

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

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**IN RE: PUERTO RICO ELECTRIC  
POWER AUTHORITY RATE  
REVIEW**

**CASE NO.:** NEPR-AP-2023-0003

**SUBJECT:** Intervenor Bondholders' Response  
to Hearing Examiner's October 27, 2025 Order

**INTERVENOR BONDHOLDERS' RESPONSE TO HEARING EXAMINER'S  
OCTOBER 27, 2025 ORDER**

**TO THE PUERTO RICO ENERGY BUREAU:**

National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., the Majority Member PREPA Ad Hoc Group,<sup>1</sup> and the PREPA Ad Hoc Group<sup>2</sup> (collectively, the "Intervenor Bondholders" or "Bondholders"), by and through the undersigned counsel, respectfully submit this response to (A) the *Informative Motion Presenting SREAAE's Responses to October 27, 2025 Hearing Examiner Order* (the "SREAAE Motion"), (B) *PREPA's Motion in Compliance with Hearing Examiner's Order Regarding PREPA Testimony and Legal Discussion on Pensions* (the "PREPA Motion"), and (C) *SREAAE's Rebuttal to PREPA's Responses to the Hearing Examiner's Questions Dated October 27, 2025* (the "SREAAE Response"), and respectfully state as follows:<sup>3</sup>

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<sup>1</sup> The members of the Majority Member PREPA Ad Hoc Group are listed in the *Fifth Verified Statement of the Majority Member PREPA Ad Hoc Group Pursuant to Bankruptcy Rule 2019*, ECF No. 5840, *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Oct. 9, 2025).

<sup>2</sup> The members of the PREPA Ad Hoc Group are listed in the *Ninth Verified Statement of the PREPA Ad Hoc Group pursuant to Bankruptcy Rule 2019*, ECF No. 5797, *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Aug. 28, 2025).

<sup>3</sup> A Spanish summary of this filing is attached hereto as Appendix A, pursuant to the Hearing Examiner's May 9 and June 4, 2025 Orders.

## INTRODUCTION

On October 27, 2025, the Hearing Examiner issued an order (the “Order”) requiring the Puerto Rico Electric Power Authority (“PREPA”), and allowing other parties, such as Sistema de Retiro de los Empleados de la Autoridad de Energia Eléctrica (“SREAEE” or the “PREPA ERS”), to submit pre-filed testimony and legal explanations to specific pension-related questions. These questions include: the causes for and estimated size of the total unfunded pension liability; whether the \$307 million proposed recovery amount is derived from the unfunded pension liability; whether the pension liabilities are prepetition claims subject to adjustment in the Title III proceedings; and whether PREB could require refunds of amounts that ratepayers paid in excess of the restructured pension amounts if the Title III court later adjusts pension recoveries. *See Order* at 3-4.

The Bondholders hereby submit this Response to address the questions raised in the Order and to address and respond to the arguments advanced by SREAEE and PREPA. PREPA seeks to include a \$307 million recovery amount in the revenue requirement to fund its pension obligations. Although PREPA allegedly included pension costs in prior rate requests, PREPA “used the rate revenue to meet other needs.” SREAEE Motion at p. 5. PREPA thereafter used Commonwealth loan proceeds and FEMA funds to fund its pension obligations. *See PREPA Motion* ¶¶ 47-50. Despite apparently using rate revenues to fund other needs, PREPA now seeks authority from PREB to pay pension debts from rate revenues, while at the same time claiming that PREB should not include other legacy debts in the revenue requirement due to the potential for adjustment of those debts in PREPA’s Title III case. PREPA cannot have it both ways: it cannot argue that the bond debts should be excluded from the revenue requirement, while pension

obligations (which are themselves legacy debts subject to adjustment) should be included in the revenue requirement and paid during the pendency of PREPA’s Title III case.

PREPA concedes that the \$307 million proposed recovery amount is based on the unfunded status of the PREPA ERS and that this amount covers “existing commitments to *former* employees and beneficiaries.” PREPA Motion, Ex. A. at 10 (emphasis added). Though PREPA attempts to frame this recovery amount as covering its pay-as-you go (or “PayGo”) obligations (without distinguishing between its regular and annual accrued obligations contributions), PREPA has ultimately conceded that the recovery amount is for contractual obligations to PREPA’s former employees—which are just debts arising from pre-bankruptcy contracts. Whether those payments are due after the petition date does not make a difference. Therefore, PREPA has billions of dollars of legacy obligations, including legacy pension and legacy bond debt, that are subject to potential restructuring in PREPA’s Title III proceeding. There is no legal basis for PREPA’s rates to be set so as to fund its legacy pension obligations while ignoring PREPA’s legacy bond obligations—which PREPA is obligated to pay and which are legally senior to PREPA’s legacy pension obligations. To do so would overwrite Puerto Rican law and in effect create a new creditor waterfall of whole cloth. Thus, if PREPA is to charge rates that account for payment of legacy pension debt, it must also charge rates to account for payment of legacy bond debt.

PREPA also errs in contending that current payment of these pension obligations would not violate the automatic stay, or PROMESA<sup>4</sup> more generally, on the theory that (i) pension payments are supposedly “favored by PROMESA” and (ii) the 2025 PREPA Fiscal Plan<sup>5</sup> provides

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<sup>4</sup> “PROMESA” shall refer to the Puerto Rico Oversight, Management, and Economic Stability Act. The “Board” shall refer to the Financial Oversight and Management Board for Puerto Rico.

<sup>5</sup> February 2025 Fiscal Plan for the Puerto Rico Electric Power Authority (“2025 Fiscal Plan”) (available at <https://drive.google.com/file/d/1WksRhtfmoLvaZfb-5pUNkFXGEiT3t6vp/view>)

that pensions should be funded through electricity rates. PREPA Motion, Ex. A at 6; *see In re Fin. Oversight & Mgmt. Bd. for P.R.*, 919 F.3d 121, 132 (1st Cir. 2019).

SREAE mischaracterizes the \$307 million proposed recovery amount as a current operating expense not subject to adjustment in PREPA's Title III case. Pension claims were previously adjusted in the Commonwealth's Title III case, where the Title III court rejected the same arguments that SREAE advanced in its motion. Moreover, as SREAE concedes, the \$307 million is a contribution to the unfunded liability in the PREPA ERS, which is simply one of PREPA's outstanding debts. SREAE's payments to beneficiaries—employees that are retired and no longer work at PREPA—are not current operating expenses. And, as both PREPA and the Board previously recognized here and in these Title III proceedings, the pension debts are not Current Expenses under the Trust Agreement.

Ultimately, whether some or all of PREPA's pension debts should be paid, and with what priority, will be determined in the Title III proceedings. As the Court of Appeals for the First Circuit has determined, the bondholders have a lien on PREPA's Net Revenues, defined in the bondholders' agreement (the "Trust Agreement") as PREPA's revenues less certain of its current expenses. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 121 F.4th 280, 312 (1st Cir. 2024); Trust Agreement § 101. Because PREPA's unfunded pension obligations are not current expenses, PREPA's payment of the pension debt from PREPA's revenues would constitute an appropriation of the bondholders' collateral in violation of PROMESA's governing priority scheme (*i.e.*, by paying an unsecured obligation ahead of a secured debt from the collateral securing the debt). As the Supreme Court has explained, this cannot be done without the bondholders' consent. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465 (2017) ("The priority system applicable to .

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. . distributions has long been considered fundamental to the Bankruptcy Code’s operation.”); *id.* at 457 (“a bankruptcy court cannot confirm a plan that contains priority-violating distributions over the objection of an impaired creditor class.”); *id.* at 468-69 (the parties to a bankruptcy case cannot by other means circumvent the Code’s priority scheme); *see also* 48 U.S.C. § 2141 (b)(1)(N) (requiring a fiscal plan “to respect the relative lawful priorities or lawful liens”); *id.* at § 2163. As such, because the legacy PREPA bond debt is senior to the legacy pension debt, payment in respect of the legacy pension debt cannot be made without the PREPA bondholders’ consent.

## BACKGROUND

### I. The PREPA Bonds and Trust Agreement

In July 2017, the Board filed a petition on behalf of PREPA under Title III of PROMESA to restructure PREPA’s obligations and debts. *See* ECF No. 1, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Jul. 2, 2017). PREPA has over \$8.3 billion of revenue bonds (the “Bonds”), which were issued pursuant to a 1974 trust agreement between PREPA and the trustee for the PREPA bondholders (the “Trust Agreement”).<sup>6</sup>

The Bondholders hold a perfected security interest in PREPA’s “Net Revenues”—which the Trust Agreement defines as follows: “for any particular period . . . the amount of the excess of the Revenues for such period over the Current Expenses for such period.” Trust Agreement § 101. The term “Current Expenses” is defined as PREPA’s “reasonable and necessary current expenses of maintaining, repairing and operating the System, and shall include, without limiting the generality of the foregoing . . . any payment to retirement to pension or retirement funds . . .” *Id.*

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<sup>6</sup> A copy of the Trust Agreement is attached as Exhibit A to this Response. The pension claimants and PREPA ERS are neither parties to nor third party beneficiaries of the Trust Agreement. *See* Trust Agreement § 1304 (providing that there are no third party beneficiaries). The “Trustee” shall refer to the trustee for PREPA’s bondholders. *see also Elec. and Irrigation Indus. Workers’ Union v. Puerto Rico Electric Power Authority*, No. 2016-CV-0291 (Court of First Instance, Dec. 19, 2016) (“*UTIER*”) at 71-72 (holding that the Trust Agreement does not grant any rights in favor of pension claimants). A certified translation of *UTIER* is attached as Exhibit B to this Response.

(emphasis added). The definition is limited to *payments*, rather than amounts *owed* to pension systems, and with section 505 of the Trust Agreement, reflects the parties' understanding of what payments may be made prior to paying bond debt.

Pursuant to section 503 of the Trust Agreement, PREPA is required to remit its Revenues to the credit of a "General Fund," which is a fund from which PREPA pays some (but not all) of its Current Expenses. *See id.* § 503. Section 505 of the Trust Agreement further provides that Current Expenses will be paid from the General Fund only if they are not in excess of (a) the total amount provided in the Annual Budget<sup>7</sup> and (b) an amount that is "reasonable and necessary" for operating the system "in an efficient and economical manner." *Id.* at § 505. On a monthly basis, PREPA is thereafter required to remit the Net Revenues to special funds used to pay PREPA's bonds and, after payment of debt service on the bonds, to pay PREPA's non-Current Expenses. *See id.* §§ 506, 507.

## **II. The Pension Claims and the Retirement System's Adversary Complaints**

PREPA has a retirement system for its employees, which is maintained within SREAEE. On June 25, 2018, SREAEE filed a proof of claim in PREPA's Title III case, asserting an unsecured claim for approximately \$120,683,625 based on "unpaid PREPA contributions through June 30, 2017." *See* Proof of Claim No. 51696, Ex. A.<sup>8</sup> SREAEE's proof of claim also attached a certain Cavanaugh McDonald Report, which showed that the expected contribution amount from PREPA was only \$147 million in 2016—far below the FY2026 recovery amount \$307 million

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<sup>7</sup> The "Annual Budget" means the budget for Current Expenses and Capital Expenditures "for a fiscal year adopted pursuant to the provisions of section 504" of the Trust Agreement. *Id.* § 101. On information and belief, PREPA has not adopted an "Annual Budget" in compliance with section 504 since around 2014.

<sup>8</sup> SREAEE's proof of claim can be accessed free of charge at <https://cases.ra.kroll.com/puertorico/>. Proofs of claim are accessible under the Claims tab of that website.

proposed in the current rate petition. *See* Exhibit to Proof of Claim No. 51696, Cavanaugh McDonald Report at 5-6; PREPA Rate Petition, Schedule B-3.

As set forth in the bylaws and regulations that SREAEE submitted with its Motion, (*see* Motion Ex. 2 (the “Bylaws”)), PREPA makes two types of contributions to the retirement system, one of which is intended to cover underfunding in the pension system, including for *future* contributions:

1. Regular Contribution: Annual contribution that is calculated as a “percentage of compensation of all members.” Bylaws, Art. 5 § 2(a)
2. Accrued Obligations Contribution: Contribution that is over and above the Regular Contribution, which is calculated as the “amount of all of the obligations of the Retirement System for all of the present and future benefits of active and retired members not covered by the assets held for said benefits,” as well as “future contributions to be made . . . on account of” active members. Bylaws, Art. 5 § 2(c) (emphasis added).

The priority of the pension claims remains an open and contested issue in PREPA’s Title III case. In 2019, SREAEE commenced an adversary proceeding in the Title III court, which sought to declare all pension debts (including the Accrued Obligations Contribution) to be “Current Expenses” under the Trust Agreement. *See* ECF No. 25, *SREAEE v. Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Adv. Proc. No. 19-405-LTS (D. P.R. Oct. 30, 2019) (the “2019 Complaint”). Various parties—including the Bondholders, the Board, and PREPA—moved to dismiss that complaint, arguing that pension debts do not qualify as “Current Expenses” under the Trust Agreement. *See* ECF Nos. 35, 36, *Id.* (Nov. 13, 2019) and ECF Nos. 53 and 54, *Id.* (Feb. 3, 2020). That adversary proceeding was stayed, and ultimately voluntarily dismissed. *See* ECF No. 85 ¶ 3, *Id.* (Sept. 29, 2022); ECF No. 97, *Id.* (Dec. 18, 2023).

In December 2023, UTIER, SREAEE, and others filed for a declaratory judgment that their debt qualified as “Current Expenses” under the Trust Agreement. *See* ECF No. 1, *Official*

*Committee of Unsecured Creditors of PREPA v. Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Adv. Proc. No. 23-094-LTS (D. P.R. Dec. 8, 2023) (the “2023 Complaint”).<sup>9</sup> In opposing expedited briefing, the Board noted that “UTIER has already litigated exactly the issue raised by the Complaint once before, in Commonwealth courts, and lost.” ECF No. 15 at n. 3, *Id.* (Dec. 12, 2023) (emphasis added). Specifically, the Board acknowledged that a Commonwealth court denied “UTIER’s claim to priority under the Trust Agreement as a Current Expense.” *Id.* The Title III court ultimately stayed the 2023 Complaint and a then-pending hearing on the confirmation of the Board’s proposed plan of adjustment for PREPA. ECF No. 19 at 3, *Id.* (Dec. 14, 2023). The 2023 Complaint remains pending before the Title III court.

### **III. The Plan’s Proposed Restructuring of Pension Claims**

Since commencing PREPA’s Title III case, the Board has filed numerous proposed plans of adjustment that provide for the adjustment of PREPA’s pension liabilities (as amended, the “Plan”). With respect to pensions, the Plan provides for the payment of periodic cash payments to a “PayGo” trust and requires that any obligation of PREPA to the ERS “as of the Petition Date,” including obligations to fund benefits, “shall be rescinded and be deemed rejected pursuant to section 365(a) of the Bankruptcy Code.” See ECF No. 5581, Art. VI.A, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Mar. 28, 2025). Under the Plan, PREPA’s obligation to fund or reimburse the PREPA ERS is limited to benefits paid and expenses incurred “in the prior fiscal quarter.” *Id.*, Art. XXII.A.<sup>10</sup>

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<sup>9</sup> The filing of the 2023 Complaint was in violation of a prior scheduling order from the Title III court, which expressly provided that any Current Expense issues would be adjudicated in the context of plan confirmation or after all security interest issues for the bonds had been fully resolved. ECF No. 85 ¶ 3, *SREAAE v. Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Adv. Proc. No. 19-405-LTS (D. P.R. Sept. 29, 2022).

<sup>10</sup> The disclosure statement for the most recent proposed Plan provides that pension claimants will receive a projected recovery of 90% of the petition date claim amount “as adjusted for postpetition payments to SREAAE.” See ECF No. 5582 at 314, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Mar. 28, 2025).

In its brief in support of confirmation of the proposed Plan, the Board requested that the Title III court find that “neither the Trust Agreement nor PREPA Enabling Act creates an enforceable priority.” See ECF No. 26516 ¶ 377, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-3283-LTS (D. P.R. Feb. 13, 2024). Among other things, the Board argued that: (i) “there are no provisions granting objectors asserting ‘Current Expense’ claims the right to enforce any part of” the Trust Agreement, *id.* ¶ 378, and (ii) “the Trust Agreement is not a subordination agreement granting priority rights between creditors.” *Id.* ¶¶ 379-81. Proceedings related to confirmation of the Plan are currently subject to a stay ordered by the Title III court. ECF No. 5572, *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Oct. 9, 2025).

According to the rate petition, the pension funding obligation—which is listed along with PREPA’s other legacy debts—includes “funding required for PREPA Employee Retirement System,” as determined by the administrator of the PREPA ERS. See PREPA Rate Petition, Schedule B-3, n.5. Notably, PREPA’s own rate materials admit that the “long-term funding obligation for pensions will be determined by the outcome of the Title III process and remains subject to change.” *Id.*

## **RESPONSE**

### **I. The Pension Claim Does Not Exceed \$4 Billion.**

SREAEE claims that the “most recent estimate of PREPA’s unfunded pension liability is \$4,972 million as of June 23, 2023.” SREAEE Motion at p. 3. The source for this figure is a “draft GASB Statement No. 67 Report dated September 24, 2025, prepared by CavMac Consulting.” *Id.*

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The disclosure statement also provides that after accounting for payments that PREPA made to the PREPA ERS during the Title III case, the allowed amount of the pension claim is \$3.286 billion. See *id.*, at n. 390.

SREAEE concedes that this non-public, draft report—which is not attached to the Motion—is “under review by the pension plan and its auditors and is not finalized.” *Id.* (emphasis added). SREAEE likewise failed to submit this draft report with its Motion—leaving PREB and other parties with no insight into the actual contents of that report. The Bondholders respectfully submit that a non-public draft should not be entitled to any deference in these rate proceedings.

PREPA provides a similarly inflated unfunded liability figure: \$5 billion. PREPA Motion at p. 5. PREPA concedes, however, that the net pension liability is \$3.9 billion. *See id.* According to PREPA, the net pension liability represents the total unfunded liability less the existing assets in the PREPA ERS (which total over \$1.1 billion). PREPA claims that the \$5 billion figure is more reliable because the existing pension assets are primarily unpaid employer contributions, but nevertheless, concedes that the \$5 billion figure reflects the present value of *future* payments to the PREPA ERS. *Id.*

In any event, these figures are far in excess of the size of the \$3.286 billion allowed pension claim provided in PREPA’s Plan and its accompanying disclosure statement. *See* ECF No. 5582 at n. 390, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Mar. 28, 2025).<sup>11</sup> According to the disclosure statement, that amount factors in substantial payments that PREPA made to the PREPA ERS during the Title III case. *See id.*

PREPA and SREAEE fail to acknowledge or account for those payments made since the commencement of PREPA’s Title III case, rendering their pension liability figures unreliable and misleading. Further, because SREAEE concedes that this inflated \$4.9 billion figure was used to

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<sup>11</sup> The Bondholders believe that the Board’s pension claim figures are also overstated for the reasons set forth in the Declaration of Thomas Terry. *See* ECF No. 4848-4, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Feb. 23, 2024). The Board’s figures are not the subject of this Response, and the Bondholders accordingly reserve all rights with respect to those figures. Nevertheless, the Board’s pension figures are considerably lower than the nearly \$5 billion amount provided by SREAEE and PREPA.

calculate the \$307 million proposed recovery estimate, its inclusion in the rate is neither just nor reasonable.<sup>12</sup>

## **II. SREAEE and PREPA’s Arguments Regarding Payment and Adjustment of Pension Claims Are Meritless.**

The Order also instructs parties to answer whether the pension claims are subject to adjustment in the Title III proceeding and whether payment of the pensions could violate any provisions in PROMESA. The answer to both questions is yes.

### **A. The Pension Claims Are Subject to Adjustment in the Title III Proceeding.**

The pension claims—like all other unsecured claims in the Title III case—are subject to restructuring and adjustment in the Title III proceeding. That proposition is hardly novel: pension claims were previously adjusted in the Commonwealth’s Title III case, in which the Title III court rejected the same arguments that SREAEE now advances in its Motion. And even in PREPA’s Title III case, the Board has repeatedly proposed to adjust PREPA ERS’s claims, which would result in reduced pension expenses.

PREPA conceded in its rate petition materials that the pension funding obligation “will be determined by the outcome of the Title III process and remains subject to change.” PREPA Rate Petition, Schedule B-3 at n. 5 (emphasis added). The aggregate amount of pension claims is dependent on their ultimate treatment in the Title III case, particularly given the Board’s position

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<sup>12</sup> In its motion, PREPA argues that the \$307 million request is calculated as PREPA’s annual funding requirement (specifically the difference between outflows and inflows in the PREPA ERS) and therefore is not *directly* derived from the unfunded pension liability. PREPA Motion ¶¶ 13-14. However, PREPA’s witness conceded in testimony submitted with the PREPA Motion that the “\$307 million request is based on the unfunded status of the [retirement] system . . . .” *Id.*, Ex. A at p. 6. PREPA further concedes that the outflows used to calculate the \$307 million figure are for “existing commitments to *former* employees and beneficiaries.” PREPA Motion, Ex. A. at 10 (emphasis added). None of these outflows are for PREPA’s current employees. *See id.* PREPA also fails to explain what portion of the \$307 million is used to cover the Regular Contribution, as opposed to the Accrued Obligations Contribution (which covers *future* benefits). As such, PREPA has conceded that the \$307 million recovery amount is a distribution to cover claims arising from pre-bankruptcy contracts. Those claims—just like all other unsecured claims—may be adjusted in PREPA’s Title III case.

that the pension claims are unsecured obligations and that the contracts governing the pensions are subject to rejection.<sup>13</sup> A lower recovery for the pensions will mean lower liabilities for PREPA and, therefore, lower rates for ratepayers. *See* Fiscal Plan at 98 (making clear that pension expenses are tied to the result of the Title III case).

The proposed Plan specifically provides for the reduction in pension claims; the rejection of PREPA's funding obligations for the pension system under section 365(a) of the Bankruptcy Code; and the use of a PayGo mechanism to make contributions to the pension system. *See* ECF No. 5581, at Art. VI.A, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, No. 17-BK-4780 (D. P.R. Mar. 28, 2025). After giving effect to these adjustments, the proposed Plan provides that pension expenses are “projected to decrease over time and are subject to change based on Title III restructuring results.” 2025 Fiscal Plan at 98 (emphasis added).

PREPA's obligations to the PREPA ERS, therefore, exist as a claim against PREPA yet to be treated and restructured, just like PREPA's legacy bond debt. There is no legal basis for PREPA to set its rates to fund one of these debts (its legacy pension obligations) and not PREPA's legacy bond obligations, which (1) PREPA is obligated to pay, and (2) are legally senior to PREPA's legacy pension obligations as described below. Accordingly, if PREPA charges a rate to account for legacy pension debt, it must also charge a rate for legacy bond debt as well.

#### B. PROMESA Does Not Favor Payments to Pension Claimants

Despite the clear statements from the Board and PREPA that the pension claims are subject to adjustment in the Title III case, PREPA now argues that PROMESA somehow favors payments to pension claimants. PREPA's argument is without merit for four reasons.

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<sup>13</sup> The materials that SREAEE attached to the Motion confirm that this is the Board's position. *See* SREAEE Motion, Ex. 5 at 6 (noting that Board's position is that the pensions are “regular unsecured claims”).

*First*, acceptance of voluntary payments to the PREPA ERS would violate the automatic stay. PREPA wrongly contends that payment of pensions during the Title III case would not violate the automatic stay provided for in sections 362 and 922 of the Bankruptcy Code. PREPA Motion ¶¶ 24, 26; *see* 48 U.S.C. § 2161 (incorporating by reference sections 362 and 922 of the Bankruptcy Code). PREPA claims that the automatic stay “bars a claimholder from collecting a pre-bankruptcy debt non-consensually,” but that PREPA can *choose* to pay pension claims without court approval. *See id.* ¶ 26 (emphasis added). PREPA points to the absence of Bankruptcy Code section 363—which prohibits use of debtor property outside the ordinary course absent court approval—in Title III of PROMESA and PROMESA section 305, which prohibits court interference with debtor property absent Board approval. *See id.* ¶ 22; *see also* Motion, Ex. B at 2-3 (Letter from Board’s legal counsel).<sup>14</sup>

PREPA’s arguments cannot be reconciled with the First Circuit’s recognition that, except for bond creditors subject to an exception under section 922(d) of the Bankruptcy Code, there is “ample reason to believe that” the automatic stay includes “stay[ing] a creditor from accepting voluntary payments from a debtor . . .” *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 919 F.3d at 132. Section 922(d) creates an exception to the automatic stay for the application of pledged special revenues to the payment of revenue bonds *secured* by such revenues pursuant to section 928(a) of the Bankruptcy Code.<sup>15</sup> 11 U.S.C. § 922(d). The pension claims do not benefit from that stay

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<sup>14</sup> Notably, the Board previously took the position before the First Circuit that it “was unclear whether § 362(a) stayed a creditor from accepting voluntary payments from a debtor.” *See* Rule 28(j) Letter from Board, attached as Exhibit C hereto. *Assured Guar. Corp. v. Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 18-1165 (1st Cir. Nov. 12, 2025). The Board’s letter cannot be reconciled with those prior arguments, and therefore should not be entitled to any deference. Furthermore, the Board chose not to timely intervene in these proceedings, and has therefore waived any ability to do so. As such, the Board’s attempt to participate indirectly by way of a “letter” should be disregarded.

<sup>15</sup> Section 928(a) of the Bankruptcy Code provides that post-petition special revenues “shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.” 11 U.S.C. § 928(a).

exception because the pension debts are not secured by any lien created by a prepetition security agreement. *See* SREAE Motion, Ex. 5 at 6 (noting that Board’s position is that the pensions are “regular unsecured claims”); *see also* Claim No. 51696 (indicating that the PREPA ERS claim is unsecured). And without any applicable stay exception, according to the Board, it is at best “unclear” whether the automatic stay bars “a creditor from accepting voluntary payments from” PREPA. *See* Response, Ex. C, Rule 28(j) Letter from Board at 2-3. Revenue bonds are the *only* form of prepetition debt the repayment of which is “clearly” not barred by the automatic stay. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 919 F.3d at 132.

Section 305 of PROMESA compels the same conclusion. Modeled on section 904 of the Bankruptcy Code, section 305 merely limits *the Title III court’s* ability to interfere with the debtor’s use of its revenues without the consent of the Board. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 927 F.3d 597, 605 (1st Cir. 2019). It has no impact on the automatic stay, which operates without judicial interference. *Id.* (observing that section 305 does not “impose any restraint on another court”). Moreover, even broad interpretations of section 904 of the Bankruptcy Code recognize that it provides no affirmative role for the court to play with respect to the automatic stay. *See In re City of Stockton, Cal.*, 486 B.R. 194, 199-200 (Bankr. E.D. Cal. 2013) (noting that the “day of reckoning” to “litigate the debtor’s conduct and management and spending choices during the case [is] at the time of plan confirmation”). If PREPA makes any unlawful payments during the pendency of its case (such as payments in violation of the stay), then such payments could be scrutinized when PREPA seeks confirmation of a plan of adjustment—that is all section 305 fairly represents. It certainly does not green-light violations of the automatic stay.

*Second*, contrary to PREPA’s argument, PROMESA does not prioritize pension payments over legacy debt. PREPA invokes section 201(b) of PROMESA to argue that pension funding is required, but ignores that the provision may not be construed as favoring pensions over legacy debts. *See* PREPA Motion ¶ 24. While a fiscal plan must “provide adequate funding for public pension systems,” 48 U.S.C. § 2141(b)(C), it must also “respect the relative lawful priorities or lawful liens, as may be applicable, in the constitution, other laws, or agreements” that were in effect “prior to June 30, 2016.” 48 U.S.C. § 2141(b)(1)(N).<sup>16</sup> The legislative history makes clear that section 201’s requirement to adequately fund pensions should not be construed as a mandate to prioritize pensions over debts:

This language should not be interpreted to reprioritize pension liabilities ahead of the lawful priorities or liens of bondholders as established under the territory’s constitution, laws, or other agreements. While this language seeks to provide an adequate level of funding for pension systems, it does not allow for pensions to be unduly favored over other indebtedness in a restructuring.

*See* H.R. Rep. No. 114-602 at 45 (emphasis added). Thus, section 201(b) of PROMESA is of no help to PREPA.<sup>17</sup>

*Third*, PREPA improperly relies on the Board’s fiscal plan, which provides that pension funding must come from PREPA’s rates. The fiscal plan, however, does not establish rates and cannot effectuate a restructuring of claims, including payments to prepetition creditors. *See* PREPA Motion ¶ 53. Indeed, the First Circuit has already held that fiscal-plan-related provisions like section 201(b) do not affect the operation of Bankruptcy Code provisions incorporated into

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<sup>16</sup> As the First Circuit has previously recognized, a fiscal plan also “must . . . respect the Commonwealth’s ‘relative lawful priorities’ that were in effect prior to PROMESA’s enactment.” *Wal-Mart Puerto Rico, Inc. v. Zaragoza-Gomez*, 834 F.3d 110, 123-24 (1st Cir. 2016) (emphasis added).

<sup>17</sup> Notably, SREAAE agrees that “PREPA’s statement that pension payments are ‘favored by PROMESA’ is inaccurate.” SREAAE Response at 3.

PROMESA. *See Fin. Oversight & Mgmt. Bd. for P.R. v. Andalusian Global Designated Activity Co.*, 948 F.3d 457, 476-77 (1st Cir. 2020) (“[Section 201(b)] governs only the Board’s Fiscal Plan, not the operation of Title III of PROMESA”).<sup>18</sup>

*Fourth*, the fiscal plan likewise cannot reorder priorities in a manner that is inconsistent with the Bankruptcy Code’s priority scheme. The Supreme Court has explained that this priority scheme “has long been considered fundamental to the Bankruptcy Code’s operation,” and as such, parties to bankruptcy cases may not use other means to circumvent the Bankruptcy Code’s priority scheme. *Jevic Holding Corp.*, 580 U.S. at 457, 468-69. Payment of pension debts would constitute an appropriation of the Bondholders’ collateral (the Net Revenues) in violation of the Bankruptcy Code’s priority scheme. PREPA may not pay an unsecured obligation ahead of a secured obligation from the collateral securing that secured debt.

Any fiscal plan that substantially impairs the contractual interests of PREPA’s bondholders by altering priorities, restructuring claims, or discharging claims and liens would violate the Contracts and Takings Clauses. *See* U.S. Const. art. I, § 10, cl. 1 (providing that “[n]o state shall . . . pass any . . . Law impairing the Obligation of Contracts.”); U.S. Const. amend. V (providing that “private property [shall not] be taken for public use, without just compensation.”); *see also* *U.S. Tr. Co.*, 431 U.S. 1, 31 (1977) (“[A] State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.”); *Von Hoffman v. City*

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<sup>18</sup> In the past, the Board has adopted a sweeping interpretation of Titles I and II of PROMESA, seeking the exclusion of testimony that “purports to challenge any certification determination of the Oversight Board” and any other evidence that conflicts with such certification determinations. *See* ECF No. 3863 at 2, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-4780-LTS (D. P.R. Jul. 26, 2023) (the “In Limine Order”). In particular, the Board argued that because section 106(e) of PROMESA deprives the Court of jurisdiction in some circumstances, “evidence attacking or second guessing the fiscal plans” should be excluded from confirmation proceedings. *Id.* ECF No. 3581 ¶ 3. The Title III Court disagreed, noting that parties have the right to oppose “an affirmative request for judicial relief made by the Oversight Board by disputing the factual basis and compliance with one or more statutory requirements.” *In Limine Order* at 6. The Court held that when an express provision of the Bankruptcy Code requires Court intervention, then section 106(e) does not deprive the Court of jurisdiction. *Id.* at 7.

*of Quincy*, 71 U.S. 535, 554 (1866) (a law that “impair[s] substantial rights” is “within the prohibition of the [Contract Clause of the] Constitution, and to that extent void”) (emphasis added); *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (“just compensation is due under the Fifth Amendment” for a taking of liens by transferring the underlying collateral); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 637 B.R. 223, 294 (D. P.R. 2022) (the Takings Clause creates “an irreducible entitlement to just compensation.”).

Moreover, a fiscal plan or budget that effects a delay in the payment of PREPA’s bonds (such as through use of rates to cover subordinate prepetition debts like the pension debts) likely constitutes a “moratorium law,” which is expressly preempted by section 303(1) of PROMESA. And if a fiscal plan or budget did somehow permanently bar the payment of PREPA’s bonds, that fiscal plan or budget would constitute a “method of composition of indebtedness” prohibited by section 903 of the Bankruptcy Code and section 303(1) of PROMESA. *See* 11 U.S.C. § 903(1); *see also Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115, 124 (2016).

### C. SREAE’s Arguments Are Meritless.

SREAE argues that the pension claims cannot be adjusted in the Title III case because they are purportedly ongoing operating costs “protected under Puerto Rico and federal law.” SREAE Motion at p. 14 (citing PROMESA section 305 and P.R. Constitution Art. II § 7). According to SREAE, any payments that are paid after the Title III petition date are “prospective operational cost[s]”—not payments on any prepetition claim—and therefore are not subject to adjustment under the Plan. SREAE Response at 5-6. SREAE is wrong.

*First*, SREAE ignores that similar arguments were previously rejected by the Title III court in the context of the Commonwealth’s plan of adjustment. Certain retiree associations

objected to the Commonwealth’s plan of adjustment, arguing that under Puerto Rico law, the Commonwealth’s plan could not “freeze pension accruals under public employees’ defined benefit plans and prospectively eliminate [cost of living adjustments].” *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 588 F. Supp. 3d 191, 200-02 (D. P.R. 2022) (noting that objectors cited to P.R. Const. Art. II § 7). However, in the *Findings of Fact and Conclusions of Law in Connection With Confirmation of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority*, the Title III court expressly found that PROMESA (through 11 U.S.C. § 944) permits the impairment of pension obligations despite any Commonwealth law to the contrary. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 637 B.R. at 290 n.35. The Title III court held that any inconsistent Commonwealth laws are “preempted by PROMESA.” *Id.* The Title III court therefore expressly rejected the same arguments that SREAEE advances in these rate proceedings.<sup>19</sup> Moreover, the First Circuit affirmed the Commonwealth plan’s adjustments to the pension debt, finding that the “pension obligations are contractual in nature.” *See In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 32 F.4th 67, 77 (1st Cir. 2022).

*Second*, SREAEE’s focus on post-petition pension payments to argue that pension claims do not constitute prepetition claims is misplaced. The Board asserts that the “post-petition contributions to PREPA ERS have been sufficient to meet its funding obligations with respect to pension benefits accrued since the petition date, but not to fund the actuarially determined

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<sup>19</sup> SREAEE cites section 305 of PROMESA to claim that federal law precludes impairment of pensions. But, as discussed above, that section merely limits the Title III court’s interference with the debtor’s use of its property “unless the Oversight Board consents or the plan so provides.” 11 U.S.C. § 2165. Here, the Board has filed a proposed Plan that adjusts the pension claims, thereby consenting to the Title III court’s interference with PREPA’s property. And in any event, section 305 does not apply where a plan “provides” for impairment of a claim.

contribution amounts the PREPA ERS asserts had *accrued prepetition*.” See PREPA Motion, Ex. B (Letter from Board Legal Counsel) at p. 2 (emphasis added). As such, the “liability on account of pensions is a claim” that “principally accrued *prior to* the filing of PREPA’s Title III petition . . . as a result of chronic underfunding” of employer contributions. *Id.* (emphasis added). That pension claim, including “monthly pension costs,” will “eventually be adjusted through the Title III process.” 2025 PREPA Fiscal Plan at 125.

SREAEE is therefore wrong to claim that pension claims—including payments due after the petition date—are somehow immune from impairment or discharge. PREPA has the ability to adjust and discharge “claims” under the Bankruptcy Code, subject to certain requirements in the Bankruptcy Code. See 11 U.S.C. §§ 943, 944. And, as noted, the priority of pensions is also a contested issue pending before the Title III court.

### **III. Past-Due Pension Claims Are Not Current Expenses Payable under Section 505 of the Trust Agreement.**

In its Motion, SREAEE claims that all obligations owed to it are Current Expenses under the Trust Agreement (*see* SREAEE Motion at 3) and that such obligations are “require[ed] . . . [to] be paid from the General Fund before calculating Net Revenues.” *Id.* at 9, n. 8; *see also id.* at 24 (claiming that under the Trust Agreement, pension liabilities are “Current Expenses” and therefore must be included in the rate). SREAEE’s arguments are not properly before PREB because the Current Expense issues are currently pending before the Title III court and therefore should not be addressed by PREB. In any event, SREAEE’s arguments are without merit because it lacks standing to enforce the Trust Agreement and pension debts are not Current Expenses payable under section 505 of the Trust Agreement.

#### **A. The Current Expense Issues Are Currently Pending Before the Title III Court**

Whether the pension debts are a current operating expense is a contested issue that is pending before the Title III court. Specifically, SREAE has filed at least two adversary complaints before the Title III court, raising the precise Current Expense issues that it now advances before PREB. *See generally* ECF No. 25, *SREAE v. Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Adv. Proc. No. 19-405-LTS (D. P.R. Oct. 30, 2019); ECF No. 1, *Official Committee of Unsecured Creditors of PREPA v. Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Adv. Proc. No. 23-094-LTS (D. P.R. Dec. 8, 2023). The Bondholders, PREPA, and the Board have all opposed those complaints and the arguments raised therein. *See supra* at pp. 7-8. As discussed above, the 2023 Complaint is currently stayed, and to date, SREAE has not moved for stay relief in that adversary proceeding.

B. SREAE Lacks Standing to Enforce the Trust Agreement.

Even if PREB were to consider SREAE's substantive arguments, SREAE does not have standing to enforce the Trust Agreement and therefore has no enforceable priority rights. As SREAE itself recognized in a prior filing before PREB,<sup>20</sup> the Trust Agreement is an agreement between PREPA and the Trustee. The retirement system and PREPA's union are *not* parties to the Trust Agreement and therefore have no rights under that agreement. *See* Trust Agreement § 1304 (unless otherwise "expressly provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and the holders of the bonds . . . any right, remedy or claim . . ."). The Trust Agreement also makes clear that the agreement and its provisions are "for the sole and exclusive benefit of the parties hereto and the" bondholders. *Id.* (emphasis added). As the Board correctly explained in its brief in support of confirmation of the proposed Plan, creditors asserting Current Expense

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<sup>20</sup> *See* SREAE Motion Partially Joining and Supporting PREPA Exhibits and Testimonies, at n. 1.

claims “have no right to enforce any purported priority contained in the Trust Agreement.” *See* ECF No. 26516 ¶ 378, *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, No. 17-BK-3283 (D. P.R. Feb. 13, 2024).

The Commonwealth court has already foreclosed the possibility that non-parties—like SREAEE—have contractual rights under the Trust Agreement. *See UTIER* at 70 (Exhibit B) (rejecting argument that section 505 of the Trust Agreement “provide[s] a specific remedy to demand performance of the obligations agreed to by PREPA, such as payment of its current expenses, in particular the contributions to its employees’ retirement plans”). *Id.* That holding applies equally to SREAEE, which likewise is not a named party to the Trust Agreement. Moreover, section 1304 expressly disclaims any third-party beneficiary status—the Trust Agreement inures for the “sole and exclusive benefit of the parties” and the bondholders. Trust Agreement § 1304. Finally, as the *UTIER* court properly recognized, nothing in section 505 gives putative Current Expense claimants—including SREAEE—any rights to enforce the Trust Agreement. *See UTIER* at 72 (Exhibit B hereto).<sup>21</sup>

C. SREAEE Is Incorrect That All Pension Contributions Are Current Operating Expenses.

SREAEE is wrong in asserting that all amounts owing to it after the petition date qualify as Current Expenses payable under the Trust Agreement or current operating expenses generally. Unlike PREPA (which claims that the pension costs’ alleged status as current operating expenses is irrelevant), SREAEE argues that because the Trust Agreement defines “Current Expenses” to

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<sup>21</sup> Although the *UTIER* court acknowledged that section 505 has an “indirect effect of favoring the retirement system” (*UTIER* at 72), section 1304 of the Trust Agreement states that unless “expressly provided” in the Trust Agreement, the Trust Agreement does not grant any third parties rights or benefits. Trust Agreement § 1304 (emphasis added). Section 1304 does not grant rights based on any indirect benefits. And although the court noted the indirect benefit provided to PREPA’s employees, the *UTIER* court held that “it cannot be concluded that the trust granted a right to plaintiffs.” *UTIER* at 72.

include “any payment to pension or retirement funds,” all amounts owed to SREAEF after the petition date must qualify as current operating expenses and must be paid before debt service. SREAEF Motion at pp. 9-10. But that is not what the Trust Agreement says.

Section 505 of the Trust Agreement—a provision SREAEF tellingly failed to quote in its entirety—provides that the Current Expenses that can be paid by PREPA in any given fiscal year before debt service “will not exceed an amount which is reasonable and necessary for maintaining and operating the System in an efficient and economical manner.” Trust Agreement § 505 (emphasis added). Current Expenses are defined to include only the “reasonable and necessary current expenses of maintaining, repairing and operating the System” and cannot exceed what is provided for in the Annual Budget adopted pursuant to section 504 of the Trust Agreement. *Id.* §§ 101, 505. SREAEF ignores that the determination of whether an expense is a Current Expense that PREPA is permitted to pay before debt service involves answering the question of whether the expense (a) is included within the Annual Budget; and (b) is an amount that is reasonable and necessary to currently operate PREPA’s system in an efficient manner.

The pension claims do not satisfy either of these requirements.

*First*, SREAEF does not even attempt to demonstrate that the Annual Budget (as that term is defined in the Trust Agreement) has included all pension claims as Current Expenses for the *current fiscal year*.<sup>22</sup> See Trust Agreement § 505. That is because no such Annual Budget exists. PREPA has not complied with its obligation under the Trust Agreement to create an Annual

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<sup>22</sup> SREAEF’s attempts to rely on the fiscal plan is a red herring: the fiscal plan is not the Annual Budget contemplated in the Trust Agreement. Among other things, section 504 of the Trust Agreement requires that any Annual Budget must be adopted after a formalized process and hearing, and any excess amounts for Current Expenses or supplements to the Annual Budget require the prior approval of the Consulting Engineers. See Trust Agreement § 504. The Consulting Engineers, in turn, are entities that are employed “with the written approval of the Trustee.” *Id.* § 706. Moreover, the fiscal plan does not support SREAEF’s arguments because it discloses that pension expenses are “projected to decrease over time and are *subject to change based on Title III restructuring results.*” 2025 Fiscal Plan at 98 (emphasis added).

Budget. As such, SREAEЕ cannot establish that inclusion of the pension costs would not cause PREPA to exceed its Annual Budget for the current fiscal year. Nor can it be the case that this requirement is waived by virtue of PREPA’s failure to comply with the budgeting requirement. It would be imprudent and unreasonable for PREB to overlook this requirement, which is intended to maintain fiscal responsibility and prevent overspending by PREPA.

*Second*, SREAEЕ fails to establish that any portion of the pension claim is currently “reasonable and necessary for maintaining, repairing and operating the System,” as required under section 505 of the Trust Agreement. In its Motion, SREAEЕ claims that the retirement system is unfunded and insolvent due to “PREPA’s failure to pay the actuarially determined contributions (ADCs) since 2014.” SREAEЕ Motion at 5 (emphasis added). Although PREPA had included pension costs in the rate, SREAEЕ claims that “PREPA has used the rate revenue to meet other needs.” *Id.* Despite this, PREPA has continued to operate since 2014—demonstrating that payments from PREPA to the pension system in a given year are not *currently* necessary for PREPA’s continued operation “in an efficient and economical manner.” *Contra* Trust Agreement § 505. And that is hardly surprising, because retirement payments to former PREPA employees, who are no longer working on the system, are not *currently* necessary to the system’s operation.

Indeed, the Board (in its capacity as the statutory representative of PREPA under PROMESA) agrees that amounts purportedly owed to SREAEЕ are not “Current Expenses” under the Trust Agreement:

[A]mounts allegedly owed to SREAEЕ do not meet the definition of Current Expenses [under Section 505 of the Trust Agreement.]. Current Expenses include “any *payment* to pension or retirement funds.” Trust Agreement § 505 (emphasis added). The Trust Agreement does *not* state amounts *owed*, but *unpaid*, are Current Expenses. Only “budgeted” Current Expenses may be paid . . . [and] the Trust Agreement makes clear PREPA is only authorized to “first pay” Current Expenses that “*will not exceed the amount provided therefor in the Annual Budget for such fiscal year . . .*.” Trust Agreement § 505. Unbudgeted expenses, therefore,

regardless of whether they otherwise meet the definition of “Current Expenses,” are not subject to section 505.

ECF No. 35 at p. 24, *SREAEE v. Fin. Oversight and Mgmt. Bd. for Puerto Rico*, Adv. Proc. No. 19-405-LTS (D. P.R. Nov. 13, 2019).

The Bylaws further evidence that pension payments are neither reasonable nor necessary to operate the System. Article 9 of the Bylaws provides that PREPA may, “for reasons that affect its development and normal operations as a solvent entity, discontinue, suspend or reduce its contributions to an amount that is lower than what is required under Article 5. . . .” Bylaws, Art. 9 § 2. PREPA also may “terminate the operation of the” retirement system. *Id.* These provisions undermine SREAEE’s *ipse dixit* that the pension costs are currently reasonable and necessary to operate the System and that inclusion of the pension costs in the rate is just and reasonable.

Further, the Bylaws make clear that PREPA makes different types of contributions to its pension systems: Regular Contributions and Accrued Obligations Contributions. *See infra*, Background § II. Certain of these contributions cover *future* pension payments, such as additional payments in future years to reduce the unfunded pension liability. Bylaws, Art. 5 § 2(c). Again, those future payments by definition cannot be amounts *currently* needed to operate the system in an efficient and economical manner. Moreover, the Bylaws provide that, in a given fiscal year, the “total amount to be paid annually by [PREPA] shall not be lower than” the *annual* payment for the Regular Contribution and the Accrued Obligations Contribution. *See* Bylaws Art. V, § 2(d).<sup>23</sup> SREAEE does not (and could not) allege that PREPA owes more than its annual Regular Contributions or Accrued Obligations Contribution for the current fiscal year, that the Bylaws require payment of more than that amount, or that the failure to make an annual contribution

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<sup>23</sup> The Bylaws make clear that the “rate of contribution for accrued obligations” shall be calculated such that such contribution is not less “than the payment for the prior accrued *annual* obligation.” *Id.*

renders any other pension contribution immediately due and payable such that these payments would be reasonable or necessary to maintain the System.<sup>24</sup>

Moreover, SREAEE cannot credibly argue that *past due* obligations are current operating expenses. As an initial matter, the term “Current Expenses” includes only *expenses*, including *payments* to retirement systems, rather than amounts *owed* to retirement systems. *See* Trust Agreement § 101. The Trust Agreement likewise draws a clear distinction between debts and expenses. The terms “debt” and “expense” are not interchangeable, and indeed they carry different meanings in accounting. *See In re Hoff*, No. 21-CV-01002-SWD, 2023 WL 465704, at \*4 (Bankr. W.D. Mich. Jan. 26, 2023) (distinguishing between “an expense (revealed in the income statement as such)” and “a debt (typically reflected on a balance sheet)”, and noting that “the two are conceptually distinct”). SREAEE’s efforts to shoehorn past-due liabilities—debts—into expenses eliminates the well-known distinction between the two concepts. Past due liabilities to the PREPA ERS are not payable under section 505 of the Trust Agreement and therefore cannot qualify as current operating expenses.

The *UTIER* decision confirms this. The *UTIER* court held that “section 505 of the Trust Agreement does not contemplate a priority in favor of plaintiffs in the payment of the debts that PREPA may have with the retirement system,” drawing a clear distinction between debts and expenses—the former is not covered by section 505. *See UTIER* at 72 (emphasis in original).

SREAEE fails to properly distinguish between the different types of pension contributions—instead lumping all contributions together based on whether they are paid after the Title III petition date. Although SREAEE claims that the “normal cost and amortization of annual

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<sup>24</sup> Compare Bylaws Art. V (not providing for acceleration of obligations) with Trust Agreement § 803 (providing for acceleration of the bonds).

funding requirements arising after the petition [date] are current operating expenses” (SREAAE Motion at 10), SREAAE never specifies what amounts are actually the Regular Contribution for the current fiscal year or what portion of the \$307 million recovery includes such Regular Contribution. Instead, SREAAE *concedes* that the \$307 million recovery amount is for the unfunded liability (*i.e.*, for amounts that PREPA previously failed to pay), not for any ongoing regular contributions. *See id.* at 4. That is consistent with PREPA’s rate petition materials, which disclose that the \$307 million contribution targets the portion of the pension claim subject to restructuring in the Title III proceeding. *See* PREPA Rate Petition, Schedule B-3 at n.5. Unpaid obligations are debts—they are *not* current operating expenses—and therefore are not payable under section 505 of the Trust Agreement and are not necessary to maintain and operate the electrical system.

Under the Trust Agreement, the secured legacy bond claim is senior to the pension debt, and as a result, any payment made to satisfy the pension debt would be made using the bondholders’ collateral. *See supra* pp. 5-6. As such, payment cannot be made in respect of the pension debt without the bondholder’s consent. *Id.*

## CONCLUSION

The pension debts are neither current nor an operating expense. They also do not constitute a budgeted current operating expense under the Trust Agreement because they are neither reasonable nor necessary to maintain and operate the System within the meaning of the Trust Agreement or under the Bylaws. Instead, the pension debts are adjustable junior unsecured debts properly addressed in the pending Title III proceeding. To conclude otherwise would violate the automatic stay—a conclusion undisturbed by PROMESA section 305 or applicable provisions of the Bankruptcy Code—and inappropriate for a PREB determination given the universally

recognized conclusion that “long-term funding obligation for pensions will be determined by the outcome of the Title III process and remains subject to change.” *See* PREPA Rate Petition, Schedule B-3. Finally, because the legacy bond debt and the legacy pension debt have yet to be restructured, and because the legacy bond debt is legally senior to the legacy pension debt, if PREPA collects funds specifically to pay the pension debt, it must also collect funds to pay the bond debt.

**WHEREFORE**, the Bondholders respectfully request that this Response be considered by the Hearing Examiner and the Puerto Rico Energy Bureau as part of the record of these rate case proceedings and that PREPA and SREAEE’s procedurally and substantively infirm arguments be rejected.

RESPECTFULLY SUBMITTED,

THIS 5th DAY OF DECEMBER 2025

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## 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](mailto:shempling@scotthemplinglaw.com); and to the attorneys of the parties of record, attorneys of the intervenors of record, and others:

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**RESUMEN DE: RESPUESTA DE LOS BONISTAS INTERVENTORES A LA ORDEN  
DEL OFICIAL EXAMINADOR DEL 27 DE OCTUBRE DE 2025**

SREAAE afirma que el estimado más reciente de la obligación de pensiones no financiadas “unfunded pension liability” es de \$4,972 millones al 23 de junio de 2023, pero los bonistas sostienen que un informe no auditado no debería merecer ninguna deferencia en estos procedimientos de tarifas. Por su parte, PREPA proporciona una cifra de \$5 billones, pero reconoce que el pasivo neto de las pensiones es de \$3.9 billones. Ninguno contabiliza los pagos realizados desde el inicio del caso del Título III de PREPA, lo que hace que sus cifras sean poco fiables y engañosas. La obligación de financiación a largo plazo para pensiones se determinará por el resultado del proceso del Título III y sigue sujeta a cambios. PROMESA no prioriza los pagos de pensiones sobre la deuda de bonos heredados pues violarían el esquema de prioridad de PROMESA y las Cláusulas de Contratos y Expropiaciones de la Constitución de EE. UU. El pago de las pensiones por PREPA sería una apropiación de la garantía de los bonistas, porque las pensiones no financiadas no son gastos corrientes.

PREPA sostiene erróneamente que el pago de pensiones durante el caso del Título III no violaría la suspensión automática, pero el Primer Circuito sostiene que la aceptación de pagos voluntarios por parte de un acreedor está sujeta a la suspensión automática. Los bonos de ingresos son la única forma de deuda previa a la petición cuyo reembolso no está prohibido por la suspensión automática. Cualquier plan fiscal que perjudique sustancialmente los intereses contractuales de los bonistas de PREPA mediante la alteración de prioridades, la reestructuración de reclamaciones o la desactivación de reclamaciones y gravámenes violaría las Cláusulas de Contratos y Expropiaciones.

El sistema de jubilación y el sindicato de PREPA no son partes del Acuerdo de Fideicomiso que garantiza el beneficio exclusivo de las partes y de los bonistas. SREAAE argumenta

erróneamente que las reclamaciones de pensión no pueden ajustarse en el caso del Título III porque supuestamente son costos operativos continuos. El tribunal del Título III determinó que PROMESA permite el incumplimiento de obligaciones con pensiones pese a cualquier ley estatal. Si la obligación de pensiones es un gasto operativo actual es una cuestión controvertida que está pendiente ante el tribunal del Título III.

Los gastos corrientes no pueden exceder lo previsto en el Presupuesto Anual adoptado conforme al Acuerdo de Fideicomiso y SREAEE no logra establecer que ninguna parte de la reclamación de pensión sea actualmente "razonable y necesaria para mantener, reparar y operar el Sistema". PREPA no ha cumplido con su obligación bajo el Acuerdo de Fideicomiso de crear un Presupuesto Anual y ha seguido operando desde 2014, demostrando que los pagos al sistema de pensiones no son necesarios para la operación. SREAEE no puede argumentar de forma creíble que las obligaciones vencidas sean gastos operativos actuales. Los términos "deuda" y "gasto" no son intercambiables.

El "unfunded pension liability" no constituye un gasto operativo actual presupuestado bajo el Acuerdo de Fideicomiso porque no es razonable ni necesario mantener y operar el Sistema en el sentido del Acuerdo o de los Estatutos. Es una deuda no garantizada variable que se gestiona correctamente durante el procedimiento del Título III. Concluir lo contrario violaría la suspensión automática. Finalmente, dado que la deuda de bonos heredados y la deuda de pensiones heredada aún no se han reestructurado, y porque la deuda de bonos heredados es legalmente superior a la deuda de pensiones heredada, si PREPA recauda fondos específicamente para pagar la deuda de pensiones, también debe cobrar fondos para saldar la deuda de bonos.

**EXHIBIT A**

**Joint Conformed Trust Agreement**

**CERTIFICATE**

I, RAFAEL BETANCOURT, Secretary of Puerto Rico Water Resources Authority, DO HEREBY CERTIFY that the attached Trust Agreement, dated as of January 1, 1974, is substantially in the form of the Trust Agreement which was presented at the meeting of the Authority duly called and held on December 4, 1973 and authorized by the Authority by Resolution No. 1391 duly adopted at said meeting.

WITNESS my hand this 8th day of January, 1974.

*/s/* \_\_\_\_\_  
*Secretary*  
Puerto Rico Water Resources  
Authority

**PUERTO RICO ELECTRIC POWER AUTHORITY**

**TO**

**FIRST NATIONAL CITY BANK**

*Trustee*

**Trust Agreement**

**Dated as of January 1, 1974**

THIS TRUST AGREEMENT, DATED FOR CONVENIENCE OF REFERENCE AS OF JANUARY 1, 1974, BY AND BETWEEN

PUERTO RICO ELECTRIC POWER AUTHORITY,

a body corporate and politic constituting a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (hereinafter sometimes called the "Authority"), and

FIRST NATIONAL CITY BANK,

a national banking association duly incorporated and existing under the laws of the United States of America and having its principal office in the Borough of Manhattan, City and State of New York, which is authorized under such laws to exercise trust powers and is subject to examination by federal authority (said banking association and any bank or trust company becoming successor trustee under this Agreement being hereinafter sometimes called the "Trustee"),

WITNESSETH:

**Authority Act.**

WHEREAS, by Act No. 83 of the Legislature of Puerto Rico, approved May 2, 1941, as amended, reenacted and supplemented (the "Authority Act"), the Authority was created a body corporate and politic constituting a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico; and

**Powers of Authority.**

WHEREAS, by virtue of the Authority Act the Authority is empowered to conserve, develop and utilize the water and energy resources of Puerto Rico for the purpose of making available to the inhabitants of the Commonwealth, in the widest economic manner, the benefits thereof, for the promotion of the general welfare and to increase commerce and prosperity, and the Authority is granted and may exercise all the rights and powers necessary or convenient to carry out the aforesaid purposes including but not limited to the following, among others:

(a) to have complete control and supervision of any undertaking constructed or acquired by it including the power to determine the character of and necessity for all its expenditures and the manner in which they shall be incurred, allowed and paid without regard to the provisions of any laws governing the expenditure of public funds, and such determination shall be final and conclusive upon all officers of the Commonwealth Government, and to prescribe, adopt, amend, and repeal such rules and regulations as may be necessary or proper for the exercise and performance of its powers and duties or to govern the rendering of service or sale or exchange of water or electric energy;

(b) to sue and be sued, implead and be impleaded, complain and defend, in all courts;

(c) to make contracts and to execute all instruments necessary or convenient in the exercise of any of its powers ;

(d) to acquire in any lawful manner including, but without limitation, acquisition by purchase, whether by agreement or by the exercise of the power of eminent domain, lease, bequest, devise, gift, and to hold, maintain, use and operate any undertaking or parts thereof ;

(e) to acquire in the manner set forth above, produce, impound, develop, manufacture, treat, hold, conserve, use, transmit, distribute, supply, exchange, sell, rent and otherwise dispose of, water, electric energy, equipment, and such other things, supplies and services as the Authority shall deem necessary, proper, incidental, or convenient in connection with its activities; provided, that in disposing at wholesale of electric energy the Authority shall give preference and priority as to supply to public bodies and cooperatives;

(f) to construct or reconstruct any undertaking or any part or parts thereof, and any additions, improvements, and extensions to any undertaking of the Authority by contract or contracts, or under, through, or by means of its own officers, agents, and employees;

(g) to determine, fix, alter, charge and collect reasonable rates, fees, rentals, and other charges for the use of the facilities of the Authority, or for the services, electric energy, or other commodities sold, rendered, or furnished by it, which shall be sufficient for the payment of the expenses of the Authority incurred in the conservation, development, improvement, extension, repair, maintenance, and operation of its facilities and properties, for the payment of the principal of and interest on its bonds, and for fulfilling the terms and provisions of such covenants as may be made with, or for the benefit of, the purchasers or holders of any bonds of the Authority;

(h) to borrow money, make and issue bonds of the Authority for any of its corporate purposes, and to secure payment of its bonds and of any and all other obligations by pledge of or lien on all or any of its contracts, revenues, and income only; and

(i) to make and issue bonds for the purpose of funding, refunding, purchasing, paying, or discharging any of the outstanding bonds or obligations issued or assumed by it or

any bonds or obligations the principal or interest of which is payable in whole or in part from its revenues; and

**The System and the  
1947 Indenture.**

WHEREAS, the Authority owns and operates an integrated system for the generation, transmission and distribution of electricity throughout the Commonwealth of Puerto Rico, and for the purpose of providing funds, with other available funds, for refunding certain outstanding bonds and paying the cost of a capital improvement program to provide additional generating capacity for the System (as defined herein) and necessary extensions of the transmission and distribution lines of the System and other improvements, the Authority has heretofore issued its Puerto Rico Water Resources Authority Electric Revenue Bonds, outstanding on the date hereof in the aggregate principal amount of \$868,643,000, under and pursuant to the provisions of a trust indenture, dated as of the first day of January, 1947, by and between the Authority and The National City Bank of New York (now First National City Bank), as trustee, as amended by supplemental indentures dated as of January 1, 1948, July 1, 1956, January 1, 1961, March 1, 1962, March 1, 1965, April 1, 1967, April 1, 1970 and September 1, 1971 (said indenture as so amended, together with all future amendments and all indentures supplemental thereto as therein permitted, being herein called the "1947 Indenture"); and

**Resignation of  
Trustee under the  
1947 Indenture.**

WHEREAS, First National City Bank has resigned as trustee under the 1947 Indenture and has thereby become discharged from the trusts created thereby ; and

**Successor trustee  
under the 1947  
Indenture.**

WHEREAS, the Authority has appointed The Chase Manhattan Bank (National Association) trustee under the 1947 Indenture, and said banking association, having executed, acknowledged and delivered to its predecessor trustee, and also to the Authority, an instrument in writing accepting such appointment under the 1947 Indenture, is now vested with all rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor trustee under the 1947 Indenture; and

**Determination to  
acquire additional  
facilities.**

WHEREAS, based upon surveys, estimates and recommendations, the Authority has found and determined that it is necessary and advisable to provide funds for additional facilities for the generation, transmission and distribution of electricity to serve the present and prospective demands upon the System, and has determined that it is necessary to increase its capacity to issue revenue bonds secured as hereinafter provided to provide funds for the foregoing purposes; and

**Determination to**

WHEREAS, the Authority deems it advisable to make provision

**issue revenue bonds.** for the issuance from time to time of revenue bonds on a parity with the bonds issued initially under the provisions of this Agreement for the purpose of paying all or any part of the cost of any Improvements (as defined herein) ; and

WHEREAS, the Authority has determined that the coupon bonds to be issued hereunder and the interest coupons to be attached thereto, the registered bonds without coupons to be issued hereunder and the certificate of authentication by the Trustee to be endorsed on all such bonds shall be, respectively, substantially in the following forms, with such variations, omissions and insertions as are required or permitted by this Agreement :

**Form of coupon bonds.**

[FORM OF COUPON BONDS]

No \_\_\_\_\_ \$ \_\_\_\_\_

UNITED STATES OF AMERICA

PUERTO RICO ELECTRIC POWER AUTHORITY

POWER REVENUE BOND, SERIES.....

Puerto Rico Electric Power Authority, a body corporate and politic constituting a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (herein sometimes called the "Authority"), for value received, hereby promises to pay, solely from the special fund provided therefor as hereinafter set forth, to the bearer on the 1st day of \_\_\_\_\_, \_\_\_ (or earlier as herein-after referred to), upon the presentation and surrender hereof, the principal sum of \_\_\_\_\_ THOUSAND DOLLARS and to pay, solely from said special fund, interest thereon from the date hereof at the rate of \_\_\_\_\_ per centum (\_\_\_%) per annum until payment of said principal sum, such interest to the maturity hereof being payable semi-annually on the 1st days of January and July in each year upon the presentation and surrender of the coupons representing such interest as the same respectively become due. Both the principal of and the interest on this bond are payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts.

The principal of this bond and the interest hereon are payable at the principal office of \_\_\_\_\_, in the \_\_\_\_\_, or at the principal office of \_\_\_\_\_, in the Borough of Manhattan, City and State of New York, at the option of the holder, or at such other office or agency of the Authority maintained for that purpose as the Authority shall

determine.

This bond shall not be deemed to constitute a debt or obligation of the Commonwealth of Puerto Rico or any of its municipalities or other political subdivisions, and neither the Commonwealth of Puerto Rico nor any such municipalities or other political subdivisions are liable for the payment of this bond or the interest hereon, but this bond shall be payable as to both principal and interest solely from the special fund provided therefor as hereinafter set forth.

This bond is one of a duly authorized series of revenue bonds known as “Puerto Rico Electric Power Authority Power Revenue Bonds, Series.....”, dated as of the 1st day of....., \_\_\_\_\_, consisting of bonds maturing in annual installments on the 1st day of in \_\_\_\_\_ the \_\_\_\_\_ years \_\_\_\_\_ to \_\_\_\_\_, inclusive (herein called the “serial bonds”), and of bonds maturing on the 1st day of and \_\_\_\_\_ the 1st day of \_\_\_\_\_, \_\_\_\_\_ (herein collectively called the “term bonds”), and issued for the purpose of paying the cost of acquiring or constructing capital improvements to the electric power properties of the Authority (the electric power properties owned and operated by the Authority as a single integrated system, together with all improvements, renewals and replacements thereof and extensions and additions thereto financed under the provisions of the 1947 Indenture (hereinafter mentioned) and the Agreement (hereinafter mentioned), being herein called the “System”).

All of the bonds are issued under and pursuant to a trust agreement (said agreement, together with all agreements supplemental thereto as therein permitted, being herein called the “Agreement”), dated as of the 1st day of January, 1974, by and between the Authority and First National City Bank, in the Borough of Manhattan, City and State of New York (said banking association and any bank or trust company becoming successor trustee under the Agreement being herein called the “Trustee”), an executed counterpart of which Agreement is on file at the corporate trust office of the Trustee. Reference is hereby made to the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of bonds issued under the Agreement, the collection and disposition of revenues, the fund charged with and pledged to the payment of the interest on and the principal of the bonds, the nature and extent of the security, the terms and conditions on which the bonds of each series are or may be issued, the rights, duties and obligations of the Authority and of the Trustee and the rights of the holders of the bonds, and, by the acceptance of this bond, the holder

hereof assents to all of the provisions of the Agreement.

The Agreement provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of bonds (such bonds and the bonds of the series of which this is one being herein collectively called the “bonds”).

This bond is issued and the Agreement was made and entered into under and pursuant to the Puerto Rican Federal Relations Act and the Constitution and laws of the Commonwealth of Puerto Rico, including Act No. 83 of the Legislature of Puerto Rico, approved May 2, 1941, as amended, reenacted and supplemented (the “Authority Act”), and under and pursuant to resolutions duly adopted by the Authority.

The Agreement provides for the fixing, charging and collecting by the Authority of reasonable rates and charges for the use of the services and facilities furnished by the System sufficient to provide for the payment of the expenses of the Authority incurred in the conservation, repair, maintenance and operation of the System and for the payment of the principal of and the interest on the 1947 Indenture Bonds and the bonds as the same become due and payable, including reserves for such purposes. The 1947 Indenture provides for the deposit to the credit of a special fund designated “Water Resources Authority Renewal and Replacement Fund” (herein called the “Renewal and Replacement Fund”) of the revenues of the System, to the extent required, over and above such expenses of conservation, repair, maintenance and operation and the amounts required to be deposited to the credit of the Puerto Rico Water Resources Authority Electric Revenue Bonds Sinking Fund and the Puerto Rico Water Resources Authority General Reserve Fund under the 1947 Indenture, and the Agreement provides for the deposit to the credit of the Renewal and Replacement Fund of sufficient funds to provide for the payments from said Fund to the special fund created under the Agreement designated “Puerto Rico Water Resources Authority Power Revenue Bonds Interest and Sinking Fund” (herein called the “Sinking Fund”). The Agreement also provides for the payment into the Sinking Fund of a sufficient amount of the funds on deposit to the credit of the Renewal and Replacement Fund to pay the principal of and the interest on all bonds issued under the Agreement as the same become due and payable and to create a reserve for such purpose, which special fund is pledged to and charged with the payment of the principal of and the interest on the bonds.

The Authority has heretofore issued under the provisions of the trust indenture, dated as of the first day of January, 1947 (such indenture as amended being herein called the “1947 Indenture”),

Puerto Rico Water Resources Authority Electric Revenue Bonds (herein, with any additional bonds which hereafter may be issued under the provisions of the 1947 Indenture, called the “1947 Indenture Bonds”). Until all of the 1947 Indenture Bonds shall be paid or provision shall be made for their payment and the release of the 1947 Indenture, the revenues of the System, over and above the expenses of conservation, repair, maintenance and operation thereof, are pledged to the extent required to the payment of the principal of and the interest on the outstanding 1947 Indenture Bonds.

The bonds are issuable as coupon bonds and as registered bonds without coupons, in such denominations as the Authority may by resolution determine. At the corporate trust office of the Trustee, in the manner and subject to the limitations and conditions provided in the Agreement and without cost except for any tax or other governmental charge, registered bonds without coupons may be exchanged for an equal aggregate principal amount of coupon bonds of the same series and maturity, bearing interest at the same rate and having attached thereto coupons representing all unpaid interest due or to become due thereon, or of registered bonds without coupons of the same series and maturity, of authorized denominations and bearing interest at the same rate, and coupon bonds with all coupons appertaining thereto representing all unpaid interest due or to become due thereon may in like manner be exchanged for an equal aggregate principal amount of registered bonds without coupons of the same series and maturity, of authorized denominations and bearing interest at the same rate.

[Here insert in the bonds of each Series the terms of redemption applicable to the bonds of such Series.]

The moneys in the Sinking Fund available for the purchase or redemption of bonds shall be allocated to all series of bonds outstanding under the Agreement in the manner provided in the Agreement.

If less than all of the bonds of any one maturity of a series shall be called for redemption, the particular bonds or portions of registered bonds without coupons to be redeemed from such series and maturity shall be selected by the Trustee as provided in the Agreement.

Any such redemption, either in whole or in part, shall be made upon at least thirty (30) days' prior notice by publication and otherwise as provided in the Agreement, and shall be made in the

manner and under the terms and conditions provided in the Agreement. On the date designated for redemption, notice having been published as provided in the Agreement, the bonds or portions of registered bonds without coupons so called for redemption shall become and be due and payable at the redemption price provided for redemption of such bonds or such portions thereof on such date, and, if moneys for payment of the redemption price and the accrued interest are held by the Trustee or by the paying agents, as provided in the Agreement, interest on such bonds or such portions thereof so called for redemption shall cease to accrue, the coupons for any such interest payable subsequent to the redemption date shall be void, such bonds or such portions thereof so called for redemption shall cease to be entitled to any benefit or security under the Agreement, and the holders or registered owners thereof shall have no rights in respect of such bonds or such portions thereof so called for redemption except to receive payment of the redemption price thereof and the accrued interest so held by the Trustee or by the paying agents.

The holder of this bond shall have no right to enforce the provisions of the Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Agreement, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Agreement.

In certain events, on the conditions, in the manner and with the effect set forth in the Agreement, the principal of all the bonds then outstanding under the Agreement may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

Modifications or alterations of the Agreement or of any agreement supplemental thereto may be made by the Authority and the Trustee only to the extent and in the circumstances permitted by the Agreement.

As declared by the Authority Act, this bond shall at all times be, and shall be understood to be, a negotiable instrument for all purposes.

This bond is issued with the intent that the laws of the Commonwealth of Puerto Rico shall govern its construction.

All acts, conditions and things required by the Puerto Rican Federal Relations Act and the Constitution and laws of the Commonwealth of Puerto Rico and the rules and regulations of the Authority to happen, exist and be performed precedent to and in the

issuance of this bond and the execution of the Agreement have happened, exist and have been performed as so required.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Agreement until it shall have been authenticated by the execution by the Trustee of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, Puerto Rico Electric Power Authority has caused this bond to [be signed by] [bear the facsimile signature of] the Executive Director of the Authority and to [be signed by] [bear the facsimile signature of] the Secretary of the Authority, and a facsimile of its corporate seal to be imprinted hereon, and the attached interest coupons to bear the facsimile signature of said Executive Director, all as of the 1st day of....., \_\_\_\_\_.

[Facsimile of corporate seal]

PUERTO RICO ELECTRIC POWER AUTHORITY

By ..... Executive Director

Secretary

**Form of coupons.**

[FORM OF COUPONS]

No \_\_\_\_\_

\$ \_\_\_\_\_

On ..... 1, 19 ....., Puerto Rico Electric Power Authority will pay to bearer (unless the bond mentioned below shall previously have become payable as provided in the Agreement referred to in said bond and provision for payment thereof shall have been duly made) at the principal office of, in the ....., or at the principal office of ....., in the Borough of Manhattan, City and State of New York, at the option of the bearer, or at such other office or agency of the Authority maintained for that purpose as the Authority shall determine upon the presentation and surrender hereof, the sum of.....Dollars in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, solely from the special fund referred to in, and for the semiannual interest then due upon, its

Puerto Rico Electric Power Authority Power Revenue Bond, Series, .....dated as of.. , , No .

Executive Director, Puerto Rico Electric Power Authority

**Form of registered bonds without coupons.**

[FORM OF REGISTERED BONDS WITHOUT COUPONS]

Same as Form of Coupon Bonds except as follows :

1. *Substitute the following for the caption and the first paragraph:*

No. R \_\_\_\_\_ \$ \_\_\_\_\_

UNITED STATES OF AMERICA

PUERTO RICO ELECTRIC POWER AUTHORITY

POWER REVENUE BOND, SERIES

Puerto Rico Electric Power Authority, a body corporate and politic constituting a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (herein sometimes called the "Authority"), for value received, hereby promises to pay, solely from the special fund provided therefor as hereinafter set forth, to..... , or registered assigns or legal representative, on the 1st day of \_\_\_\_\_, \_\_\_\_\_ (or earlier as hereinafter referred to), upon the presentation and surrender hereof at the Corporate Trust Office of the Trustee (hereinafter mentioned), the principal sum of ..... DOLLARS in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and to pay, solely from said special fund, to the registered owner hereof by check mailed to the registered owner at his address as it appears on the bond registration books of the Authority, interest on said principal sum from the date hereof or from the January 1 or July 1 next preceding the date of authentication to which interest shall have been paid, unless such date of authentication is a January 1 or July 1, in which case, from such date, semi-annually on January 1 and July 1 in each year in like coin or currency, at the rate of \_\_\_\_\_ per centum ( ..... %) per annum until payment of said principal sum.

2. *Substitute the following for the paragraph concerning the notice of redemption and the effect thereof:*

Any such redemption, either in whole or in part, shall be made upon at least thirty (30) days' prior notice by publication and otherwise as provided in the Agreement, and shall be made in the manner and under the terms and conditions provided in the Agreement. On the date designated for redemption, notice having been published as provided in the Agreement, the bonds or portions of registered bonds without coupons so called for redemption shall become and be due and payable at the redemption price provided for redemption of such bonds or such portions thereof on such date, and, if moneys for payment of the redemption price and the accrued interest are held by the Trustee, as provided in the Agreement, interest on such bonds or such portions thereof so called for redemption shall cease to accrue, such bonds or such portions thereof so called for redemption shall cease to be entitled to any benefit or security under the Agreement, and the holders or registered owners thereof shall have no rights in respect of such bonds or such portions thereof so called for redemption except to receive payment of the redemption price thereof and the accrued interest so held by the Trustee. If a portion of this bond shall be called for redemption, a new bond or bonds in principal amount equal to the unredeemed portion hereof will be issued to the registered owner upon the surrender hereof.

3. *Substitute the following for the paragraph concerning negotiability :*

The transfer of this bond is registrable by the registered owner hereof in person or by his attorney or legal representative at the principal office of the Trustee but only in the manner and subject to the limitations and conditions provided in the Agreement and upon surrender and cancellation of this bond. Upon any such registration of transfer the Authority shall execute and the Trustee shall authenticate and deliver in exchange for this bond a new registered bond or bonds without coupons, registered in the name of the transferee, of authorized denominations, or, at the option of the transferee, coupon bonds with coupons attached representing all unpaid interest due or to become due thereon, in aggregate principal amount equal to the principal amount of this bond, of the same series and maturity and bearing interest at the same rate.

As declared by the Authority Act, this bond, notwithstanding the provisions for registration of transfer stated herein and contained in the Agreement, shall at all times be, and shall be understood to be, a negotiable instrument for all purposes.

4. *Substitute the following for the witnessing clause:*

IN WITNESS WHEREOF, Puerto Rico Electric Power Authority

has caused this bond to [be signed by] [bear the facsimile signature of] the Executive Director of the Authority and to [be signed by] [bear the facsimile signature of] the Secretary of the Authority, and a facsimile of its corporate seal to be imprinted hereon, all as of the 1st day of \_\_, \_\_\_\_\_.

**Form of Certificate of Authentication.**

5. *Omit the Form of Coupons.*

[TO BE ENDORSED ON ALL BONDS]

**CERTIFICATE OF AUTHENTICATION**

This is one of the bonds of the series designated therein and issued under the provisions of the within mentioned Agreement.

First National City Bank, Trustee

By .....  
Authorized Officer

**Form of Certificate of Authentication for registered bonds.**

[TO BE ENDORSED ON ALL REGISTERED BONDS FOLLOWING  
**THE CERTIFICATE OF AUTHENTICATION**]

Date of authentication: .....

And

**Power to enter Agreement.**

WHEREAS, by virtue of the Authority Act, the Authority is authorized to issue revenue bonds as hereinafter provided, to enter into this Agreement and to do or cause to be done all the acts and things herein provided or required to be done as hereinafter covenanted ; and

**Authorization of Agreement.**

WHEREAS, the execution and delivery of this Agreement have been duly authorized by resolution of the Authority; and

**Recital of compliance with law.**

WHEREAS, all acts, conditions and things required by the Puerto Rican Federal Relations Act, by the Constitution and laws of the Commonwealth of Puerto Rico and the rules and regulations of the Authority to happen, exist and be performed precedent to and in the execution and delivery of this Agreement have happened, exist and have been performed as so required, in order to make this Agreement a legal, valid and binding trust agreement for the security of the bonds in accordance with its terms; and

**Recital of acceptance**

WHEREAS, the Trustee has accepted the trusts created by this

**by Trustee.** Agreement and in evidence thereof has joined in the execution hereof;

**Pledge of revenues of the System**

Now, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the premises, of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the bonds by the holders thereof, and also for and in consideration of the sum of One Dollar to the Authority in hand paid by the Trustee at or before the execution and delivery of this Agreement, the receipt of which is hereby acknowledged, and for the purpose of fixing and declaring the terms and conditions upon which the bonds are to be issued, executed, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and in order to secure the payment of all the bonds at any time issued and outstanding hereunder and the interest and the redemption premium, if any, thereon according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants, agreements and conditions therein and herein contained, the Authority has executed and delivered this Agreement and has pledged and does hereby pledge to the Trustee the revenues of the System, subject to the pledge of such revenues to the payment of the principal of and the interest on the 1947 Indenture Bonds (hereinafter mentioned), and other moneys to the extent provided in this Agreement as security for the payment of the bonds and the interest and the redemption premium, if any, thereon and as security for the satisfaction of any other obligation assumed by it in

**Agreement of parties.**

connection with such bonds, and it is mutually agreed and covenanted by and between the parties hereto, for the equal and proportionate benefit and security of all and singular the present and future holders of the bonds issued and to be issued under this Agreement, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one bond over any other bond, by reason of priority in the issue, sale or negotiation thereof or otherwise, as follows:

ARTICLE I.  
DEFINITIONS.

SECTION 101. In addition to words and terms elsewhere defined in this Agreement, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

**Accreted Value.**

The term "Accreted Value" shall mean with respect to any Capital Appreciation Bonds (i) as of any Valuation Date, the amount set forth for such date in the resolution authorizing such Capital Appreciation Bonds and (ii) as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation

Date and (b) the product of (1) a fraction, the numerator of which is the actual number of days having elapsed from the preceding Valuation Date and the denominator of which is the actual number of days from such preceding Valuation Date to the next succeeding Valuation Date and (2) the difference between the Accreted Values for such Valuation Dates.

**Additional Construction Fund Usage.**

The term “Additional Construction Fund Usage” shall have the meaning given to it in Section 405.

**Ad Hoc Group.**

The term “Ad Hoc Group” shall mean such term as defined in the Forbearance Agreement.

**Agreement.**

The word “Agreement” shall mean this Agreement, dated as of January 1, 1974, together with all agreements supplemental hereto as herein permitted.

**Amending Creditors.**

The term “Amending Creditors” shall mean Assured Guaranty Corp., Assured Guaranty Municipal Corp., National Public Finance Guarantee Corporation, Syncora Guarantee Inc., and the Ad Hoc Group, including successors and assigns thereof. For the purposes of this Agreement, the Trustee shall be entitled to rely on a certification of an Amending Creditor that it is an Amending Creditor.

**Amending Creditor Bonds.**

The term “Amending Creditor Bonds” shall mean, with respect to any date, all outstanding bonds that are beneficially owned or (without duplication) insured by the Amending Creditors as of such date (which outstanding bonds that are beneficially owned by the Amending Creditors shall only include such bonds of which the other Amending Creditors have received written notice, which notice will be effective one (1) business day after receipt). For purposes of this Agreement, the Trustee shall be entitled to rely on a certification by an Amending Creditor that it beneficially owns or (without duplication) insures certain principal amount of outstanding bonds.

**Amendment.**

The term “Amendment” shall refer to the Seventeenth Supplemental Agreement, dated as of July 1, 2015, by and between the Authority and the Trustee.

**Amendment Effective Date.**

The term “Amendment Effective Date” shall mean March 16, 2016, being the effective date of the Eighteenth Amendment.

**Amendment Period.**

The term “Amendment Period” shall mean the period from the Amendment Effective Date until the Amendment Termination Date.

**Amendment**

The term “Amendment Termination Date” shall mean the

**Termination Date.**

earliest of (a) the Scheduled Amendment Termination Date, (b) the date on which (i) the “Support Period” (as defined in the RSA) has expired or terminated in accordance with the terms of the RSA (including expiration or termination as a result of withdrawal by the relevant Supporting Creditors from the RSA) as to any Supporting Creditor Class or as to any Insurer (as defined in the RSA), and whether such termination or expiration occurred on, before or after the date of the Eighteenth Amendment, and (ii) the Trustee has received written notice from the Authority or any Supporting Creditor (as defined in the RSA) or former Supporting Creditor confirming the same, and (c) the filing of a proceeding by or on behalf of the Authority pursuant to the Puerto Rico Public Corporation Debt Enforcement and Recovery Act, title 11 of the U.S. Code, or any other any bankruptcy or insolvency law, or the commencement of any other action or proceeding that seeks to adjust, extend or challenge the claims of creditors pursuant to any federal, state or Puerto Rico statute, now in effect or hereinafter enacted. Upon the occurrence of the date described in clause (b)(i) of this definition, the Authority shall promptly, and in any event within 2 business days thereof, provide written notice to the Trustee confirming such occurrence. For purposes of this Agreement, the Trustee shall be entitled to rely on a certification of any person or entity that it is a Supporting Creditor or former Supporting Creditor, as applicable.

**Amortization  
Accrual.**

The term “Amortization Accrual” shall mean for any period the amount of an Amortization Requirement that would accrue during such period if such Requirement accrued ratably on the basis of a year consisting of twelve (12) thirty-day months. Unless otherwise provided by resolution of the Authority or an agreement supplemental hereto, the monthly accrual in respect of an Amortization Requirement for a term bond shall commence on the first day of each month in the fiscal year for which such Requirement has been established and shall end on the first day of the month succeeding the relevant Deposit Day.

**Amortization  
Requirement.**

As applied to the term bonds of any Series, the term “Amortization Requirement” for any fiscal year shall mean the principal amount fixed or computed for such fiscal year as hereinafter set forth for the retirement of such term bonds by purchase or redemption.

The Amortization Requirements for the term bonds of each Series shall be initially the respective principal amounts for each fiscal year as fixed in a resolution of the Board adopted prior to the issuance of the bonds of such Series; provided, however, that if any additional term bonds of such Series shall be issued under the provisions of the first paragraph of Section 210 of this Agreement,

the respective Amortization Requirements for the term bonds of such Series shall be increased in proportion as nearly as may be practicable to the increase in the total principal amount of the term bonds of such Series. The aggregate amount of such Amortization Requirements for the term bonds of each Series shall be equal to the aggregate principal amount of the term bonds of such Series. The Amortization Requirements for the term bonds of each Series shall begin in the fiscal year determined by the Board.

If at the close of any fiscal year the total principal amount of term bonds of any Series retired by purchase or redemption, or prior to the close of such fiscal year called for redemption under the provisions of Section 511 of this Agreement, shall be in excess of the amount of the Amortization Requirements for the term bonds of such Series for such fiscal year, then the amount of the Amortization Requirements for the term bonds of such Series shall be reduced for such subsequent fiscal years in such amounts aggregating the amount of such excess as shall be determined by the Executive Director in an order filed with the Trustee on or before the 10th day of July following the close of such fiscal year.

If at the close of any fiscal year the total principal amount of term bonds of any Series retired by purchase or redemption, or called for redemption under the provisions of Section 511 of this Agreement, prior to the close of such fiscal year shall be less than the amount of the Amortization Requirements for the term bonds of such Series for such fiscal year, then the amount of the Amortization Requirements for the term bonds of such Series for the next succeeding fiscal year shall be increased by the amount of the excess of such deficiency over the amount then held to the credit of the Redemption Account.

It shall be the duty of the Trustee, on or before the 15th day of July in each fiscal year, to compute the Amortization Requirements for the then current fiscal year for the term bonds of each Series then outstanding. The Amortization Requirement for the then current fiscal year shall continue to be applicable during the balance of such current fiscal year and no adjustment shall be made therein by reason of term bonds purchased or redeemed or called for redemption during such current fiscal year.

**Annual Budget.**

The term “Annual Budget” shall mean the Authority’s budget of Current Expenses and Capital Expenditures for a fiscal year adopted pursuant to the provisions of Section 504 of this Agreement.

**Authority.**

The word “Authority” shall mean the Puerto Rico Electric Power Authority, a body corporate and politic constituting a public

corporation and governmental instrumentality of the Commonwealth of Puerto Rico, and the successor or successors of the Authority.

**Authority Act.**

The term “Authority Act” shall mean the Puerto Rico Water Resources Authority Act, being Act No. 83 of the Legislature of Puerto Rico, approved May 2, 1941, as amended and reenacted by Act No. 19, approved April 8, 1942, as amended, and Act No. 111, approved May 6, 1941, as amended by Act No. 153, approved May 14, 1943, as amended.

**Approved Costs of Improvements.** [Note: This definition only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(iii) of the Eighteenth Supplemental Agreement.]

The term “Approved Costs of Improvements” shall mean the Approved Initial Costs of Improvements and any other costs of Improvements (and of extensions of the System) which the Required Amending Creditors or their respective advisors have confirmed are reasonably acceptable (or which have been deemed reasonably acceptable to the Required Amending Creditors in accordance with clause (3) of Section 505) and regarding which the Authority provided written certification to the Trustee and the Required Amending Creditors or their respective advisors, that such costs of Improvements (and of extensions of the System) are or are deemed to be reasonably acceptable to the Required Amending Creditors or their respective advisors.

**Approved Initial Costs of Improvements.** [Note: This definition only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(iii) of the Eighteenth Supplemental Agreement.]

The term “Approved Initial Costs of Improvements” shall mean the costs of Improvements (and of extensions of the System) specified in the initial schedule approved by the Required Amending Creditors pursuant to Section 505.

**Board.**

The word “Board” shall mean the governing board of the Authority as constituted from time to time and defined by the Authority Act, or if said Board shall be abolished, then the board, body or officer succeeding to the principal functions thereof or to whom the powers of the Authority shall be given by law.

**Bond Service Account.**

The term “Bond Service Account” shall mean the special account created in the Sinking Fund by the provisions of Section 507 of this Agreement.

**Bondholders of record.**

The term “bondholder of record” shall mean any bondholder who shall have filed with the Secretary, within the period of two years immediately prior to any time when such term has application, a written request setting forth his name and address and the particular reports, notices and other documents which he desires to receive and which are required to be mailed under the requirements of this Agreement.

**Bonds.**

The word “bonds” shall mean the bonds issued under this Agreement

**BPA.**

The term “BPA” shall mean the Bond Purchase Agreement, and all annexes, schedules and exhibits thereto, dated as of January 27, 2016, and the Bond Purchase Agreement, and all annexes, schedules and exhibits thereto, dated as of June 29, 2016, each by and among the Authority and the Purchasers defined therein, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms).

**Build America Bonds.**

The term “Build America Bonds” shall mean a series of bonds designated as “Build America Bonds” by the Authority for purposes of Section 54AA of the Code and for which the Authority has irrevocably elected pursuant to Section 54AA(g) of the Code to receive the Federal Subsidy from the United States Treasury in connection therewith under Section 6431 of the Code and apply it in accordance with the provisions of the resolution or resolutions adopted by the Board authorizing the issuance of such bonds.

**Capital Appreciation Bonds.**

The term “Capital Appreciation Bonds” shall mean any bonds hereafter issued as to which interest is payable only at the maturity or prior redemption of such bonds. For the purposes of (i) receiving payment of the redemption price if a Capital Appreciation Bond is redeemed prior to maturity to the extent provided in the resolution authorizing the Capital Appreciation Bonds, or (ii) receiving payment of a Capital Appreciation Bond if the principal of all bonds is declared immediately due and payable following an event of default as provided in Section 802 of this Agreement or (iii) computing the principal amount of bonds held by the registered owner of a Capital Appreciation Bond in giving to the Authority or the Trustee any notice, consent, request, or demand pursuant to this Agreement for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value. In the case of Capital Appreciation Bonds that are convertible to bonds with interest payable prior to maturity or prior redemption of such bonds, the term “Capital Appreciation Bonds” shall be limited to the period prior to such conversion, and after such conversion, the bonds shall be viewed as any other bonds of the same type for purposes of this

Agreement.

**Capital Expenditures.**

The term “Capital Expenditures” shall mean all expenditures made on account of the cost of the Capital Improvement Program, as defined in the 1947 Indenture, and the cost of Improvements under this Agreement and the 1947 Indenture and those expenditures made for the purposes for which funds are provided pursuant to the provisions of Section 512 of the 1947 Indenture.

**Capital Improvement Fund.**

The term “Capital Improvement Fund” shall mean the Puerto Rico Electric Power Authority Capital Improvement Fund, a special fund created and designated by Section 507 of this Agreement.

**Citibank/Scotiabank Lenders.**

The term “Citibank/Scotiabank Lenders” shall mean Citibank, N.A. or its transferees, as applicable, and the Lenders (as defined in the Scotiabank Credit Agreement).

**Citibank/Scotiabank Lines of Credit.**

The term “Citibank/Scotiabank Lines of Credit” shall mean that certain Trade Finance Facility Agreement, dated as of July 20, 2012, between the Authority and Citibank, N.A. or its transferees, as applicable, as amended or otherwise modified from time to time, and the Scotiabank Credit Agreement.

**Construction Fund.**

The term “Construction Fund” shall mean the Puerto Rico Electric Power Authority Power System Construction Fund, a special fund created and designated by the provisions of Section 401 of this Agreement.

**Construction Fund Replenishment Amount.** [Note: This definition only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(a) of the Sixteenth Supplemental Agreement.]

The term “Construction Fund Replenishment Amount” shall mean in respect of a Construction Fund Replenishment Date an amount equal to:

(a) the aggregate amount of all Additional Construction Fund Usages prior to such Construction Fund Replenishment Date,

less, the sum of:

(b) the aggregate amount that the Authority has applied to the cost of Improvements from any source other than the Construction Fund from or after the Amendment Effective Date, irrespective of whether such amount has been applied prior to or after the commencement of any bankruptcy proceeding, insolvency proceeding, proceeding under the Puerto Rico Public Corporation Debt Enforcement and Recovery Act, Act No. 71-2014, or any similar proceeding, and

(c) the aggregate amount theretofore credited to the Construction Fund by the Authority pursuant to Section 406 of this

Agreement.

**Construction Fund Replenishment Date.**  
[Note: This definition only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(a) of the Sixteenth Supplemental Agreement.]

The term “Construction Fund Replenishment Date” shall mean the twenty-fifth (25) day of each month (or if such day is not a business day, the immediately succeeding business day) on which the Construction Fund Replenishment Amount is greater than zero.

**Consulting Engineers.**

The term “Consulting Engineers” shall mean the engineer or engineering firm or corporation at the time employed by the Authority under the provisions of Section 706 of this Agreement to perform and carry out the duties imposed on the Consulting Engineers by this Agreement.

**Controller.**

The word “Controller” shall mean the Controller or any Assistant Controller of the Authority, or if there is no controller or assistant controller, then any person designated by the Board or by the by-laws of the Authority to perform the functions of the chief financial officer of the Authority.

**Cost.**

The word “cost”, as applied to any Improvements, shall embrace the cost of the acquisition and construction and all obligations and expenses and all items of cost which are set forth in Section 403 of this Agreement.

**Current Expenses.**

The term “Current Expenses” shall mean the Authority’s reasonable and necessary current expenses of maintaining, repairing and operating the System and shall include, without limiting the generality of the foregoing, all administrative expenses, insurance premiums, expenses of preliminary surveys not chargeable to Capital Expenditures, engineering expenses relating to operation and maintenance, fees and expenses of the Trustee, the 1947 Trustee, the Paying Agents and of the paying agents under the 1947 Indenture, legal expenses, any payment to pension or retirement funds, and all other expenses required to be paid by the Authority under the provisions of the 1947 Indenture, this Agreement or by law, or permitted by standard practices for public utility systems, similar to the properties and business of the Authority and applicable in the circumstances but shall not include any deposits to the credit of the Sinking Fund, the Reserve Maintenance Fund, the Self-insurance

Fund, the Capital Improvement Fund or the 1947 Sinking Fund or deposits under the provisions of Sections 511, 512 and 513 of the 1947 Indenture, and the Subordinate Obligation Fund. Notwithstanding the foregoing or anything herein to the contrary, none of the holders, the Trustee, and the Authority shall contest whether an expense, claim, liability, or amount shall be construed as a Current Expense under this Agreement based solely on (x) the Citibank/Scotiabank Lenders' actions on the Amendment Effective Date or during the Amendment Period, including (i) forbearing, delaying or failing to exercise remedies, (ii) agreeing to a postponement or delay in payment of interest or principal, (iii) granting an extension of any maturity date, or (iv) not requiring the repayment or reborrowing of any loans or not requiring any loans to be revolving loans, or (y) the inclusion in this Agreement as a Potential Default, and the inclusion in the Forbearance Agreement as a "Potential Default" (as defined in the Forbearance Agreement) of the Authority's use of moneys from the General Fund to service its debts under the Citibank/Scotiabank Lines of Credit. Notwithstanding the foregoing or anything herein to the contrary, none of the holders, the Trustee, and the Authority shall contest whether an expense, claim, liability, or amount shall be construed as a Current Expense under this Agreement based solely on (x) the Citibank/Scotiabank Lenders' actions on the Amendment Effective Date or during the Amendment Period, including (i) forbearing, delaying or failing to exercise remedies, (ii) agreeing to a postponement or delay in payment of interest or principal, (iii) granting an extension of any maturity date, or (iv) not requiring the repayment or reborrowing of any loans or not requiring any loans to be revolving loans, or (y) the inclusion in this Agreement as a Potential Default, and the inclusion in the Forbearance Agreement as a "Potential Default" (as defined in the Forbearance Agreement) of the Authority's use of moneys from the General Fund to service its debts under the Citibank/Scotiabank Lines of Credit. Notwithstanding the foregoing or anything herein to the contrary, none of the holders, the Trustee, and the Authority shall contest whether an expense, claim, liability, or amount shall be construed as a Current Expense under this Agreement based solely on (x) the Solus/Scotiabank Lenders' actions on February 3, 2016 (the New Effective Date (as defined in the RSA)), during the Amendment Period, or during the time the Support Period (as defined in the RSA) is in full force and effect as to each Supporting Creditor Class other than GDB, including (i) forbearing, delaying or failing to exercise remedies, (ii) agreeing to a postponement or delay in payment of interest or principal, (iii) granting an extension of any maturity date, or (iv) not requiring the repayment or reborrowing of any loans or not requiring any loans to be revolving loans, or (y) the inclusion in this

Agreement as a Potential Default, and the inclusion in the RSA as a “Potential Default” (as defined in the RSA) of the Authority’s use of moneys from the General Fund to service its debts under the Solus/Scotiabank Lines of Credit.

**Daily newspaper.**

The term “daily newspaper” shall mean a newspaper regularly published in the English language on at least five (5) business days in each calendar week and, in the case of a newspaper published in the Commonwealth of Puerto Rico, may include a newspaper regularly published in the Spanish language on at least five (5) business days in each calendar week.

**Depository.**

The word “Depository” shall mean one or more banks or trust companies duly authorized under the laws of the United States of America, or any state thereof or the Commonwealth of Puerto Rico to engage in the banking business therein and designated by the Authority as a depository of moneys under the provisions of this Agreement, each such depository to be a member of the Federal Deposit Insurance Corporation and shall also mean the Trustee and Government Development Bank for Puerto Rico.

**Deposit Day.**

The term “Deposit Day” shall mean the date specified in the first paragraph of Section 507 of this Agreement as the date by which all of the moneys then held to the credit of the Revenue Fund shall be withdrawn by the Treasurer and deposited in the manner set forth in said Section.

**Designated Maturity Bonds.**

The term “Designated Maturity Bonds” shall mean the indebtedness incurred by the Authority under the terms of a separate trust agreement or resolution, which indebtedness has a maturity of at least ten (10) years and is secured, as to the unamortized principal thereof, on a subordinate basis to the bonds and for which (i) no amortization of principal has been established or (ii) the aggregate amount of the amortized principal that has been established is less than the principal amount of the indebtedness; provided that interest on said indebtedness and any amortized principal of said indebtedness may be payable on a parity, respectively, with interest on bonds and Amortization Requirements on term bonds, in which case said interest and amortized principal shall be included in the calculation of Principal and Interest Requirements on bonds for purposes of this Agreement and shall otherwise be deemed to be, and be payable as, interest and Amortization Requirements on bonds for purposes of this Agreement.

**Eighteenth Amendment.**

The term “Eighteenth Amendment” shall refer to the Eighteenth Supplemental Agreement, dated as of March 1, 2016, by

and between the Authority and the Trustee.

**Executive Director.**

The term “Executive Director” shall mean the Executive Director or the Vice Executive Director of the Authority for the time being, or if there is no Executive Director or Vice Executive Director, then any person designated by the Board or by the by-laws of the Authority to perform the functions of the Executive Director.

**Extendible Maturity Bonds.**

The term “Extendible Maturity Bonds” shall mean bonds the maturities of which, by their terms, may be extended by and at the option of the bondholder or the Authority.

**Federally Subsidized Bonds.**

The term “Federally Subsidized Bonds” shall mean either Build America Bonds or Other Subsidy Bonds or both, as the case may be.

**Federal Subsidy.**

The term “Federal Subsidy” shall mean a payment made by the Secretary of the Department of Treasury to or for the account of the Authority pursuant to the Code in respect of a series of bonds constituting Federally Subsidized Bonds. Any Federal Subsidy to be received by the Authority in respect of such series of bonds shall be identified as such in the resolution authorizing the issuance of such series of bonds to which it relates.

**Federal Subsidy Payments.**

The term “Federal Subsidy Payments” shall mean the amount of Federal Subsidy actually paid to and received by the Trustee in respect of an interest payment for the series of Federally Subsidized Bonds to which it relates. Such Federal Subsidy Payments shall be deposited directly into the Bond Service Account in the Sinking Fund.

**Fiscal year.**

The term “fiscal year” shall mean the period commencing on the 1st day of July of any year and ending on the last day of June of the following year.

**Forbearance Agreement.**

The term “Forbearance Agreement” shall have the meaning set forth in the third recital of the Seventeenth Supplemental Agreement.

**General Fund.**

The term “General Fund” shall mean the Puerto Rico Electric Power Authority General Fund, a special fund created and designated by the provisions of Section 503 of this Agreement.

**General Reserve Fund.**

The term “General Reserve Fund” shall mean the Puerto Rico Electric Power Authority General Reserve Fund, a special fund created and designated by the provisions of Section 511 of the 1947 Indenture.

**Government**

The term “Government Obligations” shall mean (i) direct

**Obligations.**

obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States Government, including securities evidencing ownership interests in such obligations or in specified portions thereof (which may consist of specific portions of the principal of or interest in such obligations) (ii) bonds, debentures or notes issued by any of the following Federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association, Federal Land Banks, or the Federal National Mortgage Association (including participation certificates issued by such Association) and (iii) all other obligations issued or unconditionally guaranteed as to principal and interest by an agency or person controlled or supervised by and acting as an instrumentality of the United States Government pursuant to authority granted by the Congress.

**Improvements.**

The word “Improvements” shall mean such improvements, renewals and replacements of the System or any part thereof and such extensions and additions thereto as may be necessary or desirable, in the judgment of the Board, to keep the same in proper condition for the safe, efficient and economic operation thereof and to integrate into the System any unit or part thereof, and shall include such electric-power projects as may be authorized to be acquired or constructed by the Authority under the provisions of the Authority Act and such improvements, renewals and replacements of such properties and the System and such extensions and additions thereto as may be necessary or desirable for continuous and efficient service to the public, which shall be financed in whole or in substantial part from the proceeds of bonds issued under the provisions of the 1947 Indenture or this Agreement or from moneys deposited to the credit of the 1947 Construction Fund, the Construction Fund or the Renewal and Replacement Fund.

**Independent Consultant.**

The term “Independent Consultant” shall mean the consultant or consulting firm or corporation at the time employed by the Authority under the provisions of Section 706 of this Agreement to perform and carry out the duties of the Independent Consultant by this Agreement.

**Initial Improvements**

**Period.** [Note: This definition only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(iii) of the

The term “Initial Improvements Period” shall have the meaning given to it in Section 505.

Eighteenth  
Supplemental  
Agreement.]

**Interest Accrual.**

The term “Interest Accrual” shall mean for any period the amount of interest that would accrue during such period if such interest accrued ratably on the basis of a year consisting of twelve (12) thirty-day months. Unless otherwise provided by resolution of the Authority or an agreement supplemental hereto, the monthly accrual in respect of interest on the bonds shall commence on the later to occur of the date of issue of the bonds of such Series and the date that is six months prior to the due date of such interest and shall end on the first day of the month following the relevant Deposit Day. In the case of Variable Rate Bonds, the amount deposited shall be based on the sum of the interest accrued through the business day preceding the relevant Deposit Day and the interest (calculated at the maximum rate of interest on such Bonds, or if there is no such maximum rate, then at the rate on such Bonds on the business day preceding the Deposit Day plus one percent (1%)) that would accrue on such Bonds from the Deposit Day to the later to occur of the first day of the next calendar month and any interest payment date on such Bonds occurring prior to the next Deposit Day.

**Investment  
Obligations.**

The term “Investment Obligations” shall mean (i) Government Obligations, (ii) obligations of any state or territory of the United States or political subdivision thereof (other than obligations rated lower than the three highest grades by a nationally recognized rating agency), (iii) repurchase agreements with commercial banks fully secured by Government Obligations and (iv) any other investment obligations permitted for governmental instrumentalities such as the Authority under the laws of the Commonwealth of Puerto Rico which are rated, on the date of investment therein, in any of the three highest grades by a nationally recognized rating agency, or which are collateralized by any of the other Investment Obligations described herein.

**Net Revenues.**

The term “Net Revenues” for any particular period shall mean the amount of the excess of the Revenues for such period over the Current Expenses for such period.

**1947 Construction  
Fund.**

The term “1947 Construction Fund” shall mean the Puerto Rico Electric Power Authority Construction Fund, a special fund created and designated by the provisions of Section 401 of the 1947 Indenture.

**1947 Indenture.**

The term “1947 Indenture” shall mean the Trust Indenture, dated as of January 1, 1947, by and between the Authority and The

National City Bank of New York (now First National City Bank), as trustee, as amended by Supplemental Indentures, dated January 1, 1948, July 1, 1956, January 1, 1961, March 1, 1962, March 1, 1965, April 1, 1967, April 1, 1970 and September 1, 1971, together with all future amendments and all indentures supplemental thereto as therein permitted.

**1947 Indenture Bonds.**

The term “1947 Indenture Bonds” shall mean the bonds issued under the 1947 Indenture.

**1947 Revenue Fund.**

The term “1947 Revenue Fund” shall mean the Electric Power Authority Electric Revenue Fund, a special fund created and designated by the provisions of Section 506 of the 1947 Indenture.

**1947 Sinking Fund.**

The term “1947 Sinking Fund” shall mean the Puerto Rico Electric Power Authority Electric Revenue Bonds Sinking Fund, a special fund created and designated by the provisions of Section 507 of the 1947 Indenture.

**1947 Trustee.**

The term “1947 Trustee” shall mean the trustee under the 1947 Indenture for the time being, whether original or successor.

**Opinion of Counsel.**

The term “Opinion of Counsel” shall mean a written opinion of counsel who may (except as otherwise expressly provided in this Agreement) be counsel for the Authority. Every opinion of counsel required to be filed with the Trustee in connection with an application to the Trustee to authenticate bonds under this Agreement shall contain the following statements: (i) that the Authority has the legal right and power to enter into this Agreement and has duly authorized and validly executed and delivered this Agreement and this Agreement is legally valid and binding upon the Authority and enforceable in accordance with its terms, (ii) that this Agreement creates a legally valid and effective pledge of the Net Revenues, subject only to the lien of the 1947 Indenture, and of the moneys, securities and funds held or set aside under this Agreement as security for the bonds, subject to the application thereof to the purposes and on the conditions permitted by this Agreement and specifying the place or places, if any, where filing or recording of any document is necessary in order to make such pledge effective or to continue it in effect, (iii) that the Authority has paid all municipal or governmental charges lawfully levied or assessed upon the System or any part thereof or upon any Revenues, (iv) that the issuance of the bonds then directed to be authenticated and delivered will not violate any provision of law or of the by-laws of the Authority, or result in the breach of, or constitute a default under, any agreement, indenture or other instrument to which the Authority is a party or by which it may be bound, (v) that no authorization, consent or approval or

withholding of objection of any governmental body or regulatory authority is requisite to the legal issue of said bonds (unless such opinion shall show that no authorization, consent or approval or withholding of objection is requisite to the legal issue of said bonds, it shall specify and attach any officially authenticated certificates, or other documents, by which such authorization, consent or approval or withholding of objection is evidenced), and (vi) that the bonds then directed to be authenticated and delivered are legally valid and binding direct obligations of the Authority, enforceable in accordance with their terms and the terms of this Agreement and have been duly and validly authorized and issued in accordance with law and this Agreement.

**Other Subsidy Bonds.**

The term “Other Subsidy Bonds” shall mean bonds for which a subsidy or other payment made by the Secretary of the Department of Treasury may be made in respect of such bonds other than under Section 6431 of the Code.

**Paying Agents.**

The term “Paying Agents” shall mean with respect to the bonds of each Series the one or more banks or trust companies designated in a resolution of the Board or the office or agency of the Authority where the coupon bonds and coupons may be presented for payment.

**Predecessor Bonds.**

The term “predecessor bonds” shall mean, with respect to any registered bond without coupons, every previous bond evidencing all or a portion of the same debt as that evidenced by such registered bond without coupons; and, for the purpose of this definition, any bond authenticated and delivered under Section 212 of this Agreement in lieu of a mutilated, destroyed or lost bond shall be deemed to evidence the same debt as the mutilated, destroyed or lost bond.

**Prerefunded Municipals.**

The term “Prerefunded Municipals” shall mean any bonds or other obligations of any state of the United States of America or Puerto Rico or of any agency, instrumentality or local governmental unit of any such state or Puerto Rico (a) which are (x) not callable prior to maturity or (y) as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds or other obligations for redemption on the date or dates specified in such instructions, (b) which are secured as to principal, redemption premium, if any, and interest by a fund consisting only of cash or Government Obligations or Time Deposits, secured in the manner set forth in Section 601 of this Agreement, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity

date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (c) as to which the principal of and interest on the Government Obligations or Time Deposits, secured in the manner set forth in Section 601 of this Agreement, which have been deposited in such fund, along with any cash on deposit in such fund are sufficient to pay principal of and interest and redemption premium, if any, on the bonds or other obligations on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (a) of this paragraph, as appropriate.

**Principal Accrual.**

The term “Principal Accrual” shall mean for any period the amount of principal that would accrue during such period if such principal accrued ratably on the basis of a year consisting of twelve (12) thirty-day months. Unless otherwise provided by resolution of the Authority or an agreement supplemental hereto, the monthly accrual in respect of the principal of serial bonds shall commence on the first day of the twelfth month preceding the due date of such principal and shall end on the first day of the month succeeding the relevant Deposit Day.

**Principal and Interest Requirements.**

The term “Principal and Interest Requirements” for any fiscal year, as applied to the bonds of any Series issued under this Agreement or the 1947 Indenture, shall mean the sum of:

(a) the amount required to pay the interest on all outstanding bonds of such Series which is payable on January 1 in such fiscal year and on July 1 in the following fiscal year,

(b) the amount required to pay the principal of all outstanding serial bonds of such Series which is payable after July 31 in such fiscal year and on or prior to July 31 in the following fiscal year, and

(c) the Amortization Requirement for the term bonds of such Series for such fiscal year.

The Principal and Interest Requirements for the bonds of any Series issued under this Agreement shall be determined, as required from time to time, by the Trustee. In computing the Principal and Interest Requirements for any fiscal year for the bonds of any Series, the Trustee shall assume that an amount of the term bonds of such Series equal to the Amortization Requirement for the term bonds of such Series for such fiscal year will be retired by purchase or redemption on July 1 in the following fiscal year.

For purposes of determining the aggregate Principal and

Interest Requirements in the covenant as to rates contained in Section 502, the maximum Principal and Interest Requirements for purposes of Section 704 and the maximum aggregate Principal and Interest Requirements for purposes of Section 712 of this Agreement, the interest rate on Variable Rate Bonds shall be assumed to be one hundred ten percent (110%) of the greater of (i) the average interest rate on such Variable Rate Bonds during the twelve months ending with the month preceding the date of calculation; or such shorter period that such Variable Rate Bonds shall have been outstanding under this Agreement, or (ii) the rate of interest on such Variable Rate Bonds on the date of calculation. For purposes of determining the maximum aggregate Principal and Interest Requirements and the maximum Principal and Interest Requirements for purposes of Sections 208, 209 and 210 of this Agreement, the interest rate on Variable Rate Bonds outstanding or proposed to be issued on the date of calculation shall be determined in accordance with the formula in the previous sentence. If Variable Rate Bonds are payable at the option of the Bondholder and the source for said payment is a credit or liquidity facility, the “put” date or dates shall be ignored and the stated dates for Amortization Requirements and principal payments thereof shall be used for purposes of this calculation. If the Authority has notified the Trustee that a SWAP agreement is in effect in respect of Variable Rate Bonds, then for all purposes of this paragraph, except for the purpose of determining the aggregate Principal and Interest Requirements in the covenant as to rates contained in Section 502 hereof, in the certificate mentioned in clause (d) of Section 208 hereof and in the covenant contained in Section 704 hereof, the interest rate on such Variable Rate Bonds shall be the SWAP rate under such SWAP agreement.

For purposes of determining the above requirements in the case of Put Bonds, the “put” dates or dates shall be ignored if the source for payment of said put is a credit or liquidity facility and the stated dates for Amortization Requirements and principal payments shall be used. For purposes of determining the above requirements in the case of Extendible Maturity Bonds, the bonds shall be deemed to mature on the later of the stated maturity date or the date to which such stated maturity date has been extended. For purposes of determining the above requirements in the case of Capital Appreciation Bonds, the principal and interest portions of the Accreted Value of Capital Appreciation Bonds becoming due at maturity or by virtue of an Amortization Requirement shall be included in the calculations of accrued and unpaid interest and principal requirements in such manner and during such period of time as is specified in the resolution authorizing such Capital Appreciation Bonds.

Principal and Interest Requirements on bonds shall be deemed to include the amount required to pay interest on outstanding Designated Maturity Bonds and any amortized principal of said Designated Maturity Bonds for any fiscal year, if said interest and amortized principal are payable, under the trust agreement or resolution providing for said Designated Maturity Bonds, on a parity with interest and Amortization Requirements on bonds.

To the extent all or a portion of the principal of, Amortization Requirements for or interest on, any bonds of any Series are payable from moneys irrevocably set aside or deposited irrevocably for such purpose with a bank or trust company (which may include the Trustee) or from Investment Obligations irrevocably set aside or deposited irrevocably for such purpose with a bank or trust company (which may include the Trustee) or Time Deposits, secured in the manner set forth in Section 601 of this Agreement, and irrevocably set aside for such purpose, the principal of and the interest on which when due will provide sufficient moneys to make such payments, such principal, Amortization Requirements or interest shall not be included in determining Principal and Interest Requirements; provided, however, that for purposes of the definition of Principal and Interest Requirements as used in Sections 502(A)(b) and 502(B)(b), respectively, said definition shall include any interest payable from any amount deposited to the credit of the Bond Service Account from the proceeds of bonds to pay interest to accrue thereon. The Executive Director or his designee shall deliver to the Trustee a certificate describing the principal of, Amortization Requirements for and interest on any bonds for which moneys, Investment Obligations or Time Deposits have been set aside or deposited pursuant to this paragraph, and stating that such principal, Amortization Requirements and interest should not be included in determining the Principal and Interest Requirements. Upon request of the Trustee, the Authority shall cause to be delivered to the Trustee a certificate of an independent verification agent as to the sufficiency of the maturing principal amounts of any Investment Obligations or Time Deposits, together with interest thereon, set aside or deposited pursuant to this paragraph to pay said principal, Amortization Requirements and interest.

For purposes of determining the maximum Principal and Interest Requirements for purposes of Sections 208, 209 and 210 of this Agreement, the aggregate Principal and Interest Requirements in the covenant as to rates contained in Section 502, the maximum Principal and Interest Requirements for purposes of Section 704 and the maximum aggregate Principal and Interest Requirements for purposes of Section 712 of this Agreement, on the date of issuance of a Federally Subsidized Bonds and for so long as the Trustee shall

receive the scheduled amount of the Federal Subsidy Payments on or before such interest is payable, all or a portion of the interest in respect of one or more series of Federally Subsidized Bonds shall be excluded from the calculation of the Principal and Interest Requirement if, and to the extent that the interest thereon is payable from a Federal Subsidy. Notwithstanding the foregoing, if the Trustee shall not receive the scheduled amount of the Federal Subsidy Payments on or before the date interest on such Federally Subsidized Bonds is payable or within thirty (30) of the date such Federal Subsidy Payments were scheduled to be received under the then current applicable law and regulations, then from and after the occurrence of such failure to receive such Federal Subsidy and until such Federal Subsidy Payments shall resume and all prior deficiencies are cured, the exclusion from the calculation of the Principal and Interest Requirement set forth in the preceding sentence shall no longer be effective for purposes of determining the maximum Principal and Interest Requirements for purposes of Sections 208, 209 and 210 of this Agreement, the aggregate Principal and Interest Requirements in the covenant as to rates contained in Section 502, the maximum Principal and Interest Requirements for purposes of Section 704 and the maximum aggregate Principal and Interest Requirements for purposes of Section 712 of this Agreement.

**Potential Default.**

The term “Potential Default” shall mean each of the events specified on Schedule 1, the occurrence of which would give rise to a default under this Agreement.

**Put Bonds.**

The term “Put Bonds” shall mean bonds, other than Variable Rate Bonds, which by their terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity thereof.

**Redemption Account.**

The term “Redemption Account” shall mean the special account created in the Sinking Fund by the provisions of Section 507 of this Agreement.

**Renewal and Replacement Fund.**

The term “Renewal and Replacement Fund” shall mean the Electric Power Authority Renewal and Replacement Fund, a special fund created and designated by the provisions of Section 512 of the 1947 Indenture.

**Required Amending Creditors.**

The term “Required Amending Creditors” shall mean (i) Assured Guaranty Corp, and Assured Guaranty Municipal Corp., (ii) National Public Finance Guarantee Corporation, and, (iii) at any given time, Holders (as defined in the RSA) that (A) are party to the RSA, and (B) in the aggregate beneficially own a majority of the aggregate principal amount of Uninsured Bonds (as that term is

defined in the RSA) beneficially owned by Holders (as defined in the RSA) then party to the RSA.

**Reserve Account.**

The term “Reserve Account” shall mean the special account created in the Sinking Fund by the provisions of Section 507 of this Agreement.

**Reserve Account Insurance Policy.**

The term “Reserve Account Insurance Policy” shall mean the insurance policy, surety bond or other acceptable evidence of insurance, if any, to be deposited in the Reserve Account in lieu of or in partial substitution for cash or securities on deposit therein, for the purpose of making the payments required to be made from the Reserve Account under Section 510 hereof. The issuer providing such insurance shall be a municipal bond insurer that is rated, at the time of deposit into the Reserve Account, in one of the three highest rating categories (without regard to gradations within a category) by either (i) Standard & Poor’s Corporation or its successor, or Moody’s Investors Service, Inc. or its successors or (ii) if both such corporations shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, a nationally recognized rating agency.

**Reserve Account Letter of Credit.**

The term “Reserve Account Letter of Credit” shall mean the irrevocable, transferable letter of credit, if any, to be deposited in the Reserve Account in lieu of or in partial substitution for cash or securities on deposit therein, for the purpose of making the payments required to be made from the Reserve Account under Section 510 hereof. The issuer providing such letter of credit shall be a banking association, bank or trust company or branch thereof whose letter of credit results in the rating of municipal obligations secured by such letter of credit to be rated, at the time of deposit into the Reserve Account, in one of the three highest grades by (i) either Standard & Poor’s Corporation or its successor, or Moody’s Investors Service, Inc. or its successor or (ii) if both such corporations shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, a nationally recognized rating agency.

**Reserve Maintenance Fund.**

The term “Reserve Maintenance Fund” shall mean the Puerto Rico Electric Power Authority Reserve Maintenance Fund, a special fund created and designated by the provisions of Section 507 of this Agreement.

**Retained General Fund Amount.** [Note: This definition only survives, if at all, pursuant to the

The term “Retained General Fund Amount” shall mean \$50,000,000.

conditional and limited survival provisions of Section 2(a) of the Sixteenth Supplemental Agreement.]

**Revenue Fund.**

The term “Revenue Fund” shall mean the Puerto Rico Electric Power Authority Power Revenue Fund, a special fund created and designated by the provisions of Section 506 of this Agreement.

**Revenues.**

The word “Revenues” shall mean all moneys received by the Authority in connection with or as a result of its ownership or operation of the System, including the income derived by the Authority from the sale of electricity generated or distributed by the System, any proceeds of use and occupancy insurance on the System or any part thereof and income from investments made under the provisions of the 1947 Indenture and this Agreement, except income from the investment of moneys in the 1947 Construction Fund, the Construction Fund, the Capital Improvement Fund, the Subordinate Obligations Fund to the extent such income has been derived from the investment of moneys in such Fund to be used to pay Subordinate Obligations incurred to pay the cost of any work or properties which have not been included by the Authority as part of the System as provided in Section 516 hereof and the Reserve Maintenance Fund which shall be deemed to be a part of said Funds, respectively. Except for the purpose of determining the amount of the Revenues in the covenant as to rates contained in Section 502 hereof, Revenues shall not include any amounts paid to the Authority by a SWAP party in connection with Variable Rate Bonds.

**RSA.**

The term “RSA” shall have the meaning set forth in the third recital of the Eighteenth Amendment.

**Scheduled  
Amendment  
Termination Date.**

The term “Scheduled Amendment Termination Date” shall mean 11:59 p.m. (prevailing Eastern Time) on June 30, 2016.

**Scotiabank Credit  
Agreement.**

The term “Scotiabank Credit Agreement” shall mean that certain Credit Agreement, dated as of May 4, 2012, between the Authority, as borrower, the lenders party thereto, and Scotiabank de Puerto Rico, as administrative agent, as amended or otherwise modified from time to time.

**Self-insurance Fund.**

The term “Self-insurance Fund” shall mean the Puerto Rico Electric Power Authority Self-insurance Fund, a special fund created and designated by the provisions of Section 507 of this Agreement.

**Secretary.**

The word “Secretary” shall mean the Secretary or any Assistant Secretary of the Authority, or if there is no secretary or assistant secretary, then any person designated by the Board or by the by-laws of the Authority to perform the functions of the Secretary.

**serial bonds and term bonds.**

The term “serial bonds” shall mean the bonds of a Series which shall be stated to mature in annual or semi-annual installments or bonds which are otherwise designated serial bonds in a resolution of the Board adopted prior to the issuance of such bonds, and the term “term bonds” shall mean the bonds of a Series maturing on July 1 and designated term bonds in a resolution of the Board adopted prior to the issuance of such bonds.

**Series.**

The word “Series” shall mean either (i) the bonds issued and delivered at any one time under the provisions of Sections 208 or 209 of this Agreement or (ii) the refunding bonds issued at any one time under the provisions of the second paragraph of Section 210 of this Agreement. Bonds issued under the first paragraph of Section 210 of this Agreement to refund serial bonds of any Series shall be deemed to constitute a part of the bonds of such Series.

**Series 2015A Bonds.**

The term “Series 2015A Bonds” shall mean the Authority’s Power Revenue Bonds, Series 2015A, issued pursuant to Resolution 4239, adopted by the Authority on June 30, 2015, as supplemented by Resolution No. 4246, adopted by the Authority on July 30, 2015.

**Series 2016 Bonds.**

The term “Series 2016 Bonds” shall mean collectively the Authority’s Power Revenue Bonds, Series 2016A, Power Revenue Bonds, Series 2016B, Power Revenue Bonds, Series 2016C, Power Revenue Bonds, Series 2016D, and Power Revenue Bonds, Series 2016E, issued pursuant to Resolution 4338, adopted by the Authority on March 15, 2016, as amended, and Resolution 4391, adopted by the Authority on June 28, 2016, and sold pursuant to the BPA.

**Sinking Fund.**

The term “Sinking Fund” shall mean the Puerto Rico Electric Power Authority Power Revenue Bonds Interest and Sinking Fund, a special fund created and designated by the provisions of Section 507 of this Agreement.

**Specified Period Defeasance Fund**

The term “Specified Period Defeasance Fund” shall have the meaning given to it in Section 517.

**Specified Period Principal and Interest Requirements.**

The term “Specified Period Principal and Interest Requirements” shall mean the Principal and Interest Requirements for all outstanding bonds which accrue and are payable on or before January 1, 2015, excluding for purposes of the calculation of such Requirements any Federal Subsidy Payments.

**Solus.** The term “Solus” shall have the meaning given such term in the RSA.

**Solus Credit Agreement.** The term “Solus Credit Agreement” shall mean that certain Trade Finance Facility Agreement, dated as of July 20, 2012, between the Authority and Citibank, N.A. or its transferees party thereto from time to time (including Solus), as applicable, as amended or otherwise modified from time to time.

**Solus/Scotiabank Lenders.** The term “Solus/Scotiabank Lenders” shall mean Citibank, N.A. or its transferees (including Solus), as applicable, and the Lenders (as defined in the Scotiabank Credit Agreement).

**Solus/Scotiabank Lines of Credit.** The term “Solus/Scotiabank Lines of Credit” shall mean the Solus Credit Agreement and the Scotiabank Credit Agreement.

**Supporting Creditor Class.** The term “Supporting Creditor Class” refers to (i) GDB, (ii) the Holders, (iii) the Insurers, (iv) Solus or (v) Scotiabank and the Scotiabank Lenders, each as defined in the RSA.

**SWAP Agreement.** “SWAP agreement” shall mean an agreement between the Authority and a SWAP party whereby the SWAP party agrees to pay to the Authority amounts calculated on the basis of all or a portion of the interest on Variable Rate Bonds at or prior to the times such interest is due and payable in consideration of the Authority’s payment to the SWAP party of amounts set forth in the SWAP agreement.

**SWAP Party.** “SWAP party” shall mean a person who is party to a SWAP agreement and whose senior obligations are rated at the time of the execution and delivery of such SWAP agreement in one of the three highest rating categories (without regard to gradations within a category) by (i) Standard & Poor’s Corporation or its successor and (ii) Moody’s Investors Service or its successor.

**SWAP Rate.** “SWAP rate” shall mean the fixed rate per annum on the principal amount of Variable Rate Bonds covered by a SWAP agreement equal to the percentage derived by dividing (i) the sum of the amounts in the last twelve months paid by the Authority in respect of interest on such bonds and to the SWAP party less the amount paid to the Authority by the SWAP party by (ii) such principal amount of Variable Rate Bonds; provided, however, that if such SWAP agreement has been in effect for less than twelve months, such percentage shall be multiplied by 360 divided by the number of days between the effective date of such SWAP agreement and the date of calculation determined on the basis of 30-day months.

**Subordinate** The term “Subordinate Obligations” shall mean any

**Obligations.** obligations of the Authority incurred as provided in Section 516 of this Agreement.

**Subordinate Obligations Fund.** The term “Subordinate Obligations Fund” shall mean the Puerto Rico Electric Power Authority Subordinate Obligations Fund, a special fund created and designated by Section 507 of this Agreement.

**System.** The word “System” shall mean all the properties presently owned and operated by the Authority as a single integrated system, together with all works and properties which may be hereafter acquired or constructed by the Authority in connection with the production, distribution or sale of electric energy and the acquisition or construction of which shall be financed in whole or in part from the proceeds of bonds issued under the provisions of the 1947 Indenture or this Agreement or from moneys deposited to the credit of the 1947 Construction Fund, the Construction Fund, the Capital Improvement Fund or the Renewal and Replacement Fund or from Subordinate Obligations to the extent such works and properties have been included by the Authority as part of the System as provided in Section 516 hereof.

**Time Deposits.** The term “Time Deposits” shall mean time deposits, certificates of deposit or similar arrangements with the Trustee, Government Development Bank for Puerto Rico or any bank or trust company which is a member of the Federal Deposit Insurance Corporation having a combined capital and surplus aggregating not less than \$100,000,000.

**Treasurer.** The word “Treasurer” shall mean the Treasurer or any Assistant Treasurer of the Authority, or if there is no treasurer or assistant treasurer, then any person designated by the Board or by the by-laws of the Authority to perform the functions of the Treasurer.

**Variable Rate Bonds.** The term “Variable Rate Bonds” shall mean bonds issued with a variable, adjustable, convertible or similar interest rate which is not fixed in percentage at the date of issue for the term thereof, and which may or may not be convertible to a fixed interest rate for the remainder of their term.

**Validation Proceeding.** The term “Validation Proceeding” shall mean any validation or other legal proceedings in which holders of bonds may have a right to participate under Section 35(c) or (d) of Act No. 4-2016 of the Legislature of Puerto Rico, approved on February 16, 2016 (as the same may be amended, the PREPA Revitalization Act).

**Valuation Date.** The term “Valuation Date” shall mean with respect to any

Capital Appreciation Bonds the date or dates set forth in the resolution authorizing such bonds on which Accreted Values are assigned to the Capital Appreciation Bonds.

**Trustee.**

The word “Trustee” shall mean the Trustee for the time being, whether original or successor.

**Miscellaneous.**

SECTION 102. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “bond”, “coupon”, “owner”, “holder” and “person” shall include the plural as well as the singular number, the word “person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, and the word “holder” or “bondholder” when used herein with respect to bonds issued hereunder shall mean the holder or registered owner, as the case may be, of bonds at the time issued and outstanding hereunder.

ARTICLE II.

FORM, EXECUTION AND REGISTRATION OF BONDS AND CONDITIONS  
FOR AUTHENTICATION AND DELIVERY OF BONDS.

**Limitation on  
issuance of bonds.**

SECTION 201. No bonds may be issued under the provisions of this Agreement except in accordance with the provisions of this Article.

**Form of bonds.**

SECTION 202. The definitive bonds are issuable as coupon bonds or as registered bonds without coupons or both. The definitive bonds issued under the provisions of this Article shall be substantially in the forms hereinabove set forth, with such appropriate variations, omissions and insertions as are permitted or required by this Agreement and with such additional changes as may be necessary or appropriate to conform to the provisions of the resolution or resolutions providing for the issuance of such bonds. All such bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or of any securities exchange on which the bonds may be listed or traded or any usage or requirement of law with respect thereto or as may be authorized by the Authority and approved by the Trustee. The form of bonds may be changed as specified in said resolution or resolutions to reflect appropriate provisions for the issuance of bonds with interest payable other than semi-annually, and may reflect, without limitation, provisions for Capital Appreciation Bonds, Variable Rate Bonds, Put Bonds, Extendible Maturity Bonds and other types of bonds, subject to any

limitations under the laws of Puerto Rico at the time of the issuance of the particular bonds.

**Details of bonds.**

SECTION 203. The bonds shall be dated, shall bear interest until their payment, such interest to the maturity thereof being payable semi-annually on the 1st days of January and July in each year, and shall be stated to mature (subject to the right of prior redemption), all as hereinafter provided. Notwithstanding the previous sentence, bonds may bear interest payable other than semi-annually, as may be provided by the resolution or resolutions authorizing the issuance of particular bonds, and bonds may include, without limitation, Capital Appreciation Bonds, Variable Rate Bonds, Put Bonds, Extendible Maturity Bonds and other types of bonds, subject to any limitations under the laws of Puerto Rico at the time of the issuance of the particular bonds.

Each coupon bond shall bear interest from its date. Each registered bond without coupons shall bear interest from the interest payment date next preceding the date on which it is authenticated, unless authenticated on an interest payment date, in which case it shall bear interest from such interest payment date, or, unless authenticated prior to the first interest payment date, in which case it shall bear interest from its date; provided, however, that if at the time of authentication of any registered bond without coupons interest is in default, such bond shall bear interest from the date to which interest shall have been paid.

**Execution of bonds and coupons.**

The bonds shall be signed by, or bear the facsimile signature of, the Executive Director and shall be signed by, or bear the facsimile signature of, the Secretary, and a facsimile of the corporate seal of the Authority shall be imprinted on the bonds.

The coupons attached to the coupon bonds shall be substantially in the form hereinabove set forth and shall bear the facsimile signature of the Executive Director.

In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and also any bond may bear the facsimile signature of or may be signed by such persons as at the actual time of the execution of such bond shall be the proper officers to sign such bond although at the date of such bond such persons may not have been such officers.

**Payment of principal**

Both the principal of and the interest on the bonds shall be

**and interest.**

payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of coupon bonds of each Series and the interest on all coupon bonds of such Series shall be payable at the principal offices of the Paying Agents designated for the bonds of such Series. The principal of all registered bonds without coupons shall be payable only to the registered owner or his legal representative at the principal corporate trust office of the Trustee, and payment of the interest on each registered bond without coupons shall, except as may otherwise be provided by resolution of the Authority authorizing the issuance of any Series of bonds under this Agreement, be made by the Trustee on each interest payment date to the person appearing on the registration books of the Authority hereinafter provided for as the registered owner thereof (or of any predecessor bond) on the 15th day of the month next preceding such interest payment date, by check mailed to such registered owner at his address as it appears on such registration books. Except as provided in Section 211 of this Agreement, payment of the principal of all bonds shall be made upon the presentation and surrender of such bonds as the same shall become due and payable. Payment of the interest on the coupon bonds shall be made upon the presentation and surrender of the coupons, if any, representing such interest as the same respectively become due and payable.

**Authentication of bonds.**

SECTION 204. Only such of the bonds as shall have endorsed thereon a certificate of authentication substantially in the form hereinabove set forth, duly executed by the Trustee, shall be entitled to any benefit or security under this Agreement. No bond and no coupon appertaining to any coupon bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such certificate of the Trustee upon any such bond shall be conclusive evidence that such bond has been duly authenticated and delivered under this Agreement. The Trustee's certificate of authentication on any bond shall be deemed to have been duly executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the bonds that may be issued hereunder at any one time. Before authenticating or delivering any coupon bonds the Trustee shall detach and cancel all matured coupons, if any, appertaining thereto, except any coupons which represent unpaid interest.

**Exchange of coupon bonds for registered bonds.**

SECTION 205. Coupon bonds, upon surrender thereof at the principal office of the Trustee with all unmatured coupons and all matured coupons in default, if any, appertaining thereto, may, at the option of the holder thereof, be exchanged for an equal aggregate principal amount of registered bonds without coupons of the same

Series and maturity, of any denomination or denominations authorized by this Agreement, bearing interest at the same rate, and, with the exception of the differences between the form of coupon bonds and the form of registered bonds without coupons which are set forth in the preamble of this Agreement, in the same form as the coupon bonds surrendered for exchange.

**Exchange of registered bonds for coupon bonds or registered bonds.**

Registered bonds without coupons, upon surrender thereof at the principal office of the Trustee, together with an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee, may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of coupon bonds of the same Series (if authorized for such Series) and maturity, bearing interest at the same rate and having attached thereto coupons representing all unpaid interest due or to become due thereon, or of registered bonds without coupons of the same Series and maturity, of any denomination or denominations authorized by this Agreement, and bearing interest at the same rate, and in either case, with the exception of the differences between the form of coupon bonds and the form of registered bonds without coupons which are set forth in the preamble of this Agreement, in the same form as the registered bonds without coupons surrendered for exchange.

The Authority shall make provision for the exchange of bonds at the principal office of the Trustee.

**Negotiability of coupon bonds.**

SECTION 206. Title to any coupon bond and to any interest coupon shall pass by delivery in the same manner as a negotiable instrument payable to bearer. The Trustee as Bond Registrar shall keep books for the registration of and for the registration of transfers of bonds as provided in this Agreement. The transfer of any registered bond without coupons may be registered only upon the books kept for the registration of and registration of transfers of bonds upon surrender thereof to the Bond Registrar together with an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer the Authority shall execute and the Trustee shall authenticate and deliver in exchange for such bond a new registered bond or bonds without coupons registered in the name of the transferee, of any denomination or denominations authorized by this Agreement, or, at the option of the transferee and if coupon bonds are authorized for the same Series as such bond, coupon bonds with coupons attached representing all unpaid interest due or to become due thereon, in an aggregate principal amount equal to the principal amount of such registered bond without coupons, of

**Transfer of registered bonds.**

the same Series and maturity and bearing interest at the same rate.

**Cancellation of bonds  
and coupons  
surrendered for  
exchange or transfer.**

In all cases in which bonds shall be exchanged or the transfer of registered bonds without coupons shall be registered hereunder, the Authority shall execute and the Trustee shall authenticate and deliver at the earliest practicable time bonds in accordance with the provisions of this Agreement. All registered bonds without coupons surrendered in any such exchange or registration of transfer shall forthwith be cancelled by the Trustee. All coupon bonds and unmatured coupons surrendered in any such exchange or registration of transfer shall be retained by the Trustee in its custody. The Authority or the Trustee may make a charge for every such exchange or registration of transfer of bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any bondholder for the privilege of exchanging or registering the transfer of bonds under the provisions of this Agreement. Neither the Authority nor the Trustee shall, except as may otherwise be provided by resolution of the Authority authorizing the issuance of any Series of bonds under this Agreement, be required to make any such exchange or registration of transfer of bonds, during the fifteen (15) days immediately preceding any interest payment date on the bonds or, in the case of any proposed redemption of bonds, immediately preceding the date of first publication of notice of such redemption (or if all the bonds to be redeemed are issuable as registered bonds without coupons, immediately preceding the date of mailing of notice of such redemption), or after such bond or any portion thereof has been selected for redemption.

**Ownership of  
registered bonds.**

SECTION 207. As to any registered bond without coupons, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and the premium, if any, and the interest on any such bond shall be made only to the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such bond including the interest thereon to the extent of the sum or sums so paid. The Authority, the Trustee, the Bond Registrar and the Paying Agents may deem and treat the bearer of any coupon bond and the bearer of any coupon appertaining to any coupon bond as the absolute owner of such bond or coupon, as the case may be, whether such bond or coupon shall be overdue or not, for the purpose of receiving payment thereof and for all other purposes whatsoever, and neither the Authority, the Trustee, the Bond Registrar nor the Paying Agents shall be affected by any notice to the contrary.

**Ownership of coupon  
bonds.**

**Transfer of title of  
bonds.**

Any person in possession of any coupon bond or of any coupon appertaining to any coupon bond is hereby authorized to represent himself as the absolute owner of such bond or coupon, as the case may be, and is hereby granted power to transfer absolute title thereto by delivery thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against his transferor or any person in the chain of title and before the maturity of such bond. Any registered owner of any registered bond without coupons is hereby granted power to transfer absolute title thereto by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against his assignor or any person in the chain of title and before the maturity of such bond. Every prior holder or owner of any bond or of any coupon appertaining to any coupon bond shall be deemed to have waived and renounced all of his equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

**Issuance of revenue  
bonds to pay cost of  
Improvements.**

SECTION 208. Revenue bonds of the Authority may be issued under and secured by this Agreement, subject to the conditions hereinafter provided in this Section, from time to time for the purpose of paying all or any part of the cost of any Improvements, including the repayment of moneys advanced for paying such cost and, if deemed necessary by the Board, the payment of the interest to accrue on such moneys advanced to the date of such payment and for providing moneys for deposit to the credit of the Reserve Account.

Before any bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution or resolutions authorizing the issuance of such bonds, fixing the amount and the details thereof, describing in brief and general terms the Improvements which are to be acquired or constructed or which were acquired or constructed from any advances of moneys to be repaid from the proceeds of such bonds, and specifying the amount, if any, of the proceeds of such bonds to be deposited to the credit of the Reserve Account. The bonds of each Series issued under the provisions of this Section shall be designated 'Puerto Rico Electric Power Authority Power Revenue Bonds, Series ....' (inserting a year or a letter to identify the particular Series), shall be issued in such form, shall be in such denominations, shall be dated, shall bear interest at a rate or rates not exceeding the maximum rate then permitted by law, shall be stated to mature on July 1 as to term bonds or annually on January 1 or July 1 or semi-annually on January 1 and July 1 as to serial bonds, in such year or years, not later than fifty (50) years from their date, shall be made redeemable at such times and prices (subject to the provisions of Article III of this

Agreement), shall be numbered, shall have such Paying Agents, and the term bonds of such Series shall have such Amortization Requirements, all as may be provided by resolution or resolutions adopted by the Board prior to the issuance of such bonds. Except as to any differences in the maturities thereof or the rate or rates of interest or the provisions for redemption, such bonds shall be on a parity with and shall be entitled to the same benefits and security under this Agreement as all other bonds issued under this Agreement.

Before any Variable Rate Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution specifying, without limitation, the interest rate calculation methods and any conversion features, and any credit or liquidity facility which may be drawn upon to make principal and interest payments on the Variable Rate Bonds. The Variable Rate Bonds may provide that the owner of any such Bond may demand payment of principal and interest within a stated period after delivering notice to a designated agent for the Authority and providing a copy of the notice with the tender of the Variable Rate Bond to such agent. The designated agent for the Authority, in accordance with the terms of a remarketing or placement agreement, may provide for the resale or redelivery of the Variable Rate Bonds on behalf of the Authority at a price provided for in the agreement. If the Variable Rate Bonds shall not be resold or redelivered within a stated period, the agent for the Authority may be authorized to draw upon a previously executed credit or liquidity facility of one or more banks or other financial or lending institutions for payment of interest and principal for a particular Series of Variable Rate Bonds to which such credit or liquidity facility shall pertain. The particular form or forms of such demand provisions, the period or periods for payment of principal and interest after delivery of notice, the appointment of the agent for the Authority, the terms and provisions for the remarketing or placement agreement, and the terms and provisions of the credit or liquidity facility, including the terms of any lien on Revenues in connection with the credit or liquidity facility not inconsistent with Section 712 hereof, shall be as designated by a resolution of the Board pertaining to the Variable Rate Bonds to which such terms and provisions are applicable prior to the issuance thereof. Before any Put Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution which may provide for some of the above terms and provisions. Before any Extendible Maturity Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution which shall set forth the terms and conditions of the exercise by the bondholders or the Authority of any option to extend the maturity of said bonds. Before any Capital Appreciation Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution specifying the Valuation Dates, the Accreted Values on such dates,

the manner in which and the period during which principal and interest shall be deemed to accrue on such bonds for purposes of the definition of "Principal and Interest Requirements" and the amount of any deposit required for the Reserve Account in accordance with Section 507 hereof.

Prior to the issuance of any Federally Subsidized Bonds, the Board shall adopt a resolution identifying the details of such bonds, including, without limitation, the rate or rates of interest to be paid on such bonds, the source or sources and the amount of the Federal Subsidy expected to be received by the Authority in respect of such Series of Federally Subsidized Bonds, whether the amounts received from such Federal Subsidy are to be pledged solely to the owners of such Series of Federally Subsidized Bonds or to the owners of all outstanding bonds and a covenant by the Authority to take such actions as are necessary to ensure receipt of such Federal Subsidy.

**Conditions of authentication and delivery.**

Such bonds shall be executed substantially in the form and manner hereinabove set forth and shall be deposited with the Trustee for authentication, but before the Trustee shall authenticate and deliver such bonds there shall be filed with the Trustee the following; provided, however, that the certificate referred to in clause (c) below shall not be required to be delivered in connection with the issuance of the Series 2016 Bonds:

(a) a copy, certified by the Secretary, of the resolution or resolutions mentioned above;

(b) a copy, certified by the Secretary, of the resolution of the Board awarding such bonds, specifying the interest rate for each of such bonds and directing the authentication and delivery of such bonds to or upon the order of the purchasers mentioned therein upon payment of the purchase price therein set forth and the accrued interest on such bonds;

(c) a certificate, signed by the Executive Director and approved by the Consulting Engineers, setting forth:

(i) the amount of the Net Revenues for any twelve (12) consecutive calendar months out of the eighteen (18) calendar months immediately preceding the date of the issuance of such bonds, adjusted to reflect the moneys which would have been received if the rate schedule in effect on the date of the issuance of such bonds had been in effect throughout such twelve (12) calendar months,

(ii) the amount of the maximum aggregate

Principal and Interest Requirements for any fiscal year thereafter on account of all 1947 Indenture Bonds then outstanding and all bonds then outstanding under this Agreement,

(iii) the amount of the maximum aggregate Principal and Interest Requirements for any fiscal year thereafter on account of all 1947 Indenture Bonds then outstanding and all bonds then outstanding under this Agreement and the bonds then to be issued hereunder,

(iv) his estimate of the Net Revenues for each of the five (5) fiscal years immediately following the fiscal year in which the issuance of such bonds occurs, taking into account the rate schedule in effect on the date of the issuance of such bonds and any rate schedule the Authority has covenanted to put in effect during such five (5) fiscal years,

(v) his estimate of the average annual Net Revenues for such five (5) fiscal years, taking into account the rate schedules referred to in item (iv) of this clause (c),

(vi) the percentage derived by dividing the amount in item (i) of this clause (c) by the amount shown in item (ii) of said clause, and

(vii) the percentage derived by dividing the amount in item (v) of this clause (c) by the amount shown in item (iii) of said clause;

(d) if any of the 1947 Indenture Bonds are outstanding, a certificate, signed by the Executive Director and approved by the Consulting Engineers, to the effect that the sum determined by the Authority, with the approval of the Consulting Engineers, as the proper amount to be transferred each month from the 1947 Revenue Fund to the credit of the Renewal and Replacement Fund is not less than one-twelfth (1/12) of the maximum Principal and Interest Requirements for any fiscal year thereafter to and including the fiscal year in which the last maturity of any outstanding 1947 Indenture Bonds occurs on account of all bonds then outstanding under this Agreement and the bonds then to be issued hereunder; and

(e) an Opinion of Counsel stating that all conditions precedent to the delivery of such bonds have been fulfilled.

When the documents mentioned above in this Section shall have been filed with the Trustee and when the bonds described in the resolutions mentioned in clauses (a) and (b) of this Section shall have

been executed and authenticated as required by this Agreement, the Trustee shall deliver such bonds at one time to or upon the order of the purchasers mentioned in the resolution mentioned in said clause (b), but only upon payment to the Trustee of the purchase price of such bonds and the accrued interest. The Trustee shall be entitled to rely upon such resolutions as to all matters stated therein. The Trustee, however, shall not authenticate and deliver such bonds unless each of the percentages shown in items (vi) and (vii) of the certificate mentioned in clause (c) of this Section is not less than one hundred twenty per centum (120%); provided, however, that such requirement shall not apply in connection with the issuance of the Series 2016 Bonds.

**Disposition of bond proceeds.**

The proceeds (excluding accrued interest but including any premium) of such bonds shall be deposited as is required by the resolution or resolutions authorizing the issuance of such bonds; provided, however, that any balance of such proceeds remaining after providing for (i) any repayment of moneys advanced to the Authority, including any payment of interest accrued on such moneys advanced to the date of such payment, (ii) any deposit to the credit of the Reserve Account, and (iii) any deposit to the Bond Service Account on account of interest on such bonds in accordance with clause (f) of Section 403 of this Agreement and (iv) any payment of expenses incident to the financing shall be paid to the Authority for deposit to the credit of the Construction Fund.

All moneys received as accrued interest on bonds issued under the provisions of this Section shall be deposited with the Trustee to the credit of the Bond Service Account.

**Issuance of revenue bonds for any proper corporate purpose.**

SECTION 209. After the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, in addition to any other bonds which may be issued under the provisions of this Article, revenue bonds of the Authority may be issued under and secured by this Agreement, subject to the conditions hereinafter provided in this Section, from time to time for any proper corporate purpose of the Authority (other than for the purpose of refunding outstanding bonds of the Authority other than the Series 2016 Bonds or for the purpose of providing funds to pay any part of the cost of Improvements or for repaying advances for such purpose).

Before any bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution or resolutions authorizing the issuance of such bonds, fixing the amount and the details thereof and setting forth the purpose for which such bonds are to be issued. The bonds of each Series issued under the provisions of this Section

shall be designated ‘Puerto Rico Electric Power Authority Power Revenue Bonds, Series . . . .’ (inserting a year or a letter to identify the particular Series), shall be issued in such form, shall be in such denominations, shall be dated, shall bear interest at a rate or rates not exceeding the maximum rate then permitted by law, shall be stated to mature on July 1 as to term bonds or annually on January 1 or July 1 or semi-annually on January 1 and July 1 as to serial bonds, in such year or years, not later than fifty (50) years from their date, shall be made redeemable at such times and prices (subject to the provisions of Article III of this Agreement), shall be numbered, shall have such Paying Agents and the term bonds of such Series shall have such Amortization Requirements, all as may be provided by resolution or resolutions adopted by the Board prior to the issuance of such bonds. Except as to any differences in the maturities thereof or the rate or rates of interest or the provisions for redemption, such bonds shall be on a parity with and shall be entitled to the same benefits and security under this Agreement as all other bonds issued under this Agreement.

Before any Variable Rate Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution specifying, without limitation, the interest rate calculation methods and any conversion features, and any credit or liquidity facility which may be drawn upon to make principal and interest payments on the Variable Rate Bonds. The Variable Rate Bonds may provide that the owner of any such Bond may demand payment of principal and interest within a stated period after delivering notice to a designated agent for the Authority and providing a copy of the notice with the tender of the Variable Rate Bond to such agent. The designated agent for the Authority, in accordance with the terms of a remarketing or placement agreement, may provide for the resale or redelivery of the Variable Rate Bonds on behalf of the Authority at a price provided for in the agreement. If the Variable Rate Bonds shall not be resold or redelivered within a stated period, the agent for the Authority may be authorized to draw upon a previously executed credit or liquidity facility of one or more banks or other financial or lending institutions for payment of interest and principal for a particular Series of Variable Rate Bonds to which such credit or liquidity facility shall pertain. The particular form or forms of such demand provisions, the period or periods for payment of principal and interest after delivery of notice, the appointment of the agent for the Authority, the terms and provisions for the remarketing or placement agreement, and the terms and provisions of the credit or liquidity facility, including the terms of any lien on Revenues in connection with the credit or liquidity facility not inconsistent with Section 712 hereof, shall be as designated by a resolution of the Board pertaining to the Variable Rate Bonds to which such terms and provisions are applicable prior to the issuance thereof. Before any Put Bonds shall be issued under

the provisions of this Section, the Board shall adopt a resolution which may provide for some of the above terms and provisions. Before any Extendible Maturity Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution which shall set forth the terms and conditions of the exercise by the bondholders or the Authority of any option to extend the maturity of said bonds. Before any Capital Appreciation Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution specifying the Valuation Dates, the Accreted Values on such dates, the manner in which and the period during which principal and interest shall be deemed to accrue on such bonds for purposes of the definition of "Principal and Interest Requirements" and the amount of any deposit required for the Reserve Account in accordance with Section 507 hereof.

Prior to the issuance of any Federally Subsidized Bonds, the Board shall adopt a resolution identifying the details of such bonds, including, without limitation, the rate or rates of interest to be paid on such bonds, the source or sources and the amount of the Federal Subsidy expected to be received by the Authority in respect of such Series of Federally Subsidized Bonds, whether the amounts received from such Federal Subsidy are to be pledged solely to the owners of such Series of Federally Subsidized Bonds or to the owners of all outstanding bonds and a covenant by the Authority to take such actions as are necessary to ensure receipt of such Federal Subsidy.

**Conditions of authentication and delivery.**

Such bonds shall be executed substantially in the form and manner hereinabove set forth and shall be deposited with the Trustee for authentication, but before the Trustee shall authenticate and deliver such bonds there shall be filed with the Trustee the following; provided, however, that the certificate referred to in clause (c) below shall not be required to be delivered in connection with the issuance of the Series 2015A Bonds or the Series 2016 Bonds:

(a) a copy, certified by the Secretary, of the resolution or resolutions mentioned above;

(b) a copy, certified by the Secretary, of the resolution of the Board awarding such bonds, specifying the interest rate for each of such bonds and directing the authentication and delivery of such bonds to or upon the order of the purchasers mentioned therein upon payment of the purchase price therein set forth and the accrued interest on such bonds;

(c) a certificate, signed by the Executive Director and approved by the Consulting Engineers, setting forth:

(i) the amount of the Net Revenues for any twelve

(12) consecutive calendar months out of the eighteen (18) calendar months immediately preceding the date of the issuance of such bonds, adjusted to reflect the moneys which would have been received if the rate schedule in effect on the date of the issuance of such bonds had been in effect throughout such twelve (12) calendar months,

(ii) the amount of the maximum aggregate Principal and Interest Requirements for any fiscal year thereafter on account of all bonds then outstanding under this Agreement,

(iii) the amount of the maximum aggregate Principal and Interest Requirements for any fiscal year thereafter on account of all bonds then outstanding under this Agreement and the bonds then to be issued hereunder,

(iv) his estimate of the Net Revenues for each of the five (5) fiscal years immediately following the fiscal year in which the issuance of such bonds occurs, taking into account the rate schedule in effect on the date of the issuance of such bonds and any rate schedule the Authority has covenanted to put in effect during such five (5) fiscal years,

(v) his estimate of the average annual Net Revenues for such five (5) fiscal years, taking into account the rate schedules referred to in item (iv) of this clause (c),

(vi) the percentage derived by dividing the amount in item (i) of this clause (c) by the amount shown in item(ii)of said clause, and

(vii) the percentage derived by dividing the amount in item (v) of this clause (c) by the amount shown in item (iii) of said clause; and

(d) an Opinion of Counsel stating that all conditions precedent to the delivery of such bonds have been fulfilled.

When the documents mentioned above in this Section shall have been filed with the Trustee and when the bonds described in the resolutions mentioned in clauses (a) and (b) of this Section shall have been executed and authenticated as required by this Agreement, the Trustee shall deliver such bonds at one time to or upon the order of the purchasers mentioned in the resolution mentioned in said clause (b), but only upon payment to the Trustee of the purchase price of such bonds and the accrued interest. The Trustee shall be entitled to rely upon such resolutions as to all matters stated therein. The Trustee, however, shall not authenticate and deliver such bonds unless each of the percentages shown in items (vi) and (vii) of the certificate mentioned in clause (c) of this Section is not less than one hundred twenty per centum (120%); provided, however, that such requirement shall not apply in connection with the issuance of the

Series 2015A Bonds or the Series 2016 Bonds.

**Disposition of bond proceeds.**

The proceeds (excluding accrued interest but including any premium) of such bonds shall be deposited as is required by the resolution or resolutions authorizing the issuance of such bonds.

All moneys received as accrued interest on bonds issued under the provisions of this Section shall be deposited with the Trustee to the credit of the Bond Service Account.

**Issuance of revenue refunding bonds to refund all 1947 Indenture Bonds and bonds issued under this Agreement.**

SECTION 210. If at any time the Board shall determine that the moneys in the Sinking Fund available for such purpose will not be sufficient for paying at their maturity the serial bonds of any Series which will mature within one year thereafter, revenue refunding bonds of the Authority may be issued under and secured by this Agreement, subject to the conditions hereinafter provided in this Section, for the purpose of providing funds for refunding such bonds and, if deemed necessary by the Board, for paying the interest to accrue thereon to their maturity and any expenses in connection with such refunding. Before any bonds shall be issued under the provisions of this paragraph the Board shall adopt a resolution or resolutions authorizing the issuance of such bonds, fixing the amount and the details thereof, and describing the bonds to be refunded. Such revenue refunding bonds shall be deemed to constitute a part of the term bonds, if any, of such Series and shall mature at the same time and shall be subject to redemption at the same times and prices as such term bonds or, in case all the outstanding bonds of such Series shall be serial bonds, such revenue refunding bonds shall mature on the 1st day of July in a year not earlier than one year after the last maturing installment of the bonds of such Series and not later than fifty (50) years from their date, shall be deemed to be terms bonds of such Series and shall be made redeemable at such times and prices (subject to the provisions of Article III of this Agreement), all as may be provided by the resolution or resolutions authorizing the issuance of such bonds. Such revenue refunding bonds shall be designated, shall be issued in such form, shall be dated and shall bear interest at a rate not exceeding the maximum rate then permitted by law, all as may be provided by resolution or resolutions adopted by the Board prior to the issuance of such bonds.

Revenue refunding bonds of the Authority may also be issued under and secured by this Agreement, subject to the conditions hereinafter provided in this Section, from time to time, for the purpose of providing funds, with any other available funds, for redeeming prior to or at their maturity or maturities all of the outstanding 1947 Indenture Bonds, any 1947 Indenture Bonds issued for a purpose for which moneys may be expended from the Renewal and Replacement Fund, all or any part of the outstanding bonds of any Series or outstanding Designated Maturity Bonds, including the payment of

any redemption premium thereon, and, if deemed necessary by the Board, for paying the interest to accrue thereon to the date fixed for their redemption or their maturity and any expenses in connection with such refunding, and for the purpose of providing moneys for deposit to the credit of the Reserve Account. Before any bonds shall be issued under the provisions of this paragraph, the Board shall adopt a resolution authorizing the issuance of such bonds, fixing the amount and the details thereof and describing the bonds to be redeemed or paid. Such revenue refunding bonds shall be designated, shall be issued in such form, shall be in such denominations, shall be dated, shall bear interest at a rate or rates not exceeding the maximum rate then permitted by law, shall be stated to mature on July 1 as to term bonds or annually on January 1 or July 1 or semi-annually on January 1 and July 1 as to serial bonds in such year or years, not later than fifty (50) years from their date, and shall be made redeemable at such times and prices (subject to the provisions of Article III of this Agreement), shall be numbered, shall have such Paying Agents, and any term bonds of such Series shall have such Amortization Requirements, all as may be provided by resolution or resolutions adopted by the Board prior to the issuance of such bonds. Except as to any differences in the maturities thereof or the rate or rates of interest or the provisions for redemption, such revenue refunding bonds shall be on a parity with and shall be entitled to the same benefit and security of this Agreement as all other bonds issued under this Agreement.

Before any Variable Rate Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution specifying, without limitation, the interest rate calculation methods and any conversion features, and any credit or liquidity facility which may be drawn upon to make principal and interest payments on the Variable Rate Bonds. The Variable Rate Bonds may provide that the owner of any such Bond may demand payment of principal and interest within a stated period after delivering notice to a designated agent for the Authority and providing a copy of the notice with the tender of the Variable Rate Bond to such agent. The designated agent for the Authority, in accordance with the terms of a remarketing or placement agreement, may provide for the resale or redelivery of the Variable Rate Bonds on behalf of the Authority at a price provided for in the agreement. If the Variable Rate Bonds shall not be resold or redelivered within a stated period, the agent for the Authority may be authorized to draw upon a previously executed credit or liquidity facility of one or more banks or other financial or lending institutions for payment of interest and principal for a particular Series of Variable Rate Bonds to which such credit or liquidity facility shall pertain. The particular form or forms of such demand provisions, the period or periods for payment of principal and interest after delivery of notice, the appointment of the agent for the Authority, the terms and provisions for the remarketing or placement agreement, and the

terms and provisions of the credit or liquidity facility, including the terms of any lien on Revenues in connection with the credit or liquidity facility not inconsistent with Section 712 hereof, shall be as designated by a resolution of the Board pertaining to the Variable Rate Bonds to which such terms and provisions are applicable prior to the issuance thereof. Before any Put Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution which may provide for some of the above terms and provisions. Before any Extendible Maturity Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution which shall set forth the terms and conditions of the exercise by the bondholders or the Authority of any option to extend the maturity of said bonds. Before any Capital Appreciation Bonds shall be issued under the provisions of this Section, the Board shall adopt a resolution specifying the Valuation Dates, the Accreted Values on such dates, the manner in which and the period during which principal and interest shall be deemed to accrue on such bonds for purposes of the definition of "Principal and Interest Requirements" and the amount of any deposit required for the Reserve Account in accordance with Section 507 hereof.

**Conditions of authentication and delivery.**

Revenue refunding bonds issued under the provisions of this Section shall be executed substantially in the form and manner hereinabove set forth and shall be deposited with the Trustee for authentication, but before the Trustee shall authenticate and deliver such bonds there shall be filed with the Trustee the following:

(a) a copy, certified by the Secretary, of the resolutions mentioned above;

(b) a copy, certified by the Secretary, of the resolution adopted by the Board awarding such bonds, specifying the interest rate for each of such bonds and directing the authentication and delivery of such bonds to or upon the order of the purchasers mentioned therein upon payment of the purchase price therein set forth and the accrued interest on such bonds;

(c) in case such bonds are to be issued for the purpose of providing funds for redeeming all of the outstanding 1947 Indenture Bonds or any 1947 Indenture Bonds issued for a purpose for which moneys may be expended from the Renewal and Replacement Fund, all or any part of the outstanding bonds of any Series or outstanding Designated Maturity Bonds at or prior to their maturity or maturities;

(i) a certificate, signed by the Executive Director, setting forth (A) the amount of the maximum aggregate Principal and Interest Requirements for any fiscal year thereafter on account of all 1947 Indenture Bonds then outstanding and all bonds then outstanding under this Agreement, and (B) the amount of the

maximum aggregate Principal and Interest Requirements for any fiscal year thereafter on account of all 1947 Indenture Bonds then outstanding and all bonds to be outstanding under this Agreement after the issuance of such revenue refunding bonds and the redemption or payment of the bonds to be refunded; and

(ii) such documents as shall be required by the Trustee to show that provision has been made in accordance with the provisions of the 1947 Indenture or this Agreement, as the case may be, for the redemption or payment of all of the bonds to be refunded; and

(d) an Opinion of Counsel stating that all conditions precedent to the delivery of such bonds have been fulfilled.

When the documents mentioned above in this Section shall have been filed with the Trustee and when the bonds described in the resolutions mentioned in clauses (a) and (b) of this Section shall have been executed and authenticated as required by this Agreement, the Trustee shall deliver such bonds at one time to or upon the order of the purchasers mentioned in the resolution mentioned in said clause (b), but only upon payment to the Trustee of the purchase price of such bonds and the accrued interest. The Trustee shall be entitled to rely upon such resolution as to all matters stated therein. The Trustee, however, shall not authenticate and deliver such bonds unless

(I) the proceeds (excluding accrued interest but including any premium) of such revenue refunding bonds, together with any moneys to be withdrawn from the Sinking Fund by the Trustee, and any other moneys which have been made available to the Trustee for such purpose as hereinafter provided, or the principal of and the interest on the investment of such proceeds or any such moneys, shall be not less than an amount sufficient to pay the principal of and the redemption premium, if any, on the bonds to be refunded and the interest which will become due and payable on or prior to the date of their payment or redemption, the financing costs in connection with such refunding, and any deposit to the credit of the Reserve Account, and

(II) in case such bonds are to be issued for the purpose of providing funds for redeeming all of the outstanding 1947 Indenture Bonds or any 1947 Indenture Bonds issued for a purpose for which moneys may be expended from the Renewal and Replacement Fund, all or any part of the outstanding bonds of any Series or outstanding Designated Maturity Bonds prior to or at their maturity or maturities, either (1) the amount shown in item (B) of the certificate mentioned in subclause (i) of clause (c) of this Section shall be less than the amount shown in item (A) of said certificate or (2) there shall be filed with the Trustee a certificate, signed by the Executive Director and

approved by the Consulting Engineers, setting forth

(A) the amount of the Net Revenues for any twelve (12) consecutive calendar months out of the eighteen (18) calendar months immediately preceding the date of the issuance of such bonds, adjusted to reflect the moneys which would have been received if the rate schedule in effect on the date of the issuance of such bonds had been in effect throughout such twelve (12) calendar months,

(B) his estimate of the Net Revenues for each of the five (5) fiscal years immediately following the fiscal year in which the issuance of such bonds occurs, taking into account the rate schedule in effect on the date of the issuance of such bonds and any rate schedule the Authority has covenanted to put in effect during such five (5) fiscal years, and

(C) his estimate of the average annual Net Revenues for such five (5) fiscal years, taking into account the rate schedules referred to in item (B) above, and stating that each of the amounts shown in items (A) and (C) above is not less than one hundred twenty per centum (120%) of each of the amounts shown in items (A) and (B) of the certificate mentioned in subclause (i) of clause (c) of this Section.

**Disposition of bond proceeds.**

The proceeds of such revenue refunding bonds shall, to the extent practicable, be invested and reinvested by the Trustee, with the approval of the Executive Director, in Government Obligations, in Prerefunded Municipals or in Time Deposits, secured in the manner set forth in Section 601 of this Agreement, and the moneys so invested shall be available for use when required. The income derived from such investments shall be added to such proceeds and applied in accordance with the provisions of this Section 210.

Simultaneously with the delivery of such revenue refunding bonds, the Trustee shall withdraw from the Bond Service Account and the Redemption Account in the Sinking Fund an amount equal to the sum of the amounts deposited to the credit of such Accounts under the provisions of Section 507 of this Agreement on account of the interest which is payable on the bonds to be refunded on the next interest payment date of such bonds and on account of the next maturing installment of principal of or the current Amortization Requirement for the bonds to be refunded, but no such withdrawal shall be made on account of any deposits to the credit of the Reserve Account in the Sinking Fund. The amount so withdrawn, the proceeds (excluding accrued interest but including any premium) of such revenue refunding bonds and any other moneys which have been made available to the Trustee for such purpose, shall be held by the Trustee or deposited with the Paying Agents to be held in trust for the sole and exclusive purpose of paying such principal, redemption premium and interest; provided, however, that such portion of the

proceeds of such revenue refunding bonds as is specified by the Executive Director in a certificate filed with the Trustee shall be paid to the Authority to be used for the payment of expenses incident to the financing and the portion of the proceeds of such revenue refunding bonds to be deposited to the credit of the Reserve Account shall be deposited in the Reserve Account. Any part of the proceeds of such revenue refunding bonds which are not needed for the purpose of paying the principal of and the redemption premium, if any, on the bonds to be refunded, making any deposit to the Reserve Account or paying any expenses in connection with such refunding shall be deposited with the Trustee to the credit of the Bond Service Account in the Sinking Fund. The amount received as accrued interest on such revenue refunding bonds shall be deposited with the Trustee to the credit of the Bond Service Account in the Sinking Fund.

SECTION 210A. Revenue refunding bonds of the Authority may also be issued under and secured by this Agreement, subject to the conditions hereinafter provided in this Section, at one time, for the purpose of exchanging such revenue refunding bonds for an equal principal amount of all of the 1947 Indenture Bonds then outstanding. Before any bonds shall be issued under the provisions of this Section 210A, the Board shall adopt a resolution authorizing the issuance of such bonds, fixing the amount and details thereof and describing the 1947 Indenture Bonds to be exchanged therefor. Such revenue refunding bonds shall be designated, shall be issued in the form of registered bonds without coupons, shall be in such denominations and shall be numbered, all as may be provided by resolution or resolutions adopted by the Board prior to the issuance of such bonds. Such revenue refunding bonds shall be dated the July 1 or January 1 to which interest has been paid on the 1947 Indenture Bonds to be exchanged therefor, shall bear interest at the same rate or rates as the interest on such 1947 Indenture Bonds, shall be stated to mature in the same principal amounts and on the same dates as such 1947 Indenture Bonds and shall be subject to redemption at the same times and prices, either in whole or in part, as such 1947 Indenture Bonds. Except as to any differences in the maturities thereof or the rate or rates of interest or the provisions for redemption, such revenue refunding bonds shall be on a parity with and shall be entitled to the same benefit and security of this Agreement as all other bonds issued under this Agreement.

Revenue refunding bonds issued under the provisions of this Section shall be executed substantially in the form and manner hereinabove set forth and shall be deposited with the Trustee for authentication, but before the Trustee shall authenticate and deliver such bonds there shall be filed with the Trustee the following:

(a) a copy, certified by the Secretary, of the resolution or resolutions mentioned above;

(b) a copy, certified by the Secretary, of the resolution adopted by the Board directing the authentication and delivery of such bonds to or upon the order of the holders of the 1947 Indenture Bonds to be exchanged therefor;

(c) such documents as shall be required by the Trustee to show that, upon the date designated for exchange, no 1947 Indenture Bonds shall then be outstanding under the provisions of the 1947 Indenture;

(d) an opinion of counsel, who may be counsel for the Authority, to the effect that, on the date designated for exchange, notice having been duly given in the manner and under the conditions hereinafter provided and revenue refunding bonds duly executed and authenticated as herein provided being held by the Trustee for delivery for exchange for 1947 Indenture Bonds, interest on such 1947 Indenture Bonds shall be deemed to have ceased to accrue from the January 1 or July 1 to which interest has been paid, the coupons for any coupon bonds called for exchange payable subsequent to the exchange date shall be void and such 1947 Indenture Bonds shall cease to be entitled to any lien, benefit or security under the 1947 Indenture and the holders of such 1947 Indenture Bonds shall have no rights in respect thereof, except to receive such revenue refunding bonds of the same principal amount and maturity, bearing interest at the same rate, subject to redemption at the same times and prices as such 1947 Indenture Bonds and of any denomination or denominations authorized by this Agreement; and

(e) an Opinion of Counsel stating that all conditions precedent to the delivery of such bonds have been fulfilled.

Not later than forty-five (45) days before the exchange date of such revenue refunding bonds for such 1947 Indenture Bonds, the Authority shall give written notice to the Trustee and the 1947 Trustee of the proposed exchange and shall direct the 1947 Trustee to provide the Trustee with the names and addresses of the owners of such 1947 Indenture Bonds that are registered bonds without coupons or coupon bonds registered as to principal alone or as to both principal and interest. At least thirty (30) days before such exchange date the Trustee shall cause a notice of such exchange substantially in the form prepared by the Authority and signed by the Trustee (a) to be published once in a daily newspaper of general circulation published in the Municipality of San Juan, Puerto Rico, and in a daily newspaper of general circulation or a financial journal published in the Borough of Manhattan, City and State of New York, and (b) to be mailed, postage prepaid, to all registered owners of such 1947 Indenture Bonds at their addresses provided to the Trustee by the 1947 Trustee, but failure to mail such notice to any registered owner shall not affect the validity of the proceedings for the exchange of 1947 Indenture Bonds of any other registered owners. If all the 1947 Indenture Bonds to be exchanged are registered bonds without coupons or coupon

bonds registered as to principal alone or as to both principal and interest, such notice shall be given by mail, and the Trustee shall not be required to publish such notice. Each such notice shall set forth the date fixed for exchange, the address of the office of the Trustee at which the 1947 Indenture Bonds with all unmatured coupons appurtenant thereto, if any, shall be presented and surrendered for exchange, that on the exchange date interest on such 1947 Indenture Bonds shall be deemed to have ceased to accrue from the January 1 or July 1 to which interest has been paid, the coupons for any coupon bonds called for exchange payable subsequent to the exchange date shall be void and such 1947 Indenture Bonds shall cease to be entitled to any lien, benefit or security under the 1947 Indenture and the holders of such 1947 Indenture Bonds shall have no rights in respect thereof, except to receive registered bonds without coupons issued hereunder of the same principal amount and maturity, bearing interest at the same rate, subject to redemption at the same times and prices as such 1947 Indenture Bonds and of any denomination or denominations authorized by this Agreement.

All 1947 Indenture Bonds and unmatured coupons appurtenant thereto, if any, upon surrender thereof to the Trustee shall be delivered to the 1947 Trustee for cancellation.

**Temporary bonds.**

SECTION 211. Until definitive bonds of any Series are ready for delivery, there may be executed, and upon request of the Authority the Trustee shall authenticate and deliver, in lieu of definitive bonds and subject to the same limitations and conditions, temporary printed, typewritten, engraved or lithographed bonds, in the form of either coupon bonds in such denominations, with or without coupons, or registered bonds without coupons in such denominations, or both, or in the form of a single registered bond without coupons in a denomination equal to the aggregate principal amount of such definitive bonds and payable in installments corresponding to the maturities of such definitive bonds, with payment record attached for the notation of payments of such installments and interest, without presentation and surrender of such single registered bond, as the Authority by resolution may provide, substantially of the tenor hereinabove set forth and with such appropriate omissions, insertions and variations as may be required.

Until definitive bonds of any Series are ready for delivery, any temporary bond of such Series may, if so provided by the Authority by resolution, be exchanged at the principal office of the Trustee, without charge to the holder thereof, for an equal aggregate principal amount of temporary coupon bonds or of temporary registered bonds without coupons or both, of like tenor, of the same Series and maturity and bearing interest at the same rate.

If temporary bonds shall be issued, the Authority shall cause

the definitive bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its principal office of any temporary bond accompanied by all unpaid coupons, if any, shall cancel the same and authenticate and deliver in exchange therefor at the place designated by the holder, without charge to the holder thereof, a definitive bond or bonds of an equal aggregate principal amount, of the same Series and maturity and bearing interest at the same rate as the temporary bond surrendered. Upon any such exchange all coupons appertaining to definitive coupon bonds and representing interest theretofore paid shall be detached and cancelled by the Trustee. Until so exchanged the temporary bonds shall in all respects be entitled to the same benefit and security of this Agreement as the definitive bonds to be issued and authenticated hereunder. Interest on temporary coupon bonds, when due and payable, if the definitive bonds shall not be ready for exchange, shall be paid on presentation of such temporary coupon bonds and notation of such payment shall be endorsed thereon, or such interest shall be paid upon the surrender of the appropriate coupons if coupons representing such interest shall be attached to such temporary bonds. No charge for taxes or governmental charges shall be made against the holder upon an exchange of a temporary bond for a definitive bond.

**Mutilated, destroyed or lost bonds.**

SECTION 212. In case any bond secured hereby shall become mutilated or be destroyed or lost, the Authority shall cause to be executed, and the Trustee shall authenticate and deliver, a new bond of like date and tenor in exchange and substitution for and upon the cancellation of such mutilated bond and its interest coupons, if any, or in lieu of and in substitution for such bond and its coupons, if any, destroyed or lost, upon the holder's paying the reasonable expenses and charges of the Authority and the Trustee in connection therewith and, in the case of a bond destroyed or lost, his filing with the Trustee evidence satisfactory to it and to the Authority that such bond and coupons, if any, were destroyed or lost, and of his ownership thereof, and furnishing the Authority and the Trustee with indemnity satisfactory to them.

ARTICLE III.  
REDEMPTION OF BONDS.

**Redemption of bonds.**

SECTION 301. The bonds of any Series issued under the provisions of this Agreement shall be made subject to redemption, both in whole and in part and at such time and prices, as may be provided by resolution adopted by the Authority prior to the issuance of such bonds; provided, however, that term bonds shall be made subject to redemption to the extent of any Amortization Requirements therefor on July 1 immediately following each year in which there is an Amortization Requirement in respect of such bonds.

**Selection by Trustee.**

If less than all of the bonds of any one maturity of a Series

shall be called for redemption, the particular bonds or portions of registered bonds without coupons to be redeemed from such Series and maturity shall be selected by the Trustee in such manner as the Trustee in its discretion may determine; provided, however, that the portion of any registered bond without coupons to be redeemed shall be in the principal amount equal to the lowest denomination authorized for such Series or some multiple thereof, and that, in selecting bonds for redemption, the Trustee shall treat each registered bond without coupons as representing that number of bonds which is obtained by dividing the principal amount of such registered bond without coupons by the amount of such lowest authorized denomination.

For purposes of this Section 301, if less than all of the Capital Appreciation Bonds shall be called for redemption, the portion of any Capital Appreciation Bond of a denomination of more than the maturity amount specified in the resolution authorizing such Bonds to be redeemed shall be such maturity amount or a multiple thereof, and, in selecting portions of such Capital Appreciation Bond for redemption, the Trustee shall treat such Capital Appreciation Bond as representing that number of Capital Appreciation Bonds of such maturity amount which is obtained by dividing the maturity amount of such Capital Appreciation Bond to be redeemed in part by the maturity amount specified in such resolution.

**Redemption notice.**

SECTION 302. At least thirty (30) days before the redemption date of any bonds the Trustee shall cause a notice of any such redemption, either in whole or in part, signed by the Trustee, (a) to be published once in a daily newspaper of general circulation published in the Municipality of San Juan, Puerto Rico, and in a daily newspaper of general circulation or a financial journal published in the Borough of Manhattan, City and State of New York, (b) to be filed with the Paying Agents, and (c) to be mailed, postage prepaid, to all registered owners of bonds or portions of bonds to be redeemed at their addresses as they appear on the registration books hereinabove provided for, but failure so to file or mail any such notice shall not affect the validity of the proceedings for such redemption; provided, however, that the requirement for notice set forth in this Section 302 shall not apply to any redemption of the Series 2016 Bonds or any portions thereof. If all the bonds to be redeemed are issuable only as registered bonds without coupons, such notice of redemption shall be given by mail and the Trustee shall not be required to publish such notice of redemption. Each such notice shall set forth the date fixed for redemption, the redemption price to be paid and, if less than all of the bonds of any one maturity of a Series then outstanding shall be called for redemption, the distinctive numbers and letters, if any, of such bonds to be redeemed and, in the case of registered bonds without coupons to be redeemed in part only, the portion of the

principal amount thereof to be redeemed. In case any registered bond without coupons is to be redeemed in part only, the notice of redemption which relates to such bond shall state also that on or after the redemption date, upon surrender of such bond, a new bond or bonds of the same Series and maturity, bearing interest at the same rate and in principal amount equal to the unredeemed portion of such bond will be issued.

**Effect of calling for redemption.**

SECTION 303. On the date so designated for redemption, notice having been given in the manner and under the conditions hereinabove provided, the bonds or portions of registered bonds without coupons so called for redemption shall become and be due and payable at the redemption price provided for redemption of such bonds or portions of bonds on such date, and, if moneys for payment of the redemption price and the accrued interest are held in separate accounts by the Trustee or by the Paying Agents in trust for the holders of the bonds or portions thereof to be redeemed, as provided in this Agreement, interest on the bonds or portions of bonds so called for redemption shall cease to accrue, the coupons for interest on any coupon bonds so called for redemption payable subsequent to the redemption date shall be void, such bonds or portions of bonds shall cease to be entitled to any benefit or security under this Agreement, and the holders or registered owners of such bonds or portions of bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof and the accrued interest and, to the extent provided in Section 305 of this Article, to receive bonds for any unredeemed portions of registered bonds without coupons.

**Matured coupons.**

SECTION 304. All unpaid coupons which appertain to coupon bonds so called for redemption and which shall have become due and payable on or prior to the date of redemption designated in such notice shall continue to be payable to the bearers severally and respectively upon the presentation and surrender of such coupons.

**Redemption of portion of registered bonds.**

SECTION 305. In case part but not all of an outstanding registered bond without coupons shall be selected for redemption, the registered owner thereof or his attorney or legal representative shall present and surrender such bond to the Trustee for payment of the principal amount thereof so called for redemption, and the Authority shall execute and the Trustee shall authenticate and deliver to or upon the order of such registered owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the registered bond without coupons so surrendered, either coupon bonds (if authorized for the Series of such registered bond) or a registered bond or bonds without coupons, at the option of such registered owner or his attorney or legal representative, of the same Series and maturity, bearing interest at the same rate and of any

denomination or denominations authorized by this Agreement.

**Cancellation of bonds and coupons redeemed.**

SECTION 306. Coupon bonds so redeemed and all unmatured coupons appertaining thereto, and registered bonds without coupons so presented and surrendered, shall be cancelled upon the surrender thereof.

**Bonds and portions of bonds called for redemption not deemed outstanding.**

SECTION 307. Bonds and portions of bonds which have been duly called for redemption under the provisions of this Article, or with respect to which irrevocable instructions to call for redemption or payment at or prior to maturity have been given to the Trustee in form satisfactory to it, and for the payment of principal or the redemption price and the accrued interest of which sufficient moneys, or Government Obligations or Prerefunded Municipals or Time Deposits, secured in the manner set forth in Section 601 of this Agreement, shall be held in separate accounts by the Trustee or by the Paying Agents in trust for the holders of the bonds or portions thereof to be paid or redeemed, all as provided in this Agreement, shall not thereafter be deemed to be outstanding under the provisions of this Agreement.

ARTICLE IV.

CUSTODY AND APPLICATION OF PROCEEDS OF BONDS

**Construction Fund.**

SECTION 401. A special fund is hereby created and designated "Puerto Rico Electric Power Authority Power System Construction Fund" (herein sometimes called the "Construction Fund"), to the credit of which such deposits shall be made as are required by the provisions of Section 208 of this Agreement. There shall also be deposited to the credit of the Construction Fund any moneys received from any other source for paying any portion of the cost of any Improvements. One or more separate accounts may be created in the Construction Fund for use for specified projects.

The moneys in the Construction Fund shall be held by the Authority in trust, separate and apart from all other funds of the Authority, and shall be applied to the payment of the cost of any Improvements and, except for any moneys in separate accounts in the Construction Fund received from the United States Government or any agency thereof or from the Commonwealth of Puerto Rico or any agency thereof, pending such application, shall be subject to a lien and charge in favor of the holders of the bonds issued and outstanding under this Agreement and for the further security of such holders until paid out or transferred as herein provided.

**Payments from Construction Fund.**

SECTION 402. Payment of the cost of any Improvements shall be made from the Construction Fund as herein provided. Moneys in the Construction Fund shall be disbursed by check, voucher, order,

draft, certificate or warrant signed by the Executive Director or by any officer or employee of the Authority designated by him for such purpose.

**Items of cost.**

SECTION 403. For the purposes of this Article, the cost of any Improvements shall embrace the cost of acquisition or construction and equipment and all other items of cost incident to such acquisition and construction and equipment and the financing thereof, and shall include, without intending thereby to limit or restrict any proper definition of such cost under the provisions of law or this Agreement, the following:

(a) obligations incurred for labor and materials and to contractors, builders and materialmen in connection with the construction of any Improvements;

(b) the cost of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of any award or final judgment in or any settlement or compromise of any proceeding to acquire by condemnation, such property, lands, rights, rights of way, franchises, easements and other interests in land constituting a part of, or as may be deemed necessary or convenient for the construction of any Improvements, options and partial payments thereon, the cost of filling, draining or improving any lands so acquired, and the amount of any damages incident to or consequent upon the construction of any Improvements ;

(c) the fees and expenses of the Trustee for its services under Article II of this Agreement, including its services in connection with the acceptance of the trusts hereby created, legal expenses and fees, fees and expenses of consultants, financing charges, cost of preparing and issuing the bonds, taxes or other municipal or governmental charges lawfully levied or assessed during construction upon any Improvements, and premiums on insurance in connection with any Improvements during construction;

(d) fees and expenses of architects or engineers for making studies, surveys and testing, for preparing plans and specifications and supervising construction, as well as for the performance of all other duties of architects or engineers set forth herein in relation to the construction of any Improvements;

(e) expenses of administration properly chargeable to any Improvements and all other items of expense not elsewhere in this Section specified, incident to the acquisition or construction and equipment of any Improvements;

(f) interest on the bonds prior to and during construction of the Improvements financed by such bonds and for such period after completion of such construction as the Authority may determine, if

then permitted by law; and

(g) any obligation or expense heretofore or hereafter incurred by the Authority and any amounts heretofore or hereafter advanced by the Commonwealth of Puerto Rico or any agency thereof or by the United States Government, or from any other source, for any of the foregoing purposes.

**Lands for projects.**

SECTION 404. The Authority covenants that no disbursement will be made for the purchase price or cost of any electric system or portion thereof, or any lands, buildings, franchises, licenses, easements or rights of way, unless and until counsel for the Authority shall have rendered his written opinion to the Authority to the effect that the Authority either has or will have immediately upon such disbursement (by reason of the prior or simultaneous delivery of proper instruments of conveyance and transfer mentioned in such opinion) title thereto sufficient for the purposes of the System.

[Note: This Section 406 only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(a) of the Sixteenth Supplemental Agreement.]

SECTION 406. Replenishment of the Construction Fund. On any Construction Fund Replenishment Date, to the extent that moneys in the General Fund exceed the Retained General Fund Amount, the Authority shall transfer from the General Fund to the credit of the Construction Fund an amount equal to the lesser of (x) the excess over the Retained General Fund Amount and (y) the Construction Fund Replenishment Amount, in accordance with Section 505 of this Agreement.

ARTICLE V.  
REVENUES AND FUNDS.

**Covenant as to bills for services.**

SECTION 501. The Authority covenants that it will continue to render bills for the services and facilities furnished by the System on a monthly or bi-monthly basis until such time as the Authority shall deem it advisable to change the period covered by such bills, and that it will establish and enforce reasonable regulations in relation to the collection of such bills.

**Covenant as to rates.**

SECTION 502. The Authority further covenants that it will at all times fix, charge and collect reasonable rates and charges for the use of the services and facilities furnished by the System and that from time to time, and as often as it shall appear necessary, it will adjust such rates and charges so that the Revenues will at all times be sufficient

(A) until the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture :

(a) to pay the Current Expenses of the System, and

(b) to provide the greater of (i) the amount equal to one hundred twenty per centum (120%) of the aggregate Principal and Interest Requirements for the next fiscal year on account of all 1947

Indenture Bonds then outstanding and all bonds then outstanding under this Agreement, reduced by any amount deposited to the credit of the Bond Service Account from the proceeds of bonds to pay interest to accrue thereon in such fiscal year, or (ii) the amount required to make the deposits, transfers and payments mentioned in items (1) through (4), inclusive, below:

(1) to make the deposits to the credit of the 1947 Sinking Fund which are required to be made in each fiscal year under the provisions of Section 507 of the 1947 Indenture,

(2) to make the deposits to the credit of the General Reserve Fund which are required to be made in each fiscal year under the provisions of Section 511 of the 1947 Indenture,

(3) to make the transfers to the credit of the Renewal and Replacement Fund which are required to be made in each fiscal year under the provisions of Section 512 of the 1947 Indenture, and

(4) to make the payments which are required to be made in each fiscal year under the provisions of clause (a) of Section 513 of the 1947 Indenture, and

(B) after the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture:

(a) to pay the Current Expenses of the System, and

(b) to provide an amount at least equal to one hundred twenty per centum (120%) of the aggregate Principal and Interest Requirements for the next fiscal year on account of all the bonds then outstanding under this Agreement, reduced by any amount deposited to the credit of the Bond Service Account from the proceeds of bonds to pay interest to accrue thereon in such fiscal year.

The Authority further covenants that if at any time the Revenues shall not be sufficient to make such deposits, transfers and payments, it will revise the rates and charges for the services and facilities furnished by the System and, if necessary, it will revise its regulations in relation to the collection of bills for such services and facilities, so that such deficiency will be made up before the end of the next ensuing fiscal year. Should any deficiency not be made up in such next ensuing fiscal year, the requirement therefor, except as to the payments which are required to be made in such fiscal year under subclause (4) of clause (b) of paragraph (A) of this Section, shall be cumulative and the Authority shall continue to revise such rates until such deficiency shall have been completely made up.

Forthwith upon the adoption of any revision of rates and

charges the Authority shall cause certified copies thereof to be filed with the Trustee.

In the event that the Authority shall fail to adjust the schedule of rates and charges in accordance with the provisions of this Section, the Trustee, without regard to whether an event of default, as defined in Article VIII of this Agreement, shall have occurred, shall, upon the request of the holders of not less than ten per centum (10%) in principal amount of all bonds then outstanding and upon being indemnified to its satisfaction, institute and prosecute in a court of competent jurisdiction an appropriate suit, action or proceeding to compel the Authority to adjust such schedule in accordance with the requirements of this Section, and the Authority covenants that it will adopt and charge rates and charges in compliance with any judgment, order or decree entered in any such suit, action or proceeding.

**General Fund.**

SECTION 503. A special fund is hereby created and designated the "Puerto Rico Electric Power Authority General Fund" (herein sometimes called the "General Fund"). The Authority covenants that, after the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, all Revenues, other than income from investments made under the provisions of this Agreement, will be deposited as received in the name of the Authority with a qualified depository or depositories to the credit of the General Fund and applied in accordance with the provisions of this Article.

**Annual Budget.**

SECTION 504. The Authority covenants that on or before the 15th day of May in each year the Board will cause to be prepared and will adopt and file with the Secretary, with the Trustee and with the Consulting Engineers a proposed budget of Current Expenses and of Capital Expenditures for the ensuing fiscal year.

The Authority further covenants that such proposed budget of Current Expenses will be prepared in such manner as to segregate, in so far as advisable, the accounts in respect of the different classes of operations, projects, undertakings and activities of the Authority and will be prepared on the basis of monthly requirements so that it will be possible to determine from the budget the Current Expenses for each month during the fiscal year, that it will comply with any reasonable request of the Consulting Engineers as to the classifications in which such budget shall be prepared, and that such proposed budget of Capital Expenditures will show separately (a) so long as any 1947 Indenture Bonds are outstanding, the amount to be expended during such fiscal year from moneys deposited or transferred to the credit of the Renewal and Replacement Fund, including a separate statement as to the amount to be withdrawn from said Fund under the provisions of Section 507 of this Agreement, (b) the amount to be expended during such fiscal year from moneys

deposited to the credit of the Construction Fund and, so long as any 1947 Indenture Bonds are outstanding, the 1947 Construction Fund, and (c) the amount of the working cash funds required for each month during such fiscal year.

The Authority further covenants that on the 1st day of June of each year, or on the first business day thereafter, it will hold a public hearing at its office in the Municipality of San Juan, Puerto Rico, on the proposed budget for the ensuing fiscal year, at which any bondholder, any consumer or any other interested person may appear, in person or by agent or attorney, and present any objections he may have to such proposed budget, and that promptly after each such public hearing and, in any event, on or before the first day of the next ensuing fiscal year the Board will finally adopt the annual budget of Current Expenses and Capital Expenditures for such fiscal year (which budget, together with any amendment thereof or supplement thereto as hereinafter permitted, is herein sometimes called the "Annual Budget"). The Authority covenants that the total expenditures provided for in the Annual Budget of Current Expenses will not exceed *the total* expenditures set forth in the proposed budget unless such excess shall be approved by the Consulting Engineers, and that before adopting the budget of Capital Expenditures it will receive and consider the Consulting Engineers' advices and recommendations with respect thereto.

If for any reason the Board shall not have adopted the Annual Budget before the first day of any fiscal year, the proposed budget for such fiscal year, if approved by the Consulting Engineers, or, if there is none so approved, the budget for the preceding fiscal year, shall, until the adoption of the Annual Budget, be deemed to be in force and shall be treated as the Annual Budget under the provisions of this Article; provided, however, that, so long as any 1947 Indenture Bonds are outstanding, the amounts provided for in the Annual Budget to be transferred from the 1947 Revenue Fund to the Renewal and Replacement Fund shall not be less than the amount set forth in the most recent certificate of the Executive Director filed with the Trustee pursuant to clause (d) of Section 208 of this Agreement.

The Board may at any time cause to be prepared and may file with the Secretary, with the Trustee and with the Consulting Engineers, and the Board may thereafter adopt, after receiving the approval of the Consulting Engineers, an amended or supplemental Annual Budget for the then current fiscal year.

**Application of moneys in General Fund.**

[Note: Bracketed sentence beginning with “On each Construction Fund Replenishment Date” only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(a) of the Sixteenth Supplemental Agreement.]

SECTION 505. The Authority covenants that moneys in the General Fund will be used first for the payment of the Current Expenses of the System, that such expenses will not exceed an amount which is reasonable and necessary for maintaining, repairing and operating the System in an efficient and economical manner, and that the total amount of Current Expenses in any fiscal year will not exceed the amount provided therefor in the Annual Budget for such fiscal year or any amendment thereof or supplement thereto unless such expenses shall be required by conditions beyond the control of the Authority happening during such fiscal year and which could not reasonably have been contemplated at the time of the adoption of the Annual Budget. If at any time the total amount theretofore expended during any fiscal year for Current Expenses shall exceed the total amount provided in the Annual Budget for Current Expenses for such fiscal year, the Authority covenants that it will report in writing the amount of such excess and the reason or reasons therefor to the Consulting Engineers and to the Trustee as soon as practicable but not later than the last day of the sixth month following the month in which such excess shall have occurred.

[Note: Bracketed sentence beginning with “On each Construction Fund Replenishment Date” only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(a) of the Sixteenth Supplemental Agreement.]

[On each Construction Fund Replenishment Date, the Authority shall apply moneys credited to the General Fund to satisfy its replenishment obligation under Section 406 prior to using such moneys for the payment of Current Expenses. Notwithstanding anything in this Agreement to the contrary, after the Amendment Period, the obligation to replenish the Construction Fund in accordance with Section 406 shall be junior and subject to the obligation to pay Current Expenses in accordance with this Section 505 and to transfer moneys from the General Fund to the Revenue Fund in accordance with Section 506 of this Agreement until the bonds are paid or deemed paid in full under the provisions of this Agreement.]

[Note: Bracketed clauses (1) through (6) only survives, if at all, pursuant to the conditional and limited survival provisions of Section 2(iii) of the Eighteenth Supplemental Agreement, which provides that these clauses and any related definitions will continue in effect solely as to clause (5) until all moneys transferred to the Capital Improvement Fund (if any) during the Amendment Period shall have been applied in accordance therewith and all related certifications have been made.]

[(1) After the Amendment Effective Date and not less than ten (10) business days before the first transfer of moneys from the General Fund to the Capital Improvement Fund pursuant to clause (4) of this Section 505, the Authority shall submit to the Amending Creditors or their respective advisors for approval a schedule of expected costs of Improvements (and of extensions to the System) during an initial period of not more than thirteen (13) weeks from the date of transfer of moneys from the General Fund to the Capital Improvement Fund (the "Initial Improvements Period") that itemizes and contains a brief description of Improvements (and of such extensions of the System) and the applicable project name or names assigned thereto by the Authority the costs of which are expected to be paid from moneys in the Capital Improvement Fund, the Reserve Maintenance Fund or the Construction Fund during such Initial Improvements Period, along with a monthly cost forecast for each such project during the Initial Improvements Period.

(2) At any point thereafter during the Amendment Period, at least ten (10) business days before the requested date of approval, the Authority may submit to the Amending Creditors or their respective advisors for approval (i) a revised schedule of expected Improvements (and of extensions of the System) during the Initial Improvements Period or (ii) a schedule of expected Improvements (and of extensions of the System) during a subsequent thirteen (13) week period commencing on the date of delivery of such schedule (in each case that itemizes and specifies the expected costs of such Improvements (and of extensions of the System) during such period and contains a brief description of such Improvements (and of such extensions of the System) and the applicable project name or names assigned thereto by the Authority) the costs of which are expected to be paid from moneys in the Capital Improvement Fund, the Reserve Maintenance Fund or the Construction Fund during such period following the date of delivery of such schedule, along with a monthly cost forecast for each such project during such period.

(3) Within not more than ten (10) business days after receipt of any such schedule referred to in clauses (1) or (2) above in this Section, the Required Amending Creditors or their respective advisors may deliver to the Authority written confirmation or confirmations that the costs of Improvements (and of extensions of the System) described in the applicable schedule (the "Proposed Improvements") are or are not reasonably acceptable. In addition, if within not more than ten (10) business days after receipt of any such schedule referred to in clauses (1) or (2) above in this Section, none of the Required Amending Creditor Groups nor any of their respective advisors objects in one or more writings to the Authority to any such schedule of Proposed

Improvements, such Proposed Improvements shall be deemed to be reasonably acceptable to the Required Amending Creditors for purposes of this Section 505. Upon receipt of written confirmation from each Required Amending Creditor Group or its advisor stating that such Proposed Improvements are acceptable or, to the extent a Required Amending Creditor Group or its advisor has not provided a written confirmation stating that such Proposed Improvements are acceptable, the expiration of such ten (10) business day period without the receipt by the Authority of any objection from such Required Amending Creditor Group or its advisors, the Authority shall provide a certificate to the Trustee and the Amending Creditors or their respective advisors, signed by the Executive Director or by any other officer or employee of the Authority with fiscal authority, attaching such schedule and certifying that it has received from each Required Amending Creditor Group or its advisor either (a) a written confirmation that the Proposed Improvements described in such schedule are reasonably acceptable or (b) no objection within the applicable time period described above and, as a result, that such Proposed Improvements are deemed to be reasonably acceptable to such Required Amending Creditor Group for purposes of this Section 505.

(4) During the Amendment Period, and subject to the Authority's compliance with the provisions of clauses (1) through (3) of this Section 505, the Authority may transfer moneys from the General Fund to the Capital Improvement Fund to be applied as provided in Section 512B of this Agreement to pay Approved Costs of Improvements, provided that:

(a) immediately prior to any such transfer, the balance in the Construction Fund and the Capital Improvement Fund in the aggregate is less than \$75,000,000;

(b) on the date of each such transfer and application the representations of the Authority given in Section 12(b) of the RSA are true and correct as of the date of any such transfer and as of the date of any application of such funds;

(c) immediately following any such transfer, the aggregate amount of moneys transferred pursuant to this clause (4) plus the aggregate amount of moneys deposited in the Construction Fund after the date of the Eighteenth Amendment does not exceed the aggregate amount of Approved Costs of Improvements;

(d) any moneys so transferred during the Amendment Period shall be applied by the Authority only to

Approved Costs of Improvements and are applied in the manner required by the Agreement for application of moneys from the Construction Fund; and

(e) on a quarterly basis, on the fifteenth (15th) day of the month, the Authority shall provide a certification to the Trustee and each Amending Creditor or its advisors for the three-month period preceding the first day of the month in which the certification is given, (i) indicating whether the Improvements on the schedules of Approved Costs of Improvements are complete, and, for any such Improvements that are not complete, an estimate of the percentage of completion of the project, (ii) containing an estimate of the actual costs towards which the moneys in the Construction Fund, Reserve Maintenance Fund and/or Capital Improvement Fund were applied during such three-month period on a project-level basis, and (iii) stating that all funds withdrawn from the Construction Fund, Reserve Maintenance Fund and/or Capital Improvement Fund during such three-month period were applied to Approved Costs of Improvements (A) in a manner consistent with the required manner of application of moneys from the Construction Fund and (B) in compliance with the Eighteenth Amendment.

(5) After the Amendment Period but subject to any obligation of the Authority to transfer funds to the Bond Service Account and the Redemption Account as and when required under Section 512B, for so long as moneys transferred to the Capital Improvement Fund pursuant to clause (4) remain in the Capital Improvement Fund, (i) the Authority may not apply such moneys for costs of Improvements (or of extensions of the System) other than Approved Costs of Improvements approved during the Amendment Period in accordance with the terms of this Section 505 and (ii) the Authority must provide the certification in clause (4)(e) following the expenditure of such funds; provided, however, that if the Authority decides not to apply such funds to such Approved Costs of Improvements, then it shall transfer such funds to the General Fund.

(6) The Trustee shall have no duty to review any certification received pursuant to previous clauses (1)-(5) for any purpose, except to confirm that such certification has been delivered, and the Trustee shall be authorized to provide any requesting bondholder with a copy of any such certification.]

#### **Revenue Fund.**

SECTION 506. A special fund is hereby created and designated the "Puerto Rico Electric Power Authority Power Revenue Fund" (herein sometimes called the "Revenue Fund"). After the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, the Treasurer

shall transfer, on or before the 15th day of each month, from the General Fund to the credit of the Revenue Fund an amount equal to the amount of all moneys held for the credit of the General Fund on the last day of the preceding month less such amount to be held as a reserve for Current Expenses as the Treasurer may determine, but not more than one-sixth (1/6) of the amount shown by the Annual Budget to be necessary for Current Expenses for the current fiscal year, such transfer to be made on the books of the Authority as of the close of the preceding month. The Authority covenants that all moneys to the credit of the Revenue Fund will be applied to the purposes and in the order set forth in this Article.

**Sinking Fund.**

**Bond Service  
Account, Reserve  
Account and  
Redemption Account.**

**Reserve Maintenance  
Fund.**

SECTION 507. A special fund is hereby created and designated the "Puerto Rico Electric Power Authority Power Revenue Bonds Interest and Sinking Fund" (herein sometimes called the "Sinking Fund"). There are hereby created three separate accounts in the Sinking Fund designated "Bond Service Account", "Reserve Account" and "Redemption Account", respectively. Another special fund is hereby created and designated "Puerto Rico Electric Power Authority Reserve Maintenance Fund" (herein sometimes called the "Reserve Maintenance Fund"). Two other special funds are hereby created and designated "Puerto Rico Electric Power Authority Self-insurance Fund" (herein some times called the "Self-insurance Fund") and "Puerto Rico Electric Power Authority Capital Improvement Fund" (herein sometimes called the "Capital Improvement Fund"). Another special fund is hereby created and designated "Puerto Rico Electric Power Authority Subordinate Obligations Fund" (herein some times called the "Subordinate Obligations Fund"). On or before the last day of the month during which the first Series of bonds shall be issued under the provisions of Section 208 of this Agreement and on or before the 25th day of each month thereafter, (i) until the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, it shall be the duty of the Executive Director or any officer or employee of the Authority designated by him for such purpose to withdraw from the Renewal and Replacement Fund, and (ii) after the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture it shall be the duty of the Treasurer to withdraw from the Revenue Fund, all of the moneys then held to the credit of such Fund (less any amount equal to the amount of Federal Subsidy Payments that have not been received as of the 25th of the month preceding the Interest Payment Date to which such Federal Subsidy Payments relate, which amount will be held in the Revenue Fund and (x) if the Federal Subsidy Payment has not been received by the Authority by such Interest Payment Date, transferred to the Bond Service Account on the Interest Payment Date and applied to the payment of interest on Bonds or (y) if the Federal Subsidy Payment has been received by the Authority on or before such Interest

Payment Date, remain on deposit in the Revenue Fund for application in accordance with the provisions below in the following calendar month) and deposit the moneys so withdrawn to the credit of the following Accounts and Funds in the following order:

(a) to the credit of the Bond Service Account, such amount thereof (or the entire sum so withdrawn if less than the required amount) as may be required to make the total amount then to the credit of the Bond Service Account equal to the sum of

(i) the Interest Accrual on all the outstanding bonds to and including the first day of the next calendar month, and

(ii) the Principal Accrual on the outstanding serial bonds to and including the first day of the next calendar month;

(b) to the credit of the Redemption Account, such amount, if any, of any balance remaining after making the deposit under clause (a) above (or the entire balance if less than the required amount) as may be required to make the amount then to the credit of the Redemption Account equal to the Amortization Accrual to and including the first day of the next calendar month;

(c) to the credit of the Reserve Account, such amount, if any, of any balance remaining after making the deposits under clauses (a) and (b) above (or the entire balance if less than the required amount) as may be required to make the amount then to the credit of the Reserve Account, including the amount of any Reserve Account Insurance Policy or any Reserve Account Letter of Credit therein, equal to the interest payable on the bonds of each Series issued hereunder within the next ensuing twelve (12) months; (A) provided, however, that the amount so deposited in any month in respect of bonds of any Series issued under Sections 208 or 209 of this Agreement need not exceed one-sixtieth ( $1/60$ ) of the amount of the increase in the interest payable within the next ensuing twelve (12) months resulting from the issuance of the bonds of such Series; and that if the amount so deposited in any month to the credit of said Account shall be less than the required amount for such month, the requirement therefor shall nevertheless be cumulative and the amount of any deficiency in any month shall be added to the amount otherwise required to be deposited in each month thereafter until such time as such deficiency shall have been made up; and that in the case of Variable Rate Bonds, the minimum amount to be deposited in the Reserve Account over the period required herein, shall be based initially on the interest rate in effect on the date of issuance of the Variable Rate Bonds and then shall be adjusted on the 25th day of each subsequent month based on the actual interest accrued from the 25th day of the previous month to the date of adjustment, except that

in the case of Variable Rate Bonds in respect of which the Authority has notified the Trustee that a SWAP agreement is in effect, the Trustee shall use the SWAP rate in calculating the interest payable on such Bonds within the next ensuing twelve (12) months; and that in the case of Capital Appreciation Bonds, the minimum amount required to be deposited in the Reserve Account shall be an amount derived from the interest rate which has been used to calculate the assumed yield on such bonds through their maturity times the Accreted Value of such bonds on the Valuation Date occurring at or after the first day of the twelfth succeeding month to the date of calculation of this requirement, as may be further specified in the resolution authorizing Capital Appreciation Bonds; and (B) provided, however, that in the case of Federally Subsidized Bonds, the amount of interest deemed to be payable on such bonds from the date of issuance of such Federally Subsidized Bonds and for so long as the Trustee shall receive the scheduled amount of the Federal Subsidy Payments on or before such interest shall be payable shall exclude the amount of interest to be paid from the Federal Subsidy and provided further, however, that if the Trustee shall not receive the scheduled amount of the Federal Subsidy Payments on or before the date interest on such Federally Subsidized Bonds is payable or within thirty (30) of the date such Federal Subsidy Payments were scheduled to be received under the then current applicable law and regulations, then for purposes of the calculation of interest to be credited to the Reserve Account, the amount shall be equal to the interest payable on the bonds of each Series issued hereunder within the next twelve (12) months.

(d) to the credit of the Reserve Maintenance Fund, such amount, if any, of any balance remaining after making the deposits under clauses (a), (b) and (c) above (or the entire balance if less than the required amount) as may be recommended by the Consulting Engineers, as provided by Section 706 of this Agreement, to be deposited to the credit of said Fund during such month; provided, however, that if the amount so deposited to the credit of said Fund in any month shall be less than the amount recommended by the Consulting Engineers, the requirement therefor shall nonetheless be cumulative and the amount of any such deficiency in any month shall be added to the amount otherwise required to be deposited in each month thereafter until such time as such deficiency shall have been made up, unless such requirement shall have been modified by the Consulting Engineers in writing, a signed copy of such modification to be filed with the Authority; and provided further, however, that in the event that the Authority shall so covenant in respect of any Subordinate Obligation, as authorized by Section 516 of this Agreement, the deposit required by this clause (d) in any month shall be equal to the least of

(i) the amount described above in this clause (d),

(ii) the amount of \$400,000, and

(iii) an amount that when added to the amount then held to the credit of the Reserve Maintenance Fund shall make the total amount to the credit of said Fund equal to \$10,000,000;

(e) to the credit of one or more special accounts in the Subordinate Obligations Fund, such amount, if any, of any balance remaining after making the deposits under clauses (a), (b), (c) and (d) above (or the entire balance if less than the required amount) that together with funds then held to the credit of the Subordinate Obligations Fund will make the total amount then to the credit thereof equal to any amounts required to be paid or accrued with respect to any Subordinate Obligations prior to the Deposit Day of the next succeeding month from or to the Subordinate Obligations Fund;

(f) in the event the Authority shall have covenanted pursuant to Section 516 with respect to Subordinate Obligations to limit its deposit to the Reserve Maintenance Fund in accordance with the provisions of the second proviso of clause (d) above and in fact the deposit to said Fund pursuant to clause (d) was limited to the amount described in subclause (ii) or (iii), to the credit of the Reserve Maintenance Fund, such amount, if any, of any balance remaining after making the deposits under clauses (a), (b), (c), (d) and (e) above (or the entire balance if less than the required amount) as may be required to make the total amount deposited to the credit of the Reserve Maintenance Fund in such month equal to the amount described in subclause (i) of clause (d) above;

(g) On the date of the release of the 1947 Indenture, to the credit of the Self-insurance Fund an amount equal to the amount held to the credit of the General Reserve Fund under the 1947 Indenture on the date of such release remaining after making the deposits under clauses (a), (b), (c), (d), (e) and (f) above and thereafter such amount, if any, of any balance remaining after making the deposits under clauses (a), (b), (c), (d), (e) and (f) above, as the Consulting Engineers shall from time to time recommend; and

(h) After the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, to the credit of the Capital Improvement Fund such amount, if any, of any balance remaining after making the deposits under clauses (a), (b), (c), (d), (e), (f) and (g) above, as the Consulting Engineers shall recommend as provided by Section 706 of this Agreement; provided, however, that if the amount so deposited to the credit of said Fund during any fiscal year of the Authority shall be less than the amount recommended by the Consulting Engineers,

the requirement therefor shall nevertheless be cumulative and the amount of any such deficiency in any such fiscal year shall be added to the amount otherwise required to be deposited in each fiscal year thereafter until such time as such deficiency shall have been made up, unless such requirement shall have been modified by the Consulting Engineers in writing, a signed copy of such modification to be filed with the Authority.

Until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, any balance remaining after making the deposits under clauses (a), (b) and (c) above shall be transferred to the Renewal and Replacement Fund. After the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, any balance remaining after making the deposits under clauses (a) through (h) above may be used for any lawful purpose of the Authority.

The moneys in the Sinking Fund shall be held by the Trustee in trust, and the moneys in the Reserve Maintenance Fund, the Self-insurance Fund and the Capital Improvement Fund shall be held by the Authority in trust, separate and apart from all other funds of the Authority, and shall be applied as hereinafter provided with respect to such Funds and, pending such application, shall be subject to a lien and charge in favor of the holders of the bonds issued and outstanding under this Agreement and for the further security of such holders until paid out or transferred as herein provided. The moneys in each account in the Subordinate Obligations Fund shall be held by the Authority (or a Depositary) in trust, separate and apart from all other funds of the Authority, and shall be applied as hereinafter provided with respect to such Fund and, pending such application, shall be subject to a lien and charge in favor of the holders of the Subordinate Obligations incurred in the manner provided under this Agreement and for the further security of such holders until paid out or transferred as herein provided. The Authority (or such Depositary) may establish one or more accounts within the Subordinate Obligations Fund corresponding to the source of moneys or particular Subordinate Obligations for each deposit made into said Fund so that the Authority (and such Depositary) may ascertain the source and date of deposit of the moneys in each such account.

**Disposition of  
balances in 1947  
Indenture funds and  
accounts.**

SECTION 508. At such time as the outstanding 1947 Indenture Bonds shall be paid or provision shall be made for their payment and the Trustee under the 1947 Indenture shall have released the 1947 Indenture, all moneys (other than moneys held for the redemption or payment of bonds and coupons), including any obligations purchased as an investment of such moneys, then held for the credit of the special funds and accounts created under the provisions of the 1947 Indenture shall be withdrawn and deposited to the credit of the special

funds and accounts created under the provisions of this Agreement, as follows :

<u>1947 Indenture</u>	<u>Agreement</u>
Construction Fund	Construction Fund
General Fund	General Fund
Revenue Fund	Revenue Fund
Sinking Fund, including	Reserve Account in
Reserve Account	Sinking Fund
General Reserve Fund	General Fund
Renewal and Replacement Fund	General Fund

At the same time the Authority shall withdraw all moneys then held to the credit of the Construction Fund revolving fund under the provisions of the 1947 Indenture and deposit such moneys to the credit of the Construction Fund under the provisions of this Agreement.

**Application of moneys in Bond Service Account.**

SECTION 509. The Trustee shall, on the business day immediately preceding each interest payment date, withdraw from the Bond Service Account and (a) remit by mail to each owner of registered bonds without coupons the amounts required for paying the interest on such bonds as such interest becomes due and payable and (b) set aside or deposit in trust with the Paying Agents the amounts required for paying the interest on the coupon bonds as such interest becomes due and payable and the principal of all serial bonds as such principal becomes due and payable.

Notwithstanding the foregoing, if principal and interest payments, or a portion thereof (other than any payments of the purchase price of bonds pursuant to a “put”), for particular bonds have been made on behalf of the Authority by a credit or liquidity facility issuer or other entity insuring, guaranteeing or providing for said payments, amounts deposited in the Bond Service Account and allocable to said payments for said bonds shall be paid, to the extent required under any agreement, to the credit or liquidity facility issuer or entity having theretofore made said corresponding payment.

**Application of moneys in Reserve Account.**

SECTION 510. Moneys held for the credit of the Reserve Account or amounts available under any Reserve Account Insurance Policy or Reserve Account Letter of Credit shall first be used for the purpose of paying interest on the bonds and maturing principal of the serial bonds whenever and to the extent that the moneys held for the credit of the Bond Service Account shall be insufficient for such purpose and thereafter for the purpose of making the deposits to the credit of the Redemption Account pursuant to the requirements of

clause (b) of Section 507 of this Agreement whenever and to the extent that the withdrawals from the Renewal and Replacement Fund or the Revenue Fund, as the case may be, are insufficient for such purpose. If at any time the moneys held for the credit of the Reserve Account, including amounts available under any Reserve Account Insurance Policy or Reserve Account Letter of Credit, shall exceed interest payable within the next ensuing twelve (12) months on the bonds of each Series issued and then outstanding hereunder, such excess moneys shall be transferred to the credit of the Bond Service Account or any Reserve Account Insurance Policy or Reserve Account Letter of Credit may be reduced to the extent of such excess, at the option of the Authority. For purposes of determining whether any excess exists in the Reserve Account, the amount required for Capital Appreciation Bonds and interest payable within the next ensuing twelve (12) months for Variable Rate Bonds shall be calculated in accordance with clause (c) of Section 507, and the minimum amount required in the Reserve Account shall be deemed to include any additional level of funding of the Reserve Account required under the terms of the resolution adopted by the Authority for the bonds.

Notwithstanding anything to the contrary contained in Section 507 or elsewhere in this Agreement, in lieu, or in partial satisfaction, of any required deposit into the Reserve Account, the Authority may cause to be deposited into the Reserve Account a Reserve Account Insurance Policy or a Reserve Account Letter of Credit, as to which any reimbursement obligation in respect of a drawing thereon may be secured by a lien on Revenues not inconsistent with Section 712 hereof, for the benefit of the holders of the bonds in an amount equal to the required deposit or any portion thereof, and which Reserve Account Insurance Policy or Reserve Account Letter of Credit shall be payable or available to be drawn upon, as the case may be (upon the giving of notice as required thereunder), on any date on which moneys are required to be paid out of the Reserve Account pursuant to the first sentence of this Section 510. If a disbursement is made under the Reserve Account Insurance Policy or the Reserve Account Letter of Credit, the Authority shall be obligated either to reinstate the amount of such Reserve Account Insurance Policy or Reserve Account Letter of Credit or to deposit into the Reserve Account moneys, in accordance with the provisions of Section 507 hereof, in the amount of the disbursement made under such Reserve Account Insurance Policy or Reserve Account Letter of Credit, or a combination of such alternatives. The Authority may at any time substitute (i) all or a portion of the moneys held to the credit of the Reserve Account with a Reserve Account Insurance Policy or Reserve Account Letter of Credit, or a combination of such alternatives, (ii) all or a portion of any Reserve Account Insurance

Policy on deposit in the Reserve Account with moneys or a Reserve Account Letter of Credit, or a combination of such alternatives, or (iii) all or a portion of any Reserve Account Letter of Credit on deposit in the Reserve Account with moneys or a Reserve Account Insurance Policy, or a combination of such alternatives. Any moneys on deposit in the Reserve Account in substitution of which a Reserve Account Insurance Policy or Reserve Account Letter of Credit is deposited into the Reserve Account shall, to the extent not required to fund any deficiencies in the amount then required to be on deposit in the Reserve Account, be released and immediately paid over to the Authority to be used by the Authority for any lawful purpose of the Authority. Prior to the expiration date of any Reserve Account Insurance Policy or Reserve Account Letter of Credit then on deposit to the credit of the Reserve Account, the Authority shall (x) cause the term of such Reserve Account Insurance Policy or Reserve Account Letter of Credit to be extended, (y) replace any such Reserve Account Insurance Policy with moneys (which may include, without limitation, moneys available under the Reserve Account Insurance Policy or from any other source available for such purpose) or a Reserve Account Letter of Credit, or a combination of such alternatives, or (z) replace any such Reserve Account Letter of Credit with moneys (which may include, without limitation, moneys available under the Reserve Account Letter of Credit or from any other source available for such purpose) or a Reserve Account Insurance Policy, or a combination of such alternatives; provided that, in the event the Authority has not extended or replaced the expiring Reserve Account Insurance Policy or Reserve Account Letter of Credit by the fifth (5th) business day prior to the date of expiration, the expiring Reserve Account Insurance Policy or Reserve Account Letter of Credit shall, on such date, be drawn upon to fund the Reserve Account. For purposes of this Agreement, other than Article VI hereof, moneys for deposit to, or held for the credit of, the Reserve Account shall include amounts available under any Reserve Account Insurance Policy or Reserve Account Letter of Credit on deposit in the Reserve Account.

**Application of  
moneys in  
Redemption Account.**

SECTION 511. Moneys held for the credit of the Redemption Account shall be applied to the retirement of bonds issued under the provisions of this Agreement as follows:

**Purchase of bonds.**

(a) Subject to the provisions of paragraph (c) of this Section, the Trustee shall endeavor to purchase bonds or portions of bonds secured hereby and then outstanding, whether or not such bonds or portions shall then be subject to redemption, at the most advantageous price obtainable with reasonable diligence, such price not to exceed the principal of such bonds plus the amount of the premium, if any, which would be payable on the next redemption date to the holders

of such bonds under the provisions of Article III of this Agreement if such bonds or portions of bonds should be called for redemption on such date from the moneys in the Sinking Fund. The Trustee shall pay the interest accrued on such bonds or portions of bonds to the date of settlement therefor from the Bond Service Account and the purchase price from the Redemption Account, but no such purchase shall be made by the Trustee within the period of forty-five (45) days immediately preceding any interest payment date on which such bonds are subject to call for redemption under the provisions of this Agreement except from moneys other than the moneys set aside or deposited for the redemption of bonds.

**Redemption of bonds.**

(b) Subject to the provisions of paragraph (c) of this Section, the Trustee shall call for redemption on each interest payment date on which bonds are subject to redemption from moneys in the Sinking Fund such amount of bonds or portions of bonds then subject to redemption as, with the redemption premium, if any, will exhaust the moneys then held for the credit of the Redemption Account as nearly as may be; provided, however, that not less than One Hundred Thousand Dollars (\$100,000) principal amount of bonds shall be called for redemption at any one time. Such redemption shall be made pursuant to the provisions of Article III of this Agreement. Prior to calling bonds or portions of bonds for redemption the Trustee shall withdraw from the Bond Service Account and from the Redemption Account and set aside in separate accounts or deposit with the Paying Agents the respective amounts required for paying the interest on, and the principal and redemption premium of, the bonds or portions of bonds so called for redemption.

(c) Moneys in the Redemption Account shall be applied by the Trustee in each fiscal year to the retirement of bonds of each Series then outstanding in the following order:

*first*, the term bonds of each such Series to the extent of the Amortization Requirement, if any, for such fiscal year for the term bonds of each such Series then outstanding, plus the applicable premium, if any, and, if the amount available in such fiscal year shall not be equal thereto, then in proportion to the Amortization Requirement, if any, for such fiscal year for the term bonds of each such Series then outstanding, plus the applicable premium, if any;

*second*, any balance then remaining shall be applied to the purchase of any bonds secured hereby and then outstanding whether or not such bonds shall then be subject to redemption, in accordance with the provisions of paragraph (a) of this Section;

*third*, any balance then remaining shall be applied to the redemption of the term bonds of each such Series in proportion to the Amortization Requirement, if any, for such fiscal year for the term bonds of each such Series then outstanding, plus the applicable premium, if any; and

*fourth*, after the retirement of all term bonds, any balance still remaining shall be applied to the retirement of the serial bonds of each Series in proportion to the aggregate principal amount of the serial bonds of each such Series originally issued under the provisions of this Agreement.

Until the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, the Authority shall pay from the Renewal and Replacement Fund all expenses in connection with any such purchase or such redemption ; thereafter all such expenses shall be paid from the Revenue Fund.

Notwithstanding the foregoing, if amounts applied to the retirement of bonds that would have been applied from the Redemption Account are paid instead by a credit or liquidity facility issuer or other entity insuring, guaranteeing or providing for said payment, amounts deposited in the Redemption Account and allocable to said payments for said bonds shall be paid, to the extent required under any agreement, to the credit or liquidity facility issuer or entity having theretofore made said corresponding payment.

**Use of moneys in  
Reserve Maintenance  
Fund.**

SECTION 512. Except as hereinafter provided in this Section and in Section 707 of this Agreement, moneys held for the credit of the Reserve Maintenance Fund shall be disbursed only for the purpose of paying the cost of unusual or extraordinary maintenance or repairs, maintenance or repairs not recurring annually and renewals and replacements, including major items of equipment. Such disbursements shall be made in accordance with the provisions of Section 402 of this Agreement for payments from the Construction Fund.

If at any time moneys held for the credit of the Bond Service Account and the Reserve Account shall be insufficient for the purpose of paying the interest on all bonds and the principal of the serial bonds as such interest and principal become due and payable, then the Authority shall transfer from any moneys held for the credit of the Reserve Maintenance Fund to the credit of the Bond Service Account an amount sufficient to make up any such deficiency. If at any time the moneys held for the credit of the Redemption Account and the Reserve Account shall be insufficient for the purpose of providing funds for the retirement of term bonds to the extent of the Amortization Requirements therefor at the end of any fiscal year, then the Authority shall transfer from any moneys held for the credit of the Reserve Maintenance Fund an amount sufficient to make up any such deficiency; provided, however, that no such transfer shall be made unless the moneys then held for the credit of the Bond Service Account are at least equal to the maximum requirement therefor under clause (a) of Section 507 of this Agreement. Any moneys so transferred from the Reserve Maintenance Fund shall be restored by

the Authority from available moneys in the Revenue Fund, subject to the same conditions as are prescribed for deposits to the credit of the Reserve Maintenance Fund under the provisions of Section 507 of this Agreement.

SECTION 512A. Except as hereinafter provided in the following two paragraphs and in Section 707 of this Agreement, moneys held for the credit of the Self-insurance Fund (1) shall be disbursed in the manner provided by Section 402 of this Agreement for disbursements from the Construction Fund only for the purpose of paying the cost of repairing, replacing or reconstructing any property damaged or destroyed from or extraordinary expenses incurred as a result of a cause which is not covered by insurance under the provisions of said Section 707 or (2) shall be transferred to the Revenue Fund in an amount, approved by the Consulting Engineers, equal to the loss of income from the System as a result of a cause which is not covered by insurance under the provisions of said Section 707.

If at any time moneys held for the credit of the Bond Service Account and the Reserve Account (including moneys transferred from the Reserve Maintenance Fund to the credit of the Bond Service Account pursuant to the provisions of the first sentence of the second paragraph of Section 512 of this Agreement) shall be insufficient for the purpose of paying the interest on all bonds and the principal of all serial bonds as such interest and principal become due and payable, then the Authority shall transfer from any moneys held for the credit of the Self-insurance Fund to the credit of the Bond Service Account an amount sufficient to make up such deficiency. If at any time moneys held for the credit of the Redemption Account and the Reserve Account (including moneys transferred from the Reserve Maintenance Fund to the credit of the Redemption Account pursuant to the provisions of the second sentence of the second paragraph of Section 512 of this Agreement) shall be insufficient for the purpose of providing funds for the retirement of bonds to the extent of the Amortization Requirements therefor at the end of any fiscal year, then the Authority shall transfer from any moneys held for the credit of the Self-insurance Fund to the credit of the Redemption Account an amount sufficient to make up any such deficiency; provided, however, that no such transfer shall be made unless the moneys then held for the credit of the Bond Service Account are at least equal to the maximum requirement therefor under clause (a) of Section 507 of this Agreement.

If the Authority shall have determined that all or any portion of the moneys held to the credit of the Self-insurance Fund is no longer needed for the purposes specified in the second preceding paragraph, the Authority may withdraw an amount equal to such portion from the Self-insurance Fund and transfer such amount to the credit of the Bond Service Account; provided, however, that no such

transfer shall be made prior to the time that the Consulting Engineers shall have approved such transfer in writing.

SECTION 512B. Moneys held for the credit of the Capital Improvement Fund shall be disbursed in the manner provided by Section 402 of this Agreement only for paying the cost of anticipated extensions and Improvements of the System the cost of which has not otherwise been provided for from the proceeds of bonds issued under the provisions of this Agreement.

If at any time moneys held for the credit of the Bond Service Account and the Reserve Account (including moneys transferred from the Reserve Maintenance Fund or the Self-insurance Fund to the credit of the Bond Service Account pursuant to the provisions of the first sentence of the second paragraph of Sections 512 and 512A of this Agreement, respectively) shall be insufficient for the purpose of paying the interest on all bonds and the principal of all serial bonds as such interest and principal become due and payable, then the Authority shall transfer from any moneys held for the credit of the Capital Improvement Fund to the credit of the Bond Service Account an amount sufficient to make up such deficiency. If at any time moneys held for the credit of the Redemption Account and the Reserve Account (including moneys transferred from the Reserve Maintenance Fund or the Self-insurance Fund to the credit of the Redemption Account pursuant to the provisions of the second sentence of the second paragraph of Sections 512 and 512A of this Agreement, respectively) shall be insufficient for the purpose of providing funds for the retirement of bonds to the extent of the Amortization Requirements therefor at the end of any fiscal year, then the Authority shall transfer from any moneys held for the credit of the Capital Improvement Fund to the credit of the Redemption Account an amount sufficient to make up any such deficiency; provided, however, that no such transfer shall be made unless the moneys then held for the credit of the Bond Service Account are at least equal to the maximum requirement therefor under clause (a) of Section 507 of this Agreement.

**Application and  
pledge of moneys in  
Sinking Fund.**

SECTION 513. Subject to the terms and conditions set forth in this Agreement, moneys held for the credit of the Bond Service Account, the Reserve Account and the Redemption Account shall be held in trust and disbursed by the Trustee for (a) the payment of interest on the bonds issued hereunder as such interest becomes due and payable, or (b) the payment of the principal of such bonds at their respective maturities, or (c) the payment of the purchase or redemption price of such bonds before their respective maturities, and such moneys are hereby pledged to and charged with the payments mentioned in this Section.

Whenever the total of the moneys held for the credit of the Bond Service Account, the Reserve Account and the Redemption Account shall be sufficient for paying the principal of and the

redemption premium, if any, and the interest accrued on all bonds then outstanding under the provisions of this Agreement, such moneys shall be applied by the Trustee to the payment, purchase or redemption of such bonds.

**Moneys set aside for principal and interest held in trust.**

SECTION 514. All moneys which the Trustee shall have withdrawn from the Sinking Fund or shall have received from any other source and set aside, or deposited with the Paying Agents, for the purpose of paying any of the bonds hereby secured, either at the maturity thereof or upon call for redemption, or for the purpose of paying any maturing coupons appertaining to any of the coupon bonds hereby secured, shall be held in trust for the respective holders of such bonds or coupons. But any moneys which shall be so set aside or deposited by the Trustee and which shall remain unclaimed by the holders of such bonds or of such coupons for the period of six (6) years after the date on which such bonds or such coupons shall have become due and payable shall upon request in writing be paid to the Authority or to such officer, board or body as may then be entitled by law to receive the same, and thereafter the holders of such bonds or coupons shall look only to the Authority or to such officer, board or body, as the case may be, for payment and then only to the extent of the amounts so received without any interest thereon, and the Trustee and the Paying Agents shall have no responsibility with respect to such moneys.

**Moneys unclaimed for six years after maturity of bonds and coupons.**

**Cancellation of bonds and coupons upon payment.**

SECTION 515. All bonds paid, redeemed or purchased, either at or before maturity, together with all unmatured coupons, if any, appertaining thereto, shall be cancelled upon the payment, redemption or purchase of such bonds and shall be delivered to the Trustee when such payment, redemption or purchase is made. All coupons, which are paid by the Paying Agents, shall be cancelled upon their payment and delivered to the Trustee in the Borough of Manhattan, City and State of New York. Except for such coupons, all bonds and coupons cancelled under any of the provisions of this Agreement shall be destroyed by the Trustee, which shall execute a certificate in duplicate describing the bonds and coupons so destroyed except that the numbers of the bonds to which such coupons appertain may be omitted unless otherwise directed by the Authority, and one executed certificate shall be filed with the Secretary and the other executed certificate shall be retained by the Trustee. The coupons so paid by such Paying Agent shall be destroyed by the Trustee in the Borough of Manhattan, City and State of New York, which shall execute a certificate in triplicate describing the coupons so destroyed except that the numbers of the bonds to which such coupons appertain may be omitted unless otherwise directed by the Authority, and one executed certificate shall be filed with the Secretary and another with the Trustee and the third executed certificate shall be retained by such Paying Agent.

SECTION 516. Application of Moneys in Subordinate Obligations Fund. (a) Moneys held for the credit of the Subordinate Obligations Fund shall be paid out or pledged by the Authority as necessary to enable the Authority to meet its Subordinate Obligations. Subordinate Obligations may be incurred or issued by the Authority for any proper corporate purpose of the Authority.

(b) The Authority shall have the right to covenant with the holders from time to time of any Subordinate Obligations issued or incurred by the Authority to limit the deposits to the Reserve Maintenance Fund as authorized by Section 507(d) and to add to the conditions, limitations and restrictions under which bonds may be issued under the provisions of Sections 208, 209 and 210 hereof.

(c) Any such Subordinate Obligations shall be payable out of and may be secured by a pledge of (i) such amounts in the Subordinate Obligations Fund as may from time to time be available therefor, and (ii) any other funds of the Authority that may be available for such purpose, provided that any such payment or pledge made pursuant to clause (i) of this sentence shall be, and shall be expressed to be, subordinate and junior in all respects to the lien and charge of the bonds secured hereby upon the Revenues.

(d) Before incurring any Subordinate Obligations the proceeds of which shall finance in whole or in part the acquisition or construction of any works or properties by the Authority in connection with the production, distribution or sale of electric energy, the Authority shall adopt a resolution specifying whether or not such works or properties are to be included as part of the System.

(e) The resolution, indenture or other instrument securing each issue of Subordinate Obligations shall contain provisions (which shall be binding on all holders of such Subordinate Obligations) not more favorable to the holders of such Subordinate Obligations than the following:

(1) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or their similar proceedings in connection therewith, relative to the Authority or to its creditors, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the Authority, whether or not involving insolvency or bankruptcy, the owners of all bonds then outstanding shall be entitled to receive payment in full of all principal and interest due on all such bonds in accordance with the provisions of this Agreement before the holders of the Subordinate Obligations are entitled to receive any payment from the funds pledged to the bonds on account of principal (and premium, if any) or interest upon the Subordinate Obligations.

(2) In the event that any Subordinate Obligation is declared due and payable before its expressed maturity because of the occurrence of an event of default (under circumstances when the provisions of (1) above shall not be applicable), the owners of all bonds outstanding at the time such Subordinate Obligation becomes due and payable because of the occurrence of such an event of default shall be entitled to receive payment in full of all principal of and interest on all such bonds then due and payable before the holder of such Subordinate Obligation is entitled to receive any accelerated payment from the Revenues and other moneys pledged to the bonds under this Agreement of principal (and premium, if any) or interest upon such Subordinate Obligation.

(3) If any event of default specified in Section 802 hereof with respect to the bonds shall have occurred and be continuing (under circumstances when the provisions of (1) above shall not be applicable), the owners of all bonds then outstanding shall be entitled to receive payment in full of all principal of and interest on all such bonds as the same become due and payable before the holders of the Subordinate Obligations are entitled to receive, subject to the provisions of (5) below, any payment from the Revenues or other moneys pledged to the bonds under this Agreement of principal (and premium, if any) or interest upon the Subordinate Obligations.

(4) No owner of a bond shall be prejudiced in this right to enforce subordination of the Subordinate Obligations by any act or failure to act on the part of the Authority.

(5) The Subordinate Obligations may provide that the provisions of (1), (2), (3) and (4) above are solely for the purpose of defining the relative rights of the owners of the bonds on the one hand, and the holders of Subordinate Obligations on the other hand, and that nothing therein shall impair, as between the Authority and the holders of the Subordinate Obligations, the obligation of the Authority, which is unconditional and absolute, to pay to the holders thereof the principal thereof and premium, if any, and interest thereon in accordance with their terms, nor shall anything therein prevent the holders of the Subordinate Obligations from exercising all remedies otherwise permitted by applicable law or thereunder upon default thereunder, subject to the rights under (1), (2), (3) and (4) above of the owners of bonds to receive cash, property or securities from the funds pledged to the bonds under this Agreement otherwise payable or deliverable to the holders of the Subordinate Obligations; and the Subordinate Obligations may provide that, insofar as a trustee or paying agent for such Subordinate Obligations is concerned, the foregoing provisions shall not prevent the application by such trustee or paying agent of any moneys deposited with such trustee or paying agent for the purpose of the payment of or on account of the principal (and premium, if any) and interest on such Subordinate Obligations

if such trustee or paying agent did not have knowledge at the time of such application that such payment was prohibited by the foregoing provisions.

(6) Any issue of Subordinate Obligations may have such rank or priority with respect to any other issue of Subordinate Obligations as may be provided in the resolution, trust agreement or other instrument securing such issue of Subordinate Obligations and may contain such other provisions as are not in conflict with the provisions of this Agreement.

(7) Neither the Trustee nor any Depository shall be deemed to owe any fiduciary duty to the holders of Subordinate Obligations and shall not be liable to such holders if it shall mistakenly pay over or transfer to owners of bonds, the Authority or any other person, moneys to which any holders of Subordinate Obligations shall be entitled by virtue of this Section 516 or otherwise, provided, however, that neither the Trustee nor any Depository then holding the Subordinate Obligations Fund shall be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct. Notwithstanding any of the provisions of this Section 516 or any other provision of this Agreement, neither the Trustee nor any such Depository shall at any time be charged with knowledge of the existence of any facts that would prohibit the making of any payment of moneys to or by the Trustee or any such Depository in respect of Subordinate Obligations or of any default in the payment of the principal of or premium, if any, or interest on any Subordinate Obligations, unless and until the Trustee or such Depository shall have received written notice thereof from the Authority or the holders of a majority in principal amount of any class or category of any Subordinate Obligations or from any trustee or other fiduciary therefor and any financial institution that provides credit or security for any Subordinate Obligations.

SECTION 517. Specified Period Principal and Interest Requirements Defeasance. A special fund within the Reserve Account is hereby created and designated the “Puerto Rico Electric Power Authority Revenue Bonds Specified Period Defeasance Fund” (herein sometimes called the “Specified Period Defeasance Fund”) to be held by the Trustee separate and apart from all other funds and accounts held under this Agreement. The transfer of moneys from the Reserve Account to the Specified Period Defeasance Fund in accordance with Section 510A hereof shall constitute an irrevocable deposit of such moneys in trust solely for the purpose of paying the Specified Period Principal and Interest Requirements, and such moneys will not constitute property of the Authority. Upon such transfer and deposit to the Specified Period Defeasance Fund, the obligation of the Authority to pay the Specified Period Principal and Interest Requirements will be discharged to the extent of each such

deposit, and the sole recourse of the holders of outstanding bonds in respect of the portion of the Specified Period Principal and Interest Requirements equal to the aggregate of amounts so deposited shall be to the amounts then to the credit of the Specified Period Defeasance Fund. The transfer and deposit set forth above shall not in any way affect the obligations of the Authority to pay the Principal and Interest Requirements with respect to the outstanding bonds other than the obligation to pay the portion of the Specified Period Principal and Interest Requirements equal to the aggregate of the amounts that are credited to the Specified Period Defeasance Fund. On each date on which any Specified Period Principal and Interest Requirements are payable, the Trustee shall apply moneys in the Specified Period Defeasance Fund to pay the Specified Period Principal and Interest Requirements that are payable on such date. Any amounts remaining in the Specified Period Defeasance Fund after all Specified Period Principal and Interest Requirements are paid in full shall be transferred to the Reserve Account. Moneys held in the Special Period Defeasance Fund shall, as nearly as may be practicable, be continuously invested and reinvested by the Trustee in Government Obligations which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when moneys held in said Fund will be required for the purposes intended.

#### ARTICLE VI.

#### DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS.

##### **Deposits constitute trust funds.**

SECTION 601. All moneys received by the Authority under the provisions of this Agreement shall be deposited with a Depository or Depositaries, shall be held in trust, shall be applied only in accordance with the provisions of this Agreement and shall not be subject to lien or attachment by any creditor of the Authority.

##### **Security for deposits.**

All moneys deposited with the Trustee or any other Depository hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other Federal agency shall be continuously secured, for the benefit of the Authority and the holders of the bonds, either (a) by lodging with a bank or trust company approved by the Authority and by the Trustee as custodian, or, if then permitted by law, by setting aside under control of the trust department of the bank holding such deposit, as collateral security, Government Obligations, or, with the approval of the Trustee, other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States or applicable Commonwealth of Puerto Rico or state law or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or (b), if the furnishing of security as provided in clause (a) of this Section is not

permitted by applicable law, in such other manner as may then be required or permitted by applicable Commonwealth of Puerto Rico, state or Federal laws or regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Paying Agents to give security for the deposits of any moneys with them for the payment of the principal of or the redemption premium or the interest on any bonds issued hereunder, or for the Trustee to give security for any moneys which shall be represented by obligations purchased under the provisions of this Article as an investment of such moneys.

All moneys deposited with each Depositary, including the Trustee, shall be credited to the particular fund or account to which such moneys belong.

**Investment of moneys.**

SECTION 602. Moneys held for the credit of the Bond Service Account and the Redemption Account, shall, as nearly as may be practicable., be continuously invested and reinvested by the Trustee in Government Obligations which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when moneys held for the credit of said Accounts will be required for the purposes intended, or in Time Deposits ; provided, however, that each such Time Deposit shall permit the moneys so placed to be available for use at the times provided above.

Moneys held for the credit of the Construction Fund, the Reserve Maintenance Fund and the Self-insurance Fund shall, as nearly as may be practicable, be continuously invested and reinvested by the Authority in Investment Obligations, and moneys held for the credit of the Revenue Fund shall, as nearly as may be practicable, be continuously invested and reinvested by the Authority in Government Obligations, which Investment Obligations and Government Obligations shall mature, or shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when moneys held for the credit of said Funds will be required for the purposes intended, or in Time Deposits; provided, however, that each such Time Deposit shall permit the moneys so placed to be available for use at the times provided above.

Moneys held for the credit of the Reserve Account shall, as nearly as may be practicable, be continuously invested and reinvested by the Trustee in Investment Obligations which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, (i) as to approximately 50% of such moneys, not later than 5 years after the date of such investment, and (ii) as to the balance of such moneys, as directed by the order mentioned below, or in Time Deposits; provided, however, that each such Time

Deposit shall permit the moneys so placed to be available for use at the times provided above.

Fifty per centum (50%) of the moneys held for the credit of the Reserve Account shall be invested by the Trustee upon receipt of an order signed by the Executive Director or other authorized officer of the Authority or authorized representative of the Executive Director or other authorized officer stating the amount to be invested and directing such investment in Investment Obligations having such maturities as are specified in such order. Such obligations shall be sold by the Trustee upon receipt of an order signed by the Executive Director or other authorized officer of the Authority or authorized representative of the Executive Director or other authorized officer.

Notwithstanding any provision of this Section to the contrary, moneys held to the credit of the Self-insurance Fund may also be invested by the Authority in any investments authorized by Act No. 447 of the Legislature of Puerto Rico, approved May 15, 1951, as amended from time to time (codified as Title 3, Chapter 33, Section 779, Laws of Puerto Rico Annotated), for the Retirement System of the Employees of the Government for Puerto Rico and its Instrumentalities; provided, however, that the Authority shall invest not less than the lesser of \$25,000,000 and the entire balance to the credit of such Fund in Investment Obligations with an average weighted maturity of not in excess of three years.

Prior to investing any moneys held for the credit of the Self-insurance Fund in other Investment Obligations, the Authority shall require an Independent Consultant retained pursuant to the provisions of Section 706 to present a report described in said Section 706 recommending what portion of moneys held for the credit of the Self-insurance Fund the Authority shall maintain invested in Investment Obligations. Should the Self-insurance Fund be held by the Trustee on behalf of the Authority, a copy of such report will be furnished to the Trustee.

Prior to investing any moneys held for the credit of the Self-insurance Fund in other than Investment Obligations, the Authority shall, after duly considering the report it shall have received pursuant to the foregoing paragraph, formally adopt, subject to the consent of Government Development Bank for Puerto Rico, and maintain an investment policy first determining, subject to the limitation prescribed by the second preceding paragraph, the minimum portion of the moneys held for the credit of the Self-insurance Fund to remain invested in Investment Obligations and then setting forth prudent investment principles, considerations and goals, including, without limitation, liquidity, diversification of assets, safety and rate or rates of return, that will govern the investment strategies and goals for the balance of the moneys held for the credit of the Self-insurance Fund. The Authority agrees to advise the Trustee in writing of those

investments other than Investment Obligations that are authorized by said investment policy.

The Board shall receive at each regular meeting a detailed report from its Treasurer of the current portfolio of Investment Obligations, other securities and other moneys held to the credit of the Self-insurance Fund.

**Investments deemed to be part of Fund or Account for which purchased.**

Obligations and Time Deposits so purchased as an investment of moneys in any such Fund or Account shall be deemed at all times to be part of such Fund or Account. The interest accruing thereon and any profit realized from such investment shall be credited to such Fund or Account and any loss resulting from such investment shall be charged to such Fund or Account. The Trustee shall sell or present for payment or redemption any obligations so acquired whenever it shall be necessary so to do in order to provide moneys to meet any payment from such Fund or Account. Neither the Trustee nor the Authority nor any officer or agent of either thereof shall be liable or responsible for any loss resulting from any such investment.

ARTICLE VII.  
PARTICULAR COVENANTS.

**Payment of principal, interest and premium.**

SECTION 701. The Authority covenants that it will promptly pay the principal of and the interest on each and every bond issued under the provisions of this Agreement at the places, on the dates and in the manner specified herein and in said bonds and in the coupons, if any, appertaining thereto, and any premium required for the retirement of said bonds by purchase or redemption, according to the true intent and meaning thereof. Until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, such principal, interest and premium are payable solely from moneys in the Renewal and Replacement Fund and said moneys are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified. After the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, such principal, interest and premium will be payable solely from the Revenues and said Revenues are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified. Nothing in the bonds or in this Agreement shall be deemed to constitute the bonds a debt or obligation of the Commonwealth of Puerto Rico or any of its municipalities or other political subdivisions, and neither the Commonwealth of Puerto Rico nor any such municipalities or other political subdivisions shall be liable for the payment of the principal of or the interest on the bonds.

**Pledge of revenues.**

**Bonds not general obligations of Commonwealth of Puerto Rico.**

**Offices or agencies for payment of coupon bonds and coupons.**

The Authority further covenants that so long as any bonds issuable as coupon bonds shall be outstanding it will cause offices or agencies where the coupon bonds and coupons may be presented for payment to be maintained in the Borough of Manhattan, City and State of New York.

**Covenant to integrate Improvements into System.**

SECTION 702. The Authority covenants that, upon the acquisition or construction of any Improvements, it will forthwith integrate the properties so acquired or constructed with the System and will thereupon operate and maintain the System and all of such properties as an integrated system.

**Covenant to construct Improvements in accordance with plans.**

The Authority further covenants that it will construct all Improvements and all other works or properties constituting part of the System for the construction of which bonds or Subordinate Obligations shall be issued under the provisions of this Agreement, or for which moneys repayable from the proceeds of bonds or Subordinate Obligations issued under the provisions of this Agreement shall have been advanced to the Authority, in accordance with plans theretofore adopted by the Board and approved by the Consulting Engineers and that upon the completion of such Improvements or other works or properties it will operate and maintain the same as a part of the System.

**Covenant as to operation.**

The Authority further covenants that it will establish and enforce reasonable rules and regulations governing the use of the System and the operation thereof, that all compensation, salaries, fees and wages paid by it in connection with the maintenance, repair and operation of the System will be reasonable, that no more persons will be employed by it than are necessary, that it will operate the System in an efficient and economical manner, that it will at all times maintain the System in good repair and in sound operating condition and will make all necessary repairs, renewals and replacements, and that it will comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System.

**Compliance with 1947 Indenture.**

SECTION 703. The Authority further covenants that, until all of the 1947 Indenture Bonds shall have been paid or provision shall have been made for their payment and the 1947 Indenture shall have been released, it will duly and punctually perform all of the covenants, agreements and conditions contained in the 1947 Indenture on the part of the Authority to be performed. The Authority further covenants that it will cause the 1947 Indenture to be released at the earliest practicable date. The Authority further covenants that it will not enter into any indenture or agreement supplemental to the 1947 Indenture for the purpose of granting to or conferring upon the 1947 Trustee for the benefit of the holders of the bonds issued under

**Release of 1947 Indenture.**

**Covenant as to amendment of 1947**

**Indenture.**

the 1947 Indenture any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon such holders or the 1947 Trustee, or for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the 1947 Indenture, or for the purpose of extending the maturity of any 1947 Indenture Bond or creating a lien upon or a pledge of revenues ranking prior to or on a parity with the lien or pledge created by the 1947 Indenture. Nothing herein contained shall prevent the Authority from entering into an indenture or agreement supplemental to the 1947 Indenture to cure any ambiguity or formal defect or omission in the 1947 Indenture; and notwithstanding the above, the Authority may enter into any indenture or agreement supplemental to the 1947 Indenture for any purposes permitted thereunder, including, without limitation, modifying any of the terms or provisions contained in the 1947 Indenture, to the extent that any such indenture or agreement would not adversely affect the interest of the bondholders under this Agreement. Under this Section, the Trustee will be entitled to receive, and shall be fully protected in relying upon the opinion of any counsel approved by it, who may be counsel for the Authority.

**Covenant as to  
Renewal and  
Replacement Fund.**

SECTION 704. The Authority covenants that so long as any 1947 Indenture Bonds are outstanding under the provisions of the 1947 Indenture it will cause to be made the deposits to the credit of the Renewal and Replacement Fund required by Section 512 of the 1947 Indenture and it will not revise its determination as to the proper amount to be transferred each month from the 1947 Revenue Fund to the credit of the Renewal and Replacement Fund by reducing such amount below one-twelfth (1/12) of the maximum Principal and Interest Requirements for any fiscal year thereafter to and including the fiscal year in which the last maturity of any outstanding 1947 Indenture Bonds occurs on account of all bonds then outstanding under this Agreement.

**Payment of lawful  
charges.**

SECTION 705. Except as otherwise permitted in this Agreement the Authority further covenants that, out of the Revenues, it will pay all municipal or governmental charges lawfully levied or assessed upon the System or any part thereof or upon any Revenues when the same shall become due, that it will duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System, that it will not create or suffer to be created any lien or charge upon the System or any part thereof or upon the Revenues ranking equally with or prior to the bonds, except the lien and charge of the 1947 Indenture Bonds and the bonds secured hereby upon the Revenues, and that, out of the Revenues, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty (60) days after the same shall accrue, all

lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System or any part thereof or the Revenues; provided, however, that nothing contained in this Section shall require the Authority to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

**Employment of  
Consulting Engineers.**

SECTION 706. The Authority covenants and agrees that so long as any 1947 Indenture Bonds are outstanding it will, for the purpose of performing and carrying out the duties imposed on the Consulting Engineers by this Agreement, employ such Consulting Engineers as are employed under Section 704 of the 1947 Indenture, and after the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture and so long as any bonds are outstanding under this Agreement, it will employ an independent engineer or engineering firm or corporation having a wide and favorable repute in the United States for skill and experience in the construction and operation of electric systems. No engineer or engineering firm shall be employed as Consulting Engineers under this Agreement, except with the written approval of the Trustee. Except for fees and expenses incurred under the provisions of Section 403 of this Agreement, the cost of employing Consulting Engineers shall be treated as a part of the cost of operation and maintenance of the System.

It shall be the duty of the Consulting Engineers to prepare and file with the Authority and with the Trustee on or before the 1st day of November in each year a report setting forth their recommendations as to any necessary or advisable revisions of rates and charges and such other advices and recommendations as they may deem desirable. After the outstanding 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, it shall be the duty of the Consulting Engineers to include in such report their recommendations as to the amount that should be deposited monthly during the ensuing fiscal year to the credit of the Reserve Maintenance Fund for the purposes set forth in Section 512 of this Agreement, deposited during the ensuing fiscal year to the credit of the Self-insurance Fund for the purposes set forth in Section 512A of this Agreement, if any, and deposited during the ensuing fiscal year to the credit of the Capital Improvement Fund for the purposes set forth in Section 512B of this Agreement.

The Authority further covenants that the Consulting Engineers shall at all times have free access to all properties of the System and every part thereof for the purposes of inspection and examination, and that its books, records and accounts may be examined by the Consulting Engineers at all reasonable times.

The Authority covenants and agrees that so long as any bonds are outstanding under this Agreement, it will, for the purpose of carrying out the duties imposed on the Independent Consultant by this Agreement, employ one or more independent firms having a wide and favorable repute in the United States for expertise in risk management and other insurance matters related to the construction and operation of electric systems. Except for fees and expenses incurred under the provisions of Section 403 of this Agreement, the cost of employing such Independent Consultant shall be treated as part of the cost of operation and maintenance of the System.

It shall be the duty of the Independent Consultant to prepare and file with the Authority and the Trustee at least biennially, on or before the first day of November, beginning November 1, 1999, a report setting forth its recommendations, based on a review of the insurance then maintained by the Authority in accordance with Section 707 of this Agreement and the status of the Self-insurance Fund, of any changes in coverage, including its recommendations of policy limits and deductibles and self-insurance, and investment strategies for the Self-insurance Fund.

**Insurance.**

SECTION 707. The Authority covenants that it will at all times carry insurance, in a responsible insurance company or companies authorized and qualified under the laws of Puerto Rico to assume the risk thereof, covering such properties belonging to the System as are customarily insured, and against loss or damage from such causes as are customarily insured against, by companies engaged in similar business.

All such policies shall be for the benefit of the Authority, shall be made payable to the Authority and shall be deposited with the Treasurer, and the Treasurer shall have the sole right to receive the proceeds of such policies and to collect and receipt for claims thereunder. The proceeds of any and all such insurance shall be deposited by the Treasurer in the name of the Authority in a Depositary.

The Authority covenants that, immediately after any loss or damage to any properties of the System resulting from any cause, whether or not such loss or damage shall be covered by insurance, it will cause its engineers to prepare plans and specifications for repairing, replacing or reconstructing (either in accordance with the original or a different design) the damaged or destroyed property, and that it will forthwith commence and diligently prosecute the repair, replacement or reconstruction of the damaged or destroyed property unless it shall determine that the repair, replacement or reconstruction of such property is not essential to the efficient operation of the System.

The proceeds of all insurance policies referred to in this Section shall be available for, and shall to the extent necessary be applied to, the repair, replacement or reconstruction of the damaged or destroyed property, and shall be disbursed in the manner provided by Section 402 of this Agreement for disbursements from the Construction Fund. Until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, if such proceeds are more than sufficient for such purpose, the balance remaining shall be deposited to the credit of the Renewal and Replacement Fund. After the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, such balance shall be deposited to the credit of the Redemption Account in the Sinking Fund or, at the option of the Authority, to the credit of the Construction Fund. Until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, if such proceeds shall be insufficient for such purpose, the deficiency may be supplied, first, out of moneys in the General Reserve Fund under the 1947 Indenture, and second, out of moneys in the Renewal and Replacement Fund. After the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, such deficiency may be supplied out of any moneys held for the credit of the Reserve Maintenance Fund or from any other moneys of the Authority available for such purpose, including any moneys held for the credit of the Self-insurance Fund.

Until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, the proceeds of any insurance not applied within eighteen (18) months after their receipt by the Treasurer to repairing, replacing or reconstructing the damaged or destroyed property, unless the Authority shall be prevented from so doing because of conditions beyond its control, or unless the holders of fifty-one per centum (51%) in aggregate principal amount of all 1947 Indenture Bonds then outstanding shall otherwise direct, shall be deposited to the credit of the Renewal and Replacement Fund. After the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, such proceeds shall be deposited to the credit of the Redemption Account in the Sinking Fund or, at the option of the Authority, to the credit of the Construction Fund, unless the Authority shall be prevented from so doing because of conditions beyond its control, or unless the holders of fifty-one per centum (51%) in aggregate principal amount of all bonds then outstanding under this Agreement shall otherwise direct.

**Inspection of**

SECTION 708. All insurance policies shall be open to the inspection of the bondholders and their representatives at all reasonable times. The Treasurer of the Authority is hereby authorized

**insurance policies.** to demand, collect, sue and receipt for the insurance money which may become due and payable under any policies payable to the Authority.

**No inconsistent action.** SECTION 709. The Authority covenants and agrees that, so long as any of the bonds secured hereby shall be outstanding, none of the gross revenues of the System will be used for any purpose other than as provided in the 1947 Indenture and this Agreement, and that no contract or contracts will be entered into or any action taken by which the rights of the Trustee or of the bondholders might be impaired or diminished.

**Accurate records.** SECTION 710. The Authority covenants that its accounts will be kept according to standard practices for public utility systems similar to the properties and business of the Authority and applicable in such circumstances, and in such manner as appropriately to segregate, in so far as advisable, the accounts in respect of the different classes of its operations, projects, undertakings and activities, that it will keep accurate records and accounts of all items of cost and expenditures relating to the System and to each integral unit of the System, the Revenues collected and the application of the Revenues, and the number of consumers, and that it will keep such records and accounts with respect to its physical properties in such manner that it will be possible at all times to identify both the amounts and the items of all additions and retirements.

**Monthly reports.** The Authority further covenants that at least once each month it will cause to be filed with the Trustee and the Consulting Engineers copies of any revisions of the rate schedules during the preceding calendar month and a report, signed by the Executive Director, setting forth the following:

(a) a separate income and expense statement for Revenue Fund purposes of the System for the preceding calendar month and the twelve (12) months' period ending with such month;

(b) a statement for the preceding calendar month and for the fiscal year to date of all deposits and transfers to the credit of and withdrawals from each special fund and account created under the provisions of this Agreement, showing the balance to the credit of each such fund or account;

(c) a statement of the amount of bonds issued, paid, purchased or redeemed during the preceding calendar month;

(d) a balance sheet as of the end of the preceding calendar month;

(e) the amounts on deposit at the end of the preceding

calendar month in each bank or trust company; and

(f) the amounts of the proceeds received during the preceding calendar month from any sales of property pursuant to Section 712 of this Article.

**Annual audits.**

The Authority further covenants that in the first month of each fiscal year it will cause an audit to be made of its books and accounts pertaining to the System by an independent firm of certified public accountants of suitable experience and responsibility and widely known in the United States, to be chosen by the Executive Director with the approval of the Trustee. Before the first day of the third month following the making of such audit, reports of such audits shall be filed with the Trustee and the Authority, and copies of such reports shall be mailed to the Consulting Engineers. Such audit reports shall set forth in respect of the preceding fiscal year the same matters as are hereinabove required for the monthly reports.

**Additional reports or audits.**

The Authority further covenants that it will cause any additional reports or audits relating to the System to be made as required by law or by any applicable rules or regulations of any governmental authority or of any securities exchange on which the bonds may be listed or traded, and that as often as may be requested it will furnish to the Trustee such other information concerning the System or the operation thereof as the Trustee may reasonably request. The cost of such audits shall be treated as a part of the cost of operation of the System.

**Covenant as to additional 1947 Indenture Bonds.**

SECTION 711. The Authority covenants that so long as any bonds shall be outstanding under the provisions of this Agreement it will not issue additional 1947 Indenture Bonds which mature after July 1, 2007 and except as follows :

(a) revenue bonds under the provisions of Section 209 of the 1947 Indenture issued to pay the cost of Improvements and sold to the Rural Electrification Administration of the United States of America; provided, however, that the aggregate principal amount of such revenue bonds issued hereafter shall not exceed \$12,834,000,

(b) revenue bonds under the provisions of Section 210 of the 1947 Indenture issued for the purpose of providing working cash funds for the Authority; provided, however, that the aggregate principal amount of such revenue bonds outstanding in any fiscal year hereafter shall not exceed one-sixth (1/6) of the amount shown by the Annual Budget to be necessary for Current Expenses for such fiscal year or for the next ensuing fiscal year, whichever is greater, and

(c) revenue refunding bonds under the provisions of Section 211 of the 1947 Indenture.

**Covenant against sale  
or encumbrance;  
exceptions.**

SECTION 712. (a) The Authority covenants that so long as any bonds shall be outstanding under the provisions of this Agreement and except as in this Agreement otherwise permitted, it will not sell, lease or otherwise dispose of or encumber the System or any part thereof and will not create or permit to be created any charge or lien on the Revenues ranking equally with or prior to the charge or lien on the Revenues of the bonds issued under and secured by this Agreement; provided that in conjunction with the issuance of bonds, the Authority may secure its obligations to the provider of a credit or liquidity facility securing said bonds on a parity with the Authority's bonds under this Agreement. The Authority may, however, from time to time, sell any machinery, fixtures, apparatus, tools, instruments, or other movable property acquired by it in connection with the System, or any materials used in connection therewith, if the Authority shall determine that such articles are no longer needed or are no longer useful in connection with the construction or operation and maintenance of the System, and the proceeds thereof shall be applied to the replacement of the properties so sold or disposed of or shall be deposited (i) until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, to the credit of the Renewal and Replacement Fund, and (ii) after the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, to the credit of the Redemption Account in the Sinking Fund or the Construction Fund, at the option of the Authority.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Authority may from time to time sell or lease such other property forming part of the System as is not needed or serves no useful purpose in connection with the maintenance and operation of the System, and the proceeds of any such sale of property which is declared by resolution of the Board to be unnecessary for the System shall be deposited, so long as any 1947 Indenture Bonds are outstanding, to the credit of the Renewal and Replacement Fund or to the credit of the 1947 Reserve Account, as may be provided by such resolution, and, after the 1947 Indenture Bonds shall have been paid or provision has been made for their payment and the release of the 1947 Indenture, to the credit of the Redemption Account in the Sinking Fund or the Construction Fund, as may be provided by such resolution. Until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, the rentals under any such lease shall be deposited to the credit of the 1947 Revenue Fund, and thereafter

such rentals shall be deposited to the credit of the Revenue Fund.

(c) Notwithstanding the provisions of paragraph (a) of this Section, after the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, the Authority may from time to time permanently abandon the use of, sell or lease any property forming a part of the System but only if

(1) there shall be filed with the Trustee prior to such abandonment, sale or lease a certificate, signed by the Executive Director and approved by the Consulting Engineers, stating

(A) that the Authority is not then in default in the performance of any of the covenants, conditions, agreements or provisions contained in this Agreement, and

(B) that the Net Revenues for any twelve (12) consecutive calendar months out of the eighteen (18) calendar months next preceding the date of such certificate, after giving effect to such abandonment, sale or lease and any replacement and after adjustment to reflect the moneys which would have been received if the rate schedule in effect on the date of such certificate had been in effect throughout such twelve (12) calendar months, are not less than one hundred twenty per centum (120%) of the maximum aggregate Principal and Interest Requirements for any fiscal year thereafter on account of all bonds then outstanding under the provisions of this Agreement, and

(2) the amount held by the Trustee to the credit of the Reserve Account in the Sinking Fund is the maximum amount required under the provisions of Section 507 of this Agreement.

The proceeds of the sale of any property forming part of the System under the provisions of paragraph (c) of this Section shall either be deposited by the Authority to the credit of the Redemption Account in the Sinking Fund or the Construction Fund, at the option of the Authority, or shall be applied to the replacement of the property so sold, and any property acquired as such replacement shall become a part of the System subject to the provisions of this Agreement. The rentals under any such lease shall be deposited to the credit

of the Revenue Fund.

For purposes of paragraphs (b) and (c) of this Section, references to sales or leases shall include also other transfers of property and for purposes of paragraph (c) of this Section the transferee may be considered in lieu of the Authority or in addition to the Authority if the transferee agrees to assume the Authority's obligations under this Agreement and the Authority delivers to the Trustee an opinion of counsel to the Authority to the effect that the transferee's undertaking to assume the Authority's obligations hereunder is legally valid and binding with the same effect as though the transferee were the Authority. If the transferee is a public corporation or other governmental entity, such transfer shall be permitted notwithstanding the Authority's failure to demonstrate the necessary coverage requirement in paragraph (c) above; provided that the Authority delivers a certificate of its Consulting Engineers to the Trustee demonstrating that the coverage ratio shown in the above certificate is not reduced due to such transfer.

(d) Notwithstanding the provisions of paragraph (a) of this Section, except as may conflict with the provisions of the 1947 Indenture until the 1947 Indenture Bonds have been paid or provisions have been made for their payment and the release of the 1947 Indenture, the Authority may lease portions of the System, or grant licenses, easements and other rights or make contracts or other arrangements for operation or use of portions of the System, if there shall be delivered to the Trustee the following:

(i) a report of the Consulting Engineers determining that (A) the proposed lessee or other contracting party is a financially responsible entity with substantial experience in the operation and management of utilities of the type and size of the System, and (B) the available revenues projected to be derived from the portion of the System subject to the lease, contract, license, easement or other arrangement following the date on which such lease, contract, license, easement or other arrangement is to be effective are forecasted to be sufficient to pay the Authority the rent or other payments provided by such lease, contract, license, easement or other arrangement and to make all necessary repairs, improvements and replacements to said portion of the System in the condition it was

prior to such lease, contract, license, easement or other arrangement; and

(ii) a certificate of the Consulting Engineers to the effect that the lease, contract, license, easement or other arrangement provides (A) for rent or other payments sufficient, with other Net Revenues projected to be derived from the System to make all payments of the Principal and Interest Requirements for all Bonds which will remain Outstanding following the execution and delivery of the lease, contract, license, easement or other arrangement, (B) operational covenants binding on the lessee or other contracting party similar to those covenants contained in this Agreement and (C) to the extent permitted by law in the case of a lease, for immediate termination of the lease of such lessee without resort to legal process in the event of a default under the lease; and

(iii) an opinion of counsel of recognized standing in the field of law relating to municipal bonds to the effect that the proposed transaction would not adversely affect the federal income tax status of any Bonds.

The rentals and other payments under any such lease, contract, license, easement or other arrangement shall be included in the definition of Revenues and shall be deposited to the credit of the Revenue Fund.

Section 713. With respect to Build America Bonds, the Authority hereby covenants to file, or cause to be filed, a Form 8038-CP with the Internal Revenue Service not less than 45 days and not more than 90 days prior to the date interest on the Build America Bonds shall be payable, as provided in Notice 2010-26 issued by the Internal Revenue Service, so long as filing such form is a condition to receipt of the Federal Subsidy prior to the date such interest shall be payable. In the event that the Internal Revenue Service shall amend or revise the guidance provided in Notice 2010-26, the Authority agrees that it shall take all such actions as are necessary to ensure receipt of the Federal Subsidy. With respect to Other Subsidy Bonds, the Authority hereby covenants it shall take all such actions as are necessary to ensure receipt of the Federal Subsidy related to such series of bonds as shall be set forth in the resolution relating to such

Other Subsidy Bonds. The only effect of any failure to comply with this Section 713 shall be that the Federal Subsidy to which such failure relates shall no longer be excluded from the calculation of Principal and interest Requirements.

ARTICLE VIII.  
REMEDIES.

**Extended coupons.**

SECTION 801. In case the time for the payment of any coupon or the interest on any registered bond without coupons shall be extended, whether or not such extension be by or with the consent of the Authority, such coupon or such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Agreement except subject to the prior payment in full of the principal of all bonds then outstanding and of all coupons and interest the time for the payment of which shall not have been extended.

**Events of default.**

SECTION 802. Each of the following events is hereby declared an "event of default", that is to say: If

(a) payment of the principal and of the redemption premium, if any, of any of the bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) payment of any installment of interest on any of the bonds shall not be made when the same shall become due and payable; or

(c) the Authority shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(d) any part of the System necessary for its effective operation shall be destroyed or damaged and shall not be properly repaired, replaced or reconstructed; or

(e) final judgment for the payment of money shall be rendered against the Authority as a result of the ownership, control or operation of the System and any such judgment shall not be discharged within sixty (60) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof; or

(f) an order or decree shall be entered, with the consent or acquiescence of the Authority, for the purpose of effecting

composition between the Authority and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or Commonwealth statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Revenues; or

(g) any proceeding shall be instituted, with the consent or acquiescence of the Authority, for the purpose of effecting a composition between the Authority and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or Commonwealth statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Revenues; or

(h) the Authority shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the bonds or in this Agreement on the part of the Authority to be performed, including meeting any Amortization Requirement, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Authority by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the holders of not less than ten per centum (10%) in aggregate principal amount of the bonds then outstanding; or

(i) an event of default within the meaning of that term in Section 802 of the 1947 Indenture shall occur.

(j) notice has been received by the Trustee and the Authority, from the bank or other financial or lending institution providing a credit or liquidity facility or other entity insuring, guaranteeing or providing for payments of principal or interest in respect of any bonds that an event of default has occurred under the agreement underlying said facility, or a failure by said bank or other financial or lending institution or other entity to make said facility available or to reinstate the interest component of said facility, in accordance with the terms of said facility, to the extent said notice or failure is established as an event of default under the terms of the resolution authorizing the issuance of said bonds.

**Acceleration of maturities.**

SECTION 803. Upon the happening and continuance of any event of default specified in Section 802 of this Article, then and in every such case the Trustee may, and upon the written request of the holders of not less than twenty per centum (20%) in aggregate principal amount of the bonds then outstanding shall, by a notice in writing to the Authority, declare the principal of all of the bonds then

outstanding (if not then due and payable) to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the bonds or in this Agreement to the contrary notwithstanding; provided, however, that if at any time after the principal of the bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Agreement, moneys shall have accumulated in the Sinking Fund sufficient to pay the principal of all matured bonds and all arrears of interest, if any, upon all the bonds then outstanding (except the principal of any bonds not then due and payable by their terms and the interest accrued on such bonds since the last interest payment date), and the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee and all other amounts then payable by the Authority hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee, and every other default known to the Trustee in the observance or performance of any covenant, condition, agreement or provision contained in the bonds or in this Agreement (other than a default in the payment of the principal of such bonds then due and payable only because of a declaration under this Section) shall have been remedied to the satisfaction of the Trustee, then and in every such case the Trustee may, and upon the written request of the holders of not less than twenty per centum (20%) in aggregate principal amount of the bonds not then due and payable by their terms and then outstanding shall, by written notice to the Authority, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

**Enforcement of remedies.**

SECTION 804. Upon the happening and continuance of any event of default specified in Section 802 of this Article, then and in every such case the Trustee may proceed, and upon the written request of the holders of not less than ten per centum (10%) in aggregate principal amount of the bonds then outstanding hereunder shall proceed, subject to the provisions of Section 902 of this Agreement, to protect and enforce its rights and the rights of the bondholders under applicable laws or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the appointment of a receiver as authorized by the Authority Act or for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights; provided, however, that the Trustee

shall not be required to proceed for the appointment of a receiver of the System unless it shall receive the written request of the holders of not less than twenty-five centum (25%) in principal amount of the bonds then outstanding under the provisions of this Agreement.

In the enforcement of any remedy under this Agreement the Trustee shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the Authority for principal, interest or otherwise under any of the provisions of this Agreement or of the bonds and unpaid, with interest on overdue payments of principal at the rate or rates of interest specified in such bonds, together with any and all costs and expenses of collection and of all proceedings hereunder and under such bonds, without prejudice to any other right or remedy of the Trustee or of the bondholders, and to recover and enforce any judgment or decree against the Authority, but solely as provided herein and in such bonds, for any portion of such amounts remaining unpaid and interest, costs and expenses as above provided, and to collect (but solely from moneys in the Sinking Fund and any other moneys available for such purpose) in any manner provided by law, the moneys adjudged or decreed to be payable.

**Pro rata application  
of funds.**

SECTION 805. Anything in this Agreement to the contrary notwithstanding, if at any time the moneys in the Sinking Fund shall not be sufficient to pay the interest on or the principal of the bonds as the same shall become due and payable (either by their terms or by acceleration of maturities under the provisions of Section 803 of this Article), such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Article or otherwise, shall be applied as follows :

(a) If the principal of all the bonds shall not have become or shall not have been declared due and payable, all such moneys shall be applied

*first:* to the payment to the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the bonds;

*second:* to the payment to the persons entitled thereto of the unpaid principal of any of the bonds which shall have become due

and payable (other than bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Agreement) in the order of their due dates, with interest on the principal amount of such bonds at the respective rates specified therein from the respective dates upon which such bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the bonds due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the bonds; and

*third:* to the payment of the interest on and the principal of the bonds, to the purchase and retirement of bonds and to the redemption of bonds, all in accordance with the provisions of Article V of this Agreement.

(b) If the principal of all the bonds shall have become or shall have been declared due and payable, all such moneys shall be applied

*first:* to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the bonds, and then to the payment of any interest due and payable after maturity on the bonds, ratably, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the bonds ; and

*second:* to the payment of the principal of the bonds, ratably, to the persons entitled thereto, without preference or priority of any bond over any other bond.

(c) If the principal of all the bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of Section 803 of this Article, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the bonds shall later become due and payable or be declared due and payable, the moneys

remaining in and thereafter accruing to the Sinking Fund shall be applied in accordance with the provisions of paragraph (a) of this Section.

The provisions of paragraphs (a), (b) and (c) of this Section are in all respects subject to the provisions of Section 801 of this Article.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by the Trustee at such times, and from time to time, as the Trustee in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agents, or otherwise setting aside such moneys, in trust for the proper purpose shall constitute proper application by the Trustee; and the Trustee shall incur no liability whatsoever to the Authority, to any bondholder or to any other person for any delay in applying any such moneys, so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Agreement as may be applicable at the time of application by the Trustee. Whenever the Trustee shall exercise such discretion in applying such moneys, it shall fix the date (which shall be an interest payment date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date, and shall not be required to make payment to the holder of any unpaid coupon or any bond until such coupon or such bond and all unmatured coupons, if any, appertaining to such bond shall be surrendered to the Trustee for appropriate endorsement, or for cancellation if fully paid.

**Effect of  
discontinuance of  
proceedings.**

SECTION 806. In case any proceeding taken by the Trustee or bondholders on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the Authority, the Trustee and the bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

**Majority of  
bondholders may  
control proceedings.**

SECTION 807. Anything in this Agreement to the contrary notwithstanding, the holders of a majority in principal amount of the bonds then outstanding hereunder shall have the right, subject to the provisions of Section 902 of this Agreement, by an instrument or concurrent instruments in writing executed and delivered to the

Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions of this Agreement.

**Restrictions upon  
action by individual  
bondholder.**

SECTION 808. No holder of any of the bonds shall have any right to institute any suit, action or proceeding in equity or at law on any bond or for the execution of any trust hereunder or for any other remedy hereunder unless such holder previously shall have given to the Trustee written notice of the event of default on account of which such suit, action or proceeding is to be instituted, and unless also the holders of not less than ten per centum (10%) in aggregate principal amount of the bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted or to institute such action, suit or proceeding in its or their name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Agreement or to any other remedy hereunder; provided, however, that notwithstanding the foregoing provisions of this Section and without complying therewith, the holders of not less than twenty per centum (20%) in aggregate principal amount of the bonds then outstanding may institute any such suit, action or proceeding in their own names for the benefit of all holders of bonds hereunder. It is understood and intended that, except as otherwise above provided, no one or more holders of the bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Agreement, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all holders of such outstanding bonds and coupons, and that any individual right of action or other right given to one or more of such holders by law is restricted by this Agreement to the rights and remedies herein provided.

**Actions by Trustee.**

SECTION 809. All rights of action under this Agreement or under any of the bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the bonds or the coupons appertaining thereto or the production thereof at the trial or other proceeding relative thereto, and any such suit, action or

proceeding instituted by the Trustee shall be brought in its name for the benefit of all of the holders of such bonds and coupons, subject to the provisions of this Agreement.

**No remedy exclusive.**

SECTION 810. No remedy herein conferred upon or reserved to the Trustee or to the holders of the bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

**No delay or omission construed to be a waiver.**

SECTION 811. No delay or omission of the Trustee or of any holder of the bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the Trustee and to the holders of the bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

**Repeated exercise of powers and remedies.**

**Waiver of default.**

The Trustee may, and upon written request of the holders of not less than a majority in principal amount of the bonds then outstanding shall, waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

**Notice of default.**

SECTION 812. The Trustee shall mail to all registered owners of bonds at their addresses as they appear on the registration books and to all bondholders of record, written notice of the occurrence of any event of default set forth in Section 802 of this Article within thirty (30) days after the Trustee shall have notice, pursuant to the provisions of Section 908 of this Agreement, that any such event of default shall have occurred. The Trustee shall not, however, be subject to any liability to any bondholder by reason of its failure to mail any such notice.

Section 812. Rights of Holders Regarding Validation Proceeding. Nothing in this Agreement shall affect, limit or impair the rights of the holders of bonds to participate in any Validation Proceeding.

ARTICLE IX.  
CONCERNING THE TRUSTEE.

**Acceptance of trusts.**

SECTION 901. The Trustee accepts and agrees to execute the trusts imposed upon it by this Agreement, but only upon the terms and conditions set forth in this Article and subject to the provisions of this Agreement, to all of which the parties hereto and the respective holders of the bonds agree.

**Trustee entitled to indemnity.**

SECTION 902. The Trustee shall be under no obligation to institute any suit, or to take any remedial proceeding under this Agreement, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and against all liability; the Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Trustee, without indemnity, and in such case the Authority shall reimburse the Trustee from Revenues for all costs and expenses, outlays and counsel fees and other reasonable disbursements properly incurred in connection therewith. If the Authority shall fail to make such reimbursement, the Trustee may reimburse itself from any moneys in its possession under the provisions of this Agreement and shall be entitled to a preference therefor over any of the bonds or coupons outstanding hereunder.

**Trustee may act without indemnity.**

**Reimbursement of Trustee.**

**Limitation on obligations and responsibilities of Trustee.**

SECTION 903. The Trustee shall be under no obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Authority, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. The Trustee shall have no responsibility in respect of the validity, sufficiency, due execution or acknowledgment by the Authority of this Agreement, or, except as to the authentication thereof, in respect of the validity of the bonds or of the coupons or the due execution or issuance thereof. The Trustee shall be under no obligation to see that any duties herein imposed upon the Authority, the Consulting Engineers, the Independent Consultant, the Paying Agents, any Depositary, or any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and the Trustee shall be under no obligation for failure to see that any such duties or covenants are so done or performed.

**Trustee not liable for failure of Authority to act or for deposits in**

SECTION 904. The Trustee shall not be liable or responsible because of the failure of the Authority or of any of its employees or agents to make any collections or deposits or to perform any act

**other banks.**

herein required of the Authority or because of the loss of any moneys arising through the insolvency or the act or default or omission of any other Depository in which such moneys shall have been deposited under the provisions of this Agreement. The Trustee shall not be responsible for the application of any of the proceeds of the bonds or any other moneys deposited with it and paid out, withdrawn or transferred hereunder if such application, payment, withdrawal or transfer shall be made in accordance with the provisions of this Agreement. The immunities and exemptions from liability of the Trustee hereunder shall extend to its directors, officers, employees and agents.

**Compensation and indemnification of Trustee.**

SECTION 905. Subject to the provisions of any contract between the Authority and the Trustee relating to the compensation of the Trustee, the Authority shall, from the Revenues, pay to the Trustee reasonable compensation for all services performed by it hereunder and also all its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees incurred in and about the administration and execution of the trusts hereby created and the performance of its powers and duties hereunder, and, from such Revenues only, shall indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder. If the Authority shall fail to make any payment required by this Section, the Trustee may make such payment from any moneys in its possession under the provisions of this Agreement and shall be entitled to a preference therefor over any of the bonds or coupons outstanding hereunder.

**Monthly statement from Trustee.**

SECTION 906. It shall be the duty of the Trustee, on or before the 10th day of each month, to file with the Authority a statement setting forth in respect of the preceding calendar month

(a) the amount withdrawn or transferred by it and the amount deposited with it on account of each Fund and Account held by it under the provisions of this Agreement,

(b) the amount on deposit with it at the end of such month to the credit of each such Fund and Account,

(c) a brief description of all obligations held by it as an investment of moneys in each such Fund and Account,

(d) the amount applied to the purchase or redemption of bonds under the provisions of Section 511 of this Agreement and a description of the bonds or portions of bonds so purchased or

redeemed, and

(e) any other information which the Authority may reasonably request.

All records and files pertaining to the trusts hereunder in the custody of the Trustee shall be open at all reasonable times to the inspection of the Authority and its agents and representatives.

**Trustee may rely on certificates.**

SECTION 907. In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or not taking any action or doing or not doing anything as such Trustee, and in any case in which this Agreement provides for permitting or taking any action, the Trustee may rely conclusively upon any certificate, requisition, opinion or other instrument required or permitted to be filed with it under the provisions of this Agreement, and any such instrument shall be conclusive evidence of such fact to protect the Trustee in any action that it may or may not take or in respect of anything it may or may not do, in good faith, by reason of the supposed existence of such fact. Except as otherwise provided in this Agreement, any request, notice, certificate or other instrument from the Authority to the Trustee shall be deemed to have been signed by the proper party or parties if signed by the Executive Director or by any officer or employee of the Authority who shall be designated by the Authority by resolution for that purpose, and the Trustee may accept and rely upon a certificate signed by the Executive Director as to any action taken by the Authority.

**Notice of default.**

SECTION 908. Except upon the happening of any event of default specified in clauses (a) and (b) of Section 802 of this Agreement, the Trustee shall not be obliged to take notice or be deemed to have notice of any event of default hereunder, unless specifically notified in writing of such event of default by the holders of not less than ten per centum (10%) in aggregate principal amount of the bonds hereby secured and then outstanding.

**Trustee may deal in bonds and take action as bondholder.**

SECTION 909. The bank or trust company acting as Trustee under this Agreement, and its directors, officers, employees or agents, may in good faith buy, sell, own, hold and deal in any of the bonds or coupons issued under and secured by this Agreement, may join in any action which any bondholder may be entitled to take with like effect as if such bank or trust company were not the Trustee under this Agreement, may engage or be interested in any financial or other transaction with the Authority, and may maintain any and all other general banking and business relations with the Authority with like effect and in the same manner as if the Trustee were not a party to this

Agreement; and no implied covenant shall be read into this Agreement against the Trustee in respect of such matters.

**Trustee not responsible for recitals.**

SECTION 910. The recitals, statements and representations contained herein and in the bonds (excluding the Trustee's certificate of authentication on the bonds) shall be taken and construed as made by and on the part of the Authority and not by the Trustee, and the Trustee assumes and shall be under no responsibility for the correctness of the same.

**Trustee protected in relying on certain documents.**

SECTION 911. The Trustee shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Agreement, or upon the written opinion of any attorney, engineer or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Trustee shall not be under any obligation to see to the recording or filing of this Agreement or otherwise to the giving to any person of notice of the provisions hereof.

**Resignation of Trustee.**

SECTION 912. The Trustee may resign and thereby become discharged from the trusts hereby created, by notice in writing to be given to the Authority and published once in a daily newspaper of general circulation published in the Municipality of San Juan, Puerto Rico, and in a daily newspaper of general circulation or a financial journal published in the Borough of Manhattan, City and State of New York, not less than sixty (60) days before such resignation is to take effect, but such resignation shall take effect immediately upon the appointment of a new Trustee hereunder, if such new Trustee shall be appointed before the time limited by such notice and shall then accept the trusts hereof.

**Removal of Trustee.**

SECTION 913. The Trustee may be removed at any time by an instrument or concurrent instruments in writing executed by the holders of not less than a majority in principal amount of the bonds hereby secured and then outstanding and filed with the Authority. A facsimile copy of each such instrument shall be delivered promptly by the Authority to the Trustee. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any

provision of this Agreement with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Authority pursuant to resolution or the holders of not less than ten per centum (10%) in aggregate principal amount of the bonds then outstanding under this Agreement.

**Appointment of  
successor Trustee.**

SECTION 914. If at any time hereafter the Trustee shall resign, be removed, be dissolved or otherwise become incapable of acting, or the bank or trust company acting as Trustee shall be taken over by any governmental official, agency, department or board, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, the Authority shall appoint a Trustee to fill such vacancy. The Authority shall publish notice of any such appointment by it made once in each week for four (4) successive weeks in a daily newspaper of general circulation published in the Municipality of San Juan, Puerto Rico, and in a daily newspaper of general circulation or a financial journal published in the Borough of Manhattan, City and State of New York.

At any time within one year after any such vacancy shall have occurred, the holders of a majority in principal amount of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments in writing, executed by such bondholders and filed with the Authority, may appoint a successor Trustee, which shall supersede any Trustee theretofore appointed by the Authority. Facsimile copies of each such instrument shall be delivered promptly by the Authority to the predecessor Trustee and to the Trustee so appointed by the bondholders.

If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within ten (10) days after the vacancy shall have occurred, the holder of any bond outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction within the Commonwealth of Puerto Rico or the State of New York to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Any Trustee hereafter appointed shall be a bank or trust company having its principal office in the Borough of Manhattan, City and State of New York, duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having at the time of its appointment a combined capital and surplus aggregating not less than Fifty Million Dollars (\$50,000,000) (or whose obligations hereunder are guaranteed by a bank or trust company duly authorized to exercise

corporate trust powers and subject to examination by federal or state authority, of good standing, and having at the time of the appointment of such Trustee, a combined capital and surplus of at least such amount).

**Vesting of trusts in successor Trustee.**

SECTION 915. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, and also to the Authority, an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, shall become fully vested with all the rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor; but such predecessor shall, nevertheless, on the written request of its successor or of the Authority, and upon payment of the expenses, charges and other disbursements of such predecessor which are payable pursuant to the provisions of Section 905 of this Article, execute and deliver an instrument transferring to such successor Trustee all the rights, immunities, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all property and moneys held by it hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such Trustee the rights, immunities, powers and trusts hereby vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall and will, on request, be executed, acknowledged and delivered by the Authority.

Notwithstanding any of the foregoing provisions of this Article, any bank or trust company having power to perform the duties and execute the trusts of this Agreement and otherwise qualified to act as Trustee hereunder with or into which the bank or trust company acting as Trustee may be merged, converted or consolidated, or to which the assets and business of such bank or trust company may be sold, shall be deemed the successor of the Trustee.

**ARTICLE X.**

**EXECUTION OF INSTRUMENTS BY BONDHOLDERS AND PROOF OF OWNERSHIP OF BONDS.**

**Execution of instruments by bondholders.**

SECTION 1001. Any request, direction, consent or other instrument in writing required or permitted by this Agreement to be signed or executed by bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such bondholders or their attorneys or legal representatives. Proof of the execution of any such instrument and of the ownership of bonds shall be sufficient for any purpose of this Agreement and shall be conclusive in favor of the Trustee with regard

to any action taken by it under such instrument if made in the following manner:

**Proof of execution.**

(a) The fact and date of the execution by any person of any such instrument may be proved by the verification of any officer in any jurisdiction who, by the laws thereof, has power to take affidavits within such jurisdiction, to the effect that such instrument was subscribed and sworn to before him, or by an affidavit of a witness to such execution. Where such execution is on behalf of a person other than an individual such verification or affidavit shall also constitute sufficient proof of the authority of the signer thereof.

**Proof of holding of bonds.**

(b) The fact of the holding of coupon bonds hereunder by any bondholder and the amount and the numbers of such bonds and the date of his holding the same may be proved by the affidavit of the person claiming to be such holder, if such affidavit shall be deemed by the Trustee to be satisfactory, or by a certificate executed by any trust company, bank, banker or any other depository, wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with or exhibited to such trust company, bank, banker or other depository the bonds described in such certificate. The Trustee may conclusively assume that such ownership continues until written notice to the contrary is served upon it. The ownership of registered bonds without coupons shall be proved by the registration books kept under the provisions of Section 206 of this Agreement.

**Other proof.**

But nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the holder of any bond shall bind every future holder of the same bond in respect of anything done by the Trustee in pursuance of such request or consent.

**Bondholders' actions bind future holders.**

Notwithstanding any of the foregoing provisions of this Section, the Trustee shall not be required to recognize any person as a holder of any bond or coupon or to take any action at his request unless such bond or coupon shall be deposited with it.

ARTICLE XI.

SUPPLEMENTAL AGREEMENTS.

**Supplemental agreements by Authority and Trustee.**

SECTION 1101. The Authority and the Trustee may, from time to time, enter into such agreements supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental agreements shall thereafter form a part hereof)

(a) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement which shall not be inconsistent with the provisions of this Agreement, provided such action shall not adversely affect the interest of the bondholders, or

(b) to grant to or confer upon the Trustee for the benefit of the bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the bondholders or the Trustee, or

(c) to add to the conditions, limitations and restrictions on the issuance of bonds under the provisions of this Agreement other conditions, limitations and restrictions thereafter to be observed, or

(d) to add to the covenants and agreements of the Authority in this Agreement other covenants and agreements thereafter to be observed by the Authority or to surrender any right or power herein reserved to or conferred upon the Authority.

**Notice of supplemental agreement.**

At least thirty (30) days prior to the execution of any supplemental agreement for any of the purposes of this Section, the Trustee shall cause a notice of the proposed execution of such supplemental agreement to be mailed, postage prepaid, to all registered owners of bonds at their addresses as they appear on the registration books and to all bondholders of record. Such notice shall briefly set forth the nature of the proposed supplemental agreement and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all bondholders. A failure on the part of the Trustee to mail the notice required by this Section shall not affect the validity of such supplemental agreement.

**Modification of Agreement with consent of 60% of bondholders.**

SECTION 1102. Subject to the terms and provisions contained in this Section, and not otherwise, the holders of not less than sixty per centum (60%) in aggregate principal amount of the bonds then outstanding shall have the right, from time to time, anything contained in this Agreement to the contrary notwithstanding, to consent to and approve the execution by the Authority and the Trustee of such agreement or agreements supplemental hereto as shall be deemed necessary or desirable by the Authority for the purpose of modifying, altering, amending, adding to, repealing or rescinding, in any particular, any of the terms or provisions contained in this Agreement or in any supplemental agreement; provided, however, that nothing herein contained shall permit, or be construed as permitting, (a) an extension of the maturity of the principal of or the interest on any bond issued hereunder, or (b) a reduction in the

**Restrictions on modifications.**

principal amount of any bond or the redemption premium or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of the Revenues other than any lien and pledge created by or permitted by this Agreement, or (d) a preference or priority of any bond or bonds over any other bond or bonds, or (e) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental agreement. Nothing herein contained, however, shall be construed as making necessary the approval by bondholders of the execution of any supplemental agreement as authorized in Section 1101 of this Article.

**Notice of  
supplemental  
agreement.**

If at any time the Authority shall request the Trustee to enter into any supplemental agreement for any of the purposes of this Section, the Trustee shall, at the expense of the Authority, cause notice of the proposed execution of such supplemental agreement to be published once in each week for four (4) successive weeks in a daily newspaper of general circulation published in the Municipality of San Juan, Puerto Rico, and in a daily newspaper of general circulation or a financial journal published in the Borough of Manhattan, City and State of New York, and, on or before the date of the first publication of such notice, the Trustee shall also cause a similar notice to be mailed, postage prepaid, to all registered owners of bonds at their addresses as they appear on the registration books and all bondholders of record. Such notice shall briefly set forth the nature of the proposed supplemental agreement and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all bondholders. The Trustee shall not, however, be subject to any liability to any bondholder by reason of its failure to mail the notice required by this Section, and any such failure shall not affect the validity of such supplemental agreement when consented to and approved as provided in this Section.

Whenever, at any time within one year after the date of the first publication of such notice, the Authority shall deliver to the Trustee an instrument or instruments in writing purporting to be executed by the holders of not less than sixty per centum (60%) in aggregate principal amount of the bonds then outstanding, which instrument or instruments shall refer to the proposed supplemental agreement described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Trustee may execute such supplemental agreement in substantially such form, without liability or responsibility to any holder of any bond, whether or not such holder shall have consented thereto.

**Consent of holders of**

If the holders of not less than sixty per centum (60%) in

**60% of bonds binds all.**

aggregate principal amount of the bonds outstanding at the time of the execution of such supplemental agreement shall have consented to and approved the execution thereof as herein provided, no holder of any bond shall have any right to object to the execution of such supplemental agreement, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Authority from executing the same or from taking any action pursuant to the provisions thereof.

Upon the execution of any supplemental agreement pursuant to the provisions of this Section, this Agreement shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Agreement of the Authority, the Trustee and all holders of bonds then outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Agreement as so modified and amended.

**Trustee joining in supplemental agreement.**

SECTION 1103. The Trustee is authorized to join with the Authority in the execution of any such supplemental agreement and to make the further agreements and stipulations which may be contained therein. Any supplemental agreement executed in accordance with the provisions of this Article shall thereafter form a part of this Agreement, and all of the terms and conditions contained in any such supplemental agreement as to any provision authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes. In case of the execution and delivery of any supplemental agreement, express reference may be made thereto in the text of any bonds issued thereafter, if deemed necessary or desirable by the Trustee.

**Supplemental agreements part of this Agreement.**

**Responsibilities of Trustee under this Article.**

SECTION 1104. In each and every case provided for in this Article, the Trustee shall be entitled to exercise its discretion in determining whether or not any proposed supplemental agreement, or any term or provision therein contained, is desirable, having in view the purposes of such instrument, the needs of the Authority, the rights and interests of the bondholders, and the rights, obligations and interests of the Trustee, and the Trustee shall not be under any responsibility or liability to the Authority or to any bondholder or to anyone whomsoever for its refusal in good faith to enter into any such supplemental agreement if such agreement is deemed by it to be contrary to the provisions of this Article. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it, who may be counsel for the Authority, as evidence that any such proposed supplemental agreement does or does not comply with the provisions of this Agreement, and that it is or is not proper for it, under the provisions of this Article, to join in

**Trustee may rely upon opinion of counsel.**

the execution of such supplemental agreement.

ARTICLE XII.  
DEFEASANCE.

**Release of Agreement.**

SECTION 1201. If, when the bonds secured hereby shall have become due and payable in accordance with their terms or otherwise as provided in this Agreement or shall have been duly called for redemption or irrevocable instructions to call the bonds for redemption or payment shall have been given by the Authority to the Trustee, the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the bonds and coupons then outstanding shall be paid or sufficient moneys, or Government Obligations or Prerefunded Municipals or Time Deposits, secured in the manner set forth in Section 601 of this Agreement, the principal of and the interest on which when due will provide sufficient moneys, shall be held by the Trustee or the Paying Agents for such purpose under the provisions of this Agreement, and provision shall also be made for paying all other sums payable hereunder by the Authority, then and in that case the right, title and interest of the Trustee hereunder shall thereupon cease, determine and become void, and the Trustee in such case, on demand of the Authority, shall release this Agreement and shall execute such documents to evidence such release as may be reasonably required by the Authority, and shall turn over to the Authority or to such officer, board or body as may then be entitled by law to receive the same any surplus in any account in the Sinking Fund and all balances remaining in any other funds or accounts other than moneys held for the redemption or payment of bonds or coupons; otherwise this Agreement shall be, continue and remain in full force and effect; provided, however, that in the event Government Obligations or Prerefunded Municipals or Time Deposits, secured in the manner set forth in Section 601 of this Agreement, shall be held by the Trustee as hereinabove provided, (i) in addition to the requirements set forth in Article III of this Agreement, the Trustee shall within thirty (30) days after such obligations shall have been deposited with it cause a notice signed by the Trustee to be published once in a daily newspaper of general circulation published in the Municipality of San Juan, Puerto Rico, and in a daily newspaper of general circulation or a financial journal published in the Borough of Manhattan, City and State of New York, setting forth (a) the date designated for the redemption of the bonds, (b) a description of the Government Obligations or Prerefunded Municipals or Time Deposits so held by it and (c) that this Agreement has been released in accordance with the provisions of this Section, and (ii) the Trustee shall nevertheless retain such rights, powers and privileges under this Agreement, as may be necessary and convenient in respect of the bonds for the

payment of the principal, interest and any premium for which such Government Obligations or Prerefunded Municipals have been deposited or such Time Deposits have been made.

For purposes of determining whether Variable Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, the interest to come due on such Variable Rate Bonds on or prior to the maturity date or redemption date thereof, as the case may be, shall be calculated at the maximum rate permitted by the terms thereof.

Put Bonds and Extendible Maturity Bonds shall be deemed to have been paid only if there shall have been deposited with the Trustee moneys, Government Obligations, Prerefunded Municipals Time Deposits, secured in the manner set forth in Section 601 of this Agreement, as applicable, in an amount which shall be sufficient to pay when due the maximum amount of principal of and premium, if any, and interest on such bonds which would become payable to the holders of such bonds upon the exercise of any options or extensions of maturity; provided, however, that, if at the time a deposit is made with the Trustee, such options or extensions are no longer exercisable, such bond shall not be considered a Put Bond or an Extendible Maturity Bond for purposes of this Section.

### ARTICLE XIII.

#### MISCELLANEOUS PROVISIONS.

#### **Successorship of Authority.**

SECTION 1301. All covenants, stipulations, obligations and agreements of the Authority contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Authority to the full extent authorized or permitted by the laws of the Commonwealth of Puerto Rico, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the Authority in his individual capacity, and neither the members of the Authority or of any other agency of the Commonwealth of Puerto Rico nor any officer thereof or of the Authority, present or future, executing the bonds shall be liable personally on the bonds or be subject to any personal liability or responsibility by reason of the

issuance thereof.

The laws of the Commonwealth of Puerto Rico shall govern the construction of this Agreement, except that the rights, limitations of rights, immunities, duties and obligations of the Trustee shall be governed by the laws of the State of New York.

**Manner of giving notice, etc.**

SECTION 1302. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Authority or the Trustee shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by first class mail:

to the Authority, if addressed to the Executive Director, Puerto Rico Electric Power Authority, San Juan, Puerto Rico;

to the Trustee, if addressed to it at its Corporate Trust Office, or to any successor Trustee, if addressed to it at its principal office.

**Successorship of Paying Agents.**

SECTION 1303. Any bank or trust company with or into which any Paying Agent may be merged, converted or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Agreement. If the position of any Paying Agent shall become vacant for any reason, the Authority shall, within thirty (30) days thereafter, appoint a bank or trust company located in the same city as Paying Agent to fill such vacancy; provided, however, that if the Authority shall fail to appoint such Paying Agent within such period, the Trustee shall make such appointment.

**Parties and bondholders alone have rights under Agreement.**

SECTION 1304. Except as herein otherwise expressly provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and the holders of the bonds issued under the provisions of this Agreement any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provisions hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders from time to time of the bonds issued hereunder.

**Effect of partial invalidity.**

SECTION 1305. In case any one or more of the provisions of this Agreement or of the bonds or coupons issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or of the bonds or coupons, but this Agreement and the bonds and coupons shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation

or agreement contained in the bonds or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Authority to the full extent permitted by law.

**Substitute  
publication.**

SECTION 1306. If, because of the temporary or permanent suspension of publication of any newspaper or financial journal or for any other reason, the Trustee or the Authority shall be unable to publish in a newspaper or financial journal any notice required to be published by the provisions of this Agreement, the Trustee or the Authority, as the case may be, shall give such notice in such other manner as in its judgment shall most effectively approximate such publication thereof, and the giving of such notice in such manner shall for all purposes of this Agreement be deemed to be compliance with the requirement for the publication thereof.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event to registered owners of bonds or to bondholders of record when such notice is required to be given pursuant to any provision of this Agreement, any manner of giving notice as shall be satisfactory to the Trustee and the Authority shall be deemed to be a sufficient giving of such notice.

**Other funds not  
prohibited.**

SECTION 1307. Nothing in this Agreement expressed or implied shall be construed as preventing the Authority, if then authorized or permitted by law, from financing the acquisition or construction of any land, building, structure or other facility by the issuance of obligations which are not issued under or secured by the provisions of this Agreement or the 1947 Indenture or by entering into any financing agreement or agreements relating to any such facility pursuant to which the Authority has the right to the use, occupancy and possession of such facility and is required to make periodic payments in an aggregate amount substantially equal to the cost of such facility and reasonable financing charges, regardless of the disposition of title to such facility.

**Headings, etc. not  
part of Agreement.**

SECTION 1308. Any headings preceding the texts of the several articles hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**Multiple  
counterparts.**

SECTION 1309. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same

instrument.

IN WITNESS WHEREOF, Puerto Rico Water Resources Authority has caused this Agreement to be executed by its Executive Director and its corporate seal to be impressed hereon and attested by its Secretary or an Assistant Secretary and First National City Bank has caused this Agreement to be executed in its behalf by one of its Vice Presidents and its corporate seal to be impressed hereon and attested by one of its Associate Trust Officers, all as of the day and year first above written

PUERTO RICO WATER RESOURCES AUTHORITY

By /s/ \_\_\_\_\_  
Executive Director

**Execution by Authority.**

[SEAL]  
Attest:

/s/ \_\_\_\_\_  
Secretary

FIRST NATIONAL CITY BANK

By /s/ \_\_\_\_\_  
Vice President

**Execution by Trustee.**

[SEAL]  
Attest:

/s/ \_\_\_\_\_  
*Associate Trust Officer*

**Acknowledgment by Authority.**

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.

On the 7th day of January, 1974, before me personally Came Julio Negroni, to me known, who, being by me duly sworn, did depose and say that he resides at 269 Georgetown St., San Juan, Puerto Rico; that he is the Executive Director of Puerto Rico Water Resources Authority; and that he signed his name to the above instrument by order of the Authority, the Authority being the public corporation described in and which executed the above instrument.

/s/ Gundars Aperans  
*Notary Public*  
My commission expires

[SEAL]

**Acknowledgment by  
Trustee.**

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.

On the 7<sup>th</sup> day of January, 1974, before me personally came D.C. McNeill, to me Known, who, being by me duly sworn, did depose and say that he resides at 33 Ferris Hill Rd, New Canaan, Conn.; that he is a Vice President of First National City Bank, the banking association described in and which executed the above instrument; that he knows the seal thereof; that the seal affixed to said instrument is the corporate seal of said banking association; that it was so affixed by authority of said banking association; and that he signed his name thereto by like authority.

/s/ Gundars Aperans  
Notary Public  
My commission expires

[SEAL]

**EXHIBIT B**

**Certified Translation of**  
***Elec. and Irrigation Indus. Workers' Union v. Puerto Rico Electric Power Authority,***  
**No. 2016-CV-0291 (Court of First Instance, Dec. 19, 2016)**

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO  
COURT OF FIRST INSTANCE  
SAN JUAN PART

ELECTRIC AND IRRIGATION  
INDUSTRY WORKERS' UNION ("UTIER", for  
its Spanish acronym), JOSÉ RIVERA-RIVERA  
AND ÁNGEL FIGUEROA JARAMILLO,

PLAINTIFFS,

v.

ELECTRIC POWER AUTHORITY OF  
PUERTO RICO, CORPORATION FOR THE  
REVITALIZATION OF THE ELECTRIC  
POWER AUTHORITY OF PUERTO RICO,  
ALBERTO BACÓ-BAGUÉ, JUAN  
ZARAGOZA-GÓMEZ, VÍCTOR SUÁREZ-  
MELÉNDEZ, PUERTO RICO ENERGY  
COMMISSION AND CÉSAR MIRANDA-  
RODRÍGUEZ,

DEFENDANTS.

CIVIL NO.: K AC2016-0291 (604)

ABOUT:

DECLARATORY JUDGMENT

**JUDGMENT**

**I**

**Procedural Background**

On April 19, 2016, the Electric and Irrigation Industry Workers' Union (UTIER, for its Spanish acronym), its president Ángel Figueroa-Jaramillo and José Rivera-Rivera, who presides the UTIER Retirees Chapter (the "plaintiffs") submitted a complaint, which was later amended, in which they requested that Act No. 4-2016, known as the Act for the Revitalization of the



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Electric Power Authority (Act 4-2016), especially Chapter IV,<sup>1</sup> be declared completely null and, consequently, for all actions taken by the defendants to implement it to be declared null as well. Also, they requested payment for the costs and expenses of the litigation, as well as the award of attorney's fees.

In essence, the plaintiffs argued that Act 4-2016 is unconstitutional for contravening the following constitutional guarantees: the separation of the branches of government; the matters that should be considered in the title of a law; due process of law in its procedural form regarding the terms to challenge the validity of the legislation and/or the resolutions or orders that are carried out to implement them; the jurisdictional competence of the Court to hear the appeal of a judicial determination concerning the validity of the statute; the protection against impairment of existing contractual relationships and the equal protection of the laws.

The plaintiffs stated that the Trust of 1974, the Electric Power Authority of Puerto Rico (PREPA or Authority) recognized its authority to establish and charge reasonable tariffs to cover its current costs, which included the contributions to its employees' retirement plan. In the referenced agreement, a general fund was created to deposit all PREPA income and the order for the payment of current expenses was established. According to the plaintiffs, the payment of current or past due contributions to the retirement plan of PREPA employees has priority over any other expense or obligation for payment by the Authority.

The plaintiffs argued that the priority of PREPA payments was modified by an agreement subscribed by various creditors of the Authority, without considering the participation of the PREPA Retirement System, which is the entity that receives the employees' contributions. Also, they argued that the referenced agreement conditions the restructuring of PREPA's debt to the

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<sup>1</sup> The complaint was amended on August 19, 2016.



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approval of a special legislation that would create an independent corporation that would impose and charge transition charges that would be exclusively used for the payment of the new bonds without considering this income as part of PREPA's general fund.

In their first cause of action, the plaintiffs alleged that the title of Act 2016 included different subjects that are not related to each other, many of which amended other statutes without adequately notifying citizens. In particular, [the plaintiffs] stated that the legislation amended Act No. 33-1985, legislation that establishes the challenge processes of the bills for essential public services, and Act. No. 29-2009 known as the Act of Public-Private Alliances by establishing special processes for expedited future energy projects. Likewise, [the plaintiffs] sustained that the title also did not mention the agreed upon creditors' agreement, information that is necessary so that the Legislative Assembly, as well as active or retired employees, can evaluate whether their rights or the provisions of Act No. 57-2014, known as the Transformation and Energy Relief Act of Puerto Rico, were compromised. [The plaintiffs] also stated that the Executive Branch exercised undue pressure that affected the independent criteria of the members of the Legislative Branch since Act 4-2016 was approved to favor an established condition in a creditors' agreement that was promoted by the Executive Branch.

On the other hand, the plaintiffs posed that Act 4-2016 infringed the due process of law in its procedural form by establishing unreasonable terms for challenging its validity and the determinations of the entities in charge of implementing it. Also, [the plaintiffs] stated that the legislation limited the access to justice by eliminating the jurisdictional competency of the Court of Appeals to revise the determination that the Court of First Instance may issue as to the referenced legislation.



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In its third cause of action, the plaintiffs argued that Act 4-2016 impaired PREPA's obligations established in the Trust of 1974 by imposing a new financing scheme that eliminated the preference of covering current costs, which includes the contributions to the employees' retirement plan, before fulfilling the payment to the bondholders. In their judgment, the established transition charge affected PREPA's capacity to budget and project in its general fund the payment of the contributions to the retirement plan of its employees, which is contrary to the provisions of the Trust of 1974.

Furthermore, [the plaintiffs] argued that the State, by only favoring the accrual of the PREPA bondholders, disregarded the public interest in maintaining the continuity and permanence of the PREPA employees and retirees' pension plan, who have a proprietary right over the pension benefits. According to the plaintiffs, the Legislative Assembly and PREPA had other measures available to guarantee the payment of its debt with the bondholders without affecting the order of the debt payments established in the Trust of 1974.

On September 16, 2016, an initial hearing for this case was held. The legal representatives of the co-defendant parties expressed that the controversies of the case as they were presented by the plaintiffs were strictly matters of law and, therefore, they requested a briefing schedule and the scheduling of an oral argument hearing, all in a short timeframe, given the high public interest in this case. After hearing the parties, the Court granted a term for the parties to submit their respective briefs and scheduled an oral argument hearing for November 16, 2016, in the morning hours.

On October 11, 2016, PREPA and the Corporation for the Revitalization of PREPA (CRAEE, for its Spanish acronym) presented a motion for summary judgment which Alberto Bacó-Bagué, Víctor Suárez-Meléndez and Juan Zaragoza-Gómez later joined in their official



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capacity as CRAEE Directors (the codefendants). In their motion, the codefendants numbered various essential facts for which no controversy exists and requested [the Court] to validate the challenged legislation and, at the same time, the dismissal of the entire complaint.

First, the codefendants explained that Act 4-2016 contains various measures that address PREPA's precarious economic situation, amongst these, the reduction of certain debts that it has with various creditors to avoid non-payment. Regarding the matters that Act 4-2016 discusses, [the codefendants] alleged that the Legislative Assembly does not have an obligation to provide a detail in the title of all the matters that are covered in the legislation, sufficing that the content relates to PREPA's transformation and revitalization; an action that requires amending various statutes that affect the operation and finances of the Authority. They recognize that in its origin, Act 4-2016 was an administration measure promoted by the Executive Branch, but that it was later adopted by the members of the Legislative Assembly, who presented a bill that met the corresponding legislative procedure as required by the Constitution of the Commonwealth of Puerto Rico (ELA Constitution).

At the same time, they argued that the challenged legislation provides expiration terms for two phases for challenges; the first to question the validity of the legislation and the second to challenge the Resolution and Restructuring Order that imposes the transition charge. They explained that the established terms allow citizens to file a cause of action and, at the same time, attempt to provide certainty to a legislation whose purpose is to immediately heed the Authority's access to the capital markets and provide it the necessary tools to turn it into a self-sufficient entity. They added that, unlike other statutes and complex regulations, the terms provided in Act 4-2016 are more favorable since these [terms] commence at the moment a notice to the general public is published, contrary to other complex statutes that have much shorter



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challenge terms that commence from the moment the legislation or dictum is approved. They emphasized that the statute allows access to justice since the Court of First Instance has jurisdiction to consider the challenge claims and guarantees the jurisdictional competence of the Supreme Court as the last appellate forum that will express itself as to the controversies.

In its motion, the codefendants emphasized that the plaintiffs are neither a contracting party nor bondholders of the Trust of 1974, which prevents them from invoking the constitutional protection against impairment of contractual obligations. As to this particular matter, they stressed that the purpose of the trust is to provide the terms and conditions for the issuance of PREPA bonds with the purpose of guaranteeing their payment, yet not to regulate the payments for current costs, amongst which are found the contributions to retirement plans. In the alternative, they stated that if an obligation for priority in the payment of the contributions to the retirement plan in favor of the plaintiffs existed, the implementation of the transition charge for the payment of the restructuring bonds does not constitute a substantial impairment of the trust. Finally, they rejected that Act 4-2016 infringes upon the guarantee of equal protection under the law since a suspicious or irrational classification did not exist between similarly situated persons with respect to the purpose of the statute. As to this particular matter, they stated that the priority of the Legislative Assembly of prioritizing PREPA's debt with the bondholders does not imply a constitutional violation.

In response, on November 4, 2016, the plaintiffs submitted their opposition stating that there are facts in controversy that require for the case to continue in an ordinary course and for the parties to initiate discovery. In essence, they reiterated their previous allegations and, at the same time, requested for various other facts to be considered that, to their judgment, disallow the adjudication of a summary judgment in these stages of the litigation. To support their position



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they included in their motion, amongst other documents, an expert report prepared by Dr. José I. Alameda-Lozada and José Torres, Economists, in which they concluded that PREPA had other available alternatives to generate additional income, achieve administrative adjustments, and face the debt service without the necessity of approving Act 4-2016. Regarding the established transition charge, they stated that its effect could be contrary to the legislative purpose, as the sales and consumption of energy would be affected, which would negatively affect the income received in PREPA's general fund.

In their reply, the codefendants stated that the alleged controversies of fact invoked by the plaintiffs are based on an interpretation of the statutes and clauses of the Trust, which allows the Court to resolve the motion for summary judgment. Regarding the additional facts presented by the plaintiffs, the codefendants stated that they were immaterial and irrelevant facts since the controversies submitted in the amended complaint are issues of law and only require the Court's analysis. Regarding the expert report submitted by the plaintiffs, the codefendants argued that it should not be considered because it was hearsay and because they did not have the opportunity to evaluate this evidence beforehand.

On October 11, 2016, the Commonwealth filed a motion to dismiss through which, like the codefendants PREPA and CRAEE, they alleged that since Act 4-2016 was constitutionally valid, the amended complaint should be dismissed for failing to state a claim for which a remedy could be granted. In its motion, the Commonwealth submitted arguments similar to those provided by the codefendants in their motion for summary judgment. In their opposition, the plaintiffs adopted the arguments previously expressed in their motion opposing the motion for summary judgment.

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Finally, the Puerto Rico Energy Commission (Energy Commission) requested dismissal based on that the original complaint, as well as the amended complaint, did not state sufficient facts against it that justified granting of a remedy. In response, the plaintiffs provided that a remedy exists against the Energy Commission for having participated in the approval of the transition costs created by Act 4-2016 to guarantee the payment of the restructuring bonds. They also stated that the Commission made determinations to implement the new financial system, which prevents the dismissal of the allegation against it.

On November 16, 2016, the hearing took place in which all of the parties argued their respective positions and allegations.<sup>2</sup> Of the motions and allegations of the parties, the following controversies are pertinent and relevant.

## II

### UNDISPUTED FACTS

1. On January 27, 2016, PREPA, the Government Development Bank for Puerto Rico and various other persons, including bondholders, creditors, and insurance companies regarding PREPA's debt, subscribed a contract titled *Restructuring Support Agreement* (RSA or creditors' agreement).
2. In the RSA, as amended,<sup>3</sup> the following parties appeared:

THIS AMENDED AND RESTATED RESTRUCTURING SUPPORT AGREEMENT(including the annexes, exhibits and schedules attached hereto and as amended, supplemented or otherwise modified from time to time in accordance with the

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<sup>2</sup> During the procedure carried out before the oral argument hearing was held, the parties requested the consolidation of other case with this case, specifically, K AC-2016-0292, K AC2016-0294 and K AC2016-0806. The consolidation was denied because differences existed between the causes of action and the remedies requested, according to the plaintiffs of each case, and because the cases were already in different procedural stages. See Order of September 23, 2016.

<sup>3</sup> See, Amended and Restated Restructuring Support Agreement, March 14, 2016, [http://www.gdb-pur.com/investors\\_resources/prepa.html](http://www.gdb-pur.com/investors_resources/prepa.html) (last visit, December 19, 2016). It is important to emphasize that the referenced agreement was amended on March 23 and 29, 2016, but its essential clauses were maintained since the amendments were mainly done to substitute various agreed upon dates.



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terms hereof, this “**Agreement**” or “**RSA**”), dated as of March 14, 2016, is entered into by and among Puerto Rico Electric Power Authority (“**PREPA**”), Puerto Rico Electric Power Authority Revitalization Corporation (the “**Securitization SPV**”), National Public Finance Guarantee Corporation (“**National**”), Assured Guaranty Corp., Assured Guaranty Municipal Corp. (together with Assured Guaranty Corp., “**Assured**”), Syncora Guarantee Inc. (“**Syncora**”), the undersigned members of the Ad Hoc Group of PREPA Bondholders identified on Annex A (the “**Ad Hoc Group**”), Scotiabank de Puerto Rico (in its capacity as administrative agent for the Scotiabank Lenders, “**Scotiabank**”), the lenders (the “**Scotiabank Lenders**”) under that certain Scotiabank Credit Agreement (as herein defined), Solus Opportunities Fund 5 LP, SOLA LTD and Ultra Master LTD (collectively, “**Solus**” or the “**Solus Lenders**” and together with Scotiabank, the Scotiabank Lenders and any persons who execute a joinder to this Agreement pursuant to section 18(b) hereof in the form of Annex B-2, the “**Credit Agreements Lenders**”), and Government Development Bank for Puerto Rico (“**GDB**”). National and Assured will be referred to herein collectively as the “**Insurers**,” and the Ad Hoc Group, together with persons who beneficially own or control Uninsured Bonds (as defined herein) and are party to this Agreement (including, for the avoidance of doubt, Solus) or execute a joinder to this Agreement pursuant to section 18(a) hereof in the form of Annex B-1, will be referred to herein collectively as the “ **Holders**,” and the Insurers, the Holders, Scotiabank, the Scotiabank Lenders, Solus and GDB will be referred to herein collectively as the “**Supporting Creditors**.” The Supporting Creditors, together with PREPA, Syncora and the Securitization SPV, will be referred to herein collectively as the “**Parties**.”

3. In the recitals of the RSA, as amended, the parties agreed to the following:

**A. PREPA is the issuer of power revenue bonds (collectively, the “Revenue Bonds”) and power revenue refunding bonds (collectively with the Revenue Bonds, the “Bonds”)** issued and outstanding pursuant to that certain Trust Agreement, dated as of January 1, 1974, as amended and supplemented through July 1, 2015, between PREPA and U.S. Bank National Association, as successor trustee (the “Trustee” and, with respect to said trust agreement, as amended, the “Trust Agreement”). Capitalized terms used but not defined in this Agreement shall have the meanings given to such terms in the Trust Agreement.

**B. Each individual series of Bonds issued under the Trust Agreement was authorized pursuant to specific resolutions of PREPA authorizing the issuance of such series of Bonds.**

**C. In connection with the issuance of certain of the Bonds (such Bonds, the “Insured Bonds”), PREPA entered into various insurance agreements with the Trustee corresponding to insurance policies issued by various insurers including National Assured and Syncora (such insurance policies to which any of National, Assured or Syncora or any other person that insures Bonds is currently a party, and the insurance agreements related thereto, collectively, the “Bond Insurance Agreements” and, together with the Trust Agreement, the Bonds, the resolutions approving the Bonds, and any other**

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agreements, supplements, amendments, or other documents executed or delivered in connection with the issuance or maintenance of the Bonds, including the TA Amendment (as defined herein), the “Bond Documents”). Any Bonds that are not Insured Bonds are referred to herein as “Uninsured Bonds.”

**D. PREPA has requested, and the Insurers and Holders have agreed, subject to the terms and conditions of this Agreement, to consent to an amendment of the Trust Agreement in the form and substance reasonably acceptable to the Supermajority Holders, the Supermajority Insurers and the Supermajority Credit Agreement Lenders and consistent with the form attached hereto as Annex C (the “TA Amendment”).**

E. The Bond Insurance Agreements provide the Insurers the sole right in lieu of the beneficial owners of the applicable Insured Bonds to consent to the TA Amendment in accordance with the terms of such Bond Insurance Agreements.

F. PREPA and the Solus Lenders are parties to that certain Trade Finance Facility Agreement, dated as of July 20, 2012, (as amended, restated, extended, supplemented or otherwise modified and in effect from time to time, the “Solus Credit Agreement” and together with the Scotiabank Credit Agreement, the “Credit Agreements”).

**G. PREPA, Scotiabank and the Scotiabank Lenders have entered into that certain Credit Agreement, dated as of May 4, 2012** (as amended, restated, extended, supplemented or otherwise modified and in effect from time to time, the “Scotiabank Credit Agreement”), with Scotiabank as agent thereunder.

**H. PREPA and GDB have entered into that certain Collateral Swap Loan Agreement,** dated as of June 21, 2013, (as amended, restated, extended, supplemented or otherwise modified from time to time and currently in effect, together with any related documents, the “Collateral Swap Loan Agreement”).

I. PREPA and GDB have entered into that certain Isabela Dam Loan Agreement, dated as of March 26, 2004, (as amended, restated, extended, supplemented or otherwise modified from time to time and currently in effect, together with any related documents, the “Isabela Dam Loan Agreement” and together with the Collateral Swap Loan Agreement, the “GDB Loan Agreements”).

J. GDB is the fiscal agent under that certain **Loan Agreement, dated as of September 6, 2012, by and between Puerto Rico Infrastructure Financing Authority,** acting on behalf of the Commonwealth of Puerto Rico (“PRIFA”), and PREPA (as amended, restated, extended, supplemented or otherwise modified from time to time and currently in effect, together with any related documents, the “Aguirre Loan Agreement”).

K. GDB is the fiscal agent under that certain **Financial Agreement, dated as of September 27, 2013, by and between PRIFA and PREPA** (as amended, restated,

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extended, supplemented or otherwise modified from time to time and currently in effect, together with any related documents, the “San Juan Water Financial Agreement”).

**L. As of the date hereof, the total outstanding principal amount of Bonds insured by National under the Bond Insurance Agreements is \$1,329,155,000**, the total outstanding principal amount of Insured Bonds that are beneficially owned by National is \$0 and the total outstanding amount of Uninsured Bonds that are beneficially owned by National is \$0.

**M. As of the date hereof, the total outstanding principal amount of Bonds insured by Assured under the Bond Insurance Agreements is \$830,550,000**, the total outstanding principal amount of Insured Bonds that are beneficially owned by Assured is \$0 and the total outstanding principal amount of Uninsured Bonds that are beneficially owned by Assured is \$0.

**N. As of the date hereof, the total outstanding principal amount of Bonds insured by Syncora under the Bond Insurance Agreements is \$197,405,000**, the total outstanding principal amount of Insured Bonds that are beneficially owned by Syncora and the total outstanding principal amount of Uninsured Bonds that are beneficially owned by Syncora are set forth on its respective signature page hereto.

O. PREPA and GDB have entered into certain depository and custodial agreements (as amended, restated, extended, supplemented or otherwise modified from time to time and currently in effect, together with any related documents, the “*Custodial Agreements*” and, together with the Collateral Swap Loan Agreement, the Isabela Dam Loan Agreement, the Aguirre Loan Agreement, and the San Juan Water Financial Agreement, the “GDB Agreements”).

P. As of the date hereof, \$8,107,995,000.00 in principal amount of Bonds is outstanding. The total outstanding principal amount of Bonds as of any date shall be known hereunder as the “Bond Principal Amount.”

Q. As of the date hereof, the total outstanding principal amount of Uninsured Bonds that are beneficially owned by each member of the Ad Hoc Group is set forth on their respective signature pages hereto.

R. As of the date hereof, the total outstanding principal amount of Uninsured Bonds that are beneficially owned by Solus is set forth on its respective signature page hereto.

**S. The Insurers and the Holders collectively control more than 60% of the total outstanding principal amount of the Bonds for purposes of consenting to the TA Amendment.**

**T. As of the date hereof, there is \$549,950,000 in aggregate principal amount** (the “Scotiabank Principal Amount”) (plus applicable accrued fees and interest) outstanding under the Scotiabank Credit Agreement (the loans outstanding thereunder, the

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“Scotiabank Loans”) and the total outstanding principal amount of Uninsured Bonds that are beneficially owned or controlled by Scotiabank and the Scotiabank Lenders is \$35,000.

U. As of the date hereof, **there is \$146,041,914.24 in aggregate principal amount** (the “Solus Principal Amount”, together with the Scotiabank Principal Amount, the “Credit Agreements Principal Amount,” and the Credit Agreements Principal Amount collectively with the Bond Principal Amount, the “Outstanding Principal Amount”) (plus applicable accrued fees and interest) outstanding under the Solus Credit Agreement (the loans outstanding thereunder, the “Solus Loans”).

V. PREPA, the Holders, the Credit Agreement Lenders and GDB entered into a Restructuring Support Agreement on November 5, 2015 (as amended, the “Initial RSA”).  
W. PREPA, the Holders, the Credit Agreement Lenders, the GDB, National, Assured and Syncora entered into an Amended and Restated Restructuring Agreement dated as of December 23, 2015, (the “December RSA”) which amended and restated the Initial RSA in its entirety.

X. The December RSA terminated on January 23, 2016.

**Y. PREPA, the Holders, the Credit Agreement Lenders, the GDB, National, Assured and Syncora entered into a new Restructuring Support Agreement dated as of January 27, 2016**, which incorporated by reference the terms and conditions of the December RSA, as expressly amended thereby (as amended by Amendment No. 1 dated as of February 19, 2016, the “New RSA”).

Z. On February 16, 2016, the Legislative Assembly of Puerto Rico enacted, and the Governor of Puerto Rico signed into law, Act 4-2016, known as the PREPA Revitalization Act (the “Act”). The Act has been deemed to be reasonably acceptable and in Acceptable Form, as applicable, to the Supporting Creditors for purposes of sections 13(e)(vi) and 13(e)(viii).

(...) (Emphasis added).

4. The RSA was available to the public through the Internet, specifically in the GDB’s webpage and the *Electronic Municipal Market Access System* (EMMA). Also, the Office of the Controller of Puerto Rico published in its website that the creditors’ agreements, identified with the number 2016-P0025E and 2016-P0025F, were before its consideration.
5. On November 4, 2015, eighteen (18) Senators of the Puerto Rico Senate presented the SB 1523 which contained multiple dispositions to revitalize PREPA.



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6. That day, twenty-seven (27) House Representatives of Puerto Rico presented the HB 2742, which was equivalent to the SB 1523.
7. The SB 1523 was referred to the Energy Affairs and Water Resources Commission of the Senate (Energy Affairs Commission), which held a public hearing on November 10, 2015, received presentations and held an executive meeting on February 4, 2016.
8. The HB 2742 was referred to the Special Commission for a New Energy Policy, which held public hearings on November 11, 2015 and evaluated multiple presentations before giving its report.
9. The HB 2742 was dismissed by its equivalent, SB 1523.
10. The Energy Affairs Commission and the Special Commission for a New Energy Policy of the House of Representatives issued a Positive Report after evaluating the SB 1523.
11. On February 10, 2016, the SB 1523 was approved by a majority of the Senate of Puerto Rico and afterwards sent to the House of Representatives.
12. On February 11, 2016, the Special Commission for a New Energy Policy of the House of Representatives, that had already evaluated the equivalent project HB 2742, issued a Positive Report regarding the SB 1523.
13. The Positive Report of the Energy Commission of the Senate of Puerto Rico to the SB 1523 is identical to the Positive Report of the Special Commission for a New Energy Policy prepared by the House of Representatives to the HB 2742.
14. In the Positive Report of the Special Commission for a New Energy Policy, as well as the one of the Energy Affairs Commission, the presentations of the following participants were evaluated: the Puerto Rico Electric Power Authority (PREPA); Lisa Donahue, PREPA's Chief Restructuring Officer; the Government Board of the Puerto Rico Electric Power



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Authority (PREPA); the Commonwealth Energy Public Policy Office (OEPPE for its Spanish acronym); the Puerto Rico Public-Private Partnerships Authority (AAPP for its Spanish acronym); PREPA's Active and Retired Employees Partnership (the Partnership); Luis R. Santini-Gaudier and Carlos Gallisá, representatives of the residential customers before PREPA's Government Board; Enid Monge, representative of industrial/commercial customers before the PREPA's Government Board; the Puerto Rico Mayors Association; the Puerto Rico Energy Commission (CEPR for its Spanish acronym); the Puerto Rico Mayors Federation; the Government Development Bank (GDB); the Puerto Rico Chamber of Commerce (CCPR for its Spanish acronym); Somos Solar; the Puerto Rico Renewable Energy Contractors Association (ACONER for its Spanish acronym); Puerto Rico Manufacturers Association (AIPR for its Spanish acronym); Association of Renewable Energy Producers (APER for its Spanish acronym); and Juan Rosario, past representative of the residential customers before the PREPA's Governing Board.

15. On February 15, 2015, the majority of the representatives of the House of Representatives of Puerto Rico voted in favor of the SB 1523.

16. On February 16, 2016, the majority of the senators of the Senate of Puerto Rico approved the SB 1523 with the proposed amendments by the House of Representatives.

17. On that same day, the presidents of both legislative bodies signed the legislative piece and sent the bill to the Governor for his consideration.

18. On February 16, 2016, the Governor signed the SB 1523 which was converted in Act 4-2016.



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19. The notice of the approval of Act 4-2016 was published on February 19 and 25 and March 3, 2016 in the newspaper of daily general circulation *El Nuevo Día* and in the newspaper of daily circulation *The Bond Buyer*.

20. There is no controversy between the parties regarding the content of the published notices regarding Act 4-2016's approval.<sup>4</sup>

21. On April 7, 2016, CRAEE filed before the Puerto Rico Energy Commission a petition of Order and Resolution under Art. 6.25A of Act No. 57-2014 known as the Energy Transformation and Relief Act, 9 L.P.R.A. Secs. 1051 *et seq.* to evaluate and approve the imposition of a transition charge and the mechanism of adjustment in relation with the issuance of Restructuring Bonds.

22. The administrative evaluation process of the Energy Commission included technical, evidentiary and public hearings. Also, it required presentations and writings of intervenors, experts and general public.

23. On June 21, 2016, the Energy Commission issued the Restructuring Order No. CEPR-AP-2016-0001, in which it approved the issuance of the Restructuring Resolution and determined, among other issues, that the debt of the imposition of transition charges and issuance of Restructuring Bonds will result in savings for PREPA.

24. In the referenced Restructuring Order, the Energy Commission explained:

(...)

2. The Transition Charge is a mechanism designed to reduce the costs of the Authority's customers. **The bondholders of approximately \$7,170 million dollars of existent debt of the Authority**, with an interest rate of approximately 5.86 percent, **have accepted a reduction of such debt.** Known as "Participant Bondholders," **these are non-secured bondholders who have committed, or will commit, to reduce the value**

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<sup>4</sup> See, Exhibits 14 and 15 of the Motion for Summary Judgment filed by the co-defendants PREPA and CRAEE.

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**of their loans to a 85% of the original amount, at the same time that they accept a lower interest rate of approximately 5.22 percent. They will stop receiving payments of the principal for five years.**

3. In simple terms, a portion of the preexistent debt of the Authority (that is usually denominated as 'historic debt,' to distinguish it from the future debt that the Authority will assume to finance new capital investments) will be replaced with the 'Restructured Debt.' The 'Restructured Debt' will have a lower nominal value and lower interest rate, in addition to a moratorium in the principal payments for five years. **This action will reduce the capital costs of the Authority -and, as a result, the costs for the Authority's customers- for approximately \$867 million dollars.**

**4. These savings, however, are subject to a condition. Specifically, the bondholders are willing to reduce the payments that they receive only if the Commission increases the certainty that these payments will be made.** The mechanism to increase such certainty is known as 'Transition Charge.' The term Transition Charge has created many confusions. Although it will appear as a new item in each of the customer's invoice, this will not increase the cost of any customer more than what the customer would have paid if, once the Commission establishes new rates through a proceeding of rate revision, all the debt of the Authority would be seen reflected in their rates. The Transition Charge describes the portion of the total payment of each client (around 12 percent) that the Authority shall treat in a separate manner than the rest of the payment that the customer will make. Specifically, **the Authority shall separate the payments of the Transition Charge (which are property of the Corporation) from the rest of its income, to transfer those charges to the bondholders participants of the restructuring,** without exception and delay. This is the purpose of the Transition Charge mechanism: **separate the dollars pertaining to the Corporation and promised to the bondholders participants of the restructuring from the general funds of the Authority and assure that those dollars are transferred to their owners in law.** (Emphasis supplied).

25. On June 28, 2016, the CRAEE issued the Restructuring Resolution No. 2016-2009, which authorized the issuance of the Restructuring Bonds.

26. The notice of the referenced resolution was published in three occasions in the newspaper of general daily circulation *El Nuevo Día* and the newspaper of daily circulation *The Bond Buyer*, as of July 5, 2016.



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27. There is no controversy among the parties regarding the content of the published notifications on the Restructuring Resolution No. 2016-2009 which authorized the issuance of the Restructuring Bonds.<sup>5</sup>

28. On January 1<sup>st</sup>, 1974, the Fluvial Resources Authority (now PREPA) and the former Fiduciary First National City Bank signed a Trust Agreement.

29. In its origin, the Authority appeared in the Trust as a Trustor and First National City Bank as fiduciary.

30. Section 1201 of the Trust of 1974 establishes that the agreement will be in force while any bond issued under the agreement or the owed amounts are pending to be paid.

31. Section 1101 of Article XI of the Trust of 1974 allows amendments to the agreement through supplementary agreements, subject to the agreement of the parties and the notification to the bondholders, providing them with the right to consent.

32. In Section 1304 of Article XI of the referenced trust, the parties specified the way to acknowledge a right to third parties that were not a party to the agreement:

**Except as herein otherwise expressly provided, nothing in this Agreement expressed or implied is intended or shall be constructed to confer upon any person, firm or corporation other than the parties hereto and the holders of the bonds issued under the provisions of this Agreement any right, remedy or claim, legal or equitable, under or by its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders from time to time of the bonds issued hereunder. (Emphasis added).**

33. Article IX of the Trust of 1974 included various dispositions related with the figure of the trustee and that will provide the bondholders certain rights.

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<sup>5</sup> See, Exhibits 19 and 20 of the Request of Summary Judgment filed by the co-defendants PREPA and CRAEE.

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34. There is no controversy among the parties that Art. 22 of Act 4-2016 amends Act No. 33 of June 27, 1985, known as the Act to Establish Minimal Procedural Requirements for the Suspension of Essential Public Services, 27 L.P.R.A. Sec. 262, *et seq.* (Act 33-2009).

35. There is no controversy among the parties that Art. 12 of Act 4-2016 amends Act No. 83 of May 2, 1941, as amended, 22 L.P.R.A. Sec. 191, *et seq.*, in including dispositions related to the Act of Public-Private Partnerships (Act 29-2009).

36. Act 4-2016's title does not include the citation of Act No. 33-2009 or of Act 29-2009.

37. The concept of current expenses was defined in Section 101 of Article I of the Trust of 1974, as amended by the supplementary agreements, as follows:

The term "Current Expenses" shall mean **the Authority's reasonable and necessary current expenses of maintaining, repairing and operating the System and shall include, without limiting the generality for the foregoing,** all administrative expenses, insurance premiums, expenses of preliminary surveys not chargeable to Capital Expenditures, engineering expenses relating to operation and maintenance, fee and expenses of the Trustee, the 1947 Trustee, the Paying Agents and of the paying agents under the 1947 Indenture, legal expenses, **any payment to pension or retirement funds,** and all other expenses required to be paid by Authority under the provisions of the 1947 indenture, this Agreement of law, or permitted by standard practices for public utility system, similar to the properties and business of the Authority and applicable in the circumstances but shall not include and deposits to the credit of the Sinking fund, the Reserve Maintenance Fund, the Self-insurance Fund and the Capital Improvement Fund or the 1947 Sinking Fund or deposits under the provisions of Sections 511, 512 and 513 of the 1947 Indenture. ( ...), (Emphasis supplied).

38. Article I of the Trust of 1974, as amended, defines the concept "System" in Section 101 as follows:

The **word** "System" shall mean all the properties presently owned and operated by the Authority as a single integrated system, together with all works and properties which may be hereafter acquired or constructed by the Authority in connection with the production, distribution or sale of electric energy and the acquisition or construction of which shall be finance in whole or in part from the proceeds of bonds issued under the

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provisions of the **1947** Indenture or this Agreement or from moneys deposited to the credit of the 1947 Construction Fund, Capital Improvement Fund, the Construction Fund or the Renewal and Replacement Fund or form Subordinate Obligations to the extent such works and properties have been included by the Authority as part of the System as provided in Section .516 hereof.

39. Section 502 of Article V of the referenced trust, as amended, establishes:

The Authority further covenants that it will at all times fix, charge and collect reasonable rates and charges **for the use of the services and facilities furnished by the System** and that from time to time, and as often as it shall appear necessary, **it will adjust such rates and charges so that the Revenues will at all times be sufficient**

(A) Until the outstanding 1947 Indenture Bond have been paid or provision has been made for their payment and the release of the 1947 indenture:

**(a) To pay the Current Expenses of the System and**

\* \* \* \* \*

The Authority further covenants that if any time the Revenues shall not be sufficient to make such deposits, transfers and payments, it will revise the rates and charges for the services and facilities furnished by the System and, if necessary, it will revise its regulations in relation to the collection of bills for such services and facilities, so that such deficiency will be made up before the end of the next ensuing fiscal year. Should any deficiency not be made up in such next ensuing fiscal year, the requirement thereof, except as to the payments which are required to be made in such fiscal year under subclause (4) of clause (b) of the paragraph (A) of this Section, shall be cumulative and the Authority shall continue to revise such rates until such deficiency shall have been completely made up, provided that during the Amendment Period, the Trustee may institute and prosecute such suit, action or proceeding only upon the written request of the holders of not less than the majority in the aggregate principal amount of bonds then outstanding.; provided that during the Special Period, the Trustee may institute and prosecute such suit, action or proceeding only upon the written request of the holders of not less than the majority in the aggregate principal amount of bonds then outstanding (...)  
(Emphasis supplied).

40. Section 505 of Article V of the Trust of 1974, as amended, establishes the creation of the general fund of PREPA and in its Section 505 establishes the following:

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The Authority covenants that moneys in the General Fund will be used first for the payment of the Current Expenses of the System, that such expenses will not exceed an amount which is reasonable and necessary for maintaining, repairing and operating the System in an efficient and economical manner, and that the total amount provided thereof in the Annual Budget for such fiscal year or any amendment thereof or supplement thereto unless such expenses shall be required by conditions beyond the control of the Authority happening during the fiscal year and which could not reasonably have been contemplated at the time of the adoption of the Annual Budget, if at any time the total amount theretofore expended during any fiscal year for Current Expenses shall exceed the total amount provided in the Annual Budget for Current Expenses for such fiscal year, the Authority covenants that it will report in writing that amounts of such excess and the reason or reasons therefor to the Consulting Engineers and to the Trustee as soon as practicable but not later than the last day of the sixth month following the month in which such excess shall have occurred. (...)

### III

#### APPLICABLE LAW

##### **A. The Motion for Summary Judgment**

Rule 36.1 of Civil Procedure, 32 L.P.R.A. Ap. V R. 36.1 provides for a case to be resolved summarily, after one of the parties files a motion to the court stating the reasons of fact and law that justifies the resolution of the controversies or the case in its entirety in a summarily way. *Meléndez-González et al. v. M. Cuebas, Inc. et al.*, 193 D.P.R. 100 (2015). The procedural mechanism of the summary judgment seeks the rapid solution of such litigations that do not present substantial controversies of fact, and thus, do not require a judgment. *Abrams-Rivera v. E.L.A., D.T.O.P. and Others*, 178 D.P.R. 914 (2010); *Ramos-Pérez v. Univisión de P.R.*, 178 D.P.R. 200 (2010); *Quest Diagnostic v. Mun. San Juan*, 175 D.P.R. 994 (2009); *Sucn. Maldonado-Ortiz v. Sucn. Maldonado-Hernández*, 166 D.P.R. 154 (2005). The motion shall be based on sworn statements or other admissible evidence that demonstrates that there is no substantial controversy of essential and relevant facts for a summary judgment to be issued over the totality or any part of a claim. See, Rule 36.3 of Civil Procedure, 32 L.P.R.A. Ap. V, R. 36.3.

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The summary judgment will only be granted if the offered allegations, depositions, answers to interrogatories and admissions, together with any other sworn statement that is filed, if any, demonstrate that there is no real and substantial controversy over any essential and relevant fact and that, as a matter of law, it proceeds. Rule 36.3(e) of Civil Procedure, 32 L.P.R.A. Ap. V; *SLG Zapata-Rivera v. J.F. Montalvo*, 189 D.P.R. 414, 430 (2013). It is important to have present that the promoter of the summary judgment has the burden to establish the absence of a real controversy over the relevant facts and that the law favors it. *Hurlado v. Osuna*, 138 D.P.R. 801, 809 (1995).

On the other hand, no summary judgment will be issued in the following circumstances: 1) when there are contested material and essential facts; 2) there are affirmative allegations in the complaint that have not been refuted; 3) a real controversy regarding a material and essential fact appears from the documents attached to the motion; or 4) as a matter of law it does not proceed. *Pepsi-Cola v. Mun. Cidra et al.*, 186 D.P.R. 713, 757 (2012); *Nissen Holland v. Genthaller*, 172 D.P.R. 503 (2007); *Vera-Morales v. Bravo-Colón*, 161 D.P.R. 308 (2004).

The actual method under Rule 36.3 of Civil Procedure, *supra*, imposes to the parties the duty to identify the facts that they deem relevant and of stating their contrary version based on admissible evidence. *SLG Zapata-Rivera v. J.F. Montalvo*, *supra*, p. 434. To determine if a case shall be resolved through a summary judgment, “the documents attached to the motion, the documents included with the opposition, and those documents that are part of the file will be analyzed.” *Abrams-Rivera v. E.L.A.*, *supra*, p. 933. This is extended to those documents in the case file that have not been part of the summary judgment. *Mejías, et als. v. Carrasquillo, et als.*, 185 D.P.R. 288 (2012). The petition will be granted when it is clear that “we have the truth of all the necessary facts to resolve the controversy.” *Id.* p. 299.



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The fact that the other party did not include evidence contrary to the one filed by the moving party, does not necessarily imply that the summary judgment proceeds. *Vera-Morales v. Bravo-Colón*, supra, p. 331-332; *PFZ Props., Inc. v. Gen. Acc. Ins. Co.*, 136 D.P.R. 881, 912-913. This, because the documents attached to the motion for summary judgment must be interpreted in the most favorable way to the opposing party, granting the opposing party the benefit of any inference that may reasonably be derived from them. *Corp. Presiding Bishop v. Purcell*, 177 D.P.R. 714, 720.

The summary judgment will only proceed when it is clear that the opposing party cannot prevail under any set of facts and that the court has under its disposition all the necessary evidence to resolve the controversy before its consideration. Any doubt is not sufficient to deny the request of summary judgment; it must be a doubt that permits to conclude that there is a genuine and substantial controversy over relevant facts. *Nieves-Díaz v. González-Massas*, 178 D.P.R. 820, 848 (2010).

Under Rule 36.2 of Civil Procedure, *supra*, a party against which a claim has been filed can request a summary judgment at any moment since the party was served but no later than the 30 days following the deadline set by the Court to conclude discovery. When a motion for summary judgment is filed before the discovery procedure, the Court, in its exercise of discretion to resolve the controversies with justice, can adopt various measures in favor of the opposing party that did not have the opportunity of obtaining evidence to ground its essential facts. *Pérez v. El Vocero de PR*, 149 D.P.R. 427, 449 (1999). Among the measures, are the following: (1) deny the motion for summary judgment; (2) order the continuance of any hearing so that the party can obtain declarations or take depositions; (3) order that the other party delivers certain evidence; (4) postpone the evaluation of the motion; (5) issue any other order that is fair. See, Rule 36.6 of



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Civil Procedure; *Perez v. El Vocero de P.R.*, supra, págs. 449-450. We must have present in this analysis that resolving a premature motion "... can have the effect of depriving the opposing party of his rights without due process." *Id.*, p. 449.

In the scope of civil procedure, the trend is to facilitate the discovery, in a way that it positions the judge in the best position possible to resolve fairly. *Ward v. Tribunal Superior*, 101 D.P.R. 865, 867 (1974). Now, the fact that a motion of summary judgment is filed before discovery does not automatically impede the court from addressing and adjudicating the controversy before it. Regarding this issue, we should highlight the Supreme Court's expressions in *García-Rivera v. Enríquez-Marín*, 153 D.P.R. 323, 340 (2001) in which it stated the following:

... if the court is before a premature request for summary judgment, it can, in its exercise of discretion, postpone the evaluation of the motion or deny it at that stage of the proceedings, being the purpose of the rules of civil procedure to make feasible that the courts make justice when resolving the controversies. **However, the Court of First Instance must take those measures that guarantee that Rule 36.6, supra, is not used as a mechanism to delay the final resolution of the issue.** Because of this, **the grounds stated by the opposing party must be reasonable and adequate.** Cuevas-Segarra comments that "it is reduced to establishing reasonability limits to the acts of the opposing party," and states that the probability of prevailing by the moving party shall not be considered at this stage.

Regarding this issue, Wright and Miller states the following:

Thus Rule 56(e) [our Rule 36.5 of Civil Procedure] must be read in conjunction with the provision in Rule 56(f) [our Rule 36.6 of Civil Procedure] that the court may deny summary judgment and order a continuance when the opposing party shows why it cannot present facts necessary to justify opposition so as to allow time to pursue discovery and obtain the evidence required under Rule 56(e).  
(citations omitted).

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Although it has been recognized that there are circumstances that merit discovery before considering a motion for summary judgment, this has only been applied to complex cases or when a moving party bases its motion on the insufficiency of the evidence over the essential facts of the case. *García-Rivera v. Enríquez-Marín*, supra; *Pérez v. El Vocero de P.R.*, supra.

### **B. The Motion to Dismiss**

Rule 10.2 of Civil Procedure, 32 L.P.R.A. Ap. V., R. 10.2, allows an interested party to request the dismissal of a lawsuit filed against it, based on the following defenses: (1) lack of subject matter jurisdiction; (2) lack of jurisdiction over the person; (3) insufficiency of the summons; (4) insufficiency of process of service; (5) failure to state a claim for which a remedy could be granted, and; (6) failing to include an indispensable party. As can be concluded, the referenced rule allows the defendant party to request the dismissal of the complaint when the action fails to state a claim for which a remedy could be granted. *Torres v. Torres, et al.*, 179 D.P.R. 481, 501 (2010).

When analyzing this type of motion, the Court will assume as true all of the facts provided in the complaint, which will be considered in the light most favorable to the plaintiffs. *Id.* In these cases, [the Court] will apply experience and common sense to determine if, based on the alleged facts, the complaint establishes a plausible claim that justifies that the plaintiffs have the right to a remedy. R. Hernández Colón, *Práctica Jurídica de Puerto Rico. Derecho Procesal Civil*, 5ta Ed., San Juan, Lexis Nexis, 2010, pág. 268. It is the petitioner's responsibility to demonstrate with certainty that the plaintiffs do not have the right to any remedy under any state of law that could be established to support their claim, even when interpreting their cause of action in a liberal manner. *Rivera-Sanfeliz et al. v. Jta. Dir. First Bank*, 193 D.P.R. 38, 49 (2015); *Ortiz-Matías, et als. v. Mora Development*, 187 D.P.R. 649 (2013). This is not about



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examining whether the plaintiffs would prevail in their claim, but whether they have the right to offer evidence that justifies their claim, assuming as true the facts alleged in the complaint. J.A. Cuevas-Segarra, *Tratado de Derecho Procesal Civil*, 2da. ed., Lexis Nexis, San Juan, 2011, T. II, p. 530. The second paragraph of Rule 10.2, *supra*, allows for a motion to dismiss based in that it fails to state a claim for which a remedy could be granted, to be considered as a request for summary judgment when the following occurs:

If, on a motion asserting defense number (5), **matters outside the pleading being challenged are presented to and not excluded by the court**, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 36 until its final disposition, and all parties shall be given reasonable opportunity to present all material relevant to the motion under said rule. (Emphasis added).

Regarding the conversion of a motion to dismiss, in *Torres-Capeles v. Rivera-Alejandro*, 143 D.P.R. 300, 309 (1997), the Court explained that

...it can occur when any of the parties, the petitioner or the respondent, **submit matters that were not included in the allegations, such as depositions, admissions, certifications and responses to interrogatories**. The court has full discretion to accept or not the evidentiary matter that is annexed. This discretion is normally exercised taking into consideration whether the matter offered and the subsequent conversion would facilitate or not the dismissal of the matter before its consideration. (Emphasis added).

The request for dismissal will be granted unless it provides with certainty that the plaintiffs do not have a right to any remedy whatsoever under any state of facts that could be proven in support of their claim. *Consejo Titulares v. Gómez-Estremera, et als.*, 184 D.P.R. 407, 423 (2012); *El Día, Inc. v. Mun. de Guaynabo*, 18 D.P.R. 811 (2013). This doctrine is only applied to correctly alleged facts expressed in a conclusive manner, which on their face do not prompt any doubt whatsoever. *Colón v. Lotería*, 167 D.P.R. 625, 649 (2006).

### **C. Indispensable Party**

Rule 16.1 of Civil Procedure allows for “people that have a common interest without whose presence the controversy could not be adjudicated, to become parties and be joined as plaintiffs

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or defendants, as required. When the individual that must be joined as a plaintiff refuses to do so, [he or she] could join as a defendant.” 32 L.P.R.A. Ap. V., R. 16.1. A party is indispensable when the controversy cannot be adjudicated without his/her presence, since his/her rights would be affected. *Bonilla-Ramos v. Dávila-Medina*, 185 D.P.R. 667, 677 (2012). “In specific terms, an indispensable party is one that cannot be absent and whose interest in the matter is of such magnitude that a final judgment cannot be handed down between the other parties without radically affecting his/her rights.” *García-Colón, et al. v. Sucn. González*, 178 D.P.R. 527, 548 (2010). This is because the omission of this party violates the due process of law that must be guaranteed to the absent [person] in the lawsuit. *Id.*; *Colón-Negrón, et al. v. Mun. Bayamón*, 192 D.P.R. 499, 510-512 (2015). For this reason, it has been resolved that “if an indispensable party is absent; the court lacks jurisdiction to resolve the controversy.” *Colón-Negrón, et al. v. Mun. Bayamón, supra*, p. 511. *Romero v. S.L.G. Reyes*, 164 D.P.R. 721, 734 (2005).

To determine if a party is or not indispensable, a pragmatic approach is required, that is, an individual evaluation according to the circumstances of each case in particular. *Romero v. S.L.G., supra*, p. 732; *García-Colón et al. v. Sucn. González, supra*, p. 449-450. It will also be analyzed “whether the court [can] make justice and grant a final and complete remedy without affecting the interests of the absent [person].” *Romero v. S.L.G. Reyes, supra*, p. 733. The “common interest” that is referenced in Rule 16.1 of Civil Procedure, *supra*, is not any interest in the lawsuit, but “an interest of such order that impedes the creation of an adequate right without radically affecting or destroying his/her rights.” *Pérez v. Morales Rosado*, 172 D.P.R. 216, 223 (2007). It must be real and immediate and cannot be merely speculative or of a future interest: *Id.*

The absence of an indispensable party, “although is a reason to dismiss a lawsuit, is not an impediment so that, upon request by the interested party, the court could provide the opportunity

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to bring to the lawsuit the party originally omitted, as long as the court can acquire jurisdiction over the party.” *Aponte v. Román*, 145 D.P.R. 477, 484-485 (1998) citing *Meléndez-Gutiérrez v. E.L.A.*, 113 D.P.R. 811, 816 (1983). This matter could be raised in any stage of the litigation since the judgment that is issued in the absence of an indispensable party is null. *Unysis P.R., Inc. v. Ramallo Brother Printing, Inc.*, 128 D.P.R. 842, 842 (1991); *Romero v. S.L.G.*, supra, p. 733.

### **D. Interpretation of the Statutes**

The judicial power should make efforts to achieve congruent and compatible interpretations to maintain the constitutionality of a law. *Brau, Linares v. ELA et als.*, 190 D.P.R. 315, 337-338 (2015); *Banco Popular v. Municipio de Mayagüez*, 126 D.P.R. 653 (1990). In other words, as part of the established hermeneutic principle, the Court must ensure that no other possible reasonable explanation of the law exists. *Brau, Linares v. ELA et als.*, supra, p. 338. *Dept. de la Familia v. Soto*, 147 D.P.R. 618, 629 (1999); *Caquíás-Mendoza v. Asociación de Residentes*, 134 D.P.R. 181, 188 (1993).

A statute will not be declared unconstitutional, unless it is strictly necessary and the controversy under its consideration cannot be adjudicated by other reasons. *Nadal-Arcelay v. DRNA*, 150 D.P.R. 715 (2000); *Pueblo v. Yip-Berríos*, 142 D.P.R. 386 (1997). The Court will abstain from adjudicating the constitutional arguments if the case can be resolved: (1) through a valid legal analysis; (2) in harmony with the criteria of the parties and in accordance with the best purposes of justice; (3) if a reasonable interpretation exists that allows avoiding the constitutional question and; (4) for other reasons. *AMPR et als. V. Sist. Retiro de Maestros*, 190 D.P.R. 854, 878 (2014); *Molina v. C.R.U.V.*, 114 D.P.R. 295, 297 (1983).

### **E. Contents of the title of the legislation**



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Section 17 of Article III of the Constitution of the Commonwealth of Puerto Rico (ELA Constitution) provides that "...[n]o bill will be approved, except for those concerning the general budget, that contain more than one matter, which must be clearly expressed in its title, and any part of a law whose purpose has not been provided in the title will be null." 1 L.P.R.A. Art. III, Section 17.

When revising and interpreting this constitutional provision, the Supreme Court has adopted a reasonable and practical approach, rejecting that it should include a detailed index or a summary of the diverse procedures that became statutes. What the Constitution requires is that the subject, in other words, the theme or matter that the legislation is about, clearly appears in its title. In *Donante v. Wrangler de P.R.*, 145 D.P.R. 408, 428 (1998), the Supreme Court provided that:

When interpreting the transcribed constitutional disposition, we have stated that only in a clear and terminal case it is justified to annul a law because its title suffers deficiencies....The purpose of the constitutional provision is:

... to stop the inclusion in the law of incongruent and strange matters, and at the same time guard against inadvertence, concealment, and fraud in the legislation, ... avoid the practice, common in all legislatures in which this provision does not exist, of including in the law incongruent matters that do not have any relationship with each other or with the subject specified in the title, in virtue of which measures are approved without being brought to [people's] attention that, if they had been seen, they would have been challenged and defeated. This seems to avoid surprises in legislation.

In other words, the purpose of the constitutional requirements regarding the title of a bill, "is to inform the public in general and the legislators in particular the matter that is the purpose of the law, so that the first can oppose its approval if considered burdensome and the others [the legislators] can be in condition to cast their vote conscious of the matter object of the legislation." (Quotes omitted; emphasis supplied).

Previously, in *Cervecería Corona, Inc. v. J.S.M.*, 98 D.P.R. 801, 811-812 (1970), when considering a claim that a law violated Sec. 17 of Art. III of the Constitution, the Supreme Court stated:

Pursuant to what we have said before, only in a clear and terminal case are we justified to annul a law for deficiencies in its title in violation of the transcribed

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constitutional provision, Rivera v. Corte, 62 D.P.R. 513 (1943); Sunland Biscuit Co. v. Junta Salario Mínimo, 68 D.P.R. 371, 381 (1948). It is worth remembering that the purpose of the constitutional requirement is to inform the public in general and the legislators in particular the matter that is the purpose of the law, so that the first can oppose its approval if considered burdensome and the others [the legislators] can be in condition to cast their vote conscious of the matter object of the legislation, Rodríguez v. Corte, 60 D.P.R. 919, 921-922 (1942); but this does not mean that the title must contain a detailed description of what is intended, but it is sufficient that it states its purpose in general terms; that it be an index of its contents, since it would be impractical to provide the diverse details that precisely constitute the proposed text. Pueblo v. Vázquez Bruno, 93 D.P.R. 540, 543 (1966). Together with what has been stated, [the purpose] is to try to avoid the inclusion of incongruent matters in the text, unrelated to [the matter] specified in the title, “that the legislature and the public may understand from the title that only matters like the ones expressed in it will be approved.” (Emphasis added.)

Professor José Julián Álvarez has described the Supreme Court’s position regarding this clause as “comprehensively lax, to not handcuff the legislator,” J.J. Álvarez-González, *Derecho Constitucional de Puerto Rico*, Temis (2009), p. 244. This has been confirmed by the Supreme Court, citing with approval Professor Álvarez’ statement and added that: “a strict interpretation of the constitutional provision could impede and block the legislative process since it would oblige the legislator to approve multiple laws to regulate only one or a general matter.” *Herrero and others v. ELA*, 179 D.P.R. 277-295 (2010). The Supreme Court’s position is, at the same time, coherent with its purpose, found in the Session Diary of the Constituent Convention where it was expressed that what was sought with the referenced portion of Section 17 was to “avoid the riders, avoid the creation of strange amendments [contrary to] the purpose of the bills and [to avoid] the adulteration of the purpose of a bill by surreptitiously approving something that the Legislative Assembly should not approve.” *Herrero y otros v. ELA*, supra, p. 294, citing 2 *Sessions Diary of the Constituent Convention* 896, (1961).

This norm was reiterated and applied more recently to validate Act 7-2009 before a claim that the title did not describe all matters addressed in the law and that it was an “incongruent [law], that combined legislation about matters and that repeals a series of established laws,



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regulations, and public policy.” See, *Bomberos Unidos v. Cuerpo de Bomberos*, 180 D.P.R. 723, 765 (2011). In fact, when reviewing and applying the law in that case, the Supreme Court emphasized that it has to be taken into account that in special legislation of an economic nature, the statute will have a broader reach and of the same manner, “...it presupposes that mechanisms of an economic nature will be used, such as income measures, cost reduction and financial cuts, without requiring for all of them be specifically addressed in the title of the law.” *Id.*, pp. 765-766.

### **F. The separation of powers and the approval of bills**

The ELA Constitution establishes a republican system of government characterized by the separation of three powers: executive, legislative, and judicial. Each one of these powers, although sovereign and independent regarding the exercise of the conferred power, relates to the others thereby wholly maintaining the authority of each one. *Domínguez-Castro v. ELA*, 178 D.P.R. 1, 91 (2010). The doctrine of separation of powers does not provide for the absence of interaction or absolute separation, but establishes itself over the principle that the power is delegated in the three branches of government to avoid the concentration of powers in only one branch, or the abuse of power by the other. *Id. Banco Popular v. Corte* 66 D.P.R. 66,71 (1944).

In this interaction of powers, the validity of projects promoted by the Executive so that they eventually become law has been recognized. The denominated *administration project* is a legislation promoted by the Governor that, when submitted to the legislative body, is considered as presented by the legislators affiliated to the party that the First Executive belongs to, even though they can accept or reject the bill. Regarding the projects proposed by the Executive, in *Noriega v. Hernández-Colón*, 126 D.P.R. 42, 53-54 (1990), the Supreme Court expressed that “all of our governors have proposed new legislation and changes in public policy to drive their

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respective electoral mandates and to address the country's most important problems." The consideration and approval of administration projects is in accordance with our Constitution and a routine event in our legislation. See, for example, *Brau v. ELA*, 190 D.P.R. 315, 320-321 (2014); *Pueblo v. Ruiz*, 159 D.P.R. 194, 207 (2003); *Pueblo v. Molina-Virola*, 141 D.P.R. 713, 722 (1996); *Ortiz v. Mun. de Lajas*, 153 D.P.R. 744, 754 (2001).

The legislation that originates in this manner neither has defects nor the appearance of being null, since it constitutes a legitimate exercise of the executive power in its interaction with the legislative [power]. What is imperative in these cases is for the requirements established by the ELA Constitution for the approval of laws be met. Article III, Section 17 of the Constitution requires all bills to be "read, sent to the commission, which will return it with a written report." To approve a bill it is required, also, the "majority of the number of members that comprise each chamber." ELA Constitution, Art. III, Section 19. Once approved by such majority, the bill should be submitted to the Governor and if the Governor signs it within ten (10) days, it will become law. *Id.*

### **G. Due process of law in its procedural form and access to justice**

The purpose of the substantive form of due process of law is to protect and safeguard the fundamental rights of the people. On the other hand, due process of law in its procedural form imposes on the State the obligation to guarantee that the interference with the interests of liberty and property of the individual only occur through a just and equal procedure. *Vázquez-González v. Mun. San Juan*, 178 D.P.R. 636 (2010); *San Gerónimo Caribe Project, Inc. v. A.R.Pe.*, 174 D.P.R. 640 (2008); *Fuentes-González v. Badillo*, 160 D.P.R. 444 (2004); *Rosario & Assoc. V. Departamento de la Familia*, 158 D.P.R. 306 (2002); *U. Ind. Emp. A.E.P. v. A.E.P.*, 146 D.P.R.

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611 (1998); *Rivera-Rodríguez & Co. v. Lee Stowell, etc.*, 133 D.P.R. 881 (1993); *Rodríguez v. ELA*, 130 D.P.R. 562, 576 (1992).

To activate the protection that provides this right in its procedural form, the following two considerations must be present: (1) an interest in liberty or property, and (2) determining what is the due process of law. *Partido Acción Civil v. ELA*, 150 D.P.R. 359, 376 (2000). If the right to liberty or property is not identified, the State is not obligated to provide a due process of law.

In this context, and in what is pertinent to the case before us, Act 4-2016 establishes a procedure to challenge its provisions. See, Art .35, Chap. IV of the Act. Article 35(c)(1) establishes an expiration term of sixty (60) days to challenge Chapter IV about Securitization, which commences on the date of the first publication of the notice of approval of the law; such term expired last April 19th. The judicial action should be presented in the Court of First Instance, San Juan Part, to determine: (a) the validity of Chapter IV of the law; (b) if such Chapter results or not in violation or impairment of a contract or agreement granted by the ELA or the Authority with the bondholders or other creditors, or the taking of property by the ELA without just compensation; (c) if the funds that are received from the Transition Charge constitute income and rent from the CRAEE and not a tax or contribution, and if the right of the CRAEE to impose and charge the transition charge may or not be revoked; (d) if the income from the transition charges are subject to encumbrance or other from PREPA bondholders or other creditors or any other person; (e) any other matter regarding the aforementioned, including those related with the U.S. Constitution and the ELA Constitution.

Another expiration term of forty-five (45) days is established in Article 35(d)(1) to challenge the Second Phase of the implementation of the law. This is the one that relates to the validity of the Restructuring Order approved by the Energy Commission and the approval on behalf of the



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CRAEE of the Restructuring Bonds, among others. The term commences at the moment of the first publication of the notice about the approval of the Debt Restructuring Order Resolution. The judicial action must be presented, equally, before the Court of First Instance Courtroom of San Juan to determine the legality or validity of the aforementioned resolution.

The brief expiration terms do not represent problems of a constitutional nature, but are recognized as a valid exercise of the legislator to avoid prolonging the uncertainty of the state of law. Our system establishes expiration terms that are equally brief or even shorter to commence a judicial action, present defenses and claim rights. For example, see Article 1414 of the Civil Code, 31 L.P.R.A. Sec. 3924 about the term of nine (9) days to exercise the right of redemption of co-owners; Article 1425 of the Civil Code, 31 L.P.R.A. Sec. 3950, about the term of nine (9) days to exercise the right of redemption for a litigated credit; Article 630 of the Code of Civil Prosecution, as amended, 32 L.P.R.A. Sec. 2831 about the term of five (5) days to appeal a judgment of eviction in a summary procedure; the term of three (3) months to challenge the voluntary recognition of paternity, *González-Rosado v. Echevarría-Muñiz*, 169 D.P.R. 554 (2006); the term of thirty (30) days for claims against a vendor under the commercial code, *S.M.C. Coast, Inc. v. Master Concrete*, 143 D.P.R. 221 (1997); the term of twenty (20) days to challenge a municipal ordinance, *Acevedo v. Asamblea*, 125 D.P.R. 182 (1990). On the other hand, the Municipal Financing Act of Puerto Rico of 1996, 21 L.P.R.A. Sec. 6010, establishes a very brief term of ten (10) days starting from the date of the Approval Notice to commence a judicial action geared to questioning an ordinance or resolution that authorizes an obligation approved by the Government Bank of Puerto Rico, including those related to the payment of bonds, notes or instruments.



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Thus, the purpose of the figure of expiration is to avoid the persistence of uncertainty of a relationship or legal situation. *González-Rosado v. Echevarría-Muñiz*, supra, p. 567.

### **H. Equal Protection of Laws**

Section 7 of Article II of the Constitution of the Commonwealth of Puerto Rico establishes the right to equal protection of laws. Where applicable, said Section provides that "[a]ny person shall be deprived of his liberty or property without due process of law, nor shall any person in Puerto Rico be denied equal protection of the laws." The equal protection of the law is based on the cardinal principle of similar treatment for similarly situated persons. This means that the government can make classifications between persons for any legitimate purposes as long as it observes that basic norm. R. Serrano Geys, *Constitutional Law of United States and Puerto Rico*, San Juan, Ed. Puerto Rico Bar Association, 1988, Vol. II, p. 1082. The basis of this precept arises from the basic conception that in order to govern a society so complex and varied, in which there are different individual and group interests, and diverse social relations, it is necessary to establish classifications. *López v. ELA*, 165 D.P.R. 280-297 (2005). That is, to govern any society and especially a modern society without instituting classifications between people, without constructing inequalities that favor some and harms others, is impossible. *Id. Domínguez-Castro*, p. 70.

As a corollary to the above, the Supreme Court has stated that the constitutional principle of equal protection of laws does not require equal treatment of all citizens, but prohibits unjustified unequal treatment. *Alicea v. Córdova*, 117 D.P.R. 676, 696 (1986), *Pueblo v. Matías-Castro*, 90 D.P.R. 528, 531 (1961), quoted in *Domínguez*, p. 71. The State can make classifications between persons without breaking the usual principle, provided that the classification is reasonable and with the attainment or protection of a legitimate public interest.



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*Zachary International v. Superior Court*, 104 D.P.R. 267 (1975). That is, the inequality that violates the Constitution is that which reflects a preference based on prejudice, not that which is based on a public interest. *Vda. De Miranda v. Srio de Hacienda*, 114 D.P.R. 11, 14 (1983). Hence, the main problem of applying equal protection of laws is to design rules that allow the government to establish classifications, but at the same time protect people against undue, unreasonable or hateful inequalities. Serrano Geys, op. cit., p. 1081. Therefore, to carry out this task, it is necessary to make an analysis of the relationship between the purpose to be achieved and the means or classification used to achieve it; the effect of such a relationship on the right or interest from which the persons concerned are deprived must also be examined. *Id.*

When a court in Puerto Rico is faced with a constitutional analysis over the reasonableness of a legislative classification, the criterion or scrutiny it will use will be minimal or rational nexus scrutiny, or strict scrutiny. *López v. ELA*, supra, p. 298; *Velez v. Sec. of Justice*, supra, p. 537. Rational scrutiny is used in cases where economic and social regulations are challenged. In applying it, the constitutionality of the classification is presumed. *Domínguez-Castro*, supra, p. 72; *Rodriguez-Rodriguez v. ELA*, 130 D.P.R. 562, 582 (1992). In addition, the court has to adopt an approach of great deference towards the legislative action that is challenged. Although the classification does not appear to be the most appropriate, wise, and efficient way to advance any legislative purpose, the court must uphold its constitutionality once it is established that there is a rational relationship between them and the purpose outlined. Judicial intervention will be very limited, since it is the Legislature and not the Judicial Branch, which has the power to design classifications of the socioeconomic type. *Domínguez-Castro*, p. 72; *San Miguel Lorenzana*, supra, pp. 431-432, Consequently, the court cannot adjudicate the

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functions of the legislature when examining the constitutionality of a statute pursuant to the guarantee of equal protection of laws. *Id.*

### **I. Impairment of contractual obligations**

Section 7 of Article II of the Constitution of the Commonwealth of Puerto Rico, like Section 10 of Article 10 of the United States Constitution, prohibits the adoption of laws that impair contractual obligations. This prohibition limits the government power to interfere with the contractual obligations between private parties, as well as the contractual obligations contracted by the State. *Dominguez-Castro*, supra, p. 80; *Energy Reserves Group v. Kansas Power & Light*, 459 US 400 (1983). In assessing the validity of statutes under this clause, the applicable scrutiny will depend on the type of contract, if private or public, whose obligation is claimed. This difference responds to the fact that when the change occurs in the context of public procurement, judicial scrutiny must be more careful to ensure that the State's action is not for its own benefit only. *Id.* That more severe scrutiny, however, does not prevent the State from exercising its regulatory power in the public interest. Thus, the function of the judicial forum in assessing the validity of legislation under this clause "is to establish a balance between the power of the State (police power) to safeguard the well-being and security of citizenship and the interest to protect contractual relations." *Domínguez-Castro*, supra, p. 81.

As an initial step in this evaluation, it must be determined whether there is a contractual obligation between the State and the party claiming it; if there is a contractual obligation, it will be examined whether the amendment of the obligation constitutes a substantial or severe impairment. When the amendment adversely affects the essential terms or conditions which mainly gave rise to the contract, thereby frustrating the reasonable expectations of the parties, there is a substantial or severe impairment that triggers a further analysis: assess whether the



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modification seeks to advance an important interest for the benefit of the general welfare. Finally, it must be decided whether, in addition to being reasonable, the modification is necessary to advance the public interest. If the court finds that the amendment meets the criteria of necessity and reasonableness to advance the general interest, it must uphold the constitutional validity of the challenged law. *Domínguez-Castro*, supra, p. 84. A relevant criterion that provides for the final determination of reasonableness of the measure is that the legislation is approved in response to an emergency situation and that its application is temporary or transitory. *Id.*, p. 85.

### **J. The trust figure**

The 1974 trust fund was signed by the Authority before Act 219-2012, known as the Trust Act (12 L.P.R.A. Sec. 3351 et seq.), came into force, which we refer to the repealed articles of the Civil Code of Puerto Rico to discuss this figure.

Article 834 of the Civil Code established that "the trust is an irrevocable mandate under which certain goods are transferred to a person, called a fiduciary, to have them disposed of as ordered by the person who transfers them, called settlor, to benefit of the same or a third party called trustee." 31 L.P.R.A. Sec. 2541; *TOLIC v. Febles-Gordini*, 170 D.P.R. 804 (2007). The settlor is the person who creates a trust by an express manifestation of will, is the one who determines the end of the trust for the benefit of a third party, and is the person that constitutes the trust and designs the goods or rights necessary for the fulfillment of its purposes, transferring ownership to the fiduciary. Lugo Irizarry, Carmen Teresa, *The trust in Puerto Rico: a legal hybrid to the future*, First Book Publishing of P.R. 1996, p. 41. Under the repealed rule of law, the settlor could, among other stipulations, agree to: (1) state the trust assets; (2) appoint trustees; (3) reserve rights and impose conditions on the trust; (4) appoint substitutes and / or entrust the trustee to a third party with the appointment of a substitute; (5) dismiss the trustee when the

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trustee's personal interests are opposed to those of the trust, or when he fraudulently or maliciously mismanages the trustee assets, or when he/she is disabled or disqualified. Lugo Irizarry, *op. cit.*, p. 41-42; Arts. 855 and 858 of the Civil Code, 31 L.P.R.A. Secs. 2562 and 2565.

This mandate could be established for any purpose that would not break the law or public morals. Art. 838 Civil Code, 31 L.P.R.A. Sec. 2547. A trust could be constituted on all kinds of movable or immovable property, corporeal and incorporeal, present or future. Art. 840 Civil Code, L.P.R.A. Sec. 2544. The trustor also was free to create a trust for any purpose and under any terms or conditions that do not violate the law or public morals or are not specifically prohibited by law. Art. 855 Civil Code, 31 L.P.R.A. Sec. 2562. Public trusts were those that are interested in general society or a considerable social sector, while the private trust is established for the benefit of specific individuals and individuals. Lugo Irizarry, *op. cit.* p. 83, citing Batiza, Rodolfo, *The Trust: theory and practice*, 3rd. Ed. Libreria Porrúa, S.A. Mexico, 1976, pp. 22 et seq.

Because the trust is a form of contract, they must be interpreted as such, so that the true intention of the contracting parties prevails. In view of this, the contract clauses should be read in an integral way, interpreted one by the other, solving any ambiguity so that all its parts take effect. Art. 123.3-1241 of the Civil Code, 31 L.P.R.A. Secs. 3471-3479; *González v. Sucn. Cruz*, 163 D.P.R. 449, 437-458 (2004); *Caguas Plumbing v. Continental Const, Corp.*, 155 D.P.R. 744, 753 (2001).

### **K. General doctrine of contracts and clauses in favor of third parties**

Contracts are legal businesses that exist since the requirements of consent, object and cause concur. From that moment, the contracts establish obligations that have force of law



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between the contracting parties. Arts. 1213 and 1144 of the Civil Code, 31 L.P.R.A. Secs. 3391 and 2994. See also, *Bosques v. Echevarría*, 162 D.P.R. 830, 836 (2004); *Master Concrete Corp. v. Fraya, SE*, 152 D.P.R. 616, 621-625 (2000). The contracting parties are not only bound by the agreement, but also to all consequences that are in accordance with good faith, use and law. Hence, contracts are a source of obligations that are perfected since the contracting parties voluntarily consent to their compliance. Art. 1210 of the Civil Code, supra, Sec. 3375. *López v. Gonzalez*, 163 D.P.R. 275, 281-282 (2004); *Amador v. Conc. Univ. Church of Jesus Christ*, 150 D.P.R. 571, 582 (2000). Contracts have the force of law between the parties, who must comply with the agreement, as long as the law, morality and public order are not violated. Art. 1207 of the Civil Code, supra, Sec. 3372; *Guadalupe Solís v. González-Durieux*, 172 D.P.R. 676 (2008); *Jarra Corp., v. Axxis Corp.*, 135 D.P.R. 764 (2001).

Concerning the interpretation of contracts, it has been reiterated that if the terms of a contract are clear and leave no room for doubt as to the intent of the contractors, it will be interpreted in the literal sense of its clauses, reason why the court is prevented from resolving on what the parties allegedly attempted to agree to at the time of contracting. *Fuentes v. Popular Leasing*, 184 D.P.R. 540, 568 (2012). If the terms of a contract are clear, it is not possible to resort to rules of interpretation. 31 L.P.R.A. Sec. 3471; *Residents Parkville Sur v. Diaz Luciano*, 159 D.P.R. 374, 385-386 (2003). It should be noted that although there is a generality in the terms of a contract, it should not be understood as including things different from those on which the interested parties proposed to contract. Art 1213 of Civil Code, 31 L.P.R.A. Sec. 3473; *Marcial v. Tome*, 144 D.P.R. 522, 539 (1997).

On the other hand, the contract clauses must be interpreted as a whole and not in isolation, seeking its true meaning and the interpretation of clauses in relation to others. Article



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1237 of the Civil Code, 11 L.P.R.A. Sec. 1475; *Guadalupe Solís v. González-Durieux* 172 D.P.R. 676, 685 (2007); *CNA Casualty of P. R. v. Torres-Diaz*, 141 D.P.R. 27 (1996). Consequently, although the intention of the parties to interpret contracts must be considered, interpretation must be consistent with the principle of good faith and cannot lead to incorrect, absurd and unjust results. *S.L.G Irizarry v. S. L.G Garcia*, 153 D.P.R. 713, 727 (2001).

In our civil law, as a general rule, contracts only have an effect between the parties that grant them and their heirs, unless they contain stipulations in favor of third parties. Article 1044 and 1209 of the Civil Code, 31 L.P.R.A. Secs. 2994, 3374. That is why a contract is not always indifferent to third parties. *Bco. Central Corp. v. Yauco Homes, Inc.*, 135 D.P.R. 858, 863 (1994). If the contract has a stipulation in favor of a third party it can demand its compliance provided that it has made known its acceptance to the obligor before the stipulation has been revoked. *Id.*; Art. 1209 of the Civil Code, 31 L.P.R.A. Sec. 3374; *Arsuaga, Inc. v. La Hood Construction*, 90 D.P.R. 104, 109-110 (1964). In a contract in favor of third-parties, the intention of the contractors is to grant the beneficiary the right to claim legal compliance with what was established. *Central Bank Corp. v. Yauco Homes Inc.*, *supra*, pg. 864. The Supreme Court, citing Diez-Picazo, has pointed out that contracts in favor of third parties "are only those that the parties enter into in order to directly or indirectly assign a right to a third party which, however, has not participated neither directly nor indirectly in the business and that is not therefore bound by it ... "and that" ... the reason of the stipulation for or the benefit of the third party lies in the existence of an interest of the stipulator in which the agreement is established and in which the promise is fulfilled for the beneficiary." L. Diez-Picazo, *Foundations of Patrimonial Civil Law*, Madrid, Ed. Ternos, 1979, Vol. I., pp. 265-274.



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It is by the nature of the stipulant's interest that the third party is also legitimized to require the promise or to comply with the agreed favor. Furthermore, it is not necessary for the third party to accept the stipulation in his/her favor to acquire his right. *Central Bank corp. v. Yauco Homes, Inc.*, supra. As a general rule, it is the stipulator who has the sole power to revoke the provision for the benefit of the third party. *Id.* 864-865. The determination of whether a provision gives the third party the right to claim execution of the promise is a matter of fact. *Id.*, p. 866.

According to the aforementioned principle, "courts are empowered to ensure compliance with contracts and they should not relieve a party from the performance of its contractual obligation, where such contract is legal, valid and does not contain any defects." *Oriental Financial v. Nieves*, 172 D.P.R. 462, 471 (2007). Consequently, the contract, its rights, powers and obligations do not affect other third people, neither in its favor nor against it. *Muñiz-Olivari v. Stiefel Laboratories, Inc.*, 174 D.P.R. 813, 822 (2008).

### **L. Trusts created for PREPA's bond emission**

Since its inception, PREPA as a public corporation and autonomous governmental instrumentality of the Commonwealth of Puerto Rico has the power to borrow money, make and issue bonds either to advance its corporate purposes or guarantee the payment of its bonds by tax or pledging their contracts or income. See, Organic Law of PREPA, as amended, 22 LP.R.A. secs. 193 and 196 (0). The rights and obligations related to the issuance of PREPA bonds have been established through trusts agreements. The first issuance of PREPA bonds was regulated under the terms of the Trust Indenture 1947, which was amended by several supplementary agreements. The purpose of the revenue bonds was to provide additional funds to PREPA to refinance certain bonds and pay the cost of the capital improvement program in order to provide



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additional capacity to the system and extend the transmission and distribution of the electric system. See Exhibit 21 of the Motion for Summary Judgment, filed by the co-defendants PREPA and CRAEE, Trust of 1974, p. 2. The agreement established several funds in which the System's revenues would be distributed. *Id.*, p.7.

As far as we are concerned, PREPA undertook a second bond issuance through the 1974 Trust Agreement as there was a need to issue new income bonds to provide funds for the creation of additional facilities to generate, and distribute electricity and serve the current and future demand of the System. See, Exhibit 21, *supra*, p. 2 and 4. As in the 1954 trust, conditions, limitations and restrictions were also established for the issuance of the new bonds. *Id.*, p. 6. In addition, a number of provisions related to the figure of the fiduciary and in which the bondholders were given certain rights, so that their provisions govern the contractual relationship between PREPA and its bondholders. See Exhibit 21, *supra*, Article IX.

To understand the concept of what comprises the PREPA's System, Section 101 of Article I of the Trust of 1974<sup>6</sup> explains:

The word "System" shall mean all properties presently owned and operated by the Authority as a single integrated system, together with all works and properties which may be hereafter acquired or constructed by the Authority in connection with the production, distribution or sale of electric 1947 Construction of the 1947 Construction Fund, Capital Improvement Fund, the 1947 Indenture or this Agreement or from the acquisition or construction of which shall be in whole or in part from the proceeds of the bonds issued under the provisions of the 1947 Construction Fund or the Renewal and Replacement Fund or Subordinate Obligations to the extent such works and properties have been included by the Authority as part of the System as provided in Section 516 hereof.

As part of the considerations for the issuance of bonds, Article V containing the provisions related to the management and administration of the revenue of the Authority was

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<sup>6</sup> See Exhibit 21. Art.1



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included. In particular, a number of special funds were set up to deposit PREPA revenues and detailed how these funds would be managed. See, Exhibit 21, supra, Article V, Sections 303, 506 and 507.

In Sections 501 and 502 of Article V, PREPA reiterated its power to charge and impose reasonable tariffs for the use of the facilities of the System, as well as to adjust them so that its revenues are sufficient to pay, among other items, its current expenses. See, Exhibit 21, supra. Under the terms of this agreement, a General Fund was created in which, after the Authority fulfilled the outstanding payments of the bonds issued under the trust, all its income, other than income from the investments, was deposited and applied according to the terms of the contract. See, Exhibit 21, supra, Article V, Sections 501 and 502. According to the trust, the rent vouchers are payable on the net revenues of the Authority that come from the rates charged for the electricity service that is provided to the subscribers. Later, in Section 709 of Article VII, PREPA agreed that none of the gross income of the System would be used for purposes other than those agreed upon in the trusts. See, Exhibit 21, supra. In particular, the referenced Section provides:

The Authority covenants and agrees that, as long as any of the bonds secured shall be outstanding, none of the gross proceeds of the System shall be used for any purpose other than those provided in the 1947 indenture and this Agreement, and that no contract or contract will be entered into or any action taken by which the rights or the Trustee or the bondholders might be impaired or diminished.

PREPA agreed that it would prepare and adopt an annual budget to cover its current expenditures. See Exhibit 21, supra, Article V, Section 504. It also specified how it would manage the income deposited in the general fund. Section 505 of the 1974 Trust, as amended, provides:

The Authority covenants that the General Fund will be used first for the payment of the Current Expenses of the System, that such expenses will be an amount



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which is reasonable and necessary for maintaining, repairing and operating the System in an efficient and economical In accordance with the provisions of this Agreement, and in accordance with the provisions of this Agreement, and in accordance with the provisions of this Agreement. The total amount provided in the Annual Budget for Current Expenses for such fiscal year, the Authority covenants that it will report in writing that amounts to such excess and the reason or reasons for the Consulting Engineers and to the Trustee as soon as practicable but not later than the last day of the sixth month following the month in which such excess shall have occurred. (...) (Emphasis supplied).

In order to understand the items included in the current expenses, Section 101 of the Trust Fund, as amended, specifies:

The term "Current Expenses" shall mean the Authority's reasonable and current expenses of maintaining, repairing and operating the System and shall include, without limiting the generality for the foregoing, all administrative expenses, insurance premiums, expenses of preliminary surveys not chargeable to Capital Expenditures, engineering expenses relating to operation and maintenance, and expenses of the Trustee, the 1947 Trustee, the Paying Agents of the paying agents under the 1947 Indenture, legal expenses, any payment to pension or retirement funds, and all other expenses required to be paid by Authority under the provisions of the 1947 Indenture, this Agreement of law, or by standard practice for public utility system, similar to the properties and business of the Authority (19), (19), (19), (19) and (19) and (19) and (19) and the 1947 Sinking Fund, as well as the provisions of Sections 511, 5.12 and 513 of the 1947 Indenture. (...) Emphasis added).

It emerges from the foregoing that PREPA agreed that it would set and charge reasonable rates to cover its current expenses, which included contributions to pension retirement plans. Section 712 of Article VII states the obligation agreed by PREPA not to create a charge on the revenues of the System as follows:

(a) The Authority covenants that so long as any bond shall be outstanding under the provisions of this Agreement and except as in this Agreement otherwise permitted, it will not sell, lease or otherwise dispose of or encumber the System or any part thereof and will not create or permit to be created any charge or lien on the Revenues ranking equally with or prior to the charge or line on the Revenues of the bonds issued under and secured by this Agreement. (...)

In Section 1304 the contracting parties will specify who could invoke a remedy, right or claim. See Exhibit 21, supra. In particular, they agreed that:



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**Except as herein otherwise expressly provided, nothing in this Agreement is expressly implied or intended to be construed to confer upon any person, firm or corporation other than the parties hereto and the holders of the bonds issued under the provisions of this Agreement any right, Remedy or claim, legal or equitable, under or by its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders from time to time of the bonds issued hereunder. (Emphasis added).**

It is important to note that the provisions of Article VII of the 1974 Trust establish the remedies available to bondholders for non-compliance with the payment obligations related to the bonds issued. See, Exhibit 21, supra. Finally, Article XI of the 1974 Trust allows the agreement to be amended through supplementary agreements, subject to the contracting parties agreeing and notifying the bondholders, providing them with the right to consent.

**M. Act No. 4-2016**

With the approval of Act 4-2016, the Legislature again faced the adverse consequences of the precarious economic situation facing Puerto Rico. This time, the precarious tax status of PREPA was taken into account when it was stated in the Statement of Motives that "[t]his legislation seeks to provide the Authority with the necessary tools to make it a self-sustaining entity that implements best practices in the electrical industry through the integrated planning of its resources." The Legislature also recognized that "[a] transformation of the Authority does not begin with the approval of this Act. This piece of legislation is another link in the chain of efforts that have been carried out and will continue to be carried out by this Administration in benefit of all consumers." See Exhibit A of the Motion for Summary Judgment filed by the co-defendants PREPA and CRAEE, Statement of Motives of Act 4-2016.

For decades, members of the Puerto Rico Legislature have made legislative efforts to address the precarious economic situation of PREPA in the long term. According to the Statement of Motives of Act 4-2016, with these measures



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... we have been able to identify areas of opportunity that have resulted in significant short-term savings. These efforts have improved the Authority's processes and controls in several areas, namely: fuel inventory, accounts receivable and collection operations, tendering, inventory management and security. Regarding the tender for the purchase of fuel, the Authority has implemented an integrated process through its various departments, which includes: periodic meetings, evaluation of inventory, purchasing controls and other practices that meet the standards in the industry. (...)

Nonetheless, the Legislature recognizes that, despite the existence of measures that have produced savings, the financial situation has reached a point where immediate action is required to achieve the solvency of PREPA, with a gap of almost \$ 1 billion. See, Exhibit A, supra. That is why they point out that a transformation of the Authority is necessary since:

... the measures taken have not been sufficient. Within this fiscal year, **the Authority faces obligations that it cannot afford.** The Authority has an obligation to pay nearly \$ 700 million under its fuel credit lines and approximately \$ 763 million in principal and interest payments under its outstanding bonds. Although as of October 1, 2015, the Authority held approximately \$ 367 million in cash for operating expenses, approximately \$ 106 million in a special fund designed for construction projects and \$ 101 million in a trust-controlled trust fund for its payment bonds of services to debt, **it is projected that there is a gap of more than almost \$ 1 billion. This precarious financial situation requires immediate action so that the Authority can achieve financial solvency and can meet its obligations in an orderly and satisfactory manner to all its clients.** In order to achieve the transformation of the Authority, an integrated agreement has been reached with the creditors (Creditors Agreement) in order to balance the needs and interests of all the affected parties. The implementation of this Agreement requires the approval of this Law (Emphasis supplied).

See, Statement of Motives of Act 4-2016.

In addition to the above, "... the Authority has also confronted the accumulation of a budget deficit that needs to be dealt with in a responsible way." To illustrate the insolvency of the AEE, the Statement of Motives of Act 4-2016 adds:

Over the years, **the accumulation of debt and the lack of capital to invest in infrastructure caused the Authority to deteriorate into an obsolete entity.** The high dependence on fossil fuels has caused inefficiency in productivity and a rise in energy costs. Likewise, partisan political influences have created a lack of trust

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and credibility in the Authority. **Currently, the Authority has a debt of over \$ 9 billion** and during the summer of 2014 faced a maturity of approximately \$700 million in fuel credit lines, **while it had no access to capital markets and could not secure other sources**, including Central government, to refinance them. (Emphasis added).

On the other hand, the Legislature notes the importance for the economy of Puerto Rico to achieve the self-sustainability of PREPA by stating that as part of the legislative purpose is to ensure that the Authority has "an opportunity to provide an efficient, safe, reliable, environmentally friendly service and above all of rate stability for its consumers [which] **will stimulate Puerto Rico's economic growth.**" (Emphasis added). See, Exhibit A, supra. In the same way it is sought to increase "... the supply of service and [that] its employees [enjoy] a work environment of which they can be proud and in which they can work safely and efficiently " Id.

Members of the Legislature also emphasize in the Statement of Motives of Act 4-2016 the importance of transforming PREPA to improve the economy of Puerto Rico by stating that:

The Authority operates for the benefit of all of Puerto Rico and not for the benefit of a select group. There is a need to break cycles of resistance to change **so that the country's economy can thrive. This transformation represents the basis for a prosperous and growing Puerto Rico.** This is the opportunity to move forward with a plan based on facts and financial reality, but above all with great desire to maintain and protect the Authority as a heritage of all Puerto Ricans and Puerto Ricans. (Emphasis added).

That is why it is recognized that "[t]he implementation of the transformation efforts will allow an investment of \$2.4 billion to modernize generators that, in turn, facilitate an era of renewable energy in Puerto Rico." Finally, the success of this transformation requires that all creditors, clients, employees and municipalities share the social and economic burden for the benefit of all Puerto Ricans, as well as future generations. Also it is explained that "... to comply with the mission of the Authority and of this Administration, it is necessary to transform the

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Authority **to provide resources that permit them to move forward.**” (Emphasis supplied.)

See, Exhibit A, *supra*.

The importance of achieving Puerto Rico’s economic development through PREPA’s restructuring was reiterated in the public policy statement on restructuring. Specifically, Article 2 states:

To assure the competitiveness and the economic development of the Commonwealth of Puerto Rico, it has been necessary to continue the transformation and reform of our electric sector. **However, such reform has had to be framed within the context of the financial reality of the Electric Power Authority, understanding that its finances, operations and government require evaluation and will to transform.** Having always as essential purpose the conservation of the Authority as an entity of the Commonwealth of Puerto Rico, an integrated agreement has been accomplished with the creditors (the “Creditors’ Agreement”) which requires the approval of this Act for its implantation. The fundamental purpose of implementing such agreements is to benefit all of the customers with a fair, reasonable and transparent rate that, also, permits to comply with the Authority’s obligations and bring it to provide a world class service in medium and long term. (...) (Emphasis added).

As we have stated, the referenced legislative piece has the purpose of achieving PREPA’s sustainability. According to the Statement of Motives of the Act, **to achieve this goal, it is necessary to place PREPA in a position to access the capital markets.** The implementation of this goal requires, at the same time, to lay the groundwork to reduce the load of PREPA’s debts with its principal creditors, because this will permit it to assure other income sources so that it can comply with its obligations in the long term.

For the Legislative Assembly, PREPA’s revitalization requires to address various objectives:

- (1) **reduce the load of the debt;** (2) reform the governance operations and structure assuring its independence; (3) implement significant operational savings; (4) encourage the private-public investments and establish the conditions for key investments in electric infrastructure, cleaner energy and



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diversification of power sources, including renewable; (5) maintain reasonable and accessible rates; (6) comply with state and federal regulations.

According to engineer Javier A. Quintana-Méndez, PREPA's Executive Director, these efforts are addressed to facilitate "... the investment of \$2,400 million in fundamental infrastructure projects and [establishing] a legal framework for the issuance of restructuring bonds that will give financial sustainability to the Corporation." See, Exhibit 8 of the Motion of Summary Judgment filed by the co-defendants PREPA and CRAEE, Positive Report of the SB 1523, p. 5. This, because "PREPA needs to modernize its infrastructure to produce more efficient power and thus, more economic." According to the Executive Director, if these measures are not approved "... the consequences will be immediate and devastating because the creditors will leave their agreements without effect which will cause that for summer 2016 it will have no liquidity and it cannot comply with the investment in infrastructure. As an immediate consequence, the Authority will have to increase the cost of the energy and thus, the rates." *Id.* **Act 4-2016 does not address the immediate elimination of all PREPA's debts but proposes necessary measures to achieve its financial solvency.** As could be seen, one of the measures to achieve PREPA's restructuring and transformation requires the immediate action of reducing the load of debts.

To achieve this result, the Legislative Assembly addressed various issues that are summarized in the title of Act 4-2016 as follows:

To establish the Electric Power Authority Revitalization Act; amend Sections 2, 4, and 5; add a new Section 5B; amend Sections 6 and 6A; repeal Section 6B; amend Section 6C and renumber it as Section 6B, **add a new Section 6C, amend Sections 7, 15, and 22 of Act No. 83 of May 2, 1941, as amended, known as the "Puerto Rico Electric Power Authority Act"**; amend Section 1.3; amend Sections 6.3, 6.16(c), 6.24, and 6.25; add a new Section 6.25A, amend Sections 6.27, 6.29(a); repeal Section 6.31; amend Section 6.32 and renumber it as Section 6.31, amend Section 6.33 and renumber it as Section 6.32, renumber Section 6.34



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through Section 6.45 as Section 6.33 through Section 6.44, respectively; amend renumbered Section 6.43 of Act No. 57-2014, as amended, known as the “Puerto Rico Energy Transformation and RELIEF Act”; amend Sections 4 and 5 of Act No. 114-2007, as amended, known as the “Net Metering Act,” in order to adjust its definitions; provide for the administration, operation, and governance of the Authority; provide for the rate review and contracting processes; provide for the matters that shall govern the conduct of the members of the Board of Directors and employees of the Authority; clarify issues related to the contributions in lieu of taxes of municipalities; provide for transition charges; **clarify the energy bill review process**; clarify the duties and responsibilities of the Energy Commission and the Independent Consumer Protection Office; **provide for the matters that shall govern renewable energy projects**; create the “Puerto Rico Electric Power Authority Revitalization Corporation”; provide for the Authority’s debt restructuring process and repayment mechanism, as well as the legal and judicial proceedings related thereto; **and for other related purposes**. (Emphasis added).

Among the tools considered by the Legislative Assembly to revitalize PREPA is the process of restructuring the debt and its payment mechanism. A group of bondholders that have 40% of PREPA’s debt and creditors participated in the referenced agreement. See, Exhibit 4, *supra*, Positive Report of the SB 1523, p. 5. The new legislation considers the creditors’ agreement previously agreed with certain bondholders to modify certain terms and conditions of the original debt and establish the process to effectuate a new bond emission with the purpose of acquiring capital. *Id.*

With these instruments, part of PREPA’s millions in debt to the bondholders is modified, which establishes a ground to begin the restructuring process. See, Chapter IV of Act 4-2016. Regarding this issue, it is convenient to emphasize the statements of Mrs. Lisa Donahue, PREPA’s Chief Restructuring Officer, in her presentation before the Special Commission for a New Power Policy,<sup>7</sup> in which she stated that:

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<sup>7</sup> Positive Report regarding SB 1523 subscribed by the Energy Affairs and Water Resources Commission of the Senate of Puerto Rico, p. 8, Exhibit 4 of the Motion of Summary Judgment.



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**...the challenges that PREPA faces is (sic) the actual debt of nine thousand millions that it has with the bondholders and with the credit lines for buying fuel.** The Forbearance Agreement that has been extended for more than a year has permitted a relief to the Authority of more than one thousand three hundred million dollars (\$1,300,000,000). This agreement, in addition with the changes implemented until that moment, have been of help, however, they are not sufficient. On or before July 1, 2016, PREPA was compelled to pay around seven hundred million dollars (\$700,000,000) in credit lines for buying fuel and seven hundred fifty million (\$750,000,000) in debt to the bondholders. **At the time of the presentation to PREPA, it had approximately five hundred seventy five million (\$575,000,000) in cash.** (Emphasis added).

She also mentioned that “with this agreement a large number of PREPA’s creditors have agreed to help the Authority **to establish the grounds to begin a restructuring process** before July 1, 2016 which will permit to stabilize its finances, maintain stable rates and maintain a safe and efficient operation.”<sup>8</sup> (Emphasis supplied). Also, states that “the concessions of these creditors are of approximately a thousand, four hundred million dollars (\$1,400,000,000).”<sup>9</sup> Regarding the negotiation process with the creditors, Mrs. Donahue explains “... that the lack of a legal framework to restructure PREPA has complicated the negotiations with the creditors because there is no way of forcing the creditors to participate in negotiations.”<sup>10</sup> We should highlight that PREPA had an immediate necessity of reaching an agreement with the creditors because “for the next January 1, 2016, certain bonds for the sum of two hundred seventy five million dollars (\$275,000,000) will mature and for July 1, 2016, PREPA is forced to pay an approximate amount of four hundred twenty million dollars (\$420,000,000).”<sup>11</sup>

The issuance of restructuring bonds established in Chapter IV must be held through securitization, which means that the payment obligation is guaranteed by a secured repayment

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* p. 9.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* p. 11.



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source for the bondholders. See, Chapter IVI of Act 4-2016. Securitization is “an available tool for the electric power companies to guarantee part of their debt. Said mechanism was used by the Long Island Power Authority (LIPA) in New York State, with the purpose of restructuring part of the debt through bonds classified as investment bonds by the accrediting houses, for the purpose of reducing the costs of the debt service.”<sup>12</sup>

In order to issue the new Restructuring Bonds, the legislative piece created the PREPA’s Revitalization Corporation for it to absorb the Authority’s debt. See, Article 32 of Act 4-2016. The following powers were granted to this non-profit new public corporation:

- (1) Adopt Restructuring Resolutions;
- (2) In consideration of **providing financial assistance to the Authority by payment of Approved Restructuring Costs, impose and collect Transition Charges in connection with the financing of Approved Restructuring Costs through the issue of Restructuring Bonds for the benefit of the Authority**, including (i) making such Transition Charges Mandatory or Non-bypassable to Customers, and (ii) approving an Adjustment Mechanism, subject to the Commission’s approval in a Restructuring Order prior to the issue of the Restructuring Bonds;
- (3) **Issue Restructuring Bonds as stated in a Restructuring Resolution and to pledge the Restructuring Property to the payment thereof.** However, the Corporation may issue Restructuring Bonds to retire, defease, or refinance revenue bonds of the Authority that have been issued on or before December 31st, 2015 (“Revenue Bonds”) only if, as a result of the issue of the Restructuring Bonds, the current value of the total debt service of said Restructuring Bonds is at least seven hundred twenty-five million dollars (\$725,000,000) less than the current value of the total debt service of the Revenue Bonds of the Authority that have been issued on or before December 31st, 2015. For this calculation, the yield of the Restructuring Bonds shall be used, which bonds shall be issued as determined by the Corporation using typical assumptions, as determined by the Corporation in consultation with the advisors thereof. The aforementioned verification calculation shall be used only on the closing date of the Exchange Offer with respect to the restructuring transactions included in the Creditors’ Agreement only and solely with respect to the issuance of the Restructuring Bonds issued for such purposes. For clarification purposes, any Restructuring Bond issued to defray the incidental costs of the initial issuance of Restructuring Bonds or to defease

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<sup>12</sup> *Id.* p. 14.



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the Revenue Bonds of the Authority shall not be subject nor included in the previous calculation.

**None of the foregoing shall prevent the Corporation from issuing Restructuring Bonds to retire, annul, or refinance revenue Bonds of the Authority that have been issued on or before December 31st, 2015, if, as a result of the issue of the Restructuring Bonds, the current value of the total debt service of said Restructuring Bonds is at least seven hundred twenty-five million dollars (\$725,000,000) less than the current value of the total debt service of the Revenue Bonds of the Authority that have been issued on or before December 31st, 2015.**

(4) Provide for and direct the use of proceeds of Restructuring Bonds on behalf of the Authority in accordance with a Restructuring Resolution and a Trust Agreement entered into by the Corporation in connection with such Restructuring Bonds; and

(5) Contract for the administration and servicing of Restructuring Property and Restructuring Bonds, and for administrative services, including hiring a manager or administrator other than an employee of the Authority. (Emphasis supplied). (...)

See, Article 33 of Act 4-2016.

The Transition Charges established in Act 4-2016 are independent of those charges and rates imposed by PREPA and are not considered as PREPA's revenue. This is established in Article 31 of the law when defining this concept as follows:

(6) "Transition Charges" means those rates and charges that are independent from rates and charges of the Authority and that are imposed on Customers in accordance with a Restructuring Resolution to recover the Ongoing Financing Costs, and shall include a pro rata portion of any late payment fee imposed with respect to any past due electricity bill that includes therein a sum for Transition Charges.

(20) "Transition Charge Revenues" means any money and other property received or to be received, directly or indirectly, on account of the Transition Charges, and all proceeds of the investment thereof.

Also, section (i) of Article 35 states:

As soon as possible after receipt thereof, **all Transition Charge Revenues and the Authority's charges shall be paid or deposited in a special collection account with a bank** incorporated under and subject to the laws and regulations of the United States of America or any state thereof, and licensed to operate in the Commonwealth of Puerto Rico, selected by the Corporation **and not related to the Authority or the**



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**Commonwealth of Puerto Rico, or under the control of the Authority.** Such revenues shall be allocated and remitted to the Corporation or its assignees or creditors and to the Authority or its assignees or creditors on a daily basis in accordance with their respective interests. Any Servicing Agreement and depository agreement shall include the foregoing deposit and allocation requirements.

Under no circumstances, any Transition Charges imposed or Restructuring Property created by the Corporation to secure any Restructuring Bonds **shall be deemed to be collected on account of taxes, or be deemed to be revenues of the Authority or the Commonwealth of Puerto Rico, or be deemed to be received as a result of the Authority's ownership or operation of the System Assets, nor shall any Restructuring Bonds be deemed to be a debt or other obligation of the Authority or the Commonwealth of Puerto Rico or any of its political subdivisions.** (Emphasis added). (...)

Article 35 of Act 4-2016 establishes the proceeding for the CRAEE to issue valid Restructuring Bonds. In addition to reiterating CRAEE's authority to issue the Bonds and Transition Charges, the referenced article establishes a detailed process that implies:

(b) Approval Process.

(i) Except as otherwise provided by law, **the Corporation shall submit a petition to the Commission enclosed with a proposed Restructuring Resolution** and such other information as required in Section 6.25A of Act No. 57-2014. **Pursuant to Section 6.25A of Act No. 57-2014, the Commission shall review the proposed Restructuring Resolution and such other information to determine whether the calculation methodology followed by the Corporation for the Transition Charges and the Adjustment Mechanism to be applied to adjust the Transition Charges is consistent with the cost allocation and other standards set forth in Section 6.25A of Act No. 57-2014, and is not arbitrary or capricious. The Commission shall hold one or more public hearings in connection therewith, as provided in Section 6.25A of Act No. 57-2014. The Corporation may not adopt a Restructuring Resolution unless the Commission has either approved a Restructuring Order or the Commission has lost jurisdiction as provided in Section 6.25A of Act No. 57-2014. The Corporation shall adopt a Restructuring Resolution within five (5) business days after (A) the Commission has approved the corresponding Restructuring Order, or (B) the date on which the Commission has lost jurisdiction, as provided in Section 6.25A of Act No. 57-2014.**

(ii) Any judicial proceedings challenging a Restructuring Order or the findings and determinations stated in a Restructuring Resolution shall only be brought in accordance with the procedures set forth in subsection (d) of this Section, **and the Court shall review such findings and determinations under the standard of**

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**whether the Commission or the Corporation acted in a manner that was arbitrary or capricious.** (Emphasis supplied).

On the other hand, the aforementioned article specifies that the Court of First Instance has jurisdiction to review challenges to the validity of Chapter IV of Act 4-2016. As part of the measures to heed to the precarious financial situation in an expedited manner, Article 35 establishes with particularity a term of sixty (60) days to challenge its provisions as follows:

(c) Validation of this Chapter.

**(1) Within seven (7) days after the approval of this Act, the Corporation or the Government Development Bank for Puerto Rico shall publish in the manner provided in paragraph (2) of this subsection (c) a notice inviting any Interested Person to bring an action before the San Juan Part of the Court of First Instance of the Commonwealth of Puerto Rico (the “Court”), to determine, among other things:**

(A) The validity of this Chapter;

(B) That any provision of this Chapter, including the imposition of Transition Charges, neither results in the breach or impairment of any contract or agreement executed between the Commonwealth of Puerto Rico or the Authority and the bondholders or other creditors of the Authority, nor in the taking of property by the Commonwealth of Puerto Rico without just compensation;

(C) That the money to be received from Transition Charges by or on behalf of the Corporation or any Servicer constitute revenues and income of the Corporation and not of the Authority or any other Person, and shall not constitute available resources of the Commonwealth of Puerto Rico; and that Transition Charge shall not constitute a tax or contribution, and that the right of the Corporation to impose and collect Transition Charges may not be revoked or terminated;

(D) That the Transition Charge Revenues are not subject to any lien or levy whatsoever by bondholders or other creditors of the Authority or any other Person other than the lien or levy of the applicable Trust Agreement to be entered into in connection with the issuance of the applicable Restructuring Bonds; and

(E) Any matters relating to the foregoing including those pertaining to the Constitution of the United States or of the Commonwealth of Puerto Rico.

**(2) The Corporation, or the Government Development Bank for Puerto Rico acting on behalf of the Corporation, shall serve notice to all Interested Persons of the approval of this Act and the opportunity to challenge the validity of this Chapter through a notice for such purposes to be published once (1) a week for three (3) consecutive weeks in a newspaper of general circulation in the Commonwealth of Puerto Rico and in a newspaper of general circulation or a financial journal published or circulated in the city of New York. In**

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addition, (i) the Corporation, the Puerto Rico Government Development Bank, and the Authority shall post a copy of the notice on their websites not later than five (5) days after the first publication thereof; (ii) the Corporation or the Puerto Rico Government Development Bank acting on behalf of the Corporation shall (A) deliver or cause to be delivered a copy of the notice to those Interested Persons (to the extent known by the Corporation or the Government Development Bank for Puerto Rico) listed in paragraphs (a) through (e) of the definition of “Interested Person” established in Chapter IV of this Act, and (B) file or cause the Authority to file a copy of the notice with the Electronic Municipal Market Access maintained by the Municipal Securities Rulemaking Board (or its equivalent); (iii) the Authority shall deliver a copy of the notice referred to above to all Customers by means of (A) a direct mailing of such notice to such Customers not later than ten (10) days after the first such publication in a newspaper of general circulation in the Commonwealth of Puerto Rico and in a newspaper of general circulation or a financial journal published or circulated in the City of New York, or (B) an insert included in the next billing statement sent by the Authority to its Customers, after the first such publication, and to all Interested Persons listed in paragraph (g) of the definition of said term; and (iv) not later than fifteen (15) days after the first publication, the Corporation or the Authority shall deliver a copy of the notice to any Interested Person listed in paragraph (h) of the definition of “Interested Person” and, to the extent known by the Authority, in paragraph (i) of the definition of “Interested Person” established in this Section and Chapter IV of this Act.

(3) Upon the first publication of the notice in a newspaper of general circulation in the Commonwealth of Puerto Rico and in a newspaper of general circulation or a financial journal published or circulated in the City of New York, all Interested Persons shall be deemed to be aware or have reason to be aware of the approval of this Act and of any alleged damages or claims related to this Act. **A sixty (60)-day period to challenge this Chapter, as set forth in paragraph (1) of this subsection (c) shall begin to elapse on the date of the first publication of such notice in a newspaper of general circulation in the Commonwealth of Puerto Rico and in a newspaper of general circulation or a financial journal published or circulated in the City of New York** (and if not first published on the same date, the later date of the two publication dates shall be used for this purpose). The notice shall provide a detailed summary of the matter the Corporation seeks to validate. [...]

(4) The Court shall have jurisdiction over any action related to the matters addressed in this subsection (c), and only if such action or contest is timely filed within the sixty (60)-day statute of repose. Any Interested Person may, within said sixty (60)-day period, appear and contest the legality or validity of any matter sought to be determined in relation to Chapter IV of the “Electric Power Authority Revitalization Act.” No other court shall have jurisdiction over any action related to any of the matters addressed in this subsection (c). The Court shall lack jurisdiction if such action is brought after such sixty (60)-day period.

(5) If there is more than one action pending concerning similar contests brought in connection with Chapter IV of the “Electric Power Authority Revitalization Act,”

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such actions shall be consolidated to the extent possible, and the Court may order the consolidation of such actions as deemed necessary and proper to avoid unnecessary costs or delays. Such orders shall not be appealable to or reviewable by any court, except on appeal of the final judgment as provided in paragraph (7) of this subsection (c). Actions brought pursuant to this subsection (c) shall be entitled to liberal joinder and cross-claim rules and have priority over all other civil actions brought before the court with respect to docketing or consideration of motions, pleadings, hearings, or trial, and for the purpose of hearing and deciding such actions brought pursuant to the provisions of this subsection (c) promptly.

(6) No contest of any issue or matter under this subsection (c) related to Chapter IV of the “Electric Power Authority Revitalization Act” shall be made other than within the time and in the manner provided in this subsection (c), except for any contest to be made in accordance with subsection (d) of this Section. None of the provisions of subsection (c) shall be construed in a manner that would preclude the use by the Corporation of any other remedy to determine the validity of any issue or matter, not regulated by this subsection (c).

**(7) A review of the final judgment of the Court may only be requested by filing an appeal with the Supreme Court of Puerto Rico, in the manner described in subsection (f)(2).** (Emphasis added).

Likewise, Article 35, *supra*, establishes the process to validate the issuance of Restructuring Bonds; it provides an expiration term of forty-five (45) days to challenge this action; and provides jurisdiction to the Court of First Instance to review challenges of the determinations of the corresponding entities. It is important to warn that both expiration terms commence from the date of the publication of the notice of approval of the statute. Similarly, in both causes of action for challenges [to the validity of the Act], the Legislative Assembly established that the review of the final judgment adjudicated by the Court could only be appealed to the Puerto Rico Supreme Court. To these ends, Article 35, *supra*, provides:

(d) Validation of the Issuance of Restructuring Bonds.

(1) After the Commission has approved the initial Restructuring Order and the Corporation has approved the initial Restructuring Resolution, and prior to issuing Restructuring Bonds, the Corporation shall publish in the manner set forth in paragraph (2) of this subsection (d) a notice inviting any Interested Person to bring an action in the Court to determine:

**(A) The validity of the Restructuring Order, the issuance of Restructuring Bonds by the Corporation,** including provisions for the payment of such Restructuring Bonds, the validity of such Restructuring

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Bonds, and of the outstanding debt of the Authority that is to be refinanced, retired, or annulled through such Restructuring Bonds, the creation of Restructuring Property, and the validity of the formula or formulas used to establish the amount of such Transition Charges for each Customer class, including the allocation of Financing Costs among Customer classes. Therefore, nothing provided in this Chapter IV shall hold the Authority or any of its agents or representatives or third parties harmless from any liability or cause for action that originates or is related to the illegality or nullity of the Authority's outstanding debt that is to be refinanced, retired, or annulled through such Restructuring Bonds;

**(B) The validity and applicability of the Transition Charges and the Adjustment Mechanism and the revocability of the right of the Corporation to impose and collect Transition Charges;**

(C) That neither the issuance of the Restructuring Bonds (including the use of such Restructuring Bonds by the Authority to annul its outstanding debt) nor the amount of the Transition Charge results in the breach of any contract or agreement executed between the Commonwealth of Puerto Rico or the Authority and the bondholders or other creditors of the Authority, any fraudulent conveyance or any taking of property by the Commonwealth of Puerto Rico without just compensation or is otherwise subject to annulment or rescission; and

(D) Any or all other matters relating to the foregoing including any matters relating to the United States of America or the Commonwealth of Puerto Rico Constitutional law.

(2) The Corporation shall serve notice to all Interested Persons of the adoption of the Restructuring Resolution and the authorization of the Restructuring Bonds and the opportunity to challenge their validity through a notice for such purposes to be published once (1) a week for three (3) consecutive weeks in a newspaper of general circulation in the Commonwealth of Puerto Rico and in a newspaper of general circulation or a financial journal published or circulated in the City of New York. In addition, the Corporation, the Government Development Bank for Puerto Rico, and the Authority shall, not more than five (5) days after the first such publication, (A) deliver, or cause to be delivered, a copy of the notice to those Interested Persons (to the extent known by the Corporation or Government Development Bank for Puerto Rico) listed in paragraphs (a) through (e) of the definition of "Interested Person" provided in Chapter IV of this Act, and (B) file or cause the Authority to file a copy of the notice with the Electronic Municipal Market Access maintained by the Municipal Securities Rulemaking Board (or its equivalent). The Authority shall deliver a copy of the Corporation's notice referred to above to all Customers by means of (A) a direct mailing of such notice to such Customers not later than ten (10) days after the first such publication, or (B) an insert included in the next billing statement sent by the Authority after the first such publication and to all Interested Persons listed in paragraph (g) of said definition. Not later than fifteen (15) days after the first such publication, the Corporation or the Authority shall deliver a copy of the notice to any Interested

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Person listed in paragraph (h) and, to the extent known by the Authority, in paragraph (i) of the definition of such term provided in Chapter IV of this Act.

(3) Upon the first publication of the notice in a newspaper of general circulation in the Commonwealth of Puerto Rico and in a newspaper of general circulation or a financial journal published or circulated in the City of New York, all Interested Persons and any other Person interested in the matter shall be deemed to be aware or have reason to be aware of the approval of this Act and of any damages or claims related to this Chapter. **A forty-five (45)-day statute of repose to bring an action as set forth in paragraph (1) of this subsection (d) shall begin to elapse from the date of the first publication of the notice in a newspaper of general circulation in the Commonwealth of Puerto Rico and in a newspaper of general circulation or a financial journal published or circulated in the City of New York** (and if not first published on the same date, the later date of the two publication dates shall be used for this purpose). The notice shall provide a detailed summary of the matter the Corporation seeks to validate. (...)

(4) **The Court shall have jurisdiction over any action related to the matters addressed in this subsection (d), and only if such challenge or contest is timely filed within the forty-five (45)-day statute of repose.** Any Interested Person may, within this forty-five (45)-day period, appear and contest the legality or validity of any matter pertaining to the Restructuring Resolution sought to be determined. No other court shall have jurisdiction over any action related to the matters addressed in this subsection (d).

(5) For purposes of this subsection (d), Restructuring Bonds and Transition Charges shall be deemed to be in existence upon their authorization and the Restructuring Bonds and Transition Charges shall be deemed to be authorized as of the date of adoption of the Restructuring Resolution by the Board of the Corporation.

(6) No contest of any issue or matter under this subsection (d) related to the Restructuring Resolution shall be made other than within the time and in the manner herein specified. Nothing in subsection (d) shall preclude the use by the Corporation of any other remedy to determine the validity of any thing or matter, not regulated by this subsection (d).

(7) **A review of the final judgment of the Court may only be requested by filing an appeal directly with the Supreme Court of Puerto Rico, in the manner described in subsection (f)(2).**

(e) If there is more than one action pending concerning similar contests which may be brought in connection with the Restructuring Resolution, such actions shall be consolidated to the extent possible, and the Court may order the consolidation of such actions as deemed necessary or proper to avoid unnecessary costs or delays. Such orders shall not be appealable to or reviewable by any court, except on appeal of the final judgment as provided in this Section. **Actions brought pursuant to this subsection shall be entitled to liberal joinder and cross-claim rules and have priority over all other civil actions before the Court with respect to docketing or consideration of motions, pleadings, hearings, or trial, and for the purpose of hearing and deciding such actions brought pursuant to the provisions of this Chapter promptly.** (Emphasis added). (...)

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Finally, Article 35 (f) of Act 4-2016 provides the term to appeal to the Supreme Court the judgment of the Court of First Instance in the following manner:

Notwithstanding any other provision of law to the contrary and any rule or regulation of the courts, **no judgment entered pursuant to this Chapter shall be appealed unless it is filed with the Supreme Court of Puerto Rico within thirty (30) days after the notice of entry of the judgment of the Court**, and failure to file such appeal within the specified period shall thereafter prevent any appeals court from exercising jurisdiction over the matters which could have been so appealed. (Emphasis added).

Based on the aforementioned doctrine, we proceed to resolve the controversies before us.

**IV**

**Conclusions of Law**

As a threshold matter, we address the argument of the Energy Commission to determine if the amended complaint includes sufficient allegations against it, which requires their presence in this case. Then we will analyze the arguments presented in the motion to dismiss and the motion for summary judgment, as well as the oppositions. We address the dispositive motions in this manner because both motions are based in the constitutional validity of Act 4-2016, which requires to evaluate if each of the allegations that are well argued in the complaint are warranted. Once we address the constitutional arguments regarding the challenged legislation, we are going to be in a position to determine if the complaint must be dismissed because it does not contain a claim that justifies a remedy.

After examining the allegations presented by the plaintiff in its amended complaint, we conclude that the issuance of the Restructuring Order by the Energy Commission, as required by Act 4-2016, is sufficient to determine that there is a claim against it that justifies a remedy. We reason that, according to the allegations in the complaint and the challenged legislation, the



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appearance of the Energy Commission in this case is necessary to grant a complete remedy. Let's see.

As the plaintiff states in its amended complaint, Article 6.25A of Act 4-2016 delegated to the Commission the authority to determine the rate and the revision of the transition charges, as well as the adjustment mechanism. Thus, CRAEE [Spanish acronym for PREPA's Revitalization Corporation] filed a petition before the Energy Commission which was resolved by a Restructuring Order. In such Order, the Commission approved the methodology of the calculation and the adjustment mechanism filed by CRAEE, which were used to impose the transition charges. Also, in the complaint, it is alleged that the Commission made other determinations to implement the new financial system for the restructuring of PREPA's debt. This means that the Commission made adjudications under Act 4-2016, the law that is constitutionally challenged in this case. In light of this, we hold that the presence of the Energy Commission is indispensable in this case so that a complete remedy can be granted, in case that the plaintiffs' allegations are valid and that we hold that the challenged legislation is unconstitutional. Thus, the motion to dismiss filed by the Energy Commission is denied.

The codefendant parties, PREPA, CRAEE, ELA [the Commonwealth of Puerto Rico] and the individual officers in their character as *ex officio* members of the CRAEE, also filed their dispositive motions regarding the validity of Act 4-2016, which required the evaluation of the constitutional allegations presented by the plaintiff. As we have stated, this case presents various controversies of constitutional rights that are of great public interest, which require the intervention of this Court. The Plaintiff, which represents employees and PREPA retirees, sustains that Act 4-2016 violates various constitutional guaranties and breaches contractual



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obligations because it modifies or alters the order of payments agreed by PREPA in favor of the retirement plans.

Before we begin with the analysis of the controversies, we must have present that the case before us began with a petition of declaratory judgment filed by the plaintiff requesting that we declare Act 4-2016 unconstitutional, as well as the determinations issued by the organisms that implement it. A close examination of the allegations in the complaint leads us to the conviction that the controversies raised in this case are strictly of law. Although we acknowledge that in some cases it is necessary to begin a discovery procedure for adjudicating certain constitutional arguments, the admitted essential facts and the public documents related with Act 4-2016 in this case are sufficient to apply the relevant judicial rulings and resolve the case. In our opinion, the allegations of the complaint do not present controversies of fact that require postponing the adjudication of the dispositive motions until discovery is done. It is important to highlight that the documents filed by PREPA and CRAEE in their motion for summary judgment are public documents related with the processing and implementation of Act 4-2016, and judicial notice can be taken. See, Rule 202 of the Rules of Evidence of 2009, 32 LPRA Ap. VI, R. 202. Thus, the evidence before the Court was not only in possession of the plaintiff and/or does not require a discovery process for the plaintiff to have access to it.

When reaching this conclusion, we also considered that this case's adjudication does not require considering additional facts to the ones admitted and, thus, it is unnecessary to initiate discovery to consider expert witness reports.<sup>13</sup> This way, we comply with the principle that rules

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<sup>13</sup> The expert report prepared by the economists Dr. José Alameda and Jorge L. Torres in which they conclude that there are other alternatives to return PREPA's operational sanity or its interpretation regarding the lack of reason or necessity of Act 4-2016 is immaterial and irrelevant in the analysis of the breach of contractual obligations in this case, because the plaintiffs were not a contracting party in the Trust of 1974 or the supplemental agreements. However, because of the conclusion that we reach in this case it is unnecessary to consider them.



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civil litigation proceedings that require the Court to exercise its discretion to reach the case resolution in the more efficient and expedited manner, guaranteeing always the rights of the parties.

Similarly, we are conscious that when analyzing an allegation of the unconstitutionality of a law, the doctrine that is firmly established in our legal system regarding this issue requires that we examine if there is an interpretation that permits to avoid such determination.

Lastly, the adjudication of the reasonableness of the legislative act is not a determination of fact that requires admission of evidence, but a determination of law that this Court has to adjudicate. We are going to do it, following the evaluation criteria and the precedent established by our Supreme Court.

Having addressed the issues above, we proceed to consider and resolve the claims contained in the Amended Complaint in light of the applicable law.

**A.**

**First claim or cause of action: Challenge of Act 4-2016 for insufficiencies in its title**

Plaintiff alleges that the law violates Section 17 of Article III of the Commonwealth's Constitution because its title does not clearly include all the issues included in the 95 pages of the bill. In particular, Plaintiff alleges that the title does not alert the legislators, consumers and workers of the imposition of charges in general, the transition charges, the guarantees of the debt that will be restructured, the elimination or weakening of the guarantees of citizen participation in the PREPA's government and in the rate process or the claims process. Also, Plaintiff alleges that the title is silent regarding other laws that are affected, as Act 33- 1985 of claims and



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objections to the bills for public services, and Act 29-2009 of Public-Private Partnerships,<sup>14</sup> and it does not mention the Creditors 'Agreement, which was the reason for which the SB 1523 and its equivalent HB 2742 was "settled."

First, Act 4-2016's title is extensive and it mentions various laws and numerous articles and topics, all related with PREPA and its restructuring objective. It specifically mentions by name PREPA's Enabling Act (Act 83-1941, as amended), the Transformation and Energy Relief Act and the Net Metering Act. It also mentions various topics included in Act 4-2016 dispositions: "provide for the administration, operation, and governance of the Authority;" "provide for the rate review and contracting processes;" "provide for transition charges;" "clarify the energy bill review process;" "provide for the matters that shall govern renewable energy projects;" "provide for the Authority's debt restructuring process and repayment mechanism, as well as the legal and judicial proceedings related thereto; and for other related purposes." Thus, the matters over which the Plaintiff alleges insufficiency in Act 4-2016 title, as the transition charges, the restructuring process and debt payment, and the process for rate review and revision of bills, are mentioned, and even specifically. The omission of mentioning by name the laws that establish the process of revision of bills and the public-private partnerships through which the projects of renewable energy could be channeled does not make the law unconstitutional, because their topic is mentioned in the title. These, in turn, are germane to PREPA's revitalization and restructuring pursued by Act 4-2016. Finally, it is unnecessary for the creditors' agreement to be mentioned specifically, because this issue is part of the debt's restructuring process and the payment of the debt, which are mentioned in the title.

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<sup>14</sup> Act 4-2016 contains a disposition that establishes the special processes for the future projects of renewable energy that are done under this law.

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We conclude that according to the case-law on Section 17 of Article II of the Constitution, these references constitute sufficient notice of the matters included in the law. They are expressed in a simple language and easy to understand, for the legislators and the general public.

We must have present that the objective of the constitutional requirements regarding the title of a bill of law is to “inform the general public and the legislators of the particular issue that is object of the law, so that the first one can oppose to its approval if it is considered injurious and the second ones are in condition to issue their vote aware of the subject matter of legislation.” Only when we are before a clear and definitive case in which the title contains matters that are not part of the legislation or are contrary to the purpose of the legislation, or when its title does not mention the matters included in it, the nullification of the law could be justified for deficiencies in its titles, for violating the mentioned constitutional disposition. *Cervecería Corona, Inc. v. J.S.M.*, supra. Because the Court understands that Act 4-2016 has a title that provides a complete index and notifies adequately all of the matters included in the legislation, Plaintiff’s first cause of action or claim is not warranted according to law.

### **B.**

**Second claim or cause of action: the manner in which Act 4-2016 was enacted infringes upon the constitutional framework of separation of powers; the statutes of limitations set are unreasonably short and restricts the citizenship’s right to access to justice.**

Under this cause of action the plaintiffs allege, in the first place, that the manner in which Act 4-2016 was enacted undermined the Legislative Branch’s independence of judgment, since the Executive Branch placed undue pressure on the members of the legislative bodies for the [bill’s] passage. To those effects, plaintiffs highlight the swiftness with which SB 1523 was drafted, processed, and passed, becoming eventually Act 4-2016; They point out that only one

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public hearing was held in each legislative body and state that the Governor turned it into law the same day in which the bill was sent for his signature.<sup>15</sup> At the same time, they express that the bill originated as one of administration, which is permitted and very customary, but that the pressure exerted by the [Governor] over the members of the legislative bodies for them to approve it in a specific date and for being a condition for the implementation of the creditors' agreement, impaired the independence of judgment with which the legislators should perform their functions.<sup>16</sup>

As we stated in part II of this Judgment (Undisputed Facts), each legislative body referred the bill sent by the Governor to committee so that from there the corresponding evaluation was to be made and the discussion be taken to the corresponding public hearing. The bill was presented before both legislative bodies on November 4, 2015 as Administration Bill F-245; this was presented by the Senate majority as SB 1523.<sup>17</sup> The Senate Energy Affairs and Water Resources Commission held a public hearing on November 10, 2015 and the House Special Commission for a New Energy Policy held theirs on November 11, 2015. At the hearings, various comments were received. Three months later, on February 4, 2016, the Senate commission held an executive meeting. For its part, the aforementioned House commission issued a positive report after evaluating the comments received in public hearings and SB 1523. After various positive reports over SB 1523 were issued, on February 15 and 16, 2016, each body voted on the bill and approved [it] by a majority of their members. On February 16, 2016, the bill was signed by the presidents of both legislative bodies and sent to the Governor [for] signature, who converted it into law that same day.

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<sup>15</sup> See, Opposition to the Motion for Summary Judgment presented by the co-defendants PREPA and PREPARC on November 4, 2016, p. 23.

<sup>16</sup> *Id.*, pp. 26-27.

<sup>17</sup> Undisputed Fact number 5.



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The process described above shows that Act 4-2016 fulfilled the procedure and requirements established by the Commonwealth's Constitution for the enactment of laws, and that the members of the Legislative Assembly performed their function complying with what is required by the Constitution. The process followed, although expedited, did not omit the holding of a public hearing nor impeded that various comments be received that were object of evaluation by the Senate and House commissions. If PREPA has the need to achieve an agreement with its creditors and the absence of a legal framework complicated the panorama for the negotiations, nothing in the process described above reflects an undue pressure by the Executive Branch that would impair the legislators from exercising their judgment in an impartial and independent manner. The Legislative Branch simply acted with the diligence and speed that PREPA's emergency situation required.

In any event, [we] conclude that it does not correspond to the plaintiffs to assume the "defense" of the legislators for alleged "undue pressure." In the last instance, and having the legislators exercised their function of considering and approving the measure, the argument is not susceptible to a remedy before the judicial forum. *Cfr. Córdova-Ituregui v. Cámara de Representantes*, 171 D.P.R. 787 (2007).

On the other hand, plaintiff challenges the fatal statutes of limitations established in the act for considering them unreasonably short and restrictive to the access to justice that every citizen has a right to. As we stated earlier, Act 4-2016 establishes two fatal statutes of limitations, one of sixty (60) days and another of forty-five days (45), to file judicial actions related to certain provision of the act. See, Chapter IV, subsections (c) and (d). It also provides that the Court of First Instance's final judgment on the matter may only be appealed before the Supreme Court within the thirty (30) days of entry of the judgment in the docket.



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The fatal statutes of limitations fixed in this case do not result unreasonable if one keeps in mind that Act 4-2016 was enacted to attend to an emergency situation and procure an immediate action that would allow PREPA to attend to its precarious financial situation. The performance of PREPA's obligation in an orderly manner, reducing the amount of its debt and attending those obligations that impede PREPA from having access to capital markets is a matter of the highest public interest for its tangency with the country's economic development.<sup>18</sup> It is indisputable the necessity to impart certainty to the Authority's revitalization process and the restructuring of its debt. One should consider that the Creditors' Agreement, in which a substantial reduction of the debt and a moratorium of the repayment of the same was agreed<sup>19</sup>, required the enactment of this act for its implementation. Article 2, Act 4-2016. The challenge of the legal provisions enacted for the achievement of this goal cannot be left to the mercy of a judicial proceeding that could prolong itself for years. It is evident that the reason for which the legislator adopted short and fatal time periods to resort to the judicial forums is that legal certainty should be achieved over this matter in a short term.

The fatal statutes of limitations of sixty (60) and forty [sic] (45) days does not result unreasonable in view of the high public interest that the law is vested with or impedes the access to justice. As an example of the foregoing, we highlight that the time period of sixty (60) days was not an impediment so that the plaintiffs could come before the Court of First Instance in the present case. It has also not been for the rest of the cases presented before this Forum.<sup>20</sup> In respect to the appeal before the Supreme Court of the final judgment that the Court of First Instance issues, far from causing prejudice to the party interested in appealing, the procedural

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<sup>18</sup> See, Exhibit A, Request for Summary Judgment, Statement of Motives of the Act, p. 3.

<sup>19</sup> See, Article 33 of Act 4-2016.

<sup>20</sup> Refer to the cases mentioned in footnote 2 of this Judgment. [We] take judicial notice that there have been other cases have been presented before this Forum related with the same act.

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vehicle established by the act benefits them because it grants them a direct access to the Forum of last instance in our judicial system and it avoids for them having to incur the costs of litigation that would entail previously presenting a writ before the Court of Appeals. What the other branches cannot do in respect to the approval and establishment of laws that affect the judicial process is handcuff the Supreme Court, limiting its constitutional and review function. See, *Alvarado Pacheco v. E.L.A.*, 188 D.P.R. 595 (2013).

For all of the foregoing, plaintiffs' second claim or cause of action is contrary to law.

C.

**Third claim or cause of action: Act 4-2016 is unconstitutional because it impairs contractual obligations that benefit PREPA employees and UTIER members, and because it violates equal protection of the law**

Plaintiffs claim that Act 4-2016 alters the payment priority established in the 1974 Trust, where PREPA General Fund moneys were to be used first to pay PREPA's current expenses, among which the trust expressly mentions payments to the employees' retirement or pension fund. Plaintiffs argue that by establishing a transition charge that will be used to pay creditors that acquire restructuring bonds, Act 4-2016 has considerably diminished PREPA's economic capacity to budget and satisfy payment of its contribution to the employees' retirement system and has caused PREPA's debt with such system to potentially soon reach \$190.0 million.<sup>22</sup>

Specifically, the plaintiffs argue that a contract between PREPA and its employees exists under the 1974 Trust, by virtue of which PREPA is bound to pay its current expenses as a priority and PREPA's contribution to the employees' pension fund is among such payments; that the clause was contemplated in all the bond issues since then and that the bonds' restructuring through securitization eliminates such priority. It adds that the transition charge and other

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<sup>22</sup> According to the plaintiff, the estimated debt for years 2015-2016 and 2016-2017 could reach \$190.0 million. See, *Opposition to Summary Judgment*, page 12, subsection 18.

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charges authorized by Act 4-2016 put aside the public interest and infuse uncertainty to the retirement system and the employer's contribution, since such charges are directed only to pay the bondholders' debt; that Act 4-2016 should have preserved the payment priority and put the retirement system on a par with PREPA's creditors. In the alternative, it argues that the Legislature should have considered other less onerous measures, such as collecting the debts of private businesses, government agencies and municipalities and eliminating subsidies, imposing a temporary assessment on customers, and increasing charges and rates. Finally, it states that Act 4-2016's implementation discriminates against the retirement system and its beneficiaries and deprives them of their constitutional right to equal protection of the law.

We begin with the 1974 Trust, as it is the source of the alleged contractual relationship upon which the claim is based.

The 1974 Trust established a general fund into which all of PREPA's income would be deposited, except investment income. PREPA acknowledged that in order to keep operating, it had to cover its current expenses before making interest payments to the bonds set forth in the trust. Interpreting the trust's clauses as a whole, we understand that the primary purpose of this agreement is to regulate and establish the rights and obligations of PREPA and the original trustee and successor trustees with respect to bond issues. In this type of financial instrument, an entity distributes securities to obtain financial resources to maintain and expand its operation. To compete in the market, the entity must clearly reveal its obligations and income, and its budget management so that possible bondholders may make an informed decision when purchasing bonds.

Then, contrary to what the plaintiffs argue, the purpose of the trust was not to establish a priority for payment of PREPA's possible debts with respect to current expenses, but to establish



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that PREPA's obligations would be paid with the income deposited in the general fund and inform bondholders of such fact.

We point out that in Sections 501 and 502 of the 1974 Trust, PREPA acknowledges that it is bound to charge for the power services it provides its customers, as well as to impose charges and rates for use of its facilities. This authority does not originate from the trust agreement but from PREPA's Enabling Act. 22 LPRA Sec 196(l). To show PREPA could guarantee payment of the bonds that would be issued under the 1974 Trust, a chapter was included that provided the manner in which PREPA's income and yearly current expenses budget would be managed.

Various special funds were created in PREPA by virtue of such agreement. Section 503 created a general special fund in which all of PREPA's income would be deposited, except the income received from the bond sale. At that time, PREPA agreed that with the money deposited in the general fund it would pay the System's current expenses as well as bonds issued. Since a business' current expenses are necessary for its operation, PREPA agreed that the general fund money would be used first to pay the System's current expenses. The agreement provides for this when it states that the current expenses are the reasonable and necessary expenses to maintain, repair and operate PREPA's system, which includes, among other items, the payment of the contributions to the pension or retirement funds.

It cannot be doubted that the essence of Section 503, when interpreted in harmony with the clauses in Chapter V of the 1974 Trust, is to assure the continuity of PREPA'S operations. PREPA acknowledged the importance of directing the income from the System deposited into the general fund to the payment of its current expenses, including the contributions to its employee's retirement plans, before paying the bonds that would be issued. With such



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acknowledgment, PREPA assured its continuity and operation through the net income deposited in the general fund, which should have benefited both PREPA and the bondholders who invested in it.

We understand that Section 505 of the trust agreement does not contemplate a priority in favor of the plaintiffs in the payment of the debts that PREPA may have with the retirement system. Nor does it provide a specific remedy to demand performance of the obligations agreed-to by PREPA, such as payment of its current expenses, in particular the contributions to its employees' retirement plans. Therefore, it cannot be concluded that the trust granted a right to the plaintiffs.

However, we cannot deny that in such section, PREPA was bound to comply with paying its current expenses before proceeding to pay the bonds. That is, the clause has an indirect effect of favoring the retirement system, and thus benefits PREPA employees and pensioners, which ultimately are the beneficiaries of these contributions. Although we are conscious of the significant debt that PREPA may have with its employees' retirement plans,<sup>23</sup> we must analyze this obligation in the context of the general fund created in the trust. As discussed, in the 1974 Trust it was agreed that the current expenses and the bonds would be paid with PREPA's income deposited in the general fund. To assure continuity of operations, it was necessary to specify in the trust that current expenses would be paid first from such funds.

With Act 4-2016's approval, the restructuring bonds that would substitute the bonds issued under the 1974 Trust would be paid with income from a transition charge imposed by PREPARC, an independent corporation, through the Restructuring Resolution. As discussed, Act 4 expressly provides that the income that will be used to pay the bonds will not come from

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<sup>23</sup> Id.



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PREPA income or from the general fund. This allows us to conclude that Act 4 is not in conflict with PREPA's obligations in the 1974 Trust, as the income to be used for paying the restructuring bonds comes from a transition charge that will not be deposited into the general fund or will be considered PREPA income. The creation of an independent entity in charge of receiving the income from the transition charge and of issuing restructuring bond payments promotes the Legislature's interest in dealing with PREPA's budget deficit, reducing its debts and obligations, allowing it access to markets, receiving the necessary capital for investing in its infrastructure and becoming a self-sustaining, globally competitive entity.

The act does not deal with all of PREPA's debts; the purpose of the act, we repeat, is to provide PREPA with tools to gain access to capital markets and assure other sources of income.<sup>24</sup>

The Statement of Motives clearly states such purpose and its provisions are directed so that PREPA may reach such goal. Its purpose is not dealing with the employee and pensioner retirement fund situation as the plaintiffs purport.

Nevertheless, plaintiffs' claims that Act 4-2016 is unconstitutional because it impairs the PREPA employees and retirees pension funds require that we examine criteria established through case law to analyze socioeconomic legislation contested under Section 7, Article II of the Commonwealth Constitution. On this subject, two recent decisions by our Supreme Court are particularly relevant, *Dominguez Castro v. ELA*, extensively cited in this Judgment and where the constitutionality of Act 7-2009, dealing with the fiscal emergency, was confirmed; and *Trinidad Hernández v. ELA*, 188 DPR 828 (2013), which confirmed the constitutionality of Act 3-2013 that reformed the retirement system and modified the pensions that Commonwealth employees will subsequently receive.

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<sup>24</sup> We note here that the debts modified by the creditor agreement are obligations that, if breached, would negatively affect PREPA's credit.



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We must point out that in such cases there was a direct contractual relationship between the government and the plaintiffs, by virtue of the appointment of public employees whereby employment conditions and rights were established, which is not the case here. *Dominguez Castro* examined the constitutionality of Act 7-2009 regarding the firing of thousands of public employees, while *Trinidad Hernández* examined the constitutionality of Act 3-2013, which reformed the public employee pension system. In this second case, the act affected pension amounts, bonuses granted through special laws and terms governing retirement of employees who retire after such act became effective. Even when a direct contractual relationship existed in those cases, the Supreme Court upheld the constitutional validity of the socioeconomic acts in question, under the prevailing state interest standard, to deal with an emergency similar to this case's: the government and its entities' fiscal crisis and protecting the general welfare. Act 4-2016, Article 2, *Trinidad-Hernández*, supra, pp. 836-837; *Dominguez-Castro*, supra, pp. 88-89.

We reiterate that this is not the case here, since the 1974 Trust was not signed with the plaintiffs directly, nor is Act 4 a law directed at modifying PREPA's retirement system. Even so, we examine the contract impairment and equal protection claims.

As our Supreme Court has stated repeatedly, the *Prevailing State Interest Power* is the power acknowledged to be inherent to the State and is used to promote or protect public peace, morality, health and general welfare. *Dominguez-Castro*, page 36. The state interest power is broad. Therefore, when attempting to set limits to its scope, the circumstances and facts of each case must be considered. Economic instability has been repeatedly recognized as a fact that weighs in defining the scope of government action under the prevailing state interest power. *Id*, page 37. Thus, the legislature's broad authority to craft economic regulations that could result in impairment of contracts has been recognized, provided due process is guaranteed. *Id. Defendini-*

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*Collazo v. ELA*, 134 D.P.R. 28, 74 (1993). Such guarantee requires that the socioeconomic statute may not be unreasonable or arbitrary and the means employed must be rationally related with the interest that the legislation seeks to further. In other words, the test to be employed is the reasonability test, similar to the rational nexus test used under equal protection of laws claims. *Domínguez*, page 45. When the government is a contracting party, the scrutiny is more rigorous, so that the State's action cannot be exclusively in its own benefit. That does not prevent the exercise of the prevailing state interest, but rather the public welfare and safety interest must be weighed against the interest in protecting contractual relationships. *Dominguez Castro*, p. 81.

PREPA's bond degradation and its precarious financial situation have closed access to financial markets, and left it in a state where it cannot cover its debts.<sup>25</sup> Lack of liquidity and of access to financing jeopardize its existence and its key role as an instrument for the country's economic development. In this evident emergency situation, the Executive and Legislative powers exercised their prevailing state interest authority and created the bill that became Act 4-2016 to revitalize PREPA and give it a mechanism to return to financial markets, so it can recover liquidity and financial solvency. A first step was to reduce its large debt through the Creditors' Agreement and approval of Act 4-2016 as a mechanism to enable a restructuring process and to establish payment instruments. For this purpose, the act establishes a framework by creating PREPARC and the transition charge, among other measures. It must be concluded that Act 4-2016's terms are directly related to the purposes for which it was created: deal particularly, although partially, with the debt that prevents PREPA from having access to the bond market and improve its liquidity and financial situation.

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<sup>25</sup> See, Statement of Motives, p. 2, *Purpose of the Law*.

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Even assuming Act 4 impaired the contract between PREPA and the plaintiffs as to the pension fund, which we do not find, its validity would be sustained under the strictest test, because in addition to a real and substantial nexus, there is rational nexus to the prevailing state interest that is furthered. PREPA's revitalization and debt restructuring serves a general public interest, as its present financial condition not only harms its employees, but also affects all of us who live in Puerto Rico and the country's economic development.

Finally, we find that Act 4 does not violate equal protection of the law. It does not create suspicious classifications among persons or groups related to constitutionally protected categories or any fundamental rights, nor does it create a classification between the employees and pensioners and the bondholders or creditors. It creates a revitalization mechanism so PREPA can return to the capital markets.

Regarding the concern that the "competition" the transition charge and others may create in relation to PREPA's capacity to use more funds to pay the existing debt with the pension fund, we reiterate that Act 4 does not alter the priority of payments in the 1974 Trust, nor PREPA's authority to adopt measures that increase the general fund. PREPA is still obligated to pay its current expenses including its contribution to the pension fund. If PREPA can reduce part of its debt, reestablish its liquidity and improve its finances, it will be in a better position to continue paying its current expenses and contributions to the plaintiffs' pension plan.

\* \* \* \* \*

In sum, after examining the well-plead allegations in the amended complaint in the light most favorable to the plaintiffs, we conclude that the complaint must be dismissed as the contested legislation is valid, and the complaint thus does not set forth a claim upon which relief may be granted.



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V.

**JUDGMENT**

In light of the facts, the applicable law and the conclusions of law stated above:

1. Act 4-2016 and the actions taken thereunder, including Restructuring Order entered by the Energy Commission and the Restructuring Resolution issued by PREPARC, are found constitutionally valid;
2. PREPA and PREPARC's motion for Summary Judgment is granted, which the officers in their official capacity joined;
3. The Commonwealth's Motion to Dismiss is granted;
4. The complaint against the Energy Commission is denied as it does not state a claim upon which relief may be granted,
5. As a result of the foregoing, the complaint is dismissed in its entirety.

In San Juan, Puerto Rico, this day of December 19, 2016.



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**EXHIBIT C**

Rule 28(j) Letter from Board,  
*Assured Guar. Corp. v. Fin. Oversight & Mgmt. Bd for Puerto Rico*,  
No. 18-1165 (1st Cir. Nov. 12, 2025)



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November 12, 2018

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**VIA ECF**

Ms. Margaret Carter  
Clerk of the Court  
United States Court of Appeals for the First Circuit  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *Assured Guar. Corp. et al. v. Fin. Oversight & Mgmt. Bd. for Puerto Rico, et al.*  
(*In re: Fin. Oversight & Mgmt. Bd. for Puerto Rico*), Nos. 18-1165, 1166  
(Consolidated)

Dear Ms. Carter:

On behalf of Appellees and at the Court's request, we write to submit supplemental authority cited during Appellees' oral argument.

1. When Congress adopted Bankruptcy Code § 922 in 1988, it was unclear whether § 362(a) stayed a creditor from accepting voluntary payments from a debtor. In *In re Hellums, Inc.*, the Seventh Circuit noted that a creditor's "continued acceptance of [certain] payments under the circumstances was a violation of the stay regardless of the voluntary or involuntary nature of the payments." 772 F.2d 379, 380-81 (7th Cir. 1985) (per curiam) (internal quotation omitted). Other courts from approximately the same time held similarly. See *Knopfler v. Glidden Co.*, 149 B.R. 517, 521-22 (Bankr. N.D. Ill. 1992); *In re BNT Terminals*, 125 B.R. 963, 972-73 (Bankr. N.D. Ill. 1990); *Wills v. Heritage Bank (In re Wills)*, 226 B.R. 369, 378 (Bankr. E.D. Va. 1998). Congress inserted § 922(d) to ensure that a bondholder's acceptance of a voluntary payment was permitted and clarify that a creditor could apply funds in its possession to debts of municipal debtors.

2. Appellants cited one case supporting their argument that acceptance of voluntary payments does not violate the stay, *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 424 (6th Cir. 2000) (Reply Br. at 13), which post-dated the 1988 amendments by twelve years. *Pertuso* itself relied on *Morgan Guar. Tr. Co. v. American Sav. & Loan Ass'n*, 804 F.2d 1487, 1491 & n.4 (9th Cir. 1986), which explained that the precise character of the interaction between the creditor and debtor might determine whether a creditor's request for payment violates the stay. For example, the cases distinguished between communications "contain[ing] threats or harassment" and those that "merely set forth the fact that money is owing." *Id.* at 1491 n.4. Congress could have logically decided, to allay concerns by creditors, that it would clarify that voluntary payments by debtors do not violate the stay. Indeed, *Morgan* concluded Congress had added an earlier provision (§



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362(b)(10)) that expressly exempted “presentment” from the stay as just such a “clarifying amendment, not a change in the law.” *Id.* at 1492.

Respectfully submitted,

/s/Mark D. Harris

Mark D. Harris

Cc: All Counsel of Record (by ECF)