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

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	**CASE NO.:** NEPR-AP-2023-0003 **SUBJECT:** Bondholders' Initial Legal and Policy Brief

BONDHOLDERS' INITIAL LEGAL AND POLICY BRIEF

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Bondholders[1] respectfully submit their initial Legal/Policy Brief, pursuant to the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues*, pp.6-11 (12/22/2025) ("Issues List").

PRELIMINARY STATEMENT

This Brief addresses five legal and policy questions raised by the Hearing Examiner and set forth in the Issues List—affordability, treatment of legacy debt, treatment of pensions, the statutory burden of proof, and how to refund customers when the rate applicants double-collect ratepayer and outside funds for the same project. ***First***, considerations of "affordability" or "practicability" have no place in setting PREPA's revenue requirement, as confirmed by relevant law and the evidentiary record. Rather, such issues should be addressed through rate-design tools, including subsidies, revenue allocation, and gradual rate changes. Even if PREB were inclined to eschew standard ratemaking practice and consider affordability or practicability in setting the revenue requirement (it should not), no competent evidence has been presented that could provide a sound basis for PREB to do so. Imposing affordability constraints on this record would be an abuse of discretion.

Second, PREB's power and duty under governing law to "guarantee that [PREPA] meets its obligations to bondholders" is not preempted by PROMESA, and approving a placeholder LDR would not conflict with PROMESA, the automatic stay, or PREPA's 2025 fiscal plan. PREPA's argument that PROMESA field-preempts PREB's authority is meritless and divorced from the relevant statutory text, which shows Congress's intent for PROMESA to coexist with Commonwealth law. Nor does the placeholder LDR implicate conflict preemption, given that it

[1] Terms not defined here are the same as in *Bondholders' Initial Post-Hearing Brief on the Revenue Requirement* (1/23/2026) ("BH Initial Rev.Br."). All cites to regulatory docket items are within this proceeding unless otherwise noted.

does not require PREPA to repay any debt at this time and merely facilitates PREPA's exit from Title III—thus serving PROMESA's objectives. The automatic stay and the 2025 fiscal plan do not bar the LDR for the same reasons.

Third, PREPA twists itself into knots trying (and failing) to explain the obvious inconsistency between its arguments that: (i) it is proper to charge ratepayers hundreds of millions of dollars now for legacy, unsecured pension obligations that are subject to adjustment in the Title III proceeding; but (ii) it is *not* proper to charge ratepayers *zero dollars* now for legacy, *secured* bond obligations that are likewise subject to adjustment in the Title III proceeding. Indeed, even FOMB, PREPA's sole legal representative in the Title III case, has made clear it agrees with Bondholders that pensions are not entitled to priority payment relative to the bonds.[2] PREPA wants to get pensions, but not bonds, paid through rates, and PREPA will not let the law get in its way. PREB should decline PREPA's baseless invitation to "favor" pensions and, for the reasons discussed in Bondholders' revenue requirement briefs,[3] allow the Commonwealth to determine how it wants to pay for its political preferences as to pensions (just as it has for years).

Fourth, a "presumption of prudence" in favor of the rate applicants must be rejected, because such a construct would obliterate the statutory burden of proof. Act 57-2014 unambiguously places the burden of proof on rate applicants and contains no references to a presumption of prudence, a requirement for other parties or PREB to disprove the propriety of

[2] "'[P]ast due' amounts allegedly due to SREAEE … do not meet the definition of Current Expenses as used in section 505 of the Trust Agreement," and "only budgeted Current Expenses could have priority under section 505." Case 19-AP-405-LTS, ECF No. 53, pp.10-11 (D.P.R. 2/3/2020) ("FOMB Title III Pension Brief").

[3] BH Initial Rev.Br. pp.94-95; BH Reply Rev.Br. pp.64-65.

proposed costs, or anything similar. Inserting such a construct would do violence to the statutory language duly enacted by the legislature, constituting a clear abuse of discretion.

Even if PREB could override the legislature and unilaterally amend Act 57-2014 to insert a presumption of prudence (it cannot), such a presumption would be an exceedingly unwise policy choice. When it is used at all—and it is not in many jurisdictions—the presumption applies to IOUs, in competitive markets, seeking reimbursement of already-incurred costs. *None* of those elements is present here. PREPA is a municipal, monopoly utility seeking preapproval of prospective, estimated costs. Unlike in the IOU context, if the rate applicants expend ratepayer money on imprudent costs, there is no mechanism for PREB to later disallow those costs, making careful scrutiny in the rate case critical. The applicants must be held to their explicit statutory burden.[4]

Finally, there is no legal or practical impediment to refunding customers when the applicants double-collect ratepayer and outside funds for the same project, rendering ratepayer funding unnecessary. Refunds to avoid double-collection are, indeed, the only just and reasonable outcome under Act 57-2014. It is also fully consistent with PREB's precedent here and elsewhere, including in the Provisional Rate Order (which put the applicants and customers on notice of rate reconciliation mechanisms, and made clear that outside funding must be prioritized over ratepayer funding), and in the quarterly fuel and purchased-power reconciliation proceeding (where customers are routinely refunded for over-collections under a longstanding mechanism). Accordingly, there is nothing novel about PREB creating a similar mechanism in its final rate

[4] Notably, the notion of applying a presumption of prudence was not raised until late in this case, after it became clear during the hearing that the rate applicants had *not* carried their statutory burden as to a great many proposed costs. But the legal goalposts should not be shifted to compensate for the applicants' inadequate showing.

order. What *would* be anomalous is allowing the utilities to retain customers' funds that have been rendered redundant by outside funding.

ARGUMENT

I. Affordability and Practicability

Affordability is addressed in the relevant statutes in two ways: ***First***, as an aspirational goal of Puerto Rico's energy policy in Acts 57-2014 and 83-1941. ***Second***, as a criterion that PREB shall "take into account" in rate design in Act 17-2019. Critically, affordability does ***not*** play a role in determining the utility's revenue requirement. Rather, the statutes direct that PREB must set rates that are sufficient to enable PREPA to cover all reasonable, prudent, and necessary costs, and to provide "reliable and adequate" service. Only *after* the revenue requirement is determined does affordability enter the analysis during the rate-design phase, when it may be "take[n] into account" as one factor in determining cost allocation among customers and whether certain customers should receive subsidies or discounts. In other words, affordability does not inform how much revenue the utility requires.

Practicability—which the Hearing Examiner defined as "whether [customers] will pay what is necessary to produce the revenues required by the approved revenue requirement"[5]—is not mentioned in the relevant statutes. Like affordability, practicability is also a rate-design consideration and is *not* a basis to reduce the revenue requirement below the otherwise necessary, prudent, and reasonable amount. Indeed, doing so would violate governing law and standard ratemaking principles. In any event, there is no competent record evidence that PREPA's customers would not pay what is necessary to produce revenues sufficient to cover reasonable, prudent, and necessary costs, particularly if those costs are properly allocated among customer

[5] Issues List p.7.

classes and groups. Thus, resolving the affordability question also resolves the practicability question.

A. *Puerto Rico Statutes Discuss Affordability Primarily as an Aspirational Goal.*

Puerto Rico's energy statutes generally reference rate affordability as one of several policy goals. For example, Act 57-2014 identifies it as one of the statute's "common goals," alongside providing "reliable," "efficient," and "transparent" electric power service. Act 57-2014, Statement of Motives.[6] And in Act 83-1941—which created PREPA as a public corporation—affordability is mentioned once, again as one of PREPA's broad policy objectives. Act 83-1941, §6(a). Tellingly, affordability is *not* mentioned in Section 6A, which specifically discusses PREPA's rate-review process. *Id.*, §6A. Thus, as the Hearing Examiner noted, affordability does not have "a direct connection to the setting of just and reasonable rates. Something that's mentioned [a]s an aspirational concept." 12/11 Tr. 222:13-19.

Although Act 17-2019 (at §1.5(3)(a)) includes "affordability" as one factor PREB may consider in ratemaking, it limits "affordability" determinations to the rate-design stage. *Id.* §1.4(vi) ("*[T]he design of the rate structure* shall take into account the goal of providing affordable electricity prices to all consumers, particularly to low-income consumers."). Thus, by statutory directive, affordability is accounted for in rate design, not in determining the revenue requirement.

B. *Practicability Is Not Mentioned in PREB's Statutory Obligations.*

Puerto Rico's energy statutes do not use the term "practicability" as defined by the Hearing Examiner—"whether [customers] will pay what is necessary to produce the revenues required by

[6] Apart from the Statement of Motives, Act 57-2014 references "affordability" only in connection with the development of "performance-based incentives and penalty mechanisms," which are not being developed here. Act 57-2014, §6.25B(a).

the approved revenue requirement"[7]—or otherwise with respect to establishing the revenue requirement. Even assuming there could be some theoretical situation in which a revenue requirement is so extraordinarily high that the entire customer base cannot pay, there is no record evidence that is the case here. *See infra* Part I.E. To the extent certain customer classes or groups might have difficulty paying a higher rate, there are rate-design tools to solve for that, including revenue allocation, subsidies,[8] and gradual rate changes. In all events, under the governing statutes, practicability is not considered when establishing the revenue requirement, but rather would be taken into account (if at all) in rate design.

C. *Puerto Rico Law Does Not Permit Affordability or Practicability Concerns to Reduce the Revenue Requirement.*

As discussed, Puerto Rico energy statutes reference affordability in ratemaking only in connection with "the design of the rate structure" (Act 17-2019, §1.4(vi))—not to reduce a revenue requirement that is necessary to achieve the statutory ends. Likewise, practicability addresses whether needed revenues will actually be covered by rates; that is, whether the rates, practically speaking, will be sufficient to cover PREPA's reasonable, prudent, and necessary costs and to provide adequate service.

Consistent with these principles, PREB has acknowledged that practicability and affordability considerations should not be used to reduce PREPA's revenue requirement. For example, PREB has stated that although affordability is an "important component" of the overall analysis, "[t]otal revenues must be sufficient to make service adequate," and "[r]ates that are below the level needed to make service adequate are not just-and-reasonable rates." PRO p.34; Ex.52,

[7] Issues List p.7.

[8] Indeed, a large share of PREPA's residential customers are already subsidized, such that they do not pay the GRS rate.

p.23 n.47. Consistent with that view, PREB has indicated it would address affordability as part of the rate-design process, such as by using the rate-design phase to provide a discount to a subset of customers by charging them zero dollars for riders in their class-specific rates. *See* Ex.52, p.27.

The Hearing Examiner has likewise acknowledged that "under the statutes, the Energy Bureau must set rates *sufficient to fund* the electrical service that all customers—residential, commercial, industrial, governmental—need." *HE Order on Miscellaneous Items*, p.13 (11/24/2025).[9] Thus, Puerto Rico law, by its terms and as interpreted by PREB and the Hearing Examiner, establishes that affordability and practicability issues should not be considered in determining PREPA's revenue requirement.

D. *Witness Testimony Confirms That Affordability and Practicability Are Properly Considered during the Rate-Design Phase.*

Witness testimony confirms that consideration of affordability and practicability is properly confined to the rate-design stage. Dr. Tierney explained that establishing an appropriate revenue requirement is intended to "ensur[e] that the utility is given enough money to do its job," and that considering affordability at this stage would lead to the "utility … not … getting the amount of money that it needs." 12/11 Tr. 435:5-16, 437:3-7. Dr. Tierney further testified that the impact of rates necessary to satisfy an appropriate revenue requirement can be addressed during the cost-allocation and rate-design phase. 12/11 Tr. 436:2-7. Specifically, PREB could allocate "more of the costs to one rate class or less," or PREB could set discounted rates for certain customer classes or groups. 12/11 Tr. 436:17-24. Yet another option would be for PREB to amortize cost recovery over several years, either by "moderating the pace and degree of investment programs" or by "spreading recovery of extraordinary expenses." Ex.52, p.25.

[9] All emphases are added unless otherwise noted.

Cao conceded that he is not aware of any instance in the United States "where affordability has become a factor in determining the revenue requirement." 12/11 Tr. 368:16-20. LUMA agreed that affordability should be addressed through rate design, including through targeted subsidies. For example, Shannon testified that rates could be adjusted for low-income customers. 12/15 Tr. 382:10-383:20. His revenue allocation analysis also assigned relatively less cost to the residential class. Ex.20, p.18. And LUMA proposed exempting or discounting customers in the Lifeline Residential Service (LRS), Residential Service for Public Housing Projects (RH3), Residential Fixed Rate for Public Housing under Ownership of the Public Housing Administration (RFR), and Life Preserving Equipment Discount (LP) classes from contributing to the LDR, after the placeholder is filled. Ex.362.5. Bondholders do not oppose targeted affordability accommodations such as this, so long as those measures do not reduce overall collections. BH Initial RD Br. p.5 n.8.

E. *No Witness Presented Evidence on Affordability or Practicability Warranting Rate Reductions.*

Even if issues of affordability or practicability could be considered in setting PREPA's revenue requirement (they cannot), there is no record evidence supporting a rate reduction on either basis. For example, no witness raising affordability concerns performed a study on elasticity of demand, which would be necessary to prove that customers would reduce energy consumption in response to higher rates or that such rates would be uncollectable. *See, e.g.*, 294:14-295:3 (Cao conducted no elasticity analysis). In contrast, both Estrada and Dr. Tierney confirmed the prevailing view that electricity demand is *not* elastic, particularly over a three-year rate period. 12/11 Tr. 454:8-12; 12/12 Tr. 18:9-23, 20:6-18; Ex.72, p.13. SESA's cross-examination of Estrada also established that a base-rate increase in May 2019 did *not* impact customers' consumption. 12/12 Tr. 64:25-65:9. Thus, there is no competent evidence suggesting that a rate increase

sufficient to permit PREPA to cover its necessary, prudent costs would lower demand, be uncollectable, or otherwise adversely affect customer behavior.

Cao's bald statement that a rate increase would cause severe economic consequences was thoroughly undermined. Among other things, Cao failed to determine the effects of the proposed rate increase on real GNP, total employment, or electricity demand, and he admitted that there has never been a so-called utility death spiral from increased rates in the United States. 12/11 Tr. 307:10-308:23, 337:3-19, 342:9-22. Cao also was compelled to admit that he ignored various positive data regarding the Puerto Rico economy, including generally positive unemployment, employment, and GDP data. Nor does the record support implementing a "share-of-wallet" measure of affordability. *See* BH Initial Rev.Br. pp.96-99. "Share of wallet" is not a ratemaking concept and does not appear anywhere in the governing statutes. In addition, many low-income households are already subsidized, making a share-of-wallet limitation irrelevant to them. 12/11 Tr. 301:12-14, 365:1-368:5. Moreover, as the Hearing Examiner noted, applying a share-of-wallet approach to wealthier customers "result[s] in giving a break to other customers who don't need it." *Id.* 380:15-381:3. Finally, Cao was unable to cite a single instance in which a share-of-wallet limitation was used for ratemaking. *Id*. 355:17-23.

In sum, no Puerto Rico statute directs the consideration of affordability or practicability to determine an appropriate revenue requirement. To the extent they require PREB to consider affordability and practicability, it is only as part of the rate-design process. Even if that were not the case (it is), there is no competent evidence that a rate increase would not be affordable or practicable.

II. Legacy Debt and Unsecured Debt

Act 57-2014 vests PREB with authority to "ensure that energy costs are just and reasonable by overseeing and reviewing the rates of PREPA and any other electric power service company."

22 L.P.R.A. §1051(r), Act 57-2014, *amended by* Act 17-2019. Under Section 6.3(p) of Act 57-2014, PREB must "[e]nsure that the powers and authorities exercised by [PREB] over PREPA, including those related to rate review or approval, guarantee that PREPA meets its obligations to bondholders." 22 L.P.R.A. §1054b(m); PRO pp.31-32.[10] Thus, under Puerto Rico law, PREB is charged with ensuring PREPA has the resources to repay its bond obligations.

Those obligations are known. The First Circuit Court of Appeals held in 2024 that the amount of debt outstanding as of the commencement of PREPA's bankruptcy is "the principal plus matured interest of the bonds, or roughly $8.5 billion." *In re Fin. Oversight & Mgmt. Bd.*, 121 F.4th 280, 312 (1st Cir. 2024). That opinion is final and not subject to further appeal. To date, PREPA's bond obligations have not been reduced or otherwise adjusted by the Title III court. As discussed in Bondholders' Rate Design briefs,[11] PREB can advance its statutory duties by establishing a placeholder LDR to efficiently implement any future resolution of legacy debt. The LDR will not include *any* specific amount for debt and, pending completion of PREPA's bankruptcy, will not require PREPA to collect funds to pay legacy bond debt.

PREPA argues that PREB's statutory mandate to "guarantee that [PREPA] meets its obligations to bondholders" and establish the placeholder LDR is preempted by PROMESA. *See PREPA's Brief on Rate Design*, pp.4-5 (2/17/2026) ("PREPA Initial RD Br."); *PREPA's Motion to Vacate Hearing Examiner's Orders*, pp.8-12 (11/10/2025) ("PREPA Motion to Vacate"). As

[10] *See also PREC v. FOMB*, Adv. Proc. 18-00021, ECF No. 1, ¶ 14 (D.P.R. 3/4/2018) (PREB recognizing that it is required by law to "prevent[] its actions from impairing PREPA to meet its contractual obligations to bondholders," and that rates established by PREB "must produce revenues sufficient for the payment of the" bonds).

[11] *See Bondholders' Initial Post-Hearing Brief on Rate Design*, p.5 (2/17/2026) ("BH Initial RD Br."); *Bondholders' Post-Hearing Reply Brief on Rate Design*, pp.4-5 (3/3/2026) ("BH RD Reply").

shown below, PREPA's preemption arguments fail because a placeholder LDR neither encroaches on the Title III court's exclusive authority to restructure PREPA's debt nor conflicts with PROMESA or any future Title III court decisions.

A. *Field Preemption Does Not Apply to the LDR.*

Field preemption applies when "Congress intend[ed] federal law 'to occupy the field' [of] state law." *Attrezzi LLC v. Maytag Corp.*, 436 F.3d 32, 41 (1st Cir. 2006). The federal law must evidence "the clear and manifest purpose of Congress" to supersede the powers of the states in a given field. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009).

PREPA argues that field preemption precludes PREB from considering legacy debt in this proceeding because (i) PROMESA Title III "grant[s] the Title III court the sole authority for restructuring PREPA's Legacy Bond Debt," and (ii) the certified 2025 PREPA fiscal plan required under PROMESA Title II prohibited rate-funding for legacy debt.[12] But PROMESA does not empower the Title III court to set rates—it simply empowers the Title III court to adjust PREPA's debts. Nor does PROMESA substitute the fiscal plan for PREB's ratemaking authority.

i. *Title III does not impose field preemption.*

Title III is "largely modeled on municipal debt reorganization principles set forth in Chapter 9 of the Bankruptcy Code." *In re Fin. Oversight & Mgmt. Bd.*, 919 F.3d 121, 124-26 (1st Cir. 2019). It is blackletter law that absent "a clear and manifest" intent to displace "traditional state regulation," "the Bankruptcy Code [is] construed to adopt, rather than to displace, pre-existing state law." *BFP v. RTC*, 511 U.S. 531, 544-45 (1994) (collecting cases).[13] PROMESA

[12] *See PREPA's Response Regarding Consideration of Legacy Obligations*, ¶ 9 (10/27/2025).

[13] The Commonwealth has previously recognized that the Bankruptcy Code does not effectuate field preemption. *See, e.g.*, *Brief of Appellant Commonwealth of Puerto Rico*, Case 15-1218,

does not evince "a clear and manifest" intent to displace Act 57-2014's consideration of bondholder debt in ratemaking. Rather, PROMESA confirms that Congress intended Title III's debt-restructuring mechanism to coexist with Commonwealth law.

First, Section 4 of PROMESA provides that Title III "shall prevail over any general or specific provisions of territory law, State law, or regulation that is *inconsistent* with this chapter." 48 U.S.C. §2103. When a statute preempts an "inconsistent" state law, that law is preempted only "to the extent it *actually interferes* with the methods by which the federal statute was designed to reach its goal." *Ting v. AT&T*, 319 F.3d 1126, 1137 (9th Cir. 2003). Thus, Congress's inclusion of Section 4 shows it did not intend to simply preempt *all* Commonwealth law related to the consideration of debt in ratemaking. *See Ishikawa v. Delta Airlines Inc.*, 343 F.3d 1129, 1133 (9th Cir. 2003) ("[T]he express provisions for preemption of some state laws, *the inconsistent ones*, imply that Congress intentionally did not preempt state law generally.").

Second, Section 303 does preempt territorial laws prescribing "a method of composition of indebtedness or a moratorium law" and "unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality." 48 U.S.C. §2163(1)-(3). At the same time, however, Section 303 provides that Title III "does not limit or impair the power of a covered territory to control … the territory or any territorial instrumentality thereof in the exercise of the political or governmental powers of the territory or territorial instrumentality, including expenditures for such exercise." *Id.* §2163. These two provisions yield two potent conclusions. One, PROMESA clearly does *not* preempt all Commonwealth law relating to PREPA and thus, because Congress did not intend to entirely occupy the regulatory

pp.18-19 (1st Cir. 3/16/2015); *Reply Brief of Appellant Commonwealth of Puerto Rico*, Case 15-1218, pp.25-29 (1st Cir. 5/4/2015).

field, PREPA's field-preemption argument fails. Two, the specific preemption applies to adjustment of PREPA's debts, not setting its rates or ensuring that rates satisfy PREPA's duty to meet its obligations to bondholders after the Title III proceeding.

ii. *Title II does not impose field preemption.*

Title II of PROMESA, which states FOMB will certify fiscal plans that "provide for a debt burden that is sustainable" and "include a debt sustainability analysis" (48 U.S.C. §2141(b)(1)(E)(I)), also does not field-preempt PREB's duties under Act 57-2014.

Like Title III, the text of Title II unambiguously shows that Congress intended PROMESA and Commonwealth law to coexist. For example, under PROMESA Section 201(b), all fiscal plans "shall … provide for estimates of revenues and expenditures in conformance with agreed accounting standards and be based on … *applicable laws*." 48 U.S.C. §2141(b)(1)(A)(i); *see also* H.R. Rep. No. 114-602, at 112 (2016) (FOMB "will provide guardrails for the Puerto Rico government, but will not supplant or replace the territory's elected leaders, who will retain primary control over budgeting and fiscal policymaking."). PROMESA Section 201(b) also requires a fiscal plan to "respect the relative lawful priorities or lawful liens, as may be applicable, in the constitution, other laws, or agreements of a … covered territorial instrumentality in effect prior to June 30, 2016." 48 U.S.C. §2141(b)(1)(N); *see also Wal-Mart P.R., Inc. v. Zaragoza-Gomez*, 834 F.3d 110, 123-24 (1st Cir. 2016) (FOMB "must … respect the Commonwealth's 'relative lawful priorities' that were in effect prior to PROMESA's enactment."). Thus, Title II confirms that fiscal plans are subject to, and cannot field-preempt, applicable laws that pre-date PROMESA—including Act 57, which was enacted in 2014.

B. ***Conflict Preemption Does Not Apply to the LDR.***

Conflict preemption applies when state law "actually conflicts with federal law, that is, when compliance with both state and federal law is impossible, or when the state law stands as an

obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Fitzgerald v. Harris*, 549 F.3d 46, 53 (1st Cir. 2008). That is plainly not the case here.

i. *The LDR does not conflict with Title III.*

PREPA contends that a placeholder LDR under Act 57-2014 is preempted because it conflicts with PROMESA Title III, but review of the relevant provisions demonstrates there is no conflict. PREPA Motion to Vacate ¶ 17 (alleging conflict because there is no Title III plan that "currently authorize[s] PREPA to charge rate-based funding for" legacy bondholder debt). Put simply, the LDR does not conflict with Title III because it does not require PREPA to repay any specific amount of debt—it is simply a placeholder, with no specific number, until the legacy debt is determined following the Title III case. The placeholder LDR actually *supports* PROMESA and any future Title III court determination by enabling PREPA to more efficiently collect revenues for repayment of legacy debt after the bankruptcy.[14]

Section 1129(a)(6) of the Bankruptcy Code, made applicable under Section 301 of PROMESA, illustrates how Act 57-2014 does not conflict with the Title III court's authority to restructure PREPA's debt. Section 1129(a)(6) provides that a plan of adjustment may be confirmed only if any "governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor *has approved any rate change* provided for in the plan, or such rate change *is expressly conditioned on such approval*." 11 U.S.C. §1129(a)(6); 48 U.S.C. §2161 (incorporating Section 1129(a)(6) into PROMESA). As one court explained, Section 1129(a)(6) "suggests that the commission retains significant authority to govern rates throughout the bankruptcy," and that the regulatory commission "retains its traditional control over rates prior

[14] Establishing the placeholder LDR also yields significant efficiencies and reduces administrative burden. *See* BH Initial RD Br. pp.3-5; BH RD Reply pp.2-4.

to the finalization of a plan." *In re Cajun Elec. Power Coop., Inc.*, 185 F.3d 446, 453 (5th Cir. 1999) ("*In re Cajun*"); *see also id.* 455-59 (holding that bankruptcy court did not have jurisdiction to oversee rates and therefore lacked power to order regulator to terminate an escrow for debt service).

Similarly, Section 314(b)(5) of PROMESA provides that a court shall confirm a plan if "any legislative, *regulatory*, or electoral approval *necessary under applicable law* in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval." 48 U.S.C. §2174(b)(5). Because PROMESA explicitly requires regulatory approval of any rate structure necessary to implement a plan of adjustment, plan confirmation will necessarily depend on such approval. *See In re City of Colo. Springs Spring Creek Gen. Impr. Dist.*, 177 B.R. 684, 692-95 (Bankr. D. Colo. 1995) (denying confirmation because statute required electoral approval and debtor failed to obtain such approval). Thus, PREB's statutory duty to ensure that PREPA meets its obligations to bondholders under Act 57-2014, including by approving the placeholder LDR, cannot "conflict" with Title III, because any rate modifications resulting from a future Title III plan of adjustment will be subject to PREB's approval.

ii. <u>*The automatic stay does not bar the LDR.*</u>

The LDR also does not violate the automatic stay because it is a placeholder, meaning it does not include any specific debt amount and does not require PREPA to repay any specific amount of debt pending completion of the Title III process. *See* 11 U.S.C. §362(a)(3) (a bankruptcy petition "operates as a stay, applicable to all entities, of … any act to *obtain possession of property* of [or from] the [debtor's] estate … or to *exercise control over property* of the estate" under Section 362(a)); 48 U.S.C. §2161(a) (incorporating the automatic stay into PROMESA). In any case, Section 362(b)(4) exempts PREB's exercise of regulatory authority from the automatic stay. *See* 11 U.S.C. §362(b)(4) (providing exception from the stay for the "commencement or

continuation of an action or proceeding by a governmental unit … to enforce such governmental unit's … police and regulatory power"); 48 U.S.C. §2161 (incorporating Section 362 into PROMESA). In enacting Section 362(b)(4), "Congress created a specific exception from the automatic stay … for actions or proceedings by governmental units to enforce their police and regulatory power." *In re Cajun*, 185 F.3d at 453. Utility regulation "is one of the most important of the functions traditionally associated with the police power of the States." *In re Just Energy Grp., Inc.*, 57 F.4th 241, 251 (5th Cir. 2023). Thus, "the regulatory function is not ended by the bankruptcy of a" regulated entity such as an electric utility. *In re NextWave Pers. Commc'ns*, 200 F.3d 43, 59 (2d Cir. 1999). Indeed, "[t]he Bankruptcy Code clearly anticipates ongoing governmental regulatory jurisdiction *while a bankruptcy proceeding is pending*." *In re Mirant Corp.*, 378 F.3d 511, 523-24 (5th Cir. 2004) (noting the "Bankruptcy Code's assumption that a debtor is subject to ongoing agency regulation while in bankruptcy"); *see also* Memorandum Order Denying Urgent Motion to Enforce the Automatic Stay, Case 17-3283-LTS, ECF No. 30155, pp.10-11 (D.P.R. 10/27/2025) (holding that DACO's action was not subject to the automatic stay because the action "carries out DACO's statutory mandate"). PREB's ratemaking authority, including to establish an LDR, falls squarely within this stay exception. *See In re Cajun*, 185 F.3d at 451, 455-59.

iii. <u>*The LDR does not conflict with Title II.*</u>

The LDR also does not conflict with FOMB's authority under PROMESA Title II to certify fiscal plans that include a debt sustainability analysis. By approving the placeholder LDR, PREB would not be determining the repayment amount of legacy debt—it would simply be implementing a rider to be populated after resolution of the Title III proceeding. *Hearing Examiner's Order on Objections to Testimony*, p.2 (11/3/2025) ("PREPA's argument that the certified Fiscal Plan prohibits debt payments goes nowhere because [PREB] would not be ordering debt payments.").

The LDR is fully consistent with the requirements of PROMESA Title II—which established FOMB to "achieve fiscal responsibility *and access to the capital markets*" for PREPA (48 U.S.C. §2141(b)(1))—by signaling to the capital markets that PREB "wants to see a timely commencement of recovery of … whatever legacy debt amount that comes out of the Title III court." 12/9 Tr. 479:5-12.

PREPA argues that the LDR would conflict with FOMB's Title II powers because FOMB assertedly determined that there is "insufficient 'headroom' to raise rates for debt service" after paying for PREPA's operating and capital expenses. PREPA Motion to Vacate ¶¶ 21-23, Ex. A, p.3. But any plan of adjustment based on FOMB's debt sustainability analysis in the fiscal plan is merely preliminary because it remains subject to the Title III court's approval.

Indeed, as the Title III court has acknowledged, "the Court is not conclusively bound to adopt a fiscal plan's debt sustainability analysis." Memorandum Order Denying Debtor's Motion in Limine to Exclude Evidence Challenging Oversight Board's Certification Determinations, Case 17-4780-LTS, ECF No. 3863, p.4; *see also id*. p.7 (PROMESA affords parties the "opportunity to test or disprove the projections and economic assumptions upon which the [FOMB] has relied"); Tr. of 5/8/2023 Status Conf., Case 17-03283, ECF No. 24403, 20:13-17 (Title III court: FOMB "has unprecedented powers, responsibility, and authority conferred by Congress under PROMESA; but last I read the statute, infallibility wasn't one of them, as to particular data points, or the very specific outcomes of analyses.").[15] Thus, PREPA's attempt to elevate FOMB's debt

[15] *See also* Tr. of 7/10/2024 Status Conf., Case 17-03283, ECF No. 27823, 9:8-23 ("The Court is deeply skeptical that the [FOMB] will be able to win and sustain wins on several of the positions and assumptions articulated to date.… *The Board continues to appear to assume that PROMESA confers permanent infallibility*.…").

sustainability analysis to a final proclamation binding on PREB (and the Title III court) is misguided and contrary to the Title III court's own determinations.

Lastly, PREPA does not identify any language in Titles II or III—or any other part of PROMESA—that provides FOMB with unilateral power to set rates or prevents PREB from including a placeholder LDR that would allow PREPA to promptly collect rates after Title III resolution. Nor can it. As the Hearing Examiner acknowledged, "[n]othing in PROMESA preempts the Energy Bureau from carrying out its obligation to make rates just and reasonable…. The FOMB doesn't set rates, the Energy Bureau does. The FOMB doesn't decide what nondebt costs go into rates, the Energy Bureau does…. The FOMB does not build the revenue requirement, the Energy Bureau does." *Order Establishing Agenda and Procedures*, p.7 (9/29/2025).

C. ***Preemption Does Not Apply to the LDR If Unsecured Debt Is Included.***

PROMESA also does not preempt the LDR if unsecured debt is included, because the rider will not include any specific amount of debt or require PREPA to repay debt at this time. That said, PREB does not owe any statutory duty to holders of unsecured debt. *See* Act 57-2014, §6.3(p) (requiring PREB to guarantee PREPA meets its obligations to *bondholders*); BH RD Reply pp.7-8. Moreover, PREPA's unsecured creditors did not submit any evidence in support of an unsecured debt rider, despite the UCC intervening in this case and having multiple opportunities to do so. PREPA's proposed plan of adjustment also does not provide that unsecured creditors would be repaid through rates. BH RD Reply pp.1-2, 8.

III. <u>Pension Costs</u>

Puerto Rico law requires PREPA to propose just and reasonable rates that are sufficient to cover debt service on its bonds and "*reasonable expenses* incurred by" PREPA in operating the system. Act 33-2019 §24. The rate applicants bear the evidentiary burden of establishing that PREPA's rates are just, reasonable, and at the lowest reasonable cost. *See infra* Part IV; *see also*

Act 57-2014, §6.25(b), (c). PREB does not have any obligation to establish a rate to cover pensions. Although Puerto Rico law requires PREB to approve a rate covering debt service on the bonds, there is no comparable language requiring PREB to cover pension costs. *See* Act 4-2016 §9(c). The pension request is neither just nor reasonable for the reasons Bondholders explained in prior briefs. *See* BH Initial Rev.Br. pp.92-95; BH Reply Rev.Br. pp.62-65.

Yet, PREPA seeks ***$307M*** from ratepayers to fund pensions during this rate period alone (plus $11.9M of alleged pension administration costs). BH Initial Rev.Br. pp.93-95; BH Reply Rev.Br. pp.62-65. Although PREPA says it included pension costs in prior rate requests, PREPA apparently "used the rate revenue to meet other needs." *SRAEE's* [*sic*] *Responses to October 27th, 2025 Hearing Examiner Order*, p.5 (11/18/2025) ("SREAEE Pension Brief").[16] PREPA and SREAEE never adequately explained why PREPA used these revenues to cover other alleged needs. That alone should give PREB pause regarding the propriety of PREPA's pension request.

Further, in a recent motion, PREPA states that if PREB dismisses this rate proceeding, PREPA will seek approval of a provisional rate under Section 6.25(d) of Act 57-2014 to cover PREPA's near-term pension costs. *See PREPA Motion for Reconsideration*, ¶ 5.8 (2/21/2026) ("Case Dismissal Motion").[17] Any such provisional rate request, PREPA says, will include "detailed financial evidence demonstrating imminence, quantifiable cash flow impact, absence of alternative liquidity sufficient to bridge the gap, and the precise duration necessary to prevent

[16] PREPA thereafter used Commonwealth loan proceeds and FEMA funds to fund its pension obligations. *See PREPA's Motion in Compliance*, ¶¶ 47-50 (11/21/2025) ("PREPA Pension Brief").

[17] As Bondholders explained in their *Motion to Enforce PREB's February 18 Order* (2/25/2026), PREPA's Case Dismissal Motion should be treated as not filed.

interruption of payments." *Id.* ¶ 5.16. PREPA also states it is "currently working on the preliminary calculations of the pension rider revenue projections." *Id.*

These recent statements by PREPA drive home the utter lack of record evidence supporting PREPA's request for ratepayers to fund pensions. *See* BH Initial Rev.Br. pp.92-95; BH Reply Rev.Br. pp.62-65. PREPA now admits it has *not* done these things in the current proceeding and effectively seeks to dismiss so it can get another bite at the apple. That improper request should be denied, along with PREPA's unsubstantiated pension-funding request—which also fails for the legal reasons discussed below.

A. *PROMESA Does Not Preempt Consideration of Pensions.*

The Hearing Examiner inquired whether PROMESA preempts consideration of pensions here. PROMESA does not have the broad preemptive effect that PREPA has argued. *See supra* Part II.

That said, PREPA's position that PROMESA preempts consideration of debt owed to Bondholders, but not pensions, is fundamentally inconsistent. PREPA cannot have it both ways. PROMESA does not preempt PREB's ability to provide for the payment of legacy debt owed to Bondholders through the LDR—which, despite PREPA's strawman arguments, does *not* set the amount of debt to be paid and merely establishes a placeholder for the payment of bond debt after the Title III process. Whereas Commonwealth law requires PREB to set rates sufficient to pay amounts owing to Bondholders, it does not require PREB to set rates sufficient to cover legacy pension costs if those costs would be unreasonable, as discussed below. PREPA thus has it exactly backwards.

B. *There Is No Basis to Treat Pensions More Favorably.*

Despite apparently diverting rate revenues from pensions to other alleged needs, PREPA now seeks to pay pension debts from rate revenues, while simultaneously 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.[18] PREPA attempts to justify this obvious inconsistency by claiming PROMESA "favors" pensions. PREPA Initial RD Br. p.5 n.6. Not so. The pensions are also pre-petition (*i.e.*, pre-bankruptcy) claims subject to adjustment in Title III, and no provision in PROMESA favors pensions over other legacy debts. On the contrary, PROMESA explicitly requires "respect" for "lawful liens," such as the liens held by Bondholders securing their claims. 48 U.S.C. §2141(b)(1)(N). If anything, PROMESA favors payment of secured bond debt over other obligations.

i. *Pension claims are subject to adjustment in Title III.*

Title III of PROMESA provides for the discharge of "claims,"[19] which are defined in the Bankruptcy Code to include a "right to payment," regardless of whether such right is contingent, unliquidated, unsecured, or unmatured. 11 U.S.C. §101(5). Because this term captures both unmatured and contingent obligations, "claims" includes payment obligations not presently due. *See In re Oxford Mgmt. Inc.*, 4 F.3d 1329, 1335 n.7 (5th Cir. 1993) (claims include commissions owed by debtor on rents to be collected in the future); *In re Mallinckrodt PLC*, 99 F.4th 617, 621 (3d Cir. 2024) (claims include right to royalty payments).

Contrary to SREAEE's arguments that PREPA's post-petition pension obligations are not "affected by the pendency of the PROMESA Title III case,"[20] those obligations are claims

[18] Capitalized terms not defined in Part III shall have the meanings in *Intervenor Bondholders' Response to Hearing Examiner's Order* (12/5/2025) ("Bondholder Pension Response"). The Bondholder Pension Response also includes a more detailed discussion of facts relevant to the pension claims, which is incorporated herein by reference.

[19] 11 U.S.C. §944; 48 U.S.C. §2161 (making Section 944 applicable in Title III).

[20] *SREAEE's Revenue Requirement Reply*, pp.4-5 (2/9/2026) ("SREAEE RR Reply").

regardless of whether they are unmatured or unliquidated. SREAEE previously conceded that it was a bankruptcy creditor and that its rights to contributions from PREPA arose from the bylaws and regulations governing SREAEE, adopted long before PREPA filed for bankruptcy (the "Bylaws").[21] *See* SREAEE Proof of Claim, Exhibit A; *see also* PREPA Pension Brief ¶ 6 (conceding that contributions are made pursuant to the Bylaws). The Bylaws provide for pensions to retired employees and for PREPA to make monthly contributions to SREAEE on account of those pensions. *See* Bylaws, Art. 5(2). PREPA's funding obligations therefore stem from a *pre-petition* contract with the SREAEE (*i.e.*, the Bylaws), and any rights to receive those contributions qualify as "claims" subject to discharge in bankruptcy. *See In re US Pipe & Foundry Co.*, 32 F.4th 1324, 1330-33 (11th Cir. 2022) (although unliquidated, debtor's payment obligations to a pension fund were "claims" because they arose pursuant to pre-petition wage agreements).

The fact that some of the contributions are now labeled pay-as-you-go ("PayGo") does not change that conclusion. PayGo is merely a payment mechanism for "PREPA's pension *obligations*"—*i.e.*, debts to *former* PREPA employees arising from pre-petition contracts. Ex.1.01 (2025 PREPA Fiscal Plan), p.125. The PayGo mechanism does not change that the contributions and pension benefits arose pre-petition through a pre-petition contract.[22] Indeed, these types of obligations have been adjusted in other Puerto Rico Title III cases, including by freezing accruals

[21] Although the Bylaws have since been amended, the applicable provisions concerning the vesting of retirement pension benefits and PREPA's contribution requirements have not been amended since the Title III petition date. *See* Bylaws, Art. 4; *id.* Art. 5(2)(a) (last amended in 1967).

[22] Many debts have payments that come due after the petition date. For example, financial debts—such as notes and loans—have scheduled principal and interest payment dates falling after the petition date. If SREAEE's arguments had merit (they do not), then those financial debts would not be claims under the Bankruptcy Code, which is obviously not the case.

and discharging other post-petition funding contributions. *See, e.g.*, *In re Fin. Oversight & Mgmt. Bd.*, 637 B.R. 223, 291 n.35 (D.P.R. 2022), *aff'd*, 32 F.4th 67 (1st Cir. 2022).

PREPA concedes 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 n.5. And PREPA's current proposed plan of adjustment specifically provides for: (a) reductions in pension claims; (b) rejection of PREPA's pension funding obligations under Section 365(a) of the Bankruptcy Code; and (c) use of a PayGo mechanism to make pension contributions. *See* Case 17-BK-4780, ECF No. 5581, Art. VI.A (D.P.R. 3/28/2025). After giving effect to these adjustments, PREPA's fiscal plan provides that pension expenses are "projected to decrease over time and are *subject to change based on Title III restructuring results*." Ex.1.01, p.98.

The aggregate amount of pension claims is thus dependent on their ultimate treatment in the Title III case—particularly given FOMB's position that the pension claims are unsecured obligations, and that the contracts governing the pensions are subject to rejection.[23] PREPA's obligations to SREAEE exist as a claim against PREPA yet to be treated and restructured, just like PREPA's other legacy debts. There is no legal basis for PREPA to propose rates that fund its legacy pension obligations and not its legacy bond obligations that, as described below, (1) PREPA is obligated to pay, and (2) are legally senior to PREPA's legacy pension obligations.

ii. *PROMESA does not "favor" pensions.*

PREPA argues that a *placeholder* LDR should not be included in the revenue requirement, but that *actual funding* for pensions should be. The inconsistency is stunning. To get around it,

[23] *See* SREAEE Pension Brief, Ex. 5 at p.6 (noting FOMB's position is that the pensions are "regular unsecured claims").

PREPA tries to cast PROMESA as "favor[ing]" pensions. However, as SREAEE stated, that "is inaccurate." *SREAEE's Rebuttal*, p.3 (12/2/2025).

First, the Bankruptcy Code gives secured claims—like PREPA's legacy bond debt—priority over unsecured claims like pensions. Secured claims are entitled to receive distributions totaling at least the allowed amount of the claim, and the holders of such claims are entitled to receive adequate protection during the case.[24] By contrast, general unsecured claims are not afforded priority and are not entitled to receive the same interim protections. *See id.* §1129(b). Congress explicitly maintained this clear priority in municipal bankruptcy cases. In non-municipal bankruptcy cases, there is a limited exception for employee wages and benefits to take priority over certain other unsecured claims. *See id.* §507(a)(4)-(5). But in municipal cases, Congress made a different choice and did *not* give priority to employee wage and benefit claims. *See* 48 U.S.C. §2161 (incorporating only Section 507(a)(2), but not provisions giving priority to employee unsecured claims); *In re Valley Health Sys.*, 2011 WL 7637256, at *4 (Bankr. C.D. Cal. 11/8/2011) (rejecting employee's priority claim because "§507(a)(5) is not applicable to chapter 9 cases as a matter of law"), *aff'd*, 2012 WL 3205173 (B.A.P. 9th Cir. 8/3/2012).

PREPA's argument for "favored" treatment of pensions, which lacks any legal basis, subverts the Bankruptcy Code's priority scheme by impermissibly providing for the payment of junior unsecured pension claims over senior secured legacy bond claims. *See In re MJS Las Croabas Prop., Inc.*, 2013 WL 2949576, at *9 (Bankr. D.P.R. 5/29/2013). That is improper.

Second, SREAEE's acceptance of voluntary payments during the Title III case would violate the automatic stay. The filing of a Title III petition imposes an automatic stay on efforts to "collect, assess, or recover *a claim* against the debtor that arose before the commencement of" a

[24] 11 U.S.C. §1129(b)(2)(A); *see also id.* §362(d).

bankruptcy case. 11 U.S.C. §362(a)(1)-(6); *see also* 11 U.S.C. §922(a). The stay is triggered automatically upon the filing of a bankruptcy petition and "operates without the necessity for judicial intervention." *Sunshine Dev., Inc. v. FDIC*, 33 F.3d 106, 113 (1st Cir. 1994). The automatic stay is "extremely broad in scope" and "appl[ies] to almost any type of formal or informal action against the debtor or the property of the estate." *In re Fin. Oversight & Mgmt. Bd.*, 919 F.3d at 129. Actions taken in violation of the stay are void. *See In re Soares*, 107 F.3d 969, 975 (1st Cir. 1997).

Although PREPA argues that the automatic stay bars a placeholder LDR (PREPA Initial RD Br. p.5), PREPA inconsistently claims it can *choose* to pay pension claims without court approval. PREPA Pension Brief ¶ 26. PREPA argues "the Title III court may not enter any order interfering with" its pension payments because: (i) Section 363(b) of the Code, "which prohibits use of a debtor's property outside the ordinary course of business without court approval is not incorporated into Title III of PROMESA," and (ii) under Section 305 of PROMESA, the court "may not enter any order interfering with PREPA's use of its property unless the Oversight Board consents." *Id.* ¶ 24; *see also id.*, Ex.B at pp.2-3 (the "FOMB Pension Letter").

However, the First Circuit has recognized that, except for bondholders 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.*, 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 under Section 928(a).[25] 11 U.S.C. §922(d). Pension claims do

[25] 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).

not benefit from that exception because they are unsecured. *See* SREAEE Pension Brief, Ex.5 at p.6 (noting FOMB's position that the pensions are "regular unsecured claims"); *see also* Title III Claim No. 51696 (indicating that SREAEE's claim is unsecured).[26] Revenue bonds are the *only* form of pre-petition debt for which repayment is "clearly" not barred by the automatic stay. *In re Fin. Oversight & Mgmt. Bd.*, 919 F.3d at 131-32 & n.12.

Section 305 of PROMESA compels the same conclusion. *Contra* SREAEE RR Reply pp.5-6; *PREPA's Reply Brief on Revenue Requirement*, ¶ 1.78 (2/17/2026) ("PREPA RR Reply"). 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 FOMB or unless the plan of adjustment so provides. *See In re Fin. Oversight & Mgmt. Bd.*, 927 F.3d 597, 605 (1st Cir. 2019). It has no impact on the automatic stay, which operates without judicial intervention. *Id.* (observing that Section 305 does not "impose any such restraint *on another court*"); *see also Sunshine Dev.*, 33 F.3d at 113 (automatic stay applies without judicial intervention). The non-incorporation of Section 363 in PROMESA is likewise irrelevant because the automatic stay and the Code's priority scheme are applicable in a Title III proceeding. *See* 48 U.S.C. §2161(a) (incorporating sections 361, 362, 922, 928, and 1129).

Third, Section 201(b) of PROMESA does not subvert lawful liens and priorities. PREPA claims that the pension payments are justified because Section 201(b) requires a fiscal plan to provide for adequate pension funding. PREPA RR Reply ¶¶ 1.77-78 n.108. While a fiscal plan must "provide adequate funding for public pension systems" (48 U.S.C. §2141(b)(C)), PREPA ignores that it must also "respect the relative lawful priorities or lawful liens, as may be applicable,

[26] And without any applicable stay exception, according to FOMB, it is at best "unclear" whether the automatic stay bars "a creditor from accepting voluntary payments from" PREPA. *See* Bondholder Pension Response, Ex. C at pp.1-3 (Rule 28(j) letter from FOMB).

in the constitution, other laws, or agreements" that were in effect "prior to June 30, 2016." 48 U.S.C. §2141(b)(1)(N). As the First Circuit has recognized, a fiscal plan also "*must* … respect the Commonwealth's 'relative lawful priorities' that were in effect prior to PROMESA's enactment." *Wal-Mart P.R., Inc.*, 834 F.3d at 123-24. The legislative history makes clear that Section 201 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*.

H.R. Rep. No. 114-602 at 45 (2016).

Fourth, PREPA attempts to rely on the fiscal plan and the FOMB Pension Letter, which PREPA claims have "binding weight." PREPA RR Reply ¶¶ 1.77-78. Not so. The fiscal plan does not establish rates and cannot effectuate a restructuring of claims, including payments to pre-petition creditors. *See* PREPA Pension Brief ¶ 53. Indeed, the First Circuit has already held that fiscal-plan-related provisions like Section 201(b) do not affect the operation of the Bankruptcy Code provisions incorporated into PROMESA. *See FOMB 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."). The Title III court has also recognized that FOMB and its fiscal plans are not infallible.[27] Ultimately, the Bankruptcy Code and PROMESA are what carry the relevant weight, not FOMB's say-so and preferences.

The FOMB Pension Letter likewise not only fails to bind PREB, but should be accorded no weight. It is both procedurally and substantively improper for FOMB to belatedly interject its

[27] *See supra* Part II.B.i.

opinion by way of a letter appended to a PREPA filing. Procedurally, no parties were permitted to participate in the rate case by such means—PREB and the Hearing Examiner made clear from the outset the terms by which parties could participate under governing law, including through intervention, discovery, pre-filed testimonies, and witnesses subject to cross-examination. FOMB did none of those things. Substantively, it would be unfair to the other parties and would offend due process to allow FOMB to participate in this manner, because FOMB was not subjected to discovery, rebuttal of pre-filed testimonies, or cross-examination of witnesses, as the properly participating parties were. Considering the letter would permit FOMB to adduce evidence without an opportunity for parties to challenge it. PREPA's attempt to improperly insert the FOMB Pension Letter here is yet another example of PREPA ignoring PREB and the Hearing Examiner's orders. *See Order re: Fine*, p.2 (2/18/2026) (noting that PREPA's failure to comply with deadlines "demonstrates total disrespect to the Energy Bureau and its orders").

In any event, the FOMB Pension Letter carries no weight because the positions articulated therein conflict with FOMB's prior positions. *See* Bondholder Pension Response, Ex. C (noting that it was "unclear whether §362(a) stayed a creditor from accepting voluntary payments from a debtor"). Moreover, the Title III court has previously rejected FOMB's sweeping argument that Titles I and II of PROMESA prevent the Title III court from "second guessing the fiscal plan." *See* Memorandum Order Denying Debtor's Motion in Limine to Exclude Evidence Challenging Oversight Board's Certification Determinations, Case 17-bk-4780-LTS, ECF No. 3863, p.6 (parties have the right to oppose "an affirmative request for judicial relief made by the Oversight Board by disputing the request's factual basis and its compliance with one or more statutory requirements").

Finally, 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 Takings and Contracts Clauses. *See* U.S. Const. amend. V ("[P]rivate property [shall not] be taken for public use, without just compensation."); *id.* art. I, §10, cl.1 ("No state shall … pass any … Law impairing the Obligation of Contracts."); *see also 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 P.R.*, 637 B.R. 223, 294 (D.P.R. 2022) (Takings Clause creates "an irreducible entitlement to just compensation"); *U.S. Tr. Co. of N.Y. v. New Jersey*, 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 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*").

In addition, if a fiscal plan permanently barred the payment of PREPA's bonds, that fiscal plan 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); *Commonwealth of P.R. v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 124 (2016).[28]

C. *The Pension Debts Are Not Current Expenses under the Trust Agreement.*

SREAEE claims that all pension obligations are Current Expenses under the Trust Agreement governing the bonds (*see* SREAEE Pension Brief p.3), which must be "paid from the

[28] Moreover, although Bondholders dispute the fiscal plan has the force of law, if PREB were to find that a fiscal plan delaying payment of PREPA's bonds—such as by using rates to cover payment of subordinate pension debts—has the force of territory law, then it would constitute a "moratorium law," which is expressly preempted by Section 303(1) of PROMESA.

General Fund before calculating Net Revenues." *Id.* p.9 n.8; *see also id.* p.24. This issue is not properly before PREB and, in any event, merely highlights why pensions should not be included in the rate.

i. *The pensions' priority status is pending before the Title III court.*

Whether pension debts are Current Expenses is a contested issue pending before the Title III court in two different adversary proceedings filed by SREAEE. *See generally SREAEE v. FOMB*, Case 19-405-LTS, ECF No. 25 (D.P.R. 10/30/2019); *UCC v. FOMB*, Case 23-094-LTS, ECF No. 1 (D.P.R. 12/8/2023). As PREPA admits, the asserted priority status of the pensions is "directly before the Title III court in PREPA's Title III case and should *only* be addressed in that proceeding." PREPA RR Reply ¶ 1.73 (emphasis original).

That concession only highlights why inclusion of the pension obligations is inappropriate here. PREPA opposes a placeholder LDR because the Title III court will determine the amounts payable to bondholders. *See* PREPA Initial RD Br. p.7. But PREPA has it backwards. While the LDR is merely a tool of administrative efficiency with no ratepayer impact now, provision for the payment of pensions now *would* actually impose costs on ratepayers before the Title III case is resolved—and such costs are already mounting, through the provisional rate. If pensions are later found not to have priority over bonds, any interim payments to SREAEE will have been unlawful and void. *See supra* Part III.B.ii; *In re MJS Las Croabas Prop., Inc.*, 2013 WL 2949576, at *9. Because PREPA has conceded that the priority of pensions will be determined by the Title III court, there is no basis to include pension costs in the rate now.

ii. *SREAEE has no enforceable priority.*

SREAEE argues that the pensions are "non-discretionary, first-tier operating expenses" because they are allegedly Current Expenses under the Trust Agreement. SREAEE RR Reply pp.2, 4-5. However, as SREAEE concedes, the Trust Agreement is an agreement between PREPA

and the PREPA bond trustee.[29] SREAEE is not a party to the Trust Agreement and therefore does not have standing to enforce it. And though SREAEE claims it is a third-party beneficiary of the Trust Agreement, that contract makes clear there are no third-party beneficiaries. *See* Exhibit A, §1304, attached to Bondholder Pension Response (the "Trust Agreement"); *see also* Case 17-bk-3283-LTS, ECF No. 26516, ¶ 378 (FOMB conceding that creditors asserting Current Expense claims "have no right to enforce any purported priority contained in the Trust Agreement"). In fact, a Commonwealth court has addressed this very issue, recognizing that Current Expense claimants do not have contractual rights under the Trust Agreement. *See UTIER v. PREPA*, No. 2016-CV-0291, at 70 (Court of First Instance 12/19/2016) ("UTIER") (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").[30]

iii. *SREAEE is wrong that all pension contributions are current operating expenses.*

SREAEE argues that because the Trust Agreement defines "Current Expenses" to include "any payment to pension or retirement funds," all amounts owed to SREAEE after PREPA's petition date must qualify as "non-discretionary" operating expenses payable before the bonds. SREAEE Pension Br. pp. 9-10; SREAEE RR Reply pp.2-3. Not so.

Section 505 of the Trust Agreement—a provision SREAEE has repeatedly 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

[29] *See SREAEE Motion Regarding Pension Funding*, p.2 n.1 (11/4/2025).

[30] The Bondholder Pension Response attached a copy of the *UTIER* decision.

maintaining and operating the System *in an efficient and economical manner*." Trust Agreement §505. Current Expenses also cannot exceed what is provided in the Annual Budget adopted pursuant to Section 504 of the Trust Agreement. *Id.* §§101, 505. SREAEE ignores these requirements for the simple reason that the pension claims do not satisfy either. ***First***, SREAEE does not even attempt to demonstrate that the Annual Budget—as defined in the Trust Agreement—includes all pension claims as Current Expenses for the *current fiscal year*.[31] *See* Trust Agreement §505. That is because no such Annual Budget exists—PREPA has not complied with its obligations to create an Annual Budget and follow the procedural requirements of Section 504. As such, SREAEE cannot establish that inclusion of the pension costs would not cause PREPA to exceed its Annual Budget for the current fiscal year. Nor can this requirement be waived through PREPA's failure to comply. It would be imprudent and unreasonable for PREB to overlook this requirement, which is intended to maintain fiscal responsibility and prevent overspending by PREPA—stated goals of PREB. 2017 Rate Order ¶¶ 53, 439-44.

Second, SREAEE fails to establish that pension claims are *currently* "reasonable and necessary for maintaining, repairing and operating the System," as required under Section 505 of the Trust Agreement. Although SREAEE asserts that PayGo funding of the pensions constitutes an "ordinary and necessary expense[] of operating the System" (*SREAEE's Legal Brief on Revenue Requirement*, p.2 (1/23/2026)), SREAEE concedes that the retirement system is unfunded due to

[31] In an effort to sidestep this issue, SREAEE attempts to rely on PREPA's fiscal plan. But the fiscal plan is not the Annual Budget contemplated in Section 504 of the Trust Agreement. Among other things, Section 504 of the Trust Agreement requires that any Annual Budget must be adopted after a formal 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 employed "with the written approval of the Trustee." *Id.* §706. Moreover, the fiscal plan does not support SREAEE'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*." Ex.1.01, p.98.

"PREPA's failure to pay the actuarially determined contributions (ADCs) *since 2014*." SREAEE Pension Br. p.5.[32] Moreover, even though PREPA had included pension costs in prior revenue requirements, SREAEE says that "PREPA has used the rate revenue to meet other needs." SREAEE Pension Br. p.5. Yet, 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. 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.[33]

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 the pension costs are just and reasonable.

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

[32] Although PREPA and SREAEE represent that PREPA is funding the pension system on a PayGo basis, FOMB has indicated it intends to "convert PREPA-ERS from being funded based on actuarially defined contributions or other rate of annual payroll to a PayGo system." Ex.85.03, p.22; *see also* Decl. of Sheva R. Levy, Case 17-4780-LTS, ECF No. 4634, ¶ 17 (D.P.R. 2/12/2024) (noting that under a Title III plan, "SREAEE will be funded on a PayGo basis *going forward*").

[33] Moreover, a number of the PREPA ERS participants are no longer employees at PREPA and, following PREPA's privatization, were transferred to the Commonwealth and other governmental entities. *See* Ex.85.03, pp.33-34. Given that those employees no longer work at PREPA, any PREPA pension contributions to those employees could not possibly be described as currently necessary to operate PREPA in an efficient manner.

retirement systems—not past-due amounts *owed* to retirement systems. *See* Trust Agreement §101. The terms "debt" and "expense" are not interchangeable. *See In re Hoff*, No. 21-80088, 2023 WL 465704, at *4 (Bankr. W.D. Mich. 1/26/2023) (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"). Past-due liabilities to SREAEE are not payable under Section 505 of the Trust Agreement and therefore cannot qualify as current operating expenses.

The *UTIER* decision confirms this. It held that Section 505 "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 are not covered by Section 505. *UTIER* at 72 (emphasis original). Unpaid obligations are debts—*not* current operating expenses—and therefore are not payable under Section 505.

Remarkably, neither SREAEE nor PREPA acknowledges that FOMB has admitted that any amounts owed to SREAEE are *not* Current Expenses as they now claim. *See* FOMB Title III Pension Brief pp.10-11. According to FOMB, "'past due' amounts allegedly due to SREAEE … do not meet the definition of Current Expenses as used in section 505 of the Trust Agreement," and "only budgeted Current Expenses could have priority under section 505." *Id.* p.10.

Finally, certain contributions to the PREPA ERS cover *future* pension payments, like additional payments in future years to reduce the unfunded pension liability. Bylaws, Art. 5 §2(c). Again, those future payments by definition cannot be *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. Bylaws Art. V §2(d).[34] 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 failure to make an annual contribution renders any other pension contribution immediately due and payable such that these payments would be reasonable or necessary to maintain the System.[35]

Under the Trust Agreement, the secured legacy bond claim is senior to the pension debt and, therefore, any payment made to satisfy the pension debt would be made using bondholders' collateral, which cannot be done without bondholders' consent.

IV. Burden of Proof

A. *Act 57-2014 Unambiguously Places the Burden on Rate Applicants.*

The Hearing Examiner asked in the Issues List, "what practical meaning does 'burden of proof' have" in this proceeding, and "[h]ow if at all does that meaning differ from the meaning in a court proceeding." Issues List p.8. A "burden of proof" is a well-known, long-established legal concept that applies here as elsewhere. Allocation of the burden of proof is a foundational procedural rule that determines which party must establish the facts necessary to obtain relief. *See* BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "burden of proof" as "[a] party's duty to prove a disputed assertion or charge"); BALLENTINE'S LAW DICTIONARY (3d ed. 1969) (defining it as "[t]he obligation resting upon a party to *establish the truth of a given issue* by such a quantum

[34] The Bylaws make clear that the "rate of contribution for accrued obligations" shall be calculated so that such contribution is not less "than the payment for the prior accrued *annual* obligation." *Id.*

[35] *Compare* Bylaws Art. V (not providing for acceleration of obligations), *with* Trust Agreement §803 (providing for acceleration of the bonds).

of evidence as the law demands"); BOUVIER'S LAW DICTIONARY (1856 ed.) (explaining that the duty rests on the party asserting the affirmative position on the issue).

While there are different levels of burden (*e.g.*, preponderance of the evidence, beyond a reasonable doubt) and different frameworks, such as those in which the burden shifts to another party *after* the initial party has first met its burden, it is axiomatic that the party bearing the initial burden of proof (here, the rate applicants) must always satisfy its burden. *See Santiago v. U.S. Dep't of the Army*, 128 F. Supp. 3d 469, 475 (D.P.R. 2015) ("Where the moving party bears the ultimate burden of proof, it is not enough to point to an insufficient showing by the opposition. The moving party must make an affirmative case."). This basic legal principle is not context-dependent, whether it be in a court proceeding, a regulatory proceeding, or otherwise. As explained below, the proposal to presume that the rate applicants have already met their burden and thus to immediately and automatically shift the burden to other parties who are not making an affirmative case does not comport with any legal conception of a "burden of proof." Rather, the proposal would turn the statutory burden of proof on its head.

The plain text of Act 57-2014 expressly requires that "[d]uring *any* rate review process, *the burden of proof shall lie on the requesting electric power service company* to show that the proposed rate is just and reasonable, consistent with sound fiscal and operational practices that provide for a safe and adequate service at the lowest reasonable cost." Act 57-2014, §6.25(b), 22 L.P.R.A. §1054x. The statute also requires that "[t]he requesting electric power service company shall submit all the information requested by the Energy Bureau including, as applicable, but not limited to *evidence and documents*," and establishes a lengthy list of topics. *Id.* On its face, the relevant provision of Act 57-2014 does not include *any* reference to: (i) presuming that rate applicants have met their burden of proof; (ii) shifting the burden of proof to other parties not

making an affirmative case, such as the consumer advocate or intervenors; or (iii) requiring PREB or any other party to *dis*prove amounts requested by the rate applicants.

Under Puerto Rico law, it is a well-settled interpretive principle that "[w]hen the law is clear and free of any ambiguity, its text shall not be disregarded under the pretext of fulfilling its spirit." 31 L.P.R.A. §5341; *see also Class Fernández v. Metro Healthcare Mgmt.*, 214 D.P.R. 348, 368 (2024). The Puerto Rico Supreme Court has emphasized that, "[t]he judge is an interpreter and not a creator," and that when statutory language is clear, "judicial humility and self-discipline require[] the application of the legislative will." *Roque Gonzalez & Co. v. Srio. de Hacienda*, 127 D.P.R. 842, 862 (1/31/1991). In construing a statute, "the office of the judge is simply to ascertain and declare what is in terms or substance contained therein, *not to insert what has been omitted, or to omit what has been inserted*." *Rodriguez Sardenga v. Soto Rivera*, 8 P.R. Offic. Trans. 781, 813 (5/25/1979). Because Act 57-2014 plainly does not contain a presumption shifting the burden of proof away from the applicants, such a presumption may not be added under the guise of interpretation. Rather, the plain text of Act 57-2014 requires the rate applicant to prove its proposal is just and reasonable and would provide for adequate service at the lowest reasonable cost.[36]

Even if there were ambiguity (there is not), it certainly could not justify PREB inserting brand new concepts and requirements—such as a presumption in the rate applicant's favor, or that other parties or PREB must affirmatively *dis*prove the rate proposal—into the law, which only the legislature has the power to amend. *See Brau, Linares v. ELA*, 190 D.P.R. 315, 338 (2/21/2014) (if statutory language is unambiguous, "courts must limit their analysis to the plain and clear meaning of the language, since it is understood that the law's language of the law represents the

[36] The standard is presumptively a preponderance of the evidence in the administrative context. *See Oficina de Etica Gubernamental v. Martinez Giraud*, 210 D.P.R. 79, 115 (7/7/2022).

legislative intent"). To do so would violate black-letter law on statutory interpretation, as discussed above, and would also ignore the constitutional separation of powers between the branches of government. It is not for an agency to rewrite laws under the guise of "interpretation," even if the agency believes public policy might be better served by an amended law. That is squarely a matter for the elected legislature to decide. *See West Virginia v. E.P.A.*, 597 U.S. 697, 723 (2022) ("We presume that 'Congress intends to make major policy decisions itself, not leave those decisions to agencies."); *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 328 (2014) ("We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.").

Even if PREB could unilaterally rewrite the statute (it cannot), creating a presumption in favor of the rate applicant would not only conflict with the statutory requirements, but doing so would constitute unwise policy. The plain legislative purpose here is to make utilities fully prove and justify the costs they seek to impose on the people of Puerto Rico—which, as here, may be significant. Act 57-2014 establishes a regulatory regime designed to rigorously review utility rate proposals and to ensure proposed costs are scrutinized. 22 L.P.R.A §1051. It also embeds customer representation within that framework through the OIPC, whose mission is to advocate for ratepayers. *Id.* §1051a(ii). This law reflects a legislative commitment to cost discipline and prudence—not deference to the rate applicant(s).

PREB precedent is consistent with the unambiguous text of Act 57-2014. In the 2017 Rate Order, for example, PREB expressly confirmed that "[t]he Commission *did not* defer to the Authority's filings or positions." 2017 Rate Order ¶ 56. Thus, the rate applicant bore the burden of submitting evidence to prove the reasonableness of its proposed costs. *Id.* ¶ 55 ("[PREB Consultants] recommended the removal of most of the costs because *the Authority had not*

demonstrated that this option was the least-cost option, and the Commission accepted their recommendation."). Likewise, PREB has confirmed in this case that the rate applicants' evidence must be "*of sufficient quality and clarity to support a finding of just and reasonable rates*." *Order re: Rate Case Procedures*, p.2 (4/21/2025).

Further, Regulation 8720 expressly requires PREPA to submit with pre-filed testimony "all analyses, facts and calculations necessary for the Commission to perform a comprehensive analysis and assign it the appropriate probative value." Reg. 8720, §2.17(e). It requires that "[t]he formal application and prefiled written testimony shall avoid generalized or vague statements that would require time-consuming discovery to understand the supporting reasoning or to gather the supporting facts." *Id.* §2.18. And, again recognizing the applicable burden, it notes that noncompliance "may result in a determination by the Commission that PREPA's formal application is not complete or the disapproval by the Commission of part or all of PREPA's formal application." *Id.* §3.03.

The Hearing Examiner's orders from earlier in this proceeding also reflect the statutory burden on the rate applicants and do not reference any extratextual presumption in their favor, nor any newfound requirement for PREB or other parties to disprove the proposal. *See, e.g.*, *Hearing Examiner's Order on Rate Case Procedures*, p.4 (4/25/2025) ("About *each cost* that the rate application seeks to recover in rates, the Energy Bureau and its consultants will be asking … *Is the proposed cost no higher than the level required by prudent utility practice?* … All witnesses testifying about costs should address those questions—by giving answers that are analytic rather than formulaic."); *Hearing Examiner's Order Clarifying PREPA's Role in the Rate Case*, p.2 (7/21/2025) (noting that, under the OMA, the rate case is "prepar[ed], present[ed], [and] defend[ed]" by LUMA); *Hearing Examiner's Order Requiring Certain Information*, p.1

(3/24/2025) (ordering the rate applicants, not other parties, to submit various items of information, in recognition that the information is "necessary for the Energy Bureau to determine whether" the statutory standard has been met).

All these sources are in accord with the plain text of Act 57-2014—the burden is squarely on rate applicants to prove their case, justifying each of their proposed expenses with a sufficient quality and clarity of evidence. That is not surprising, given that the rate applicants are by definition the ones seeking to pass on costs to Puerto Rico ratepayers.

B. *The Results of a Failure to Carry the Statutory Burden.*

If PREB determines the applicants have not carried their burden—as in many cases they have not—then absent some other justified proposal in the existing record,[37] PREB should maintain the status quo. The status quo represents the currently approved level of expenditures determined to meet the statutory requirements. Absent the statutory showing, there is simply no legally and evidentiarily grounded basis for PREB to deviate from that level and approve some other number, untethered from the record. To do so would be arbitrary and capricious—Act 57-2014 does not grant PREB freewheeling power to set rates in a vacuum. Rather, it expressly provides that PREB "shall issue its final determination *with regards to the rate review request*," and "*[s]uch a determination shall be duly grounded* and comply with all the safeguards of the due process of law applicable to the final determinations of administrative agencies." Act 57-2014, §6.25(f), 22 L.P.R.A. §1054x. Thus, PREB's final decision must be made with regard to the rate petition (not some other number not proposed), and must be duly grounded in the evidentiary record (not in a general sense of what might be better than the status quo).

[37] For example, certain well-supported proposals by Bondholders, such as for Vegetation Management, are less than proposed by the rate applicants but more than the status quo.

By contrast, un-cabined discretion for PREB to come up with some "just and reasonable rate," untethered from a party's proposal, would impermissibly excise the statutory language noted above. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to *every clause and word* of a statute."); *Hibbs v. Winn*, 542 U.S. 88, 101 (2004). It would essentially recast PREB as the rate applicant. Nor would such boundless discretion "comply with the safeguards of the due process of law," because participants would not have had an opportunity to scrutinize, question, or confront any new proposal crafted by PREB after the close of evidence.

C. *The Rate Applicants' Burden Includes Showing the Unavailability of Outside Funding.*

As discussed, under Act 57-2014 the rate applicant bears the burden of proving that "the proposed rate is just and reasonable, consistent with sound fiscal and operational practices that provide for a safe and adequate service at the lowest reasonable cost." 22 L.P.R.A. §1054x(b). This necessarily includes showing that the requested ratepayer funds are *needed* for capital projects—meaning those projects will not be covered by funds from another source, such as the billions and billions of dollars of available, long-unused outside funding. BH Initial Rev.Br. pp.2, 4, 8-10, 14-15, 21, 23, 36-37, 53-55, 100-09; *Bondholders' Reply Post-Hearing Brief on the Revenue Requirement*, pp.3-5, 7-9, 10-13, 15, 31-32, 34, 65-71 (2/17/2026) ("BH Reply Rev.Br."). Collecting funds *unnecessarily* from ratepayers, for a project that could be funded by outside sources, would be a quintessential case of a cost that is *not* just, reasonable, and consistent with providing service at the lowest reasonable cost. 22 L.P.R.A. §1054x. The utilities must show that is not the case for their requests—yet, in many instances, not only did they fail to do so, but the evidence actually shows the proposed ratepayer costs *will* be covered by outside funding. *See, e.g.*, BH Initial Rev.Br. pp.2, 8-10, 14-15, 21, 23, 36-37, 53-55, 100-09; BH Reply Rev.Br. pp.3-5, 7-9, 10-13, 15, 32-32, 34, 65-71.

This burden falls on the rate applicants, and it must be met through sufficient evidence and documentation, without deference to the requesting utility's filings or positions. 22 L.P.R.A. §1054x(a)-(b); 2017 Rate Order ¶ 56. If the utilities have failed to show that outside funding is unavailable for a project, then they have failed to meet their burden, plain and simple—just as if they failed to demonstrate that a project is necessary, executable, or otherwise worth the cost. *See, e.g.*, 22 L.P.R.A. §1054x; 22 L.P.R.A. §1054t (just and reasonable tariffs); *see also, e.g.*, Section 3.13(e) of the P.R. Uniform Administrative Procedure Act, 3 L.P.R.A. §9653; Rule 110(b) of Evidence, 32 L.P.R.A. Ap. VI.

As such, if outside funds are available to cover the cost of a project, any request for ratepayer funds should be disallowed to the extent of the outside funding. Anything else would impose an unnecessary burden on ratepayers and result in overcollection, violating the statutory principles PREB is bound to apply.

This statutory requirement does not conflict with PREB's duty to set a just and reasonable rate and ensure that service is "adequate" and "reliable." Just the opposite. Collecting ratepayer funds when outside funds are available would by its terms violate PREB's duty to set a just and reasonable rate—it would result in the people of Puerto Rico being needlessly charged for a project that can *already be completed* with non-ratepayer funds. The choice is not between approving a ratepayer-fund request and seeing a project go uncompleted, as LUMA has suggested. Either way, the project will be completed. The question is whether the rate applicants should be allowed to collect twice (once from ratepayers and once from outside sources) for the very same cost. Of course, they should not.

PREB's duty to ensure service is adequate and reliable is not impaired by holding the rate applicants to their burden of proof and requiring that they demonstrate they are not double-dipping.

If the applicants chose not to make that showing, then the reason is obvious—they are double-dipping. Indeed, LUMA has brazenly admitted as much, repeatedly taking the position that it *will* double-dip, and whenever it does, it will keep ratepayer funds and spend them on something else. *See, e.g.*, BH Initial Rev.Br. pp.9-10, 22, 49-50; BH Reply Rev.Br. pp.4-5, 7, 32-33. This shocking position demonstrates why it is critically important for PREB to hold the rate applicants to their burden, including to show that outside funding is not available where ratepayer funds were requested.

This concern is even more acute given the record of the applicants' failures to timely and sufficiently use federal funds. If they are permitted to collect funds from ratepayers without showing the unavailability of outside funds, the utilities will be motivated to prioritize easier-to-use ratepayer funds instead of expending the effort necessary to properly allocate and use federal funds. Again, LUMA has admitted to this preference, which explains its track record of federal underspending. BH Initial Rev.Br. p.8; BH Reply Rev.Br. pp.3, 12. Allowing this practice to continue would harm the people of Puerto Rico and other PREPA stakeholders.

D. *Applying a Presumption Deferring to the Rate Applicants Would Violate Act 57-2014 and Invert the Statutory Burden.*

A presumption of prudence otherwise does not apply here for three independent reasons. ***First***, such a presumption is, in practice, limited to disallowance proceedings that address already-incurred expenditures by investor-owned utilities ("IOUs")—not prospective rate cases for public utilities. ***Second***, a presumption of prudence would fly in the face of Act 57-2014's keystone requirement for the applicant to prove that its costs are just, reasonable, and the least possible to provide adequate service. The notion that intervenors bear a "burden to show imprudence" or that the applicants "necessarily carry [their] burden" "if [an] intervenor doesn't prove … imprudence" is drawn from whole cloth. As discussed above, not only does Act 57-2014 contain no such

language, it affirmatively requires the *applicants* to prove their case. ***Finally***, there is no mandatory adversary in a rate case, which renders a presumption of prudence incoherent. If OIPC does not challenge the application and no other party intervenes to do so, under the proposed framework PREB would be forced to presume reasonableness and rubber-stamp whatever proposal the utility submitted, no matter how unsupported, overpriced, or unreasonable.

i. *A presumption of prudence is applied to reimbursement of already-incurred costs by IOUs, making it doubly inapt here.*

In practice, the presumption of prudence is limited to consideration of costs that IOUs have already incurred—the opposite of the situation here, where a public monopoly utility is seeking approval of prospective rates for potential costs that have not been incurred. In a prospective rate case like this one, "a utility company seeking a rate change has the burden of proving the requested regulatory action is just and reasonable." *Nat'l Fuel Gas Dist. Corp. v. Pub. Serv. Comm'n*, 16 N.Y.3d 360, 369 (2011) (recognizing the burden of proof is different in the expense-reimbursement context).

When reviewing *expense-reimbursement requests* from *IOUs*, some courts have historically applied a rebuttable presumption of "good faith." In those circumstances (not present here), "in the absence of any challenge of the[] necessity or fairness" of proposed expenses, incurred expenditures with a factual basis may be "deemed to have been made in good faith and with reasonable judgment," although the presumption may be rebutted by a showing of "inefficiency or improvidence" through direct or circumstantial evidence. *West Ohio Gas Co. v. Pub. Util. Comm'n of Ohio*, 294 U.S. 63, 72 (1935).

That practice continues in some courts today, but cases applying the presumption are readily distinguishable. *See Nat'l Fuel Gas Dist.*, 16 N.Y.3d at 369 (involving an IOU in a proceeding to approve already-incurred expenses); *State ex rel. Public Counsel v. Public Serv.*

Comm'n, 274 S.W.3d 569 (Mo. Ct. App. 2009) (same); *Potomac Elec. Power Co. v. Pub. Serv. Comm'n of D.C.*, 661 A.2d 131 (D.C. Ct. App. 1995) (same); *Delmarva Power & Light Co.*, 160 FERC P 61,102 (Fed. Energy Reg. Comm'n 2017) (similar). Even jurisdictions that have continued to apply the presumption recognize it is a limited practice *and does not apply in a "general rate case"* such as this one. *Sw. Gas Corp. v. PUC*, 504 P.3d 503, 510 (Nev. 2022).[38] And while some states apply the presumption in this inapposite context, "many do not." William G. Bolgiano, *Rate Case Expense*, 46 ENERGY L.J. 3:529, 538 n.54 (2025).

PREPA is not an IOU, and the rate applicants seek to *prospectively* raise rates for costs that are merely hypothetical at this time—a far cry from IOU reimbursement of factual, already-incurred expenses. The rationales for the presumption of prudence are therefore inapplicable here. For instance, one of the safeguards to ensure the presumption does not lead to excessive spending is that IOUs are subject to market forces that compel efficiency and prudence, independent of regulation. PREPA is a public monopoly utility with an islanded grid and no wheeling in place, so it indisputably is *not* subject to such market forces.

Another important rationale for the presumption of prudence is to avoid "Monday morning quarterbacking" by the regulator, meaning the IOU's actions should be reviewed "based on the information that [the IOU] had and the circumstances that existed at the time" the spending was incurred, not with the benefit of hindsight. *Nat'l Fuel Gas Dist.*, 16 N.Y.3d at 369. Again, this rationale simply does not apply here, because with prospective ratemaking, the costs have not been incurred, meaning the regulator cannot unfairly rely on hindsight. And whereas an IOU may have

[38] It also does not apply to one-time expenses. *Application of Peoples Nat. Gas Co.*, 413 N.W.2d 607, 616 (Minn. Ct. App. 1987).

had to immediately incur past costs before obtaining approval (*e.g.*, due to exigent circumstances), that logically cannot be the case for future costs.

Yet another issue cutting against a presumption of prudence here, as recognized by PREB, is that PREPA "does not have shareholders to bear its unreasonable costs," and therefore all costs must be absorbed by ratepayers. 2017 Rate Order pp.25-26. As the Hearing Examiner explained, unlike "in the context of a traditional [IOU], [where] the regulator can actually cause the utility to absorb costs if the regulator finds that those costs are [not] prudently incurred," the "possibility of forcing the utility to absorb costs if they were imprudently incurred, when [applied] to a non-investment utility, simply leaves the utility without money that it otherwise needs." 11/24 Tr. 161:7-163:1.

This issue was repeatedly discussed during the evidentiary hearing, with the Hearing Examiner and the Commissioners acknowledging PREB's inability to discipline the rate applicants here in the manner that would be possible in the IOU context, as it "can't disallow [imprudent costs] in this regime." 12/2 Tr. 39:22-41:18; *see also id.* 163:2-8 (Hearing Examiner observing that LUMA provided "unsatisfactory answers" about how to discipline LUMA in the absence of disallowance proceedings); 11/24 Tr. 163:2-8 (Hearing Examiner emphasizing that regulation through disallowance "in a publicly-owned utility context [is] a questionable technique"). Thus, "[b]ecause we're not in an IOU context" (12/12 Tr. 445:7-446:21), a presumption of prudence would be particularly ill-advised here. *See* 11/24 Tr. 29:23-32:23. Rather, the proposed costs must be rigorously assessed *before* they are approved and incurred.

The presumption of prudence also arose at a time when utilities faced price uncertainty and utilities were "in competition with other forms of fuel." *West Ohio Gas*, 294 U.S. at 72; *see also Missouri ex rel. Sw. Bell Tel. Co. v. Public Serv. Comm'n of Mo.*, 262 U.S. 276, 301-02 (1923)

(Brandeis, J., concurring) (noting the difficulties in determining a profitable base rate for investors given price instability from World War I). The Hearing Examiner previously noted these competitive pressures as essential to justifying use of the presumption of prudence. *See Direct Testimony of Scott Hempling*, Application of Dominion Energy S.C., Case 2020-125-E, pp.2, 19 (Pub. Serv. Comm'n of S.C. 11/10/2020) ("Hempling Testimony") (testifying that "a utility protected by government from competition *deserves no automatic presumption of prudence*," and that a "presumption of prudence is *especially inappropriate for a utility that faces little competition*"). When a utility possesses a monopoly—as PREPA does here—"[p]rudence review is regulation's substitute for competitive forces." *Id.* It is only through regulatory review that monopolies are prevented "from becoming 'high cost plus profit companies,'" at ratepayers' expense. Scott Hempling, REGULATING PUBLIC UTILITY PERFORMANCE: THE LAW OF MARKET STRUCTURE, PRICING AND JURISDICTION 273 (ABA 2d ed. 2021). PREB expressed this very concern in the 2017 Rate Order, noting PREPA could use its monopoly power to cross-subsidize affiliates. 2017 Rate Order p.158. If applied to public monopolies, the presumption of prudence is "costly to the consumers" and without any "rationale—statutory, constitutional, or policy." Hempling Testimony p.17.

For all these reasons, the presumption of prudence would be out of place here. It is not applied in rate cases for public utilities, and none of the rationales for its use are germane.

ii. A presumption of prudence would violate applicable law.

A rate case presumption of prudence also finds no basis in applicable Puerto Rico law. *See Rate Case Expense*, 46 ENERGY L.J. 3:529, 571, 614, Appendix (noting that, in Puerto Rico, "[t]here is no statute, regulation, or even precedent directly on point" that would suggest a presumption of prudence applies); *see also supra* Part IV.A. Rather, as the parties here agree and as the governing regulations confirm, Act 57-2014 squarely lays the burden of proof on the rate

applicants "to demonstrate the rate proposed[] is just and reasonable." Reg. 8543, §13.03(E). To use LUMA's words, "*the requesting electric power service company bears the burden* to show its proposed rates are just and reasonable, consistent with sound fiscal and operational practices that provide for safe and adequate service at the lowest reasonable cost," and it must "prov[e] the affirmative case" for new rates. *Request for Leave to Exceed Page Limitation*, p.2 (1/23/2026) (citing Act 57-2014, §6.25(b)).[39]

Act 57-2014 creates an affirmative burden on the rate applicants. The presumption of prudence would effectively red-pencil the text of Act 57-2014 to remove this requirement, which is impermissible under well-settled principles of statutory interpretation and constitutional separation of powers. *See Baily v. Srio de Hacienda*, 101 D.P.R. 735, 739 (1973) (arguments that "render [the text] of the cited statute dead letter" are untenable); *United States v. Tohono O'odham Nation*, 563 U.S. 307, 315 (2011) ("Courts should not render statutes nugatory through construction."); *see also supra* Part IV.A. The rate applicants' statutory burden of proof therefore cannot be "lightened" by any PREB-created presumption of prudence.

Presuming prudence would also clash with PREB's 2017 Rate Order, where it repeatedly admonished PREPA for imposing imprudent costs on ratepayers. In exchange for their monopoly over a "necessary service," utilities "are regulated to protect the ratepayers, the public, and the parties who transact business with them." *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 854 (1992). As PREB has noted, applying a presumption of prudence would defeat this bargain, because PREPA operates fundamentally differently from IOUs—PREB found there was "no doubt that

[39] During the hearings, and notwithstanding his "disagreement" with the premise that utilities would make "[im]prudent decisions in the first place," LUMA's CFO similarly testified that the presumption should not apply to Puerto Rico public utilities, explaining he was "not suggesting that because we [the public utility's executive team] make a decision, that by default means that it's a prudent decision." 11/24 Tr. 91:10-93:2.

PREPA's current rates are recovering costs that reflect waste and imprudence" and noted that "[a]ll of PREPA's costs must be paid by its customers … regardless of their prudence or reasonability." 2017 Rate Order pp.23-25; *see also supra* Part IV.A. Consequently, PREB vowed it "would use every power it has to prevent future imprudence," adopting an approach that "prevents imprudent costs not yet incurred … from being incurred." 2017 Rate Order pp.25-26. Adopting a presumption of prudence now would break PREB's vow.

iii. *A presumption of prudence would yield absurd results.*

Not only would applying a presumption of prudence here be misplaced and contrary to governing law, it would turn ratemaking into a farce. As discussed, when it is applied, the presumption is automatic and must be rebutted by an affirmative showing by another party to the case. *See supra* Part IV.D.i. But the ratemaking process in Puerto Rico does not necessarily involve any parties opposing the rate application. Act 57-2014, §§6.25(b), 6.25A(f); 2017 Rate Order pp.147-61, 168-84. Intervenors are permitted but not guaranteed, meaning third parties must first decide to intervene, then seek PREB's permission to do so (which can be opposed and/or denied), and then continue to expend substantial resources participating in a lengthy rate case. None of this is a foregone conclusion.

Thus, in a rate case with only the OIPC (which may be hampered by broad responsibilities and budget constraints) and/or resource-constrained intervenors—a plausible scenario[40]—a presumption of prudence would effectively handcuff PREB into rubber-stamping rate requests, because all proposed costs would automatically be deemed appropriate until proven otherwise. That cannot be so under the statutory scheme. It would gut PREB's authority as an independent,

[40] For example, despite the huge impact of the current rate case, there were only a handful of intervenors—far fewer than in PREPA's last IRP proceeding—and many submitted testimony limited to discrete issues and conducted little or no cross-examination.

technical regulator, remove guardrails meant to protect customers from imprudent rate requests, and make a mockery of the ratemaking process.

Such a scenario would also create perverse incentives. If applicants go into rate cases knowing their proposed costs start at "approve" (via the presumption) and can only move to "deny" through other parties' opposition, applicants will be strongly incentivized to obstruct intervention and public participation, obscure the basis for their proposed costs, stonewall parties seeking additional information, and generally thwart any meaningful inquiry and transparency. Obviously, such incentives would disserve the public interest and run contrary to Act 57-2014.

PREPA—a public monopoly in the throes of bankruptcy—is not the utility to experimentally import a presumption of prudence from the IOU context.

V. Refunds of Ratepayer Overpayments for NFC

As Bondholders have explained, the applicants should prioritize federal funding and should not collect from customers when outside funding is available. Nor should they be permitted to retain over-collected amounts under any circumstances; rather, over-collected amounts must be refunded to customers. BH Initial Rev.Br. pp.9, 49-50; BH Reply Rev.Br. pp.32-33.[41] The rule against retroactive ratemaking does not bar customer refunds, including under the hypotheticals set forth by the Hearing Examiner. Issues List p.11.

A. *Funds Received during the Provisional-Rate Period.*

Customer refunds based on outside funds received during the provisional-rate period—between 7/1/2025 and the date on which permanent rates go into effect—do not violate the prohibition against retroactive ratemaking. The entire purpose of the provisional rate is to permit

[41] Indeed, Ricardo Pallens of Genera committed to refunding customers if federal funds were ultimately received for ratepayer-funded projects, and the Hearing Examiner stated, "that goes for LUMA as well, and PREPA and Genera." 11/20 Tr. 427:12-428:20.

increased collections to flow during the pendency of the rate case, subject to ultimate reconciliation (up or down) of the provisional amounts collected with the approved permanent rate. PREB already recognized in the PRO that such reconciliations are "authorized by Act 57, section 6.25(f)." PRO p.27 (quoting statutory requirement). Just as any other variances between provisional collections and permanent rates must be, and will be, reconciled without violating the rule against retroactive ratemaking, so too must any ratepayer-funded NFC cost that subsequently receives federal or Commonwealth funding—funding that renders the NFC collections unnecessary, imprudent, and not the least reasonable cost.

This reconciliation process is neither novel nor controversial—it is the standard practice for provisional rates. As the Hearing Examiner explained: "[T]here is a type of reconciliation that legally can occur," which is the "reconciliation between what the Bureau determines is the permanent rate, and what the Bureau has required to go into effect as the provisional rate." 11/17 Tr. 426:17-25. Similarly, for many years PREB has regularly conducted a reconciliation process for fuel and purchased power, whereby customer collections based on projected costs are ultimately trued up with actual expenditures—sometimes resulting in a refund to customers, sometimes resulting in a surcharge. *See generally In re: PREPA's Permanent Rate*, NEPR-MI-2020-0001. No one has suggested that this long-running procedure violates the rule against retroactive ratemaking because it may result in customer refunds.

Refunding customers for unnecessary NFC collections during the provisional-rate period is no different. Everything collected during this period is subject to true-up, as PREB clearly established throughout the PRO.[42] Customers paid, and PREPA collected, provisional rates with prior notice and the understanding that adjustments would follow.

[42] *See, e.g.*, PRO pp.4-6, 19, 35, 37.

B. *Funds Received after the Provisional-Rate Period.*

Customer refunds based on outside funds received after permanent rates go into effect are permissible if PREB simply provides appropriate notice of a reconciliation mechanism in its final order on permanent rates—exactly as it did in the PRO. *See supra* n.42. Again, there is nothing controversial about this; what *would* be controversial is refusing to refund customers for amounts that the utilities collected but no longer need for a project due to outside funds covering that project.

PREB has correctly recognized that "federal dollars are a pillar of the Puerto Rico electric system's long-term rebuilding and resiliency strategy," and it "will not treat electricity customers as the funding source of first resort." PRO p.32. Allowing the applicants to keep over-collected amounts would contravene this foundational principle. As the record demonstrates, over-collection is "not efficient, prudent, or consistent with providing service at the lowest reasonable cost," and it violates the mandate of Act 57-2014 that proposed costs be reasonable, just, and the "lowest reasonable cost" to provide adequate service. Act 57-2014, §6.25(b), 22 L.P.R.A. §1054x.

PREB's final order approving the permanent rate should therefore include a clear mechanism for refunds of collected NFC costs that later receive outside funding. Such a mechanism should expressly provide notice that any approval of NFC costs is conditioned upon, and subject to, reimbursement to ratepayers should federal, Commonwealth, or other outside funds become available to defray those costs.

This approach is both legally sound and practical. The rule against retroactive ratemaking is intended to protect customers' reliance interests by ensuring that customers know the rates they will be charged and are not subject to surprise adjustments for past periods. Where notice is provided in advance that a particular cost is subject to potential refund upon receipt of outside funding, there can be no claim of unfair surprise. The applicants and ratepayers alike will know, from the outset, that approval of the NFC cost is provisional, similar to the provisional costs

approved in the PRO. And it is highly unlikely that customers would be unfairly surprised by *refunds* of what turned out to be unnecessary collections—in contrast to retroactive upward rate adjustments.[43]

The hearing record confirms this principle. The Hearing Examiner stated unequivocally that funds do not go "back to ratepayers unless there's some, like I said, advance notice that gets us around the prohibition against retroactivity," and "[u]nless the Energy Bureau has in advance come up with some way to get the money back." 11/25 Tr. 54:5-55:19 (cleaned up), 56:1-2. Similarly, the Hearing Examiner explained that "unless there is a[n] in-advance method of returning funds to the ratepayers, if we set a revenue requirement based on a certain amount of labor and you end up spending less than the labor, that money stays in one of your accounts." 11/25 Tr. 41:22-42:24; *see also* 12/1 Tr. 225:18-226:11 (Hearing Examiner confirming it is "100% correct" that a reconciliation mechanism in the final order would not violate the retroactivity principle). Thus, to avoid a retroactive ratemaking issue, PREB need only create an appropriate mechanism for customer refunds of over-collected NFC funds in its final order, as it did in the PRO.

CONCLUSION

Bondholders respectfully request that PREB make the determinations regarding legal and policy issues reflected in this brief and in their prior post-hearing briefs.

[43] Nor is there anything unfair to the applicants about this mechanism. The applicants can have no reasonable expectation of retaining customer funds after they have received duplicate outside funds covering the same costs. That would be an unfair windfall.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief, exclusive of the portions exempted in the Hearing Examiner's 12/22/2025 Order (caption, table of contents, signature blocks, and service information) and the Spanish summary required by standing order, contains 16,729 words per the word-processing program's word count feature.

/s/ *Corey K. Brady*
Corey K. Brady

Dated: March 6, 2026

RESPECTFULLY SUBMITTED,

THIS 6TH DAY OF MARCH 2026

CERTIFICATE OF SERVICE: We hereby certify that the foregoing petition was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System, and courtesy copies were sent via electronic means to mvalle@gmlex.net; alexis.rivera@prepa.pr.gov; jmartinez@gmlex.net; jgonzalez@gmlex.net; nzayas@gmlex.net; Gerard.Gil@ankura.com; Jorge.SanMiguel@ankura.com; Lucas.Porter@ankura.com; mdiconza@omm.com; golivera@omm.com; pfriedman@omm.com; msyassin@omm.com; katiuska.bolanos-lugo@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; regulatory@genera-pr.com; legal@genera-pr.com; mvazquez@vvlawpr.com; gvilanova@vvlawpr.com; dbilloch@vvlawpr.com; ratecase@genera-pr.com; jfr@sbgblaw.com; hrivera@jrsp.pr.gov; gerardo_cosme@solartekpr.net; contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; alexis.ramsey@weil.com; kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; monica@emmanuelli.law; cristian@emmanuelli.law; luis@emmanuelli.law; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; brett.solberg@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lindsay.greenbaum@analysisgroup.com; harrison.holtz@analysisgroup.com; charles.wu@analysisgroup.com; Brian.Gorin@analysisgroup.com; Bhumika.Sharma@analysisgroup.com; Rachel.Anderson@analysisgroup.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; zack.schrieber@cwt.com; thomas.curtin@cwt.com; escalera@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; David.herman@dechert.com; Isaac.Stevens@dechert.com; James.Moser@dechert.com; michael.doluisio@dechert.com; Kayla.Yoon@dechert.com; mfb@tcm.law; lft@tcm.law; arosenberg@paulweiss.com; pbrachman@paulweiss.com; swintner@paulweiss.com; kzeituni@paulweiss.com; Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com; juan@londoneconomics.com; mmcgill@gibsondunn.com; LShelfer@gibsondunn.com; jcasillas@cstlawpr.com; jnieves@cstlawpr.com; pedrojimenez@paulhastings.com; ericstolze@paulhastings.com; arrivera@nuenergypr.com; apc@mcvpr.com; ramonluisnieves@rlnlegal.com; kbailey@acciongroup.com; shempling@scotthemplinglaw.com; rsmithla@aol.com; guy@maxetaenergy.com; jorge@maxetaenergy.com; rafael@maxetaenergy.com; dawn.bisdorf@gmail.com; msdady@gmail.com; mcranston29@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com;

kbailey@acciongroup.com; zachary.ming@ethree.com; PREBconsultants@acciongroup.com; carl.pechman@keylogic.com; bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com; roger@maxetaenergy.com; Shadi@acciongroup.com; MWhited@synapse-energy.com

ADSUAR

By:*/s/ Eric Pérez-Ochoa*
Eric Pérez-Ochoa
P.R. Bar No. 9739
Luis Oliver-Fraticelli
P.R. Bar No. 10764
Alexandra Casellas-Cabrera
P.R. Bar No. 18912
PO Box 70294
San Juan, PR 00936-8294
Telephone: 787.756.9000
Facsimile: 787.756.9010
Email: epo@amgprlaw.com
loliver@amgprlaw.com
acasellas@amgprlaw.com

WEIL, GOTSHAL & MANGES LLP

By:*/s/ Robert Berezin*
Matthew S. Barr
Robert Berezin (admitted *pro hac vice*)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: matt.barr@weil.com
robert.berezin@weil.com

Gabriel A. Morgan
700 Louisiana Street, Suite 1700
Houston, TX 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
Email: gabriel.morgan@weil.com

Corey Brady (admitted *pro hac vice*)
1395 Brickell Avenue
Suite 1200, Miami, FL 33131
Telephone: (305) 577-3225
Facsimile: (305) 374-7159
Email: corey.brady@weil.com

Co-Counsel for National Public Finance Guarantee Corporation

RAMOS CRUZ LEGAL

By: */s/ Lydia M. Ramos Cruz*
Lydia M. Ramos Cruz
P.R. Bar No. 12301
1509 López Landrón Street
American Airlines Building, PH
San Juan, Puerto Rico 00911
Tel.: (787) 508-2525
Email: lramos@ramoscruzlegal.com

WHITE & CASE LLP

By: */s/ Thomas E Lauria*
Thomas E Lauria
Glenn M. Kurtz
Claudine Columbres
Isaac Glassman
Thomas E. MacWright
1221 Avenue of the Americas
New York, New York 10036
Tel.: (212) 819-8200
Fax: (212) 354-8113
Email: tlauria@whitecase.com
gkurtz@whitecase.com
ccolumbres@whitecase.com
iglassman@whitecase.com
tmacwright@whitecase.com

John K. Cunningham
Michael C. Shepherd
Jesse L. Green
200 S. Biscayne Blvd., Suite 4900
Miami, Florida 33131
Tel.: (305) 371-2700
Fax: (305) 358-5744
Email: jcunningham@whitecase.com
mshepherd@whitecase.com
jgreen@whitecase.com

Co-Counsel for GoldenTree Asset Management LP

CASELLAS ALCOVER & BURGOS P.S.C.

By: */s/ Heriberto Burgos Pérez*
Heriberto Burgos Pérez
P.R. Bar No. 8746
Diana Pérez-Seda
P.R. Bar No. 17734
P.O. Box 364924
San Juan, Puerto Rico 00936-4924
Telephone: (787) 756-1400
Facsimile: (787) 756-1401
Email: hburgos@cabprlaw.com
dperez@cabprlaw.com

GIBSON, DUNN & CRUTCHER LLP

By: */s/ Miguel A. Estrada*
Miguel A. Estrada (*pro hac vice* application pending)
Lochlan F. Shelfer (admitted *pro hac vice*)
1700 M Street, N.W.
Washington, D.C. 20036-4504
Tel.: (202) 955-8500
Fax: (202) 530-9662
Email: mestrada@gibsondunn.com
lshelfer@gibsondunn.com

CADWALADER, WICKERSHAM & TAFT LLP

By: */s/ William J. Natbony*
Casey J. Servais (admitted *pro hac vice*)
William J. Natbony (admitted *pro hac vice*)
Thomas J. Curtin (admitted *pro hac vice*)
200 Liberty Street
New York, New York 10281
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: casey.servais@cwt.com
bill.natbony@cwt.com
thomas.curtin@cwt.com

Co-Counsel for Assured Guaranty Inc.

TORO COLÓN MULLET P.S.C.
P.O. Box 195383
San Juan, PR 00919-5383
Tel.: (787) 751-8999
Fax: (787) 763-7760

/s/ Manuel Fernández-Bared
MANUEL FERNÁNDEZ-BARED
USDC-PR No. 204204
Email: mfb@tcm.law

/s/ Linette Figueroa-Torres
LINETTE FIGUEROA-TORRES
USDC-PR No. 227104
Email: lft@tcm.law

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Tel.: (212) 373-3000
Fax: (212)757-3990

/s/ Andrew N. Rosenberg
Andrew N. Rosenberg
Paul D. Brachman
Karen R. Zeituni

Email: arosenberg@paulweiss.com
pbrachman@paulweiss.com
kzeituni@paulweiss.com

Co-Counsel for the Majority Member Ad Hoc Group

REICHARD & ESCALERA, LLC

By: */s/ Rafael Escalera*
Rafael Escalera
P.R. Bar No. 5610

By: */s/ Sylvia M. Arizmendi*
Sylvia M. Arizmendi
P.R. Bar No. 10337

By: */s/ Carlos R. Rivera-Ortiz*
Carlos R. Rivera-Ortiz
P.R. Bar No. 22308
255 Ponce de León Avenue
MCS Plaza, 10th Floor
San Juan, Puerto Rico 00917-1913
Tel.: (787) 777-8888
Fax: (787) 765-4225
Email: escalara@reichardescalera.com
arizmendis@reichardescalera.com
riverac@reichardescalera.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Susheel Kirpalani*
Susheel Kirpalani
Eric Kay
295 Fifth Avenue
New York, New York 10016
Tel.: (212) 849-7000
Fax: (212) 849-7100
Email:
susheelkirpalani@quinnemanuel.com
erickay@quinnemanuel.com

Co-Counsel for Syncora Guarantee, Inc.

MONSERRATE SIMONET & GIERBOLINI, LLC

By: */s/ Dora L. Monserrate-Peñagarícano*
Dora L. Monserrate-Peñagarícano
P.R. Bar No. 11661
Fernando J. Gierbolini-González
P.R. Bar No. 11375
Richard J. Schell
P.R. Bar No. 21041
101 San Patricio Ave., Suite 1120
Guaynabo, Puerto Rico 00968
Phone: (787) 620-5300
Facsimile: (787) 620-5305
Email: dmonserrate@msglawpr.com
fgierbolini@msglawpr.com
rschell@msglawpr.com

DECHERT LLP

By: */s/ David A. Herman*
David A. Herman (admitted *pro hac vice*)
G. Eric Brunstad, Jr.
Stephen D. Zide
1095 Avenue of the Americas
New York, New York 10036
Phone: (212) 698-3500
Facsimile: (212) 698-3599
Email: eric.brunstad@dechert.com
stephen.zide@dechert.com
david.herman@dechert.com

Michael Doluisio
Stuart Steinberg
2929 Arch Street
Philadelphia, PA 19104
Phone: (215) 994-4000
Facsimile: (215) 994-2222
Email: michael.doluisio@dechert.com
stuart.steinberg@dechert.com

Co-Counsel for the PREPA Ad Hoc Group

RESUMEN DE: ESCRITO JURÍDICO Y NORMATIVO DE LOS BONISTAS

AL NEGOCIADO DE ENERGÍA DE PUERTO RICO:

Las leyes de Puerto Rico imponen al Negociado de Energía (NEPR) el deber de fijar tarifas que cubran todos los gastos razonables, prudentes y necesarios, garantizando un servicio eléctrico adecuado y seguro. Asimismo, la normativa exige que el NEPR vele por el cumplimiento de PREPA con sus obligaciones con los Bonistas. En este contexto, consideraciones como "asequibilidad" o "practicabilidad" no pueden reducir los ingresos requeridos. Estas consideraciones, de existir, corresponden exclusivamente a la etapa de diseño tarifario.

Los Bonistas reiteran que la Ley PROMESA no tiene preeminencia sobre la facultad del NEPR para crear y aprobar en este procedimiento, un mecanismo para facilitar el futuro pago de la deuda heredada a los bonistas (LDR) una vez concluya el procedimiento de Título III. El LDR no contempla un monto específico, no provoca pagos de la deuda ni genera obligaciones inmediatas, por lo que no incumple la suspensión automática ni invade la jurisdicción de la Corte del

Título III.

Se destaca la inconsistencia jurídica y fáctica en el intento de PREPA de financiar mediante tarifas sus obligaciones de pensión—no garantizadas y sujetas a reestructuración—mientras sostiene que las obligaciones garantizadas a los Bonistas no deben considerarse. Dicha posición contradice el marco legal, los principios de prioridad bajo el Código de Quiebras y la propia estructura de PROMESA. No existe fundamento legal alguno para conferir prioridad tarifaria a obligaciones de pensiones frente a deuda garantizada.

Los Bonistas reafirman que la carga probatoria recae exclusivamente en los solicitantes de tarifas—PREPA, Genera y LUMA—quienes deben demostrar, mediante prueba suficiente, que

cada gasto propuesto es prudente, razonable y necesario. No existe base jurídica para presumir la prudencia de sus propuestas ni para trasladar tal carga a los consumidores o interventores. Esto es particularmente aplicable a costos futuros o estimados, donde el marco regulatorio exige escrutinio previo.

Los Bonistas sostienen que los solicitantes deben priorizar fondos federales en lugar de requerir dichos fondos de los clientes, y cuando un proyecto financiado por tarifas reciba posteriormente fondos federales o externos, el NEPR debe ordenar la devolución a los clientes para evitar doble cobro. Esta medida no constituye retroactividad prohibida siempre que el mecanismo de reconciliación sea previamente notificado y esté contenido en la orden final. Ello se alinea con la práctica existente de reconciliaciones en tarifas provisionales y en cargos por combustible y compra de energía.

Se solicita respetuosamente que el NEPR adopte las conclusiones aquí expuestas y afirme su autoridad legal para garantizar tarifas justas y razonables, prevenir el doble cobro, exigir el cumplimiento estricto de la carga probatoria y proteger los derechos de los acreedores garantizados, como los Bonistas.