

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

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In re:

PUERTO RICO ELECTRIC POWER  
AUTHORITY RATE REVIEW

Case No.: NEPR-AP-2023-0003

**PREPA'S REPLY BRIEF IN RESPONSE TO THE LEGAL AND POLICY QUESTIONS  
IN THE HEARING EXAMINER'S ORDER ON EXHIBITS, MISCELLANEOUS POST HEARING  
MATTERS, AND LEGAL ISSUES**

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**TO THE HEARING EXAMINER,**

**COMES NOW**, the Puerto Rico Electric Power Authority ("PREPA"), through its undersigned legal counsel, and in reply to the responses to certain legal and policy questions posed in the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues*, and very respectfully, states and prays as follows:<sup>1</sup>

**II. PRELIMINARY STATEMENT**

PREPA submits this reply brief to address the arguments raised by other parties—principally, the Bondholders, and Solar United Neighbors's and the Solar and Energy Storage Association of Puerto Rico's (jointly, "SUN-SESA") —on three categories of issues: (1) whether the Puerto Rico Energy Bureau's ("Energy Bureau") inclusion of a legacy debt rider ("LDR") in PREPA's rate structure is preempted by the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"); (2) the proper treatment of PayGo<sup>2</sup> pension obligations in PREPA's revenue requirement; and (3) the proper construction of Section 4 of Act 114-2007 ("Act 114-2007").

The Bondholders ask the Energy Bureau to act where it should not—by embedding a placeholder for legacy debt recovery in rates while the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") has not authorized any payment, the automatic stay remains in effect in PREPA's Title III case,

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<sup>1</sup> The filing of this brief is made without waiver of, and expressly subject to, PREPA's arguments set forth in its Motion for Reconsideration and in Compliance with Resolution and Order of February 9, 2026, filed on February 21, 2026. PREPA expressly preserves all rights, positions, and objections asserted therein. Further, PREPA reiterates that several of the questions posed in the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues*, issued on December 22, 2025, are framed in broad terms and lack sufficient factual context. Accordingly, PREPA provides the replies set forth herein based on its current understanding of the issues presented. By doing so, PREPA does not waive, and expressly reserves, its right to revise or supplement its legal positions should additional, different or more specific facts emerge in the course of these proceedings or other proceedings. PREPA also expressly reserves all rights to challenge any determinations of the Hearing Examiner or the Energy Bureau in this proceeding.

<sup>2</sup> "PayGo" funding refers to go-forward pension obligation payments for PREPA's pensioners.

and the Title III court has not determined whether, how, or in what amount that debt will be repaid. This request is not only premature, it risks direct conflict with PROMESA Title II and Title III. By contrast, PREPA's request to include PayGo pension costs in rates is permitted under the certified Fiscal Plan, provided for under PREPA's certified Amended Fiscal Year 2026 Budget, and implicates no Title III issues at this stage.

PREPA also addresses Solar United Neighbors's and the Solar and Energy Storage Association of Puerto Rico's (jointly, "SUN-SESA")<sup>3</sup> contention that a fixed per-customer pension rider is unlawful under Section 4 of Act 114-2007 and demonstrates that such argument rests on a misreading of the statute and an incomplete legal analysis. As will be explained in the ensuing paragraphs, the volumetric mandate on which SUN-SESA relies is not presently operative, as it is expressly conditioned on a future study that cannot legally commence until 2030; thus, it does not constrain current rate design or prohibit fixed charges. Section 4(c) does not ban new rate structures but rather requires prior authorization from the Energy Bureau. Moreover, a uniform fixed charge for legacy pension costs is neither discriminatory nor a charge on renewable generation, but instead a lawful mechanism to ensure equitable cost allocation and compliance with the "just and reasonable" standard under Act 57-2014. PREPA also addresses SUN-SESA's response to the Hearing Examiner's hypothetical, demonstrating that Act 114-2007 does not distinguish between base rates and riders and that, in any event, the statutory conditions necessary to impose a volumetric requirement have not been triggered. Accordingly, the Energy Bureau

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<sup>3</sup> SUN-SESA' Initial Legal and Policy Brief, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (March 6, 2026) (the "SUN-SESA' Brief").

retains full jurisdiction to approve a fixed per-customer charge for pension costs, and that SUN–SESA's interpretation is both legally unsound and internally inconsistent.

### III. DISCUSSION

#### A. **The Bondholders' Argument That a Legacy Debt Rider is Not Preempted by PROMESA Ignores Unresolved Questions and Invites Unnecessary Litigation**

No party claims that imposing a placeholder LDR, at this time, is mandatory. The Bondholders contend that “[b]y approving the placeholder LDR, [the Energy Bureau] 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.”<sup>4</sup> The Bondholders are correct in their concession that no funds can be collected under a LDR at this time. But PROMESA preempts the Energy Bureau's inclusion of a LDR that is inconsistent with (1) PREPA's certified fiscal plan or budget under Title II; or (2) any determinations of the Title III court, whether the inconsistency arises from the amount or method of collection.<sup>5</sup> Accordingly, the Bondholders' conclusion that a LDR would not be preempted<sup>6</sup> cannot be proven because they have not proposed any specific LDR, nor is there any evidence of the form or scope

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<sup>4</sup> Bondholders' Initial Legal and Policy Brief at 16, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (March 6, 2026) (the “Bondholders' Brief”).

<sup>5</sup>Notably, the Oversight Board goes further, stating that any legacy debt rider would be preempted *at this time*. November 7, 2025 communication from Oversight Board counsel at 3–5 (Exhibit A to PREPA's Initial Brief in Response to the Legal and Policy Questions in the Hearing Examiner's Order on Exhibits, Miscellaneous Post Hearing Matters, and Legal Issues, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (March 9, 2026)). Indeed, as it stands today, the Fiscal Plan expressly provides that legacy debt will not be paid through rates. February 2025 Fiscal Plan for the Puerto Rico Electric Power Authority at 118 (available at <https://drive.google.com/file/d/1WksRhtfmoLvaZFb-5pUNkFXGEiT3t6vp/view?usp=sharing>) (hereinafter, the “Fiscal Plan”) (“PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs.”).

<sup>6</sup> Bondholders' Brief at 11 (“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”).

of a LDR, which can be tested against PROMESA's preemptive effect.<sup>7</sup> There is no reason for the Energy Bureau to delve into this issue and invite expensive and time-consuming federal litigation: it should simply decline to order the LDR today on the grounds it is confusing and unnecessary.

1. **Title II Conflict Preemption: The Fiscal Plan's Authority Under Title II Cannot Be Diminished by the Bondholders' Mischaracterization of its Legal Force**

The Bondholders attempt to undermine Title II's preemptive effect by arguing that "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."<sup>8</sup> However, this conflates two distinct legal principles. Under Title II, certified fiscal plans and budgets are binding and not subject to judicial review.<sup>9</sup> The fact that the Title III court must make an independent determination that a plan of adjustment consistent with the fiscal plan is feasible, fair and equitable, and confirmable does not make PREPA's Fiscal Plan "preliminary" or any less binding for preemption purposes today. The fact that a fiscal plan cannot bind the Title III court's future determination as to

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<sup>7</sup> The potential for conflict between a LDR and PROMESA is outlined in PREPA's Initial Brief in Response to the Legal and Policy Questions in the Hearing Examiner's Order on Exhibits, Miscellaneous Post Hearing Matters, and Legal Issues, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (March 9, 2026).

<sup>8</sup> Bondholders' Brief at 17.

<sup>9</sup> 48 U.S.C. § 2126(e) ("There shall be no jurisdiction in any United States district court to review challenges to the Oversight Board's certification determinations under this chapter."); see *Roselló v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 330 F. Supp. 3d 685, 700 (D.P.R. 2018) ("The power bestowed on the Oversight Board by Section 201(b)(1)(K) of PROMESA allows the Oversight Board to make binding policy choices for the Commonwealth . . ."); *Vázquez-Garced v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 945 F.3d 3, 8 (1st Cir. 2019) (affirming that any spending outside a certified budget and fiscal plan is "inconsistent with PROMESA's declaration that the Oversight Board-certified budget for the fiscal year is in full force and effect, and is therefore preempted by that statutory provision by force of Section 4 of PROMESA" (emphasis removed from original)).

whether a plan of adjustment is confirmable does not erode a fiscal plan's current effect.<sup>10</sup>

Next, the Bondholders claim that Title II does not preempt Act 57<sup>11</sup> because fiscal plans must be based on “applicable laws” and “respect relative lawful priorities or lawful liens” existing before June 30, 2016.<sup>12</sup> The “applicable laws” provision does not suggest that fiscal plans are subordinate to Puerto Rico law. Quite the opposite: in the areas in which certified fiscal plans and budgets govern (like if, when and how legacy debt will be repaid), they preempt inconsistent Puerto Rico law.<sup>13</sup> And, private parties have no ability to challenge how the Oversight Board balances the various provisions in PROMESA Section 201, including with respect to debt payments.<sup>14</sup>

2. **Title III Conflict Preemption: A Legacy Debt Rider Frustrates PROMESA's Purposes by Prejudging Outcomes Reserved for the Title III Court**

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<sup>10</sup> *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 916 F.3d 98, 116 (1st Cir. 2019) (“[u]nder PROMESA's preemption provision, the grants of authority to the Board at §§ 201 and 202 to approve Fiscal Plans and Budgets ‘prevail over any general or specific provisions of territory law,’ including provisions of Puerto Rico's Constitution that are ‘inconsistent with [PROMESA].’”).

<sup>11</sup> Act 57-2014, as amended by Act 17-2019 (“Act 57”).

<sup>12</sup> Bondholders' Brief at 13.

<sup>13</sup> See *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 330 F. Supp. 3d at 700 (“The power bestowed on the Oversight Board by Section 201(b)(1)(K) of PROMESA allows the Oversight Board to make binding policy choices for the Commonwealth . . . .”); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 945 F.3d at 8 (affirming that any spending outside a certified budget and fiscal plan is “inconsistent with PROMESA's declaration that the Oversight Board-certified budget for the fiscal year is in full force and effect, and is therefore preempted by that statutory provision by force of Section 4 of PROMESA” (emphasis removed from original)); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 916 F.3d at 112–114, 116 (rejecting a challenge to a certified fiscal plan and budget for lack of subject matter jurisdiction under section 106(e) of PROMESA and holding that “[u]nder PROMESA's preemption provision, the grants of authority to the Board at §§ 201 and 202 to approve Fiscal Plans and Budgets ‘prevail over any general or specific provisions of territory law,’ including provisions of Puerto Rico's Constitution that are ‘inconsistent with [PROMESA].’”).

<sup>14</sup> *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 916 F.3d at 113 (“[U]nder § 201, the Board has ‘sole discretion’ to determine whether Fiscal Plans comply with [PROMESA's] statutory requirements.”).

The Bondholders insist there is no preemption because a placeholder LDR would not be “determining the repayment amount.”<sup>15</sup> While this is an important concession that no amounts for repayment can be imposed today, the Bondholders miss the point, which is that even a placeholder LDR can conflict with PROMESA through inconsistency with a fiscal plan or Title III ruling as to amount or source of payments.

The parties agree that conflict preemption applies when local law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>16</sup> The bar is not a strict conflict between two mandates—it is enough that local law “frustrates” federal law’s “operation within its chosen field” and denies “its provisions . . . their natural effect.”<sup>17</sup>

An undefined placeholder LDR threatens to do exactly that. At a minimum, it is a prediction by the Energy Bureau that the bonds will be paid—and paid through rates—even though the current Fiscal Plan does not permit that and the issue has not been resolved in the Title III court.<sup>18</sup> And this is despite the fact that the Energy Bureau plays no role in establishing how much Bondholders will be paid or what the source of those payments will be (i.e., from rates or from some other source). The Bondholders

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<sup>15</sup> Bondholders’ Brief at 16.

<sup>16</sup> Bondholders’ Brief at 13–14; accord *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

<sup>17</sup> *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (quoting *Savage v. Jones*, 225 U.S. 501, 533 (1912)).

<sup>18</sup> In fact, the certified Fiscal Plan provides that “PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs.” Fiscal Plan at 118.

do not dispute this signaling effect; they welcome it.<sup>19</sup> But unanchored market expectations about legacy debt, untethered to any fiscal plan, budget, or court ruling, are contrary to Congress's purpose to allow Puerto Rico to "achieve fiscal responsibility and access to the capital markets."<sup>20</sup>

The Bondholders' reliance on section 1129(a)(6) of the Bankruptcy Code and section 314(b)(5) of PROMESA fares no better.<sup>21</sup> Those provisions authorize rate changes necessary to implement a plan of adjustment (which, of course, must be consistent with a fiscal plan)—not an amorphous, pre-confirmation rider inconsistent with the current certified Fiscal Plan.<sup>22</sup>

### **3. PROMESA's Comprehensive Federal Regime Over Debt Restructuring Preempts the Energy Bureau's Authority to Address Legacy Debt**

While PREPA's preemption argument here centers on conflict preemption,<sup>23</sup> the Bondholders' field preemption claims warrant a brief response. The Bondholders assert that "PROMESA does not empower the Title III court to set rates—it simply

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<sup>19</sup> Hr'g Tr. at 441:7–14 (Dec. 9, 2025) ("I think that in anticipation of the future in which there will be emergence from bankruptcy by PREPA, that it would be a signal to the capital markets that the [Energy Bureau] wants to see a timely commencement of recovery of legacy, whatever legacy debt amount comes out of the Title III court." (statement of Dr. Susan Tierney)); see also Bondholders' Brief at 17.

<sup>20</sup> 48 U.S.C. § 2141(b)(1). The conflict preemption risks of a LDR are extensively outlined in PREPA's Brief on Rate Design, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Feb. 17, 2026) and PREPA's Reply Brief on Rate Design, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Mar. 3, 2026).

<sup>21</sup> See Bondholders' Brief at 14–15.

<sup>22</sup> 48 U.S.C. § 2174(b)(5) ("The court shall confirm the 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."); 11 U.S.C. § 1129(a)(6) ("The court shall confirm a plan only if all of the following requirements are met: . . . 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.").

<sup>23</sup> See PREPA's Initial Brief in Response to the Legal and Policy Questions in the Hearing Examiner's Order on Exhibits, Miscellaneous Post Hearing Matters, and Legal Issues, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (March 9, 2026). For the avoidance of doubt, PREPA reserves the right to contest in the future that any legacy debt rider is field preempted by PROMESA.

empowers the Title III court to adjust PREPA's debts. Nor does PROMESA substitute the fiscal plan for [the Energy Bureau]'s ratemaking authority."<sup>24</sup> The parties agree.<sup>25</sup> But this has nothing to do with the critical point: Title II imposes parameters on how PREPA can raise revenue and annual debt service<sup>26</sup> and the Title III court has "exclusive authority to restructure PREPA's debt."<sup>27</sup> Since neither currently permit debt payments or specify how debt will be repaid, a rider designed to address legacy debt treatment should await the Title III court's ruling.<sup>28</sup>

The Bondholders further contend that fiscal plans "shall . . . provide for estimates of revenues and expenditures in conformance with agreed accounting standards and be based on . . . applicable laws,"<sup>29</sup> to argue fiscal plans cannot

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<sup>24</sup> Bondholders' Brief at 11.

<sup>25</sup> By framing PREPA's preemption argument as regarding "ratemaking," the Bondholders also misidentify the operative "field" for the sake of their argument; the relevant field is not ratemaking, but debt restructuring. The rider at issue involves how legacy debt should be treated, a matter that is actively being litigated in PROMESA's "modified version of the municipal bankruptcy code for territories and their instrumentalities." *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 32 F.4th 67, 75 (1st Cir. 2022). PREPA has never suggested that PROMESA preempts the Energy Bureau's ratemaking authority as a whole; rather, the Energy Bureau is preempted insofar as the ratemaking attempts to address legacy debt obligations, as those determinations belong in the first instance in the Title III court (as related to restructuring debt).

<sup>26</sup> *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 709 F. Supp. 3d 52, 57 (D.P.R. 2023) (stating that Title II "provide[s] the Oversight Board with the power to 'develop, review, approve, and certify fiscal plans that . . . in turn dictate the bounds of any annual budgets adopted by' the Commonwealth and its instrumentalities"); see also Fiscal Plan at 118 ("PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs."); see also Tr. of Hr'g at 6:19-22, *Puerto Rico Energy Comm'n v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, Adv. Pro. No. 18-00021-LTS (D.P.R. Apr. 2, 2018), Dkt. No. 74 (recognizing, as the Hearing Examiner did when representing the Energy Bureau's predecessor before the Title III court, that the "effect of [fiscal plan] certification [under Title II] is to establish fiscal parameters, expenditure limits, budget caps, all of which will be binding on PREPA and on [the Energy Bureau].").

<sup>27</sup> Bondholders' Brief at 11.

<sup>28</sup> This position is consistent with Act 57 itself, which exempts from the Energy Bureau's approval authority bond issues promulgated under Title III or Title IV of PROMESA. See Act 57-2014, § 6.3(q), as amended by Act 17-2019, § 5.10 ("None of these provisions shall apply to bond issues that [sic] promulgated in accordance with Chapter IV of the 'Electric Power Authority Revitalization Act' or subject to authorization under Title III or Title IV of PROMESA, Public Law No. 114-87.").

<sup>29</sup> Bondholders' Brief at 13.

preempt pre-PROMESA law like Act 57.<sup>30</sup> But as outlined above, Fiscal Plans are not subject to challenge and do preempt inconsistent Puerto Rico law.<sup>31</sup> The fact that some state law survives does not strip a federal statute of all preemptive effect.<sup>32</sup>

The Bondholders also argue that “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.”<sup>33</sup> That is not an issue for the Energy Bureau because here, the Title III automatic stay remains in effect. Moreover, the provision the Bondholders invoke is expressly “[s]ubject to the limitations set forth in subchapters I and II of” PROMESA<sup>34</sup>—meaning the fiscal plan is not subject to this limitation. Similarly, their citation to section 303’s reservation 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”<sup>35</sup> proves little: a general reservation of governmental control over instrumentalities does not mean Puerto Rico laws regarding debt obligations are not preempted by PROMESA. The Energy Bureau

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<sup>30</sup> Bondholders’ Brief at 13. PREPA also incorporates by reference Section I of PREPA’s Response to Hearing Examiner’s Order Regarding Consideration of Legacy Debt in Rate Case Hearing, *In re Puerto Rico Elec. Power Auth. Rate Review*, NEPR-AP-2023-0003 (P.R. Energy Bureau Oct. 27, 2025) (outlining that sections 6.3(m) and 6.3(p) of Act 57 are field preempted by PROMESA).

<sup>31</sup> See *supra* Section A(1).

<sup>32</sup> Indeed, federal law may preempt one field while leaving other, closely-related fields to be regulated by the states. See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 552 (2001) (holding that, despite preempting state tobacco advertising regulations, the Federal Cigarette Labeling and Advertising Act “does not foreclose *all* state regulation of conduct as it relates to the sale or use of cigarettes” but instead leaves regulation of the sale of tobacco to minors to the states).

<sup>33</sup> Bondholders’ Brief at 29.

<sup>34</sup> 48 U.S.C. § 2163.

<sup>35</sup> Bondholders’ Brief at 12.

should avoid preemption risk by deferring the LDR until the Title III court and Oversight Board have resolved legacy debt treatment.

**B. PayGo Pension Obligations are Distinguishable from Legacy Bondholder Debt**

**1. The Distinction Between Pension Costs and Bondholder Debt Follows Directly from the Fiscal Plan and Budget Express Mandates**

The Bondholders claim that PREPA's position that PROMESA preempts consideration of bondholder debt but not pensions is "fundamentally inconsistent."<sup>36</sup> But the distinction between pensions and bondholder debt follows PROMESA and the Oversight Board's powers under it with respect to fiscal matters to a tee.

Certified fiscal plans and budgets under PROMESA govern PREPA's financial obligations and debt repayment.<sup>37</sup> The certified Fiscal Plan and PREPA's Amended Fiscal Year 2026 Budget make clear that PayGo pension funding is critical for PREPA.<sup>38</sup> In accordance with this, the FY26 Budget establishes the annual amount required to satisfy that obligation.<sup>39</sup> That, in turn, means section 6.25(a) of Act 57 provides for its

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<sup>36</sup> Bondholders' Brief at 20.

<sup>37</sup> See *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 330 F. Supp. 3d at 700 ("The power bestowed on the Oversight Board by Section 201(b)(1)(K) of PROMESA allows the Oversight Board to make binding policy choices for the Commonwealth, notwithstanding the Governor's rejection of Section 205 recommendations."); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 945 F.3d at 8 (affirming that any spending outside a certified budget and fiscal plan is "inconsistent with PROMESA's declaration that the Oversight Board-certified budget for the fiscal year is in full force and effect, and is therefore preempted by that statutory provision by force of Section 4 of PROMESA" (emphasis removed from original)).

<sup>38</sup> Fiscal Plan at 97 (listing PayGo pension benefits as a PREPA expense); Resolution Certifying Third Revised Fiscal Year 2026 Budget for the Puerto Rico Electric Power Authority, at A-2 (Jan. 26, 2026) (available at [https://drive.google.com/file/d/1uhW54Jtj1OJH6EozY7faM\\_pwTms9LpXZ/view](https://drive.google.com/file/d/1uhW54Jtj1OJH6EozY7faM_pwTms9LpXZ/view)) (the "FY26 Budget") (listing a roughly \$307.5 million expense for pensions).

<sup>39</sup> FY26 Budget at A-2; see also PREPA's Reply Brief on Revenue Requirement at 1.63–1.65, *In re P.R. Elec. Power Auth. Rate Review*, Case No. NEPR-AP-2023-0003 (Feb. 17, 2026) (explaining that PREPA filed Exhibit 1105 which includes the revenue requirement for pensions: \$211,146,063 for FY2026, \$307,408,581 for FY2027, and \$307,188,608 for FY2028).

inclusion in PREPA's revenue requirement as a lawfully incurred cost.<sup>40</sup> By contrast, the Fiscal Plan and FY26 Budget do not permit bond debt in rates.<sup>41</sup>

## 2. **PayGo Pension Payments are Payment of Current Pension Obligations**

The Bondholders frame PREPA's pension request as payment of "legacy, unsecured pension obligations."<sup>42</sup> But PREPA is not seeking to contribute to PREPA's Employees' Retirement System to re-fund or recover for legacy underfunding. Rather, PREPA is seeking to pay the ongoing pension obligation—based on actual payments to current retirees—distinct from the mandated employer contributions and recapitalization that characterized prepetition pension system obligations. The approximately \$211 million for FY26 and approximately \$307 million for FY27/28 reflect only yearly funding requirements on a PayGo basis.<sup>43</sup> This is fundamentally different from a legacy debt obligation: PayGo payments are ongoing expenses approved by the Oversight Board *through a certified fiscal plan and budget*,<sup>44</sup> not pre-petition claims being satisfied outside the bankruptcy process.<sup>45</sup>

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<sup>40</sup> See Act 57-2014, § 6.25(a) as amended by Act 17-2019, § 5.20 (rates shall be approved if they "allow[] electric power service companies to recover all operating and maintenance costs, capital investments, financing costs, statutory costs, as well as any other cost lawfully incurred in the provision of electric power services . . ." (emphasis added)).

<sup>41</sup> See Fiscal Plan at 118 ("PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs.").

<sup>42</sup> Bondholders' Brief at 2.

<sup>43</sup> FY26 Budget at A-2.

<sup>44</sup> PayGo funding consists of \$211,146,063 for FY2026, \$307,408,581 for FY2027, and \$307,188,608 for FY2028. See PREPA Ex. 1105 at 3.

<sup>45</sup> Legacy pension liabilities consist of approximately \$3.0 billion. See Exhibit 85.01, PREPA's Written Testimony of Brenda E. Rivera Rodríguez on Behalf of the Puerto Rico Electric Power Authority Regarding the PREPA Employees' Retirement System ("Question No. 4: What is the current estimated net pension liability of the PREPA ERS? Answer to Question No. 4: Approximately \$3.9 billion, from the FY2023 PREPA ERS audited financial statement. This reflects a total pension liability of approximately \$5.0 billion, offset by an estimated Plan Fiduciary Net Position of approximately \$1.1 billion.").

### 3. **PROMESA, the Fiscal Plan, and Oversight Board Actions All Favor PayGo Pension Funding**

The Oversight Board has determined that funding PayGo pension payments is necessary to ensure adequate funding of public pensions—as required by section 201(b)(1)(C) of PROMESA—so the Fiscal Plan and FY26 Budget provide for it.<sup>46</sup> No similar determination has been made with regard to bonds.

The Bondholders second-guess the Oversight Board's determination, arguing that section 201(b)(1)(C) "should not be interpreted to reprioritize pension liabilities ahead of . . . bondholders."<sup>47</sup> First, the same paragraph from the House Report where this language is derived makes clear that section 201(b)(1)(C) "seeks to provide an adequate level of funding for pension systems."<sup>48</sup> The Fiscal Plan's requirement for PayGo funding is precisely the type of "adequate funding" PROMESA envisions. Second, there is no "reprioritization" of obligations occurring here (but if there were, it would be an issue for the Title III court to resolve). The Fiscal Plan's provisions for PayGo funding creates a lawful operating expense under federal law that *must be* included in rates under Puerto Rico law.<sup>49</sup>

As the Oversight Board has argued as recently as last week:

PREPA is required, in any event, to adequately fund its pension obligations. PROMESA grants the Oversight Board the authority to certify

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<sup>46</sup> See FY26 Budget at A-2 (listing a roughly \$307.5 million expense for pensions); Fiscal Plan at 97, 118 (listing pension expenses (specifically PayGo funding), as an expense category, but stating that "PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs").

<sup>47</sup> Bondholders' Brief at 27.

<sup>48</sup> H.R. Rep. No. 114-602 at 45 (2016).

<sup>49</sup> Act 57-2014, § 6.25(a) *as amended by* Act 17-2019, § 5.20 (rates *shall* be approved if they "allow[] electric power service companies to recover all operating and maintenance costs, capital investments, financing costs, statutory costs, as well as *any other cost lawfully incurred* in the provision of electric power services . . ." (emphasis added)).

fiscal plans and budgets for the Commonwealth and its covered instrumentalities, which, once certified, must be complied with by the subject entity. Moreover, section 201 (b) of PROMESA requires fiscal plans to “provide adequate funding for public pension systems.” Each of the fiscal plans certified by the Oversight Board for PREPA, including the current PREPA Fiscal Plan, require PREPA to pay PREPA ERS for its current pension liabilities on a monthly basis. Indeed, contrary to Movants’ allegations, the Pension Charge does not compel PREPA’s customers (i.e. the putative class members) to pay for pensions twice. PREPA may have previously collected revenues ostensibly for pensions, but had to use the funds for other operating costs because its rates were historically kept too low to cover both, and now PREPA must start paying that deferred expense. Ratepayers were then, and are now, paying only for the all-in cost of providing electricity; payments to PREPA ERS to fund pensions to PREPA retirees is not an extraneous expenditure.<sup>50</sup>

Additionally, the Fiscal Plan identifies inclusion of pension costs in the revenue requirement as a funding source and calls on all stakeholders to implement a dedicated funding source.<sup>51</sup> In contrast, it explicitly prohibits payment of bondholder debt through rates.<sup>52</sup>

#### **4. Disputes Regarding the Trust Agreement and Creditor Priority Belong Before the Title III Court**

The Bondholders rely on the Trust Agreement to attack the priority of pensions.<sup>53</sup> But as the Bondholders admit, this issue is pending before the Title III court<sup>54</sup> and

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<sup>50</sup> Notice of Filing of Corrected Objection of the Puerto Rico Electric Power Authority to Urgent Motion for Stay Relief to Prosecute Consumer Class Action Contesting Validity of Provisional Charge Imposed by Puerto Rico Energy Bureau to Pay Pensions at Ex. A, 17–18, *Socias v. P.R. Elec. Power Auth. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, Case Nos. 17-BK-3283-LTS; 17-BK-4780-LTS (D.P.R. Mar. 9, 2026), Dkt. No. 6044.

<sup>51</sup> Fiscal Plan at 125 (“[T]he Oversight Board urges all stakeholders, including PREPA, AAFAF, PREPA ERS, and PREB, to take immediate action to implement a dedicated [pension] funding source during CY2025 while conclusion of the Title III case is pursued. As PREB reinitiated the rate review process in December 2024, with expectation of a provisional rate imposition in July 2025, including the pension cost into the revenue requirement as part of the base rate or a rider may be a possible funding source.”).

<sup>52</sup> See *id.* at 118 (“PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs.”).

<sup>53</sup> See Bondholders’ Brief at 29–35.

<sup>54</sup> See *id.* at 30 (“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.’”).

resolutions regarding legacy debt and priority among creditors will be properly resolved in that forum, not this one.

**5. PayGo Pension Payments Do Not Implicate the Automatic Stay Under PROMESA**

The Bondholders argue that voluntary pension payments by PREPA would violate the automatic stay. This argument is created out of whole cloth (evidenced by the fact that it has never been raised in the Title III court in nine years).<sup>55</sup> For one, the PREPA Employees' Retirement System's ("PREPA ERS") acceptance of a payment is not an "effort[] to collect, assess, or recover a claim against the debtor."<sup>56</sup> PREPA is the actor here, making voluntary payments, not PREPA ERS. The Bondholders' claim that the First Circuit has recognized that "except for bondholders subject to exception 922(d) of the Bankruptcy Code" the automatic stay bars acceptance of voluntary payment from a debtor is based on inapplicable dicta.<sup>57</sup> The court in *In re Financial Oversight & Management Board* held that section 922(d) permits voluntary application of pledged special revenues without violating the stay.<sup>58</sup> Stating that this premise can be turned upside down overstates section 922(d)'s impact.

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<sup>55</sup> However, when considering whether use of cash collateral gave rise to an administrative claim, the Title III court recently held that "because PROMESA lacks section 363, and is thus more deferential to debtors, there is no restriction on PREPA's right to use its collateral, unlike in Chapter 11 cases in which debtors are subject to the restrictions imposed by section 363." Opinion and Order Denying PREPA Bondholders' Motion for Allowance of Administrative Expense Claim at 38–39, *In re Fin. Oversight & Mgmt. Bd. for P.R.*, Case Nos. 17-BK-3283-LTS, 17-BK-4780-LTS (D.P.R. Mar. 16, 2026) Dkt. No. 30,762.

<sup>56</sup> See Bondholders' Brief at 24 (quoting 11 U.S.C. § 362(a)(6)) (quotations omitted).

<sup>57</sup> See Bondholders' Brief at 25.

<sup>58</sup> See *In re Financial Oversight & Management Board*, 919 F.3d 121, 130–32 (1st Cir. 2019) ("Section 922(d)'s plain language establishes that the application of pledged special revenues is not a violation of the automatic stay."); see also *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 582 B.R. 579, 595 (D.P.R. 2018) (construing Bankruptcy Code § 922(d) narrowly to give full effect to PROMESA § 305, given the statutory canon that "statutes should be interpreted to give effect to all words and phrases" (citing *United States v. Ven-Fuel, Inc.*, 758 F.2d 741, 751-52 (1st Cir. 1985))), *aff'd*, 919 F.3d 121 (1st Cir. 2019).

Importantly, PROMESA does not incorporate section 363(b), which prohibits a debtor's use of property outside the ordinary course of business.<sup>59</sup> In fact, section 305 of PROMESA provides that the Title III court may not enter any order interfering with PREPA's use of its property unless the Oversight Board consents.<sup>60</sup> The Oversight Board has included PayGo pension payments in its FY26 Budget, and therefore legally provided for them under Title II.<sup>61</sup> The Oversight Board has also taken the position that voluntary payments are not barred by the automatic stay.<sup>62</sup>

#### **6. The Bondholders' Constitutional Claims Fail on the Merits and are Misplaced in this Proceeding**

As a last-ditch effort, the Bondholders invoke the Takings and Contracts Clauses. As the Title III court made clear on March 16, 2026, the Bondholders "contracted away their ability to claim a [constitutional] taking."<sup>63</sup> This is no surprise, as these claims have been attempted and failed before.<sup>64</sup> But even if these arguments had merit (they do not), they belong in the Title III court.

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<sup>59</sup> See *id.*; 48 U.S.C. § 2161; 11 U.S.C. § 363(b). The Bondholders also cite to Chapter 7 cases in their argument regarding the automatic stay (e.g. *Sunshine Dev., Inc. v. FDIC*, 33 F.3d 106, 113 (1st Cir. 1994)), but unlike Chapter 7, PROMESA does not include 11 U.S.C. § 363, substantially altering the character of the automatic stay.

<sup>60</sup> See 48 U.S.C. § 2165 ("[U]nless the Oversight Board consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with . . . any of the property or revenues of the debtor.").

<sup>61</sup> FY26 Budget at A-2.

<sup>62</sup> Letter from Financial Oversight & Mgmt. Bd. for P.R. to PREPA, at 2–3 (Nov. 18, 2025) (attached as Exhibit B to PREPA's Motion in Compliance with Hearing Examiner's Order Regarding PREPA Testimony and Legal Discussion on Pensions, *In re P.R. Elec. Power Auth. Rate Review*, NEPR-AP-2023-0003 (Nov. 21, 2025)) (explaining that "the Title III court may not enter any order interfering with PREPA's use of its property unless the Oversight Board consents").

<sup>63</sup> Opinion and Order Denying PREPA Bondholders' Motion for Allowance of Administrative Expense Claim at 35, *In re Fin. Oversight & Mgmt. Bd. for P.R.*, Case Nos. 17-BK-3283-LTS, 17-BK-4780-LTS (D.P.R. Mar. 16, 2026), Dkt. No. 30,762.

<sup>64</sup> See, e.g., *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 361 F. Supp. 3d 203, 244 (D.P.R. 2019) (applying the *Penn Central* analysis to debt restructuring under a PROMESA-approved plan and rejecting takings claims, holding that the restructuring of relationships between the Commonwealth, COFINA, and its bondholders using

C. **SUN-SESA's Argument that Structuring the Pension Rider as a Fixed Per-Customer Charge is Unlawful Under Section 4 of Act 114-2007 Fails as a Matter of Law.**

In the SUN-SESA Brief, SUN-SESA first contend that structuring the pension rider as a fixed per-customer charge is unlawful under Section 4 of Act 114-2007. PREPA respectfully disagrees.

SUN-SESA's argument fails at the threshold because the statutory framework on which they rely is not presently operative. Section 4(a) establishes a forward-looking regulatory process that relies on a comprehensive study that "shall not begin before January 2030". Subsection (b), which contains the volumetric mandate SUN-SESA relies upon, **only triggers** if the Bureau establishes new values "in accordance with the study described in the preceding subsection."

Because that study cannot legally commence for years, the statutory mechanism that could theoretically constrain rate design determinations to net consumption has not been triggered. Accordingly, the volumetric mandate in Section 4(b) does not constitute a present-day prohibition on rate design, and SUN-

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powers established by Congress in PROMESA constituted a legitimate regulatory adjustment of the benefits and burdens of economic life to promote the common good, rather than a physical invasion of property by the government); *Preston Hollow Cap., L.L.C. v. Cottonwood Dev. Corp.*, 23 F.4th 550, 551–52 (5th Cir. 2022) ("We decline this invitation to constitutionalize what amounts to nothing more than a contract dispute. '[W]hen a municipality acts in a contractual or proprietary capacity, actions such as contract termination or detention of property under the contract that would constitute a simple breach of contract when a non-governmental entity is involved do not become a constitutional violation simply because the contracting party is a municipality.'" (quoting *Massó-Torrellas v. Mun. of Toa Alta*, 845 F.3d 461, 468 (1st Cir. 2017))); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 297 F. Supp. 3d 269, 285 (holding that due to the failure to prove that a fiscal plan is state law [just as the Bondholders have failed to do], a Contracts Clause claim failed).

SESA's attempt to apply a conditional, post-2030 provision to invalidate the fixed charge is legally unsound.

SUN-SESA's reliance on Section 4(c) of Act 114-2007 to claim a fixed pension charge is unlawful is equally textually and legally unsupported.

First, SUN-SESA ignores the express threshold jurisdictional grant within Section 4(c), which dictates that the utility shall not impose any new charge "without prior authorization from the Bureau as provided above". The statute does not categorically ban new rate designs; it merely requires the Energy Bureau's prior authorization, which is precisely what is being sought in this proceeding.

Second, a fixed per-customer charge for legacy pension costs is not "discriminatory." It applies uniformly to all customers within the relevant class for system-wide costs entirely unrelated to energy production. To the contrary, it is SUN-SESA's position that offends statutory ratemaking principles. Section 6.25(a) of Act 57-2014 mandates that the Energy Bureau ensure all rates are "just and reasonable and consistent with sound fiscal and operational practices."

Allowing net metering customers to substantially reduce or eliminate their contribution to unavoidable legacy pension liabilities shifts cost to, and disproportionate burden non-participating customers. Rather than discriminate against net metering customers, a uniform fixed charge addresses inequity in cost allocation. A uniform fixed charge cures the inherent discrimination of allowing net metering customers to shift onto non-participant customers their fair share of the pension liability.

Furthermore, the fact that a rate structure may affect the overall economics of distributed generation does not render it unlawful as “discouraging” within the meaning of Section 4(c). Act 114-2007 does not guarantee any particular payback period or level of savings; it prohibits targeted barriers to entry, not uniform, system-wide charges authorized by the Energy Bureau to ensure the fiscal survival of the utility.

Finally, the fixed per-customer pension charge does not constitute a “direct or indirect charge... on the generation of renewable energy,” as prohibited by the final sentence of Section 4(c). A fixed charge applies irrespective of whether a customer generates electricity, is not triggered by the act of generation or export, and does not alter the crediting of exported energy. It is therefore not a charge on generation --directly or indirectly-- but a uniform charge imposed on all customers to recover system-wide costs. SUN-SESA's argument conflates economic effect with legal causation. The fact that a charge may affect the overall economics of a customer's bill does not transform it into a charge “on generation of renewable energy” within the meaning of the statute.

With respect to the Hearing Examiner's second question -- if pension costs were included in base rates, rather than recovered through a rider, would Act 114 require the pension to be recovered via a kWh charge -- SUN-SESA responded in the affirmative. Specifically, SUN-SESA asserted that a volumetric charge based on net consumption “would be fully legal,” and, by implication, that any non-volumetric charge is impermissible under the statute. However, this response omits the necessary legal analysis regarding the base rate hypothetical.

The correct answer to the Hearing Examiner's question is 'No,' and the legal analysis does not differ between a base rate and a rider. Section 4(b) of Act 114-2007 dictates that "any charges applicable to net metering customers shall be based on their net consumption." The plain text of "any charges" makes no statutory distinction between costs recovered in base rates versus a rider.

Notwithstanding and, as previously established, this volumetric mandate is not presently operative for either mechanism. Section 4(b) only triggers if the Energy Bureau establishes new values based on a comprehensive study that cannot legally commence before January 2030. Because the statutory prerequisite to trigger the 'net consumption' mandate has not occurred, the statute does not presently require pension costs to be recovered via a volumetric kWh charge, regardless of whether those costs are structured as a base rate or a rider.

Because Section 4(b) is dormant, the Energy Bureau retains its affirmative jurisdiction under Section 4(c) of Act 114-2007 and Section 6.25(a) of Act 57-2014 to authorize fixed charges in either context to ensure rates remain just, reasonable, and consistent with sound fiscal practices.

Finally, the Hearing Examiner asks why the legal analysis would be different for a rider if the statute required base rates to be strictly volumetric. Because the answer to the preceding base-rate question is unequivocally 'No,' this final inquiry is moot. Act 114-2007 establishes no legal distinction between base rates and riders; the text of Section 4(b) applies universally to "any charges". Because the conditional volumetric mandate of Section 4(b) has not been triggered, it presently constrains neither base rates nor riders.

In their brief, SUN-SESA did not address the Hearing Examiner's comparative hypothetical, concluding instead that a volumetric rider would be 'fully legal'. This omission leaves a significant contradiction in their statutory interpretation unresolved. Had SUN-SESA engaged the hypothetical and answered 'Yes,' they would have had to argue the untenable position that every base rate component must be strictly volumetric. Had they answered 'No,' they would have legally conceded that the phrase "any charges" does not categorically prohibit fixed charges. Because this logical inconsistency remains unaddressed, it is clear that the Energy Bureau possesses the unbroken statutory jurisdiction to authorize a fixed charge for legacy pension costs regardless of the ratemaking vehicle employed.

#### **IV. CONCLUSION**

**WHEREFORE**, PREPA respectfully requests that the Hearing Examiner take **NOTICE** of the arguments submitted herein.

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**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 20<sup>th</sup> day of March 2026.

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## CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE:** We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and notified via e-mail to the Hearing Examiner, Scott Hempling, [shempling@scotthemplinglaw.com](mailto:shempling@scotthemplinglaw.com); and to the attorneys of the parties of record, attorneys of the intervenors of record, and others: LUMA Energy, LLC and LUMA Energy ServCo, LLC; Margarita Mercado [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com); Jan Albino, [Jan.AlbinoLopez@us.dlapiper.com](mailto:Jan.AlbinoLopez@us.dlapiper.com); Andrea Chambers, [andrea.chambers@us.dlapiper.com](mailto:andrea.chambers@us.dlapiper.com); Carlyn Clarkin, [carlyn.clarkin@us.dlapiper.com](mailto:carlyn.clarkin@us.dlapiper.com); Katuska Bolanos, [katuska.bolanos-lugo@us.dlapiper.com](mailto:katuska.bolanos-lugo@us.dlapiper.com); Yahaira De La Rosa, [Yahaira.delarosa@us.dlapiper.com](mailto:Yahaira.delarosa@us.dlapiper.com); Genera PR, LLC, through: Jorge Fernández-Reboredo, [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com); Gabriela Castrodad, [gcastrodad@sbgblaw.com](mailto:gcastrodad@sbgblaw.com); José J. 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