

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

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

SUBJECT: SREAEE'S LEGAL BRIEF

LEGAL BRIEF OF THE PREPA EMPLOYEES' RETIREMENT SYSTEM (SREAEE)¹

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. INTRODUCTION

The proper resolution of the issues presented in this proceeding requires a clear articulation of two foundational legal principles: first, the scope of the Puerto Rico Energy Bureau's statutory authority in setting just and reasonable rates; and second, the legal nature, autonomy, and

¹ This memorandum is the culmination of an extensive procedural record in which the undersigned has filed, and the Bureau of Energy has received, multiple prior pleadings and related submissions addressing the issues presented herein. Each of those filings forms an integral part of this memorandum and is hereby incorporated and adopted by reference as if fully set forth herein, including all of their terms, conditions, factual allegations, legal arguments, and supporting exhibits. The documents incorporated by reference are the following: (1) Expert Report on PREPA Retirement System Cash Flow Requirements for FYs 2026-2028 J. Fernandez Expert Report filed on October 27, 2025; (2) SREAEE's Informative Motion Presenting Responses To October 27th, 2025 Hearing Examiner Order filed on November 18, 2025; (3) 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; (4) Motion of the PREPA Employees Retirement System (SREAEE) to Protect Statutory Pension Contributions filed on December 12, 2025; (5) SREAEE's Revenue Requirement Brief filed on January 23, 2026; (6) SREAEE Reply to Bondholders filed on February 9, 2026; and (7) Rate Design Brief of the PREPA Employees' Retirement System (SREAEE) filed on February 9, 2026.

enforceable rights of SREAE. Any evaluation of pension funding within PREPA's revenue requirement must be grounded in these legal realities.

The Energy Bureau's ratemaking authority is not a matter of policy discretion exercised in a vacuum. It is a statutory function governed by Act 57-2014, which mandates that approved rates allow the utility to recover all reasonable and necessary operating expenses lawfully incurred in the provision of electric service. The Bureau's duty is therefore regulatory and legal in character: it must ensure that PREPA's rates reflect the actual, lawful costs of maintaining operations. This authority necessarily encompasses costs that arise from binding statutory mandates, contractual commitments, and fiduciary obligations. The Bureau's discretion lies in evaluating prudence and reasonableness—not in disregarding legally enforceable obligations.

At the same time, SREAE is not a voluntary or peripheral program. It is an autonomous fiduciary trust created pursuant to a collective bargaining agreement ("CBA") and by PREPA's formal governing board action, as a separate legal personality and a patrimony distinct from PREPA. Its assets are legally segregated and dedicated exclusively to the payment of retirement benefits and plan-related expenses. Pension benefits constitute deferred compensation earned by employees under collective bargaining agreements and governing trust documents. As such, the SREAE possesses enforceable legal rights, and PREPA bears corresponding funding obligations grounded in regulations, a CBA, and fiduciary law.

These obligations are further reinforced by PREPA's Trust Agreement, which expressly categorizes payments to pension or retirement funds as "Current Expenses," placing them on equal legal footing with other essential operating costs. In addition, PROMESA preserves PREPA's authority over its property and revenues and does not convert ongoing operational pension

obligations into discretionary expenditures. While legacy underfunding may be addressed within the Title III framework,² the obligation to fund pensions on a going-forward basis remains a lawful operational expense arising from continuing employment relationships and statutory mandates.

Establishing the Bureau’s statutory duty to recognize lawful operating costs, together with SREAEE’s independent legal status and enforceable right to pension funding, is therefore essential to define the scope of these rate proceedings. Pension contributions are not optional transfers or policy-driven subsidies; they are mandatory operational expenses rooted in Puerto Rico law, trust law principles, collective bargaining agreements, and binding fiscal plan commitments.

II. LEGAL ORIGIN, STRUCTURE, AND GOVERNANCE OF THE PREPA EMPLOYEES’ RETIREMENT SYSTEM

As stated in previous filings, SREAEE was formally created by PREPA Governing Board Resolution No. 200, adopted on June 25, 1945, and effective July 1, 1945. The System originated within the framework of collective bargaining agreements with the Unión de Trabajadores de la Industria Eléctrica y Riego (“UTIER”) and was designed to provide retirement benefits to PREPA employees as part of their compensation and conditions of employment. *See SREAEE’s Informative Motion Presenting Responses to October 27th, 2025 Hearing Examiner Order filed on November 18, 2025, p. 2-3.*

SREAEE operates as an autonomous fiduciary trust with legal personality, and a patrimony separate and distinct from PREPA. Its assets are legally segregated from PREPA’s operational accounts and may be used solely to provide benefits to active members, retirees, and beneficiaries,

² An issue that is still disputed and pending resolution before the Title III Cout. Thus, SREAEE reserves all rights regarding those proceedings.

as well as to cover plan-related expenses. Governance of the System is vested in a Board of Trustees composed of representatives of PREPA management, active employees, and retirees. The independent fiduciary nature of SREAE has been reaffirmed through subsequent legislation, including the Reciprocity Act (Act No. 59-1953) and Act No. 34-2005, as well as judicial determinations recognizing the System as a lawful public trust with its own patrimony. *See Unión de Trabajadores de la Industria Eléctrica y Riego (UTIER) v. Autoridad de Energía Eléctrica de Puerto Rico, SJ2015CV00100.*

III. AUTHORITY OF THE PUERTO RICO ENERGY BUREAU AND INTERACTION WITH PROMESA

The Puerto Rico Energy Bureau's authority to include current pension funding in PREPA's revenue requirement derives from Act 57-2014 Section 6.25(b)(9)(i) which requires the Bureau to approve rates sufficient to recover all reasonable and necessary operating expenses of the utility:

The Bureau shall approve a rate that: (i) allows 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 and that, except for statutory costs, have been determined by the Bureau to be prudent, reasonable, and consistent with the sound fiscal and operating practices which help provide a reliable service at the lowest possible cost...

22 L.P.R.A. § 1054x (b)(9)(i)

“During 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...” 22 L.P.R.A. § 1054x(b). Section 6.25(c) further provides that any modification to the approved revenue requirement or rate design must be addressed through a formal rate review proceeding, with discovery and public hearings.

PREPA's pension obligations are current operating expenses, and the Bureau must distinguish between legacy liabilities accrued prior to the filing of PREPA's Title III petition and ongoing pension obligations that arise after the petition date. Amounts due and unpaid prior to July 2, 2017, may constitute pre-petition claims subject to adjustment within the Title III process. However, the obligation to fund pension benefits as they become due on a going-forward basis constitutes a current operating³ expense of PREPA's **continued operations**. To afford a different treatment in this case would be contrary to what FOMB have established regarding this pension payment mechanism.

Current pension funding obligations arise from PREPA's continued employment relationships, collective bargaining agreements, statutory mandates, and fiduciary duties under the governing trust documents. These obligations are not discretionary and are not rendered optional by the pendency of Title III proceedings. Rather, they represent recurring operational expenses necessary to comply with Puerto Rico law and to maintain PREPA's workforce commitments. This treatment is consistent with the 1974 Trust Agreement, which defines "Current Expenses" to include payments to pension or retirement funds and requires that such expenses be paid prior to the application of revenues to debt service:

The term "Current Expenses" shall mean the Authority's reasonable and necessary current expenses of maintaining, repairing and operating the System and shall include, without limiting the generality of the foregoing, all administrative expenses, insurance premiums, expenses of preliminary surveys not chargeable to Capital Expenditures, engineering expenses relating to operation and maintenance, fees and expenses of the Trustee, the 1947 Trustee, the Paying Agents and of the paying agents under the 1947 Indenture, legal expenses, any payment to pension or retirement funds, and all other expenses required to be paid by the Authority under the provisions of the 1947 Indenture,

³ See PREPA's exhibit 85.03, page 26 of the FOMB Report.

this Agreement or by law, or permitted by standard practices for public utility systems...

See exhibit A, filed January 23, 2026: Trust Agreement, p6.

Pension payments are therefore placed on the same footing as other core operating costs necessary for PREPA's ongoing operations.

In this context, ratemaking is a regulatory function and does not violate the automatic stay under PROMESA, which applies to actions to recover pre-petition claims. Moreover, PROMESA Section 305 preserves PREPA's control over its property and revenues and limits the Title III court's authority to interfere with PREPA's operational decisions absent Oversight Board consent. Recognizing current pension obligations as part of PREPA's cost of service therefore does not conflict with the Title III process.

At the same time, pension contributions function as the principal source of income for more than 12,000 retirees who depend on those payments for their livelihood. Recognizing both the humanitarian and operational implications of interrupting those payments, the Oversight Board concluded that PREPA must continue funding pensions during the pendency of the bankruptcy proceedings. It further determined that such payments do not violate the automatic stay. Unlike Chapter 11 of the Bankruptcy Code, Title III of PROMESA does not impose the same constraints on a debtor's use of its property and revenues. Moreover, under PROMESA §305, the Title III court lacks authority to interfere with the debtor's property, revenues, or governmental operations absent the Oversight Board's consent. See PROMESA §305, 48 U.S.C. §2165 (restricting the court's power to control the debtor's property or revenues). Accordingly, PREPA retains control over its revenues and remains responsible for satisfying its lawful operational expenses, including pension obligations.

Consistent with PROMESA’s mandate that certified fiscal plans adequately fund public pensions, PREPA’s fiscal plan assumes continued pension funding from operating revenues. Looking forward, according to the PREPA’s 2025 Certified Fiscal Plan, the pension system is expected to be restructured: benefits accrued as of the plan’s effective date will be frozen and paid on a pay-as-you-go basis, while active employees transition to a defined-contribution structure. Although this reform is projected to moderate long-term pension costs, the Oversight Board has acknowledged that it will not materially reduce PREPA’s pension burden during the three-year period covered by the permanent rate currently under review. *See PREPA Exhibit 85.03, p.3; PREPA Fiscal Plan, p. 23 and Expert Report on PREPA Retirement System Cash Flow Requirements for FYs 2026-2028 J. Fernandez Expert Report filed on October 27, 2025, p.2.*

For these reasons, excluding pension obligations from the rate base would result in rates that are not “just and reasonable.” Such exclusion would deprive PREPA of the revenue necessary to meet its lawful obligations while simultaneously maintaining reliable electric service.

IV. OTHER SOURCES OF FUNDING

The Oversight Board has expressly stated that it does not currently intend to approve any further Commonwealth loans for pension payment, nor will it approve the Commonwealth assuming the obligations of the PREPA ERS pension plan. *See PREPA’s exhibit 85.03, page 4.*

The aforementioned exhibit consists of a letter addressed to PREPA’s counsel by the Oversight Board in response to the Hearing Examiner’s October 27, 2025, Order requiring PREPA to provide testimony and legal analysis regarding pensions. In that correspondence, the Oversight Board expressly states that it is necessary for the Bureau to include pension costs in PREPA’s tariff

since the only other available source of funding for PREPA's obligations to PREPA ERS is PREPA's own cash, which is currently insufficient for that purpose.

In regard of the available sources of funding for PREPA's obligations to the ERS, FOMB explained:⁴

The only other available source of funding for PREPA's obligations to PREPA ERS is PREPA's own cash, which is currently insufficient for this purpose. PREPA's certified fiscal plan therefore contemplates PREPA including pension obligations in the revenue requirement as part of the Rate Case. PREB has discretion as to how to structure any rate component to cover funding of PREPA ERS's pension obligations on a PayGo basis, but full payment of accrued benefits to participants in the plan is an essential revenue requirement under its fiscal plan.

Moreover, in the FOMB Report of the PREPA ERS prepared in September 2025 that is attached to the letter, FOMB established that there are no other potential funding sources: "Absent significant funding outside of PREPA, funding PREPA-ERS is an operating expense financed, like all operating expenses, by PREPA's charges to customers. That is, PREPA customers are the only source of payments to PREPA-ERS." *See exhibit 85.03, p. 26 of the FOMB Report.*

FOMB continues explaining that under the Plan of Adjustment, PREPA's retirement system will no longer operate as a traditionally funded pension but will instead function as a pay-as-you-go system financed directly through an increase in electricity rates, with those revenues deposited into a newly created PREPA PayGo Trust. That trust will collect enough funds each year to cover current pension payments, plus an additional \$50 million annually for the first five years to build a limited reserve equal to roughly one year of expected benefits and will then reimburse PREPA-

⁴ *See PREPA's exhibit 85.03, page 4.*

ERS on a quarterly basis for pension payments and administrative expenses, subject to the terms of the POA. At the same time, the FOMB is cautioning that the projected costs of this system are inherently uncertain because they depend on assumptions about retiree behavior, demographics, and broader economic conditions in Puerto Rico, and if those assumptions prove inaccurate, the actual pension costs—and therefore the revenue required from ratepayers—could be higher than anticipated.

Additionally, given PREPA customers are the only source of payments to PREPA-ERS and therefore funding for PREPA-ERS will come from rates charged to customers; the amount of revenue generated is expected to vary with electricity demand and usage. The objective of accumulating assets equal to one year of expected pension payments in the PREPA PayGo Trust is intended to help maintain a source of pension funding despite any potential, temporary, partial or complete disruption of payments from ratepayers.

The Energy Bureau's discretion in addressing pension costs is limited to evaluating the reasonableness and accuracy of the projected amounts, such as reviewing actuarial assumptions or requiring transparency and reporting. The Bureau may not lawfully exclude or defer pension obligations that constitute mandatory operating expenses.

The record reflects no contingency plan that would allow PREPA to ensure uninterrupted pension payments if pension funding were denied or materially reduced. Failure to approve sufficient funding would therefore risk disruption of benefit payments and renewed reliance on emergency liquidity measures, contrary to the statutory mandate to establish just and reasonable rates. As the record already demonstrates, there is no alternative source of funding available to satisfy PREPA's pension obligations. If the Bureau were to determine that pension costs should not be included in the revenue requirement or were to include them in an amount below what is

actuarially necessary, the practical consequence would be immediate and severe: thousands of pensioners would be left without the benefits on which they depend. There are no remaining governmental loans, subsidies, or contingency strategies from which those funds could be drawn. In the absence of tariff inclusion sufficient to cover pension expenses, there is simply no other mechanism to generate the revenue required to pay retirees.

V. NATURE AND SCOPE OF THE PAY-AS-YOU-GO PENSION FUNDING FRAMEWORK

The pension funding framework reflected in PREPA's revenue requirement is based on a pay-as-you-go ("PayGo") methodology. Under this framework, pension funding is determined by projecting the cash required to satisfy pension-related benefit payments as they accrue during the relevant fiscal year, rather than by amortizing historical underfunding or restoring a prefunded trust structure.

The PayGo methodology relies on current census data, actuarial assumptions regarding mortality and benefit commencement, observed benefit levels, and historical payment experience. It reflects the reality that SREAEE's trust assets have been depleted and that ongoing pension benefits must therefore be funded contemporaneously as they come due.

Consistent with this framework, the pension funding amounts requested for Fiscal Years 2026, 2027, and 2028 reflect only the projected benefit payments expected to occur during those fiscal years, assuming continuation of existing benefit provisions. These amounts do not represent a recovery of legacy liabilities, nor do they seek to rebuild trust assets.

For Fiscal Year 2026, the PayGo pension funding requirement is approximately \$307 million. This amount represents the net difference between projected pension-related cash outflows

and limited internal inflows. Projected outflows include regular monthly pension payments to retirees and beneficiaries, surviving spouse annuities, death benefits, refunds and rollovers of member contributions, seasonal bonuses such as summer and Christmas bonuses, disability-related benefits, funeral benefits, and cost-of-living adjustments provided under existing regulations. These projections are based on actuarial analyses, census data, and historical payment patterns and projections further reviewed and affirmed as reasonable by SREAAE's actuarial expert, José Fernández, based on the same cash-flow projections and census data. (Fernández Expert Report, Oct. 27, 2025). Furthermore, they were endorsed in the FOMB's September 2025 PREPA Employee Retirement System report. *See* PREPA Exhibit 85.03, p.24

In the other hand, projected inflows consist of employer contributions, member contributions (including contributions from mobilized employees), repayments of personal loans, mortgage payments, and other limited cash receipts. When these inflows are netted against projected outflows, the resulting PayGo funding requirement equals approximately \$307 million for Fiscal Year 2026. Comparable methodologies yield projected requirements of approximately \$298.7 million for Fiscal Years 2027 and 2028.

In assessing the proposed pension funding rider and the corresponding revenue requirement for SREAAE, the Bureau must evaluate the legal and practical necessity of ensuring uninterrupted funding for benefits that constitute earned, vested compensation. The demographic composition of the ERS is not incidental—it defines the scope of PREPA's binding obligations. As of March 15, 2025, the ERS served 12,177 members, including 243 active PREPA employees, 1,908 employees participating in mobility programs, and 10,026 retirees. Thus, nearly 82% of the System's participants are retirees who depend directly on pension payments as their primary or

sole source of income. This is not a forward-looking workforce benefit; it is a matured obligation owed to individuals who have already completed their service and earned their retirement compensation.

The age distribution of this retiree population further underscores the legal imperative of fully funding the revenue requirement. More than 32% of retirees are between 71 and 80 years old, and an additional 38% fall within the 61–70 and 81–90 age brackets. Approximately 13 retirees are over 100 years old. These figures reflect a beneficiary population that is overwhelmingly elderly, living on fixed incomes, and particularly vulnerable to any interruption in pension disbursements. Moreover, approximately 18% of retirees are under age 60, many likely having retired early due to the hazardous or physically demanding nature of electric utility service—circumstances that further reinforce the compensatory character of these benefits. The obligation to fund these pensions is therefore not abstract; it is immediate, recurring, and legally enforceable. *See SREAAE'S Rate Design Brief.*

The System's obligations extend beyond retirees themselves. ERS provides survivor benefits to 129 incapacitated children of retirees—beneficiaries who often lack independent earning capacity and whose financial and medical stability is directly tied to continued pension payments. In addition, the System supports 2,296 surviving spouses, more than 90% of whom are over the age of 70. Among them, 924 are between the ages of 80 and 89, and 304 are over 90 years old. These beneficiaries represent some of the most economically fragile members of the community, with limited or no alternative sources of income.

Given this demographic reality, the revenue requirement is not merely a financial projection; it is the mechanism through which PREPA fulfills binding statutory, contractual, and

fiduciary duties. Failure to approve sufficient funding would not simply adjust accounting entries—it would directly impair the payment of earned benefits to retirees, widows, and dependent children. The law requires that rates be structured to recover reasonable and necessary operating expenses, and pension payments to this overwhelmingly elderly and dependent population fall squarely within that mandate. Ensuring full and timely funding through the revenue requirement is therefore a legal necessity to safeguard the vested rights and financial security of retirees and their families.

VI. CONCLUSION

For all the foregoing reasons, the legal framework governing this proceeding compels recognition of pension funding as a mandatory component of PREPA’s revenue requirement. 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 SREAEF 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.

SREAEF is an autonomous fiduciary trust with a separate legal personality and a dedicated patrimony, created pursuant to law and charged with administering retirement benefits that constitute deferred compensation earned by PREPA employees. Its right to receive funding sufficient to satisfy accrued benefits is not discretionary, nor is it contingent upon policy considerations. It is a legally enforceable obligation arising from binding statutory, contractual,

and fiduciary duties. PROMESA does not alter this conclusion. While legacy underfunding may be addressed within the Title III restructuring framework, ongoing pension payments represent current operational expenses necessary for PREPA's continued functioning. Section 305 of PROMESA preserves PREPA's authority over its property and revenues and does not authorize the elimination or suspension of lawful operational obligations through the ratemaking process.

Moreover, the record establishes that PREPA customers constitute the only viable source of funding for these obligations. In the absence of inclusion within the revenue requirement, no alternative mechanism exists to ensure uninterrupted payment of earned benefits. Excluding or materially reducing pension funding would therefore result in rates that fail to recover mandatory operating costs and would be inconsistent with the statutory mandate that rates be just and reasonable.

Accordingly, the Bureau must exercise its ratemaking authority consistent with Puerto Rico law, trust law principles, and PROMESA's fiscal framework, and recognize current pension funding as a lawful and necessary cost of service.

WHEREFORE, the *Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica*, through its undersigned legal representatives, respectfully submits the foregoing Legal 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 5, 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 three affirmative briefs**, taken together, **does not exceed the maximum of 52,000 words** 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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