence specific to Puerto Rico. Dr. Tierney admitted that a legacy debt rider will only appear "after the amount is known."¹⁶ The only purported benefit, according to her timeline of events, is a possible reduction in the time between a Title III decision and the

¹⁵ Dec. 9, 2025 PREB Hr. Tr. at 405:23-406:5 (Q: "At this point, [your legacy debt rider] doesn't have those recommendations as to how to treat the subsidized or low income customers, correct? It's a shell" A: "It could have exemptions."); 377:20-23 (Q: "Are you proposing any structure for the legacy debt rider?" A: "I did not propose one."); 377:25-378:5 (Q: "So, nowhere in your testimony, whether you're answering or your rebuttal, have you described how you suggest a legacy debt rider could or should work?" A: "Not in my written testimony, no.").

¹⁶ Dec. 9, 2025 PREB Hr. Tr. at 396:16.

commencement of collections, which remains speculative given Dr. Tierney has no understanding of the Title III proceedings to opine on timing or outcome.¹⁷ Ultimately, the “benefit” she testifies to could actually be a “sunk cost” if the Title III proceeding results in no rate recovery for legacy debt—the Energy Bureau would have expended valuable administrative effort creating and maintaining a rider for no purpose.¹⁸

2. **The Record Shows No Harm from Waiting.**

The Bondholders’ own witnesses admit that the LDR would not go into effect until after a Title III plan of adjustment is confirmed, and that all material terms would be determined at that time.¹⁹ Further, the Energy Bureau’s witnesses and consultants advise that the Energy Bureau should await the Title III court’s determination of PREPA’s legacy obligations before including any amount in the revenue requirement, and that the Energy Bureau should not “front run” the court

¹⁷ See *id.*; 387:20-391:15 (stating a belief that including a LDR results in administrative efficiencies because of “the number of hours that people are spending on these issues . . .” and the timing of a Title III court decision, but admitting she does not “have any understanding of when the Title III case may be forecasted to conclude.”).

¹⁸ Dec. 9, 2025 PREB Hr. Tr. at 427:22-428:6 (Q: “If [at the end of the Title III proceeding, there’s no legacy debt obligation], have we just wasted all this time and it was inefficient rather than efficient?” A: “It will be a sunk cost at that point, administratively.”).

¹⁹ *Id.* at 396:12-16 (Q: “When are you proposing to have the legacy debt rider begin appearing on customer bills?” A: “After the amount is known. So, that would be after the Title III court makes its decision.”); Tierney Testimony at 22:3-5 (“As structured, the proposed revenue requirement imposes costs on customers to support PREPA’s ability to obtain future debt-financing, even though no new investments are expected to be financed with debt until, at the earliest, *after the Title III proceeding.*”) (emphasis added); Rebuttal Testimony of Susan Tierney, Ph.D., NERP-AP-2023-0003 (P.R. Energy Bureau, Oct. 27, 2025) (“Rebuttal Testimony”) at 4:13-14 n.4 (acknowledging the “uncertainty” in the Title III case and quoting the Energy Bureau to note “[T]he ultimate pension obligation may change based on the outcome of determinations [in] the Title III bankruptcy proceeding” and that the Title III court will resolve outstanding issues.); see also Dec. 15, 2026 Hr. Tr. at 418:20-25 (Mr. Sam Shannon acknowledging allocation of legacy debt can only occur after the Title III court establishes the amount of debt).

by inserting a non-zero placeholder.²⁰ Even the Bondholders' witnesses could not identify a harm in waiting to implement a LDR.²¹ Thus, the record contains no recommendation or evidentiary basis to include any amount for legacy debt now, and the Energy Bureau has acknowledged that, given the lack of factual foundation, testimony on amounts or methods of determining legacy debt is not appropriate at this stage. These facts collectively support deferring consideration of legacy debt in rates.

3. **Potential for Confusion and Legal Risk.**

Creating a placeholder LDR now simply creates confusion among ratepayers, stakeholders, and capital markets—especially given the lack of any amount, structure, or legal authority for such a charge. While Dr. Tierney argues early inclusion of an LDR would signal to capital markets a timely recovery following Title III,²² this assertion overlooks the fact that such a signal would be pure conjecture and might not reflect actual post-Title III outcomes. Relying on such hypothetical signaling risks potentially misleading investors, distorting market

²⁰ See *supra* n.13; Smith & Dady Expert Report at 32 (“[D]eveloping a Legacy Debt Rider surcharge, we believe, would be more appropriately done after the Title III Court has determined what PREPA’s Legacy Debt Obligation is.”); 33 (“Concerning the development of a Legacy Debt Rider surcharge, we recommend that be deferred until there is a resolution of PREPA’s Legacy Debt Obligation by the Title III Court.”).

²¹ Tierney Testimony at 384:20-391:2 (Dr. Tierney declining to say it is “incorrect or wrong as a policymaking matter about waiting until there is a degree of certainty from the Title III court” and instead reasserting supposed “administrative efficiencies.”).

²² Dec. 9, 2025 Hr. Tr. at 441:7-14 (describing alleged benefits of LDR and stating “I think that in anticipation of the future in which there will be emergence from bankruptcy by PREPA, that it would be a signal to the capital markets that the Commission wants to see a timely commencement of recovery of legacy, whatever legacy debt amount comes out of the Title III court.”).

expectations, and undermining confidence if a rate funded recovery fails to materialize. Even the Energy Bureau Experts in their report admit that “developing a Legacy Debt Rider surcharge . . . would be more appropriately done after the Title III Court has determined what PREPA’s Legacy Debt Obligation is.”²³

Moreover, the risk of administrative burden—given the legal authority for any such rider will depend on the outcome of PREPA’s Title III case and future PREPA Fiscal Plan certification—is too high and unnecessary during this already critical juncture given the ongoing PREPA Title III proceeding. Imposing an LDR—even at zero—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 plan²⁴ and the Financial Oversight and Management Board for Puerto Rico, which never hesitates to sue governmental entities which take such actions.

IV. CONCLUSION

For the reasons set forth herein, PREPA respectfully requests that the Energy Bureau (1) decline to adopt any LDR in this proceeding; (2) confirm that legacy bond debt will not be considered in establishing the revenue requirement or rate design at this time; and (3) proceed with permanent rates based solely on PREPA’s current operational needs consistent with the PREPA Fiscal Plan and PROMESA,

²³ Smith & Dady Expert Report at 32.

²⁴ PREPA Fiscal Plan at 118 (“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.”) (emphasis added).

without prejudice to addressing legacy debt through a separate process following the Title III court's final determinations.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of February 2026.

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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, katiushka.bolanos-lugo@us.dlapiper.com; Yahaira De La Rosa, Yahaira.delarosa@us.dlapiper.com; Genera PR, LLC, through: Jorge Fernández-Reboredo, jfr@sbgbllaw.com; Gabriela Castrodad, gcastrodad@sbgbllaw.com; José J. Díaz Alonso, jdiaz@sbgbllaw.com; Stephen Romero Valle, sromero@sbgbllaw.com; Giuliano Vilanova-Feliberti, gvilanova@vvlawpr.com; Maraliz Vázquez-Marrero, mvarez@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.ICPO@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; tloria@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, fgerbolini@msglawpr.com; dmonserrate@msglawpr.com; eric.brunstad@dechert.com; rschell@msglawpr.com; david.herman@dechert.com; Stephen.zide@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;

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