

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

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CASE NO.: NEPR-AP-2023-0003

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

**SUBJECT: SREAEE'S REPLY TO THE
BONDHOLDERS "INITIAL LEGAL AND
POLICY BRIEF"**

**SREAEE's REPLY TO THE BONDHOLDERS "INITIAL LEGAL AND POLICY
BRIEF"**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the *Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica* ("SREAEE"), through its undersigned counsel, and respectfully STATES and REQUEST:

I. PRELIMINARY STATEMENT

In their Initial Legal and Policy Brief, the Bondholders devote substantial portions of their arguments to challenging the inclusion of pension-related costs in PREPA's revenue requirement. Their position is premised on several interrelated theories, including that pension obligations are merely legacy liabilities subject to restructuring in the Title III proceeding, that such costs are not legitimate operating expenses of the utility, that the Trust Agreement does not support their treatment as Current Expenses, and that the evidentiary record does not justify their recovery through rates. These arguments are legally and factually incorrect. They rest on mischaracterizations of the Trust Agreement governing PREPA's bonds, misinterpretations of the

nature of the pension obligations at issue, and an incomplete reading of the evidentiary record developed in this proceeding.

A review of *Bondholders' Initial Legal and Policy Brief* confirms that the arguments now advanced are not new but instead recycle positions that were already addressed in *SREAAE's Reply To Bondholder's Initial Post-Hearing Brief on the Revenue Requirement* and in the evidentiary record developed in this proceeding. To the extent Bondholders again challenge the pension-related component of the Revenue Requirement, SREAAE explained the basis for the proposed amounts, the methodology supporting them, and the evidentiary record on which they rest. Yet, despite having had the opportunity to do so during the evidentiary phase, Bondholders did not present expert testimony, documentary evidence, or any competing analysis sufficient to rebut that showing.

The same is true of Bondholders' renewed challenge to the treatment of pension-related costs as part of PREPA's current expenses. As reflected in *Bondholders' Initial Legal and Policy Brief*, Bondholders continue to press the same disagreement with the inclusion of pension obligations within the Revenue Requirement. But that contention was already squarely addressed in *SREAAE's Reply To Bondholder's Initial Post-Hearing Brief on the Revenue Requirement*, which set forth both the legal and evidentiary bases for treating those costs as part of PREPA's current operating obligations. Bondholders' latest brief does not materially engage with that prior analysis, nor does it identify any new factual development that would undermine it.

Likewise, Bondholders' effort in *Bondholders' Initial Legal and Policy Brief* to challenge SREAAE's reliance on the Trust Agreement is merely a repackaging of an argument previously addressed in *SREAAE's Reply To Bondholder's Initial Post-Hearing Brief on the Revenue Requirement*. There, SREAAE explained that it was not attempting to enforce the Trust Agreement

as a signatory or third-party beneficiary but rather relying on the Trust Agreement as the governing instrument that defines the structure of the Trust and the meaning of operative terms relevant to this proceeding, including “Current Expenses.” Bondholders’ continued disagreement with that framework does not transform the argument into a new one, nor does it substitute for a substantive rebuttal.

Bondholders also reprise in *Bondholders’ Initial Legal and Policy Brief* their claim that the record lacks sufficient evidentiary support for the proposed Revenue Requirement. That assertion, too, was already answered in *SREAAE’s Reply To Bondholder’s Initial Post-Hearing Brief on the Revenue Requirement*, which identified the testimonial, documentary, and actuarial support for the proposed pension-related amounts. Bondholders were afforded multiple opportunities during the evidentiary proceedings to rebut that evidence or present contrary proof. They chose not to do so. Having declined to develop a competing evidentiary record, Bondholders cannot now recast their disagreement as if it were a failure of proof by SREAAE.

The administrative record, the governing Trust Agreement, PREPA’s enabling statute, and the applicable regulatory framework all demonstrate that pension funding obligations constitute legitimate operating expenses necessary for the continued operation of the electric system. Accordingly, the Bondholders’ objections should be rejected.

Bondholders’ position reduces to the untenable premise that, because they are not receiving recovery through an LDR in current rates, pension obligations likewise should not be funded, effectively conditioning retirees’ access to essential benefits on the satisfaction of bondholder claims. This stance is particularly problematic given that Bondholders lack any present economic stake in the proposed rates, as any LDR is merely a placeholder and does not generate current debt repayment during the Title III proceedings. Rather than addressing pension funding in a

comprehensive or equitable manner, Bondholders seek to influence future revenue allocation to preserve value for their own claims, while offering no alternative mechanism to fund pensions and disregarding the immediate consequences to retirees. Their arguments further ignore the statutory mandate to ensure just and reasonable rates that protect consumers and are supported not by competent evidence but by unsupported assertions and policy preferences, warranting little weight from the Energy Bureau.

For these reasons, the Energy Bureau should accord little, if any, weight to Bondholders' views on this issue. Their arguments neither advance a legally sound framework nor contribute to a balanced and workable solution. Instead, they seek to leverage this proceeding to advance their own financial interests at the expense of pensioners and the broader public interest.

II. BONDHOLDERS' OPPOSITION REFLECTS A 'IF NOT US, THEN NO ONE' APPROACH TO RECOVERY, TO THE DETRIMENT OF PENSIONERS.

Bondholders' position, as articulated in their Initial Legal and Policy Brief, ultimately reduces to a stark and untenable proposition: if ratepayers are not required to fund bondholder claims through the rate structure, then pension obligations likewise should not be funded through rates. This framing is not only legally flawed but also reveals a policy stance that seeks to condition the payment of essential pension benefits on the satisfaction of their own financial interests. In effect, Bondholders advocate for a result whereby, absent a mechanism to secure their recovery, retirees, who depend on pension payments for subsistence, should likewise be denied relief.

This position is particularly troubling given that Bondholders lack a direct and concrete stake in the proposed rate increase at issue. As their own Brief acknowledges, any LDR mechanism would, at this stage, function merely as a placeholder and would not result in the collection of

funds to service bond debt during the pendency of the Title III proceedings. Thus, Bondholders' opposition to the inclusion of pension-related costs in the rate is not grounded in any immediate economic harm or cognizable regulatory injury, but rather in a strategic effort to influence the allocation of future revenues to their advantage.

Notwithstanding the absence of a present financial stake, Bondholders nevertheless seek to interfere with the PREPA's ability to address its pension obligations through the ratemaking process. This constitutes yet another instance in which Bondholders advance positions that, rather than promoting the financial stability of Puerto Rico, risk exacerbating existing social and economic vulnerabilities. Their insistence on opposing pension funding without offering any viable alternative mechanism for the payment of such obligations underscores a disregard for the real and immediate consequences on pensioners. Indeed, Bondholders' Brief is conspicuously silent as to how pension obligations would be satisfied if excluded from the rate structure. They do not identify any alternative funding source, nor do they propose any feasible framework through which retirees' benefits could be maintained. This omission is significant. It demonstrates that Bondholders' arguments are not aimed at ensuring a comprehensive or equitable resolution of PREPA's financial obligations, but rather at preserving, to the greatest extent possible, residual value for their own Title III claims.

Moreover, the positions advanced by Bondholders reflect no meaningful consideration of Puerto Rico's ratepayers or the statutory mandate that rates be just reasonable, and as low as possible consistent with reliable service. Instead, their arguments are narrowly tailored to maximize the availability of revenues that could ultimately be directed toward satisfying their claims in Title III proceedings. Such a position is incompatible with the Energy Bureau's duty to

balance the interests of all stakeholders, including consumers and vulnerable populations such as retirees.

Finally, it bears emphasis that Bondholders' opposition to the recovery of pension costs through rates is supported primarily by assertions and policy preferences, rather than by competent evidence in the record. As reflected in their Brief, their arguments against pension funding consist largely of legal characterizations and generalized statements, without substantiating evidentiary support demonstrating that inclusion of such costs would be unlawful, imprudent, or inconsistent with applicable ratemaking principles. As such, their position amounts to little more than advocacy grounded in opinion.

III. BONDHOLDERS' PROMESA-BASED ARGUMENTS AND ASSERTIONS REGARDING TITLE III ADJUSTMENT OF PENSIONS HAVE ALREADY BEEN FULLY ADDRESSED AND REBUTTED

Bondholders' reliance on PROMESA in this proceeding is misplaced. Bondholders argue that PROMESA does not expressly favor pension payments. In addition, they argue that pension claims are subject to adjustment in title III proceedings citing Bankruptcy Code sections. Yet, Bondholder's seemed to miss a key point: this is a Puerto Rico administrative rate case governed by Commonwealth law, not a Title III proceeding, and the Energy Bureau's determinations are guided by its statutory mandate under local law—not by the Bankruptcy Code or PROMESA. With that being said, PROMESA does not prohibit the solicited pension costs from being recovered by tariffs, and the pension claims are not tied to the III proceedings.

The Hearing Examiner expressly solicited and received detailed responses from both PREPA and SREAEE addressing any potential concerns regarding pensions and their interaction

with the Title III process. *See SREAEE's Informative Motion Presenting Responses to October 27th, 2025 Hearing Examiner Order filed on November 18, 2025; see also SREAEE's Rebuttal to PREPA's Motion in Compliance with Hearing Examiner's Order Regarding PREPA Testimony and Legal Discussion on Pensions filed on December 2, 2025.* Those submissions clearly established, with legal and factual support, that the inclusion of pension costs in rates does not violate PROMESA, does not interfere with the jurisdiction of the Title III court, and does not contravene any applicable provisions of federal law. Bondholders' attempt to reframe this administrative proceeding as one constrained by PROMESA is therefore both procedurally improper and substantively unfounded and appears designed to inject inapplicable legal standards in order to oppose pension recovery rather than to meaningfully address the issues properly before the Bureau.

Similarly, Bondholders' attempt to dismiss the FOMB pension letter as irrelevant or entitled to no weight is misplaced. While this proceeding does not turn on adopting FOMB's views, neither can Bondholders simply disregard them where they directly address issues central to this case. The letter itself responds to questions posed by the Hearing Examiner regarding the treatment of pensions in light of the Title III proceedings. SREAEE does not rely on the letter as binding authority, but adopts those portions that are consistent with the record and applicable law—namely, that ongoing pension obligations constitute current operating expenses, that they must be funded on a going-forward basis, and that their inclusion in rates does not violate PROMESA nor interfere with the Title III process. These conclusions align with SREAEE's independently supported position and are grounded in the same legal and factual framework already before the Bureau. Bondholders' effort to exclude the letter in its entirety therefore reflects an attempt to ignore relevant analysis that contradicts their arguments, rather than any legitimate limitation on the Bureau's consideration of the issues presented.

IV. PENSION PAYMENTS ARE EXPRESSLY RECOGNIZED AS CURRENT EXPENSES UNDER THE TRUST AGREEMENT.

The Bondholders argue that pension costs should not be included in PREPA's revenue requirement because they allegedly do not constitute operating expenses of the utility. This argument directly contradicts the language of the Trust Agreement itself. The Trust Agreement dated January 1, 1974, explicitly defines "Current Expenses" to include "any payment to pension or retirement funds." *See SREAEE's Legal Brief, p. 6-7.*

This definition is not incidental. It forms part of the contractual structure governing the allocation of PREPA's revenues. Section 505 of the Trust Agreement establishes that funds deposited into the General Fund must first be used for the payment of Current Expenses before revenues may be applied toward debt service or other bond-related accounts. Therefore, under the very contractual instrument upon which the Bondholders rely on their security, pension payments are expressly recognized as ordinary operating costs of the electric system. The Bondholders' attempt to recharacterize pension costs as subordinate liabilities conflicts with the plain language of the Trust Agreement.

Strikingly, Bondholder's argue that "SREAEE is not a party to the Trust Agreement and therefore does not have standing to enforce it". Bondholders' contention that SREAEE cannot rely on the Trust Agreement because it is not a signatory, and because the Agreement disclaims third-party beneficiaries, is misplaced. SREAEE does not seek to enforce the Trust Agreement as a contracting party, nor to assert rights derived from third-party beneficiary status. Rather, SREAEE relies on the Agreement for what it indisputably is: the governing instrument that establishes the structure, operation, and financial framework of the Trust securing the very bonds held by Bondholders.

The Trust Agreement expressly “fix[es] and declar[es] the terms and conditions” under which the bonds are issued and secured, and binds all bondholders, who by accepting their bonds “assent[] to all of the provisions of the Agreement.” Accordingly, the Agreement is not being invoked here as a source of independent enforcement rights, but as the authoritative statement of how revenues must be allocated and how key financial terms—such as “Current Expenses”—are defined within the Trust’s own framework.

Critically, the Agreement defines “Current Expenses” to include “any payment to pension or retirement funds,” thereby expressly recognizing pension obligations as part of the Authority’s operational expenses. That definition is not incidental; it is embedded in the very mechanism that determines Net Revenues and, consequently, the funds available for debt service. Bondholders’ attempt to exclude pension-related costs is therefore not a challenge to SREAE’s position, but to the plain terms of the Agreement that governs their own rights.

The absence of third-party beneficiary status is just an **argument** raised by the Bondholders and not an uncontested matter, thus irrelevant. The issue before the Bureau is not who may enforce the Agreement, but what the Agreement provides: clarity on the definition of “current expense”. Bondholders cannot simultaneously invoke the protections of the Trust while disregarding the definitions that structure it. Their disagreement with the inclusion of pensions within “Current Expenses” does not create a legal basis to rewrite that definition; it merely reflects dissatisfaction with the consequences of the bargain embodied in the Agreement.

The Bondholders further contend that pension obligations represent legacy debt that must be addressed exclusively in PREPA’s Title III proceeding. This argument conflates two legally distinct categories of obligations. The pension obligations at issue in this rate proceeding are PayGo obligations representing ongoing monthly payments owed to retirees and beneficiaries.

These obligations arise from PREPA's continuing operation and its statutory and contractual responsibilities as an employer. As SREAE explained in the evidentiary record, the amounts proposed for inclusion in the revenue requirement correspond to projected pension-related cash outflows during the applicable rate period and are designed to fund pension obligations on a current pay-as-you-go basis. *See SREAE's Revenue Requirement Brief, p.13-19.*

These ongoing obligations are fundamentally different from the historical unfunded pension liability that may be addressed within the Title III restructuring process. Funding current pension payments through rates does not constitute payment of pre-petition claims; rather, it allows PREPA to meet its continuing operational obligations to retirees and beneficiaries. Indeed, the Oversight Board has recognized the necessity of funding ongoing pension payments through PREPA's revenues as part of its operational framework.

IV. PENSION COSTS ARE LEGITIMATE COMPONENTS OF PREPA'S COST OF SERVICE

Under Act 57-2014 Section 6.25(b)(9)(i), a utility's revenue requirement must be sufficient to recover **all reasonable and necessary costs** associated with providing service.

Pension obligations form an integral component of employee compensation and are therefore part of the cost of maintaining a qualified workforce capable of operating and maintaining critical electric infrastructure. PREPA's enabling statute, Act No. 83 of 1941, authorizes the Authority to establish rates sufficient to cover all expenses necessary for the operation and maintenance of the electric system. The SREAE retirement system itself was established pursuant to that statutory authority and operates as PREPA's employer-sponsored retirement plan. As such, pension payments represent a direct cost associated with PREPA's workforce and its provision of electric

service. The Bondholders' attempt to characterize pension obligations as unrelated to the operation of the electric system ignores this fundamental regulatory principle.

V. THE ADMINISTRATIVE RECORD CONTAINS SUBSTANTIAL EVIDENCE SUPPORTING THE PENSION FUNDING REQUIREMENT

The Bondholders also argue that PREPA has failed to provide sufficient evidentiary support for the approximately \$307 million pension funding requirement proposed in this proceeding. The administrative record demonstrates otherwise. During the evidentiary hearings, PREPA and SREAEI presented actuarial analyses, demographic data, and financial projections supporting the proposed funding requirement. These analyses estimate annual pension-related costs of approximately \$307 million for Fiscal Year 2026, equivalent to roughly \$27 million per month in benefit payments to retirees and beneficiaries.

Notwithstanding the foregoing, Bondholders are directed to SREAEI's Revenue Requirement Brief, where the components comprising the \$307 million are fully itemized, explained, and supported by actuarial analysis. During the evidentiary proceedings, Bondholders were afforded multiple opportunities to rebut this evidence or to present their own evidence contradicting the pre-filed testimonies of PREPA's and SREAEI's witnesses. They chose not to do so. Instead, at this stage, Bondholders now assert, without evidentiary support, that there is no foundation for the proposed Revenue Requirement. Such a position is not only procedurally improper, but also inconsistent with the unrebutted record before the Bureau.

The demographic structure of the retirement system further underscores the inevitability of these obligations. The SREAEI currently provides pension benefits to more than 12,000 retirees and thousands of additional beneficiaries, including surviving spouses and dependents. These

monthly benefit payments represent binding obligations owed to former employees who devoted decades of service to PREPA's electric system.

IX. CONCLUSION

For the foregoing reasons, the Bondholders' objections to the inclusion of pension costs in PREPA's revenue requirement are unsupported by the Trust Agreement, inconsistent with established principles of public utility regulation, and contradicted by the evidentiary record. The Puerto Rico Energy Bureau's authority under Act 57-2014 requires the approval of rates that permit recovery of all reasonable and necessary operating expenses lawfully incurred in providing electric service. Pension obligations arising from SREAEE fall squarely within that category. They are grounded in statute, collective bargaining agreements, fiduciary trust instruments, and PREPA's governing Trust Agreement, which expressly classifies payments to pension or retirement funds as "Current Expenses" entitled to priority treatment within the utility's revenue structure. Accordingly, SREAEE respectfully requests that the Energy Bureau reject the Bondholders' arguments and approve the inclusion of pension-related costs within PREPA's revenue requirement.

WHEREFORE, the *Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica*, through its undersigned legal representatives, **respectfully submits** the foregoing **Reply to Bondholder's Initial Legal and Policy Brief**, and requests that the same be taken into **consideration** by the Puerto Rico Energy Bureau as part of the record of these proceedings.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on March 20, 2026.

WE HEREBY CERTIFY that pursuant to the Hearing Examiner’s Order dated December 22, 2025, that this Brief is part of the undersigned party’s affirmative briefing in this proceeding and that the **total word count across all Reply briefs**, taken together, **does not exceed the maximum** authorized by the Hearing Examiner.

WE HEREBY CERTIFY that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Notice will be sent to: Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com ; and to the attorneys and advisers of the parties of record.

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