

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

NEPR

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IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW

CASE NO.: NEPR-AP-2023-0003

SUBJECT: SRAEE REPLY TO ICSE'S
MOTION FOR PARTIAL
RECONSIDERATION

REPLY TO ICSE'S MOTION FOR PARTIAL RECONSIDERATION

TO THE HONORABLE ENERGY BUREAU:

COMES NOW the Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica ("SREAEE"), through undersigned legal representatives, hereby files this Reply to ICSE's Motion for Partial Reconsideration and respectfully **states and informs** the Hearing Examiner and the Puerto Rico Energy Bureau as follows:

I. Preliminary Statement

On May 6, 2026, the Institute of Competitiveness and Economic Sustainability ("ICSE") submitted to the Honorable Energy Bureau a Motion seeking Partial Reconsideration. Among other things, in subsection B of their motion, ICSE wrongfully argues that PREPA's Pensions should not be charged to the rate, as stated in the Final Order. ICSE's arguments ultimately rests on a fundamentally flawed understanding of both PROMESA and the nature of PREPA's pension obligations. ICSE suggests that PREB would be voluntarily renouncing its powers and subsume its powers to the Fiscal Plan just by acting according to statutory rules and the FOMB Certified Fiscal Plan. However, the Final Order correctly recognized that pension funding obligations cannot simply be disregarded as optional costs but recognized as a necessary component of the rates.

II. Arguments

First, ICSE intends to mislead the Bureau by arguing that the Certified Fiscal Plan does not direct PREPA to recover the payment of pensions through rates. Under Section 2141 of PROMESA, the Oversight Board is empowered to develop and certify fiscal plans for covered territorial instrumentalities, including PREPA. *48 U.S.C. § 2141*. Once certified, a fiscal plan is not a recommendation or a policy preference, it is a legally operative document that governs the fiscal conduct of the covered entity. In this respect, the certified fiscal plan functions as a supreme fiscal constitution for covered entities, to which all other fiscal decisions, including rate-setting determinations, must conform.

Moreover, as the record shows, the PREB'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.

Also, the FOMB Report of the PREPA ERS 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*. The Bureau may not lawfully exclude or defer pension obligations that constitute mandatory operating expenses.

Moreover, ICSE failed to suggest another funding source available for pensions. In this regard, the FOMB has expressed that while "PREB has discretion as to how to structure any rate

component to cover funding of PREPA ERS's pension obligations on a PayGo basis, [...] full payment of accrued benefits to participants in the plan is an essential revenue requirement under its fiscal plan". See *PREPA's exhibit 85.03, page 4*; *SRAEE's Legal Brief, page 8* (citation omitted).

Second, unlike discretionary expenditures, pension obligations involve accrued rights of retired employees who already performed the services, giving rise to those benefits. PREB cannot treat those obligations as if they were optional operational expenses that management may simply choose not to incur. ICSE's *all-or-nothing* theory of Fiscal Plan binding effect is incorrect.

The FOMB does not require that every projection, assumption, or policy observation in a Fiscal Plan bind PREB identically. Fiscal Plans necessarily contain projections, policy discussions, assumptions, and operational estimates of varying characters. The fact that PREB may exercise independent judgment regarding certain operational projections does not mean it may disregard core fiscal obligations expressly incorporated into the Fiscal Plan's financial structure.

Moreover, pension obligations materially differ from generalized affordability observations or operator projections because they concern fixed legal liabilities already owed to retirees. Affordability considerations unquestionably remain relevant to ratemaking, but they do not authorize PREB to disregard legally recognized obligations incorporated into the certified fiscal framework. As stated in *SRAEE's Legal Brief*, 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. *SRAEE's Legal Brief, page 13*.

III. Conclusion

ICSE's argument ultimately collapses into an impermissible attempt to subordinate certified fiscal obligations to PREB's independent policy preferences. PREB retains ratemaking authority, but that authority must still operate consistently with the FOMB Certified Fiscal Plan framework. Recognizing PREB's jurisdiction does not mean PREB may exercise that authority in a manner that frustrates implementation of the certified fiscal plan objectives or renders compliance with pension obligations financially impossible. The Final Order therefore correctly concluded that PREPA's pension obligations cannot simply be excluded from the rates.

WHEREFORE, SREAEE respectfully submits the foregoing Reply to ICSE's Motion for Partial Reconsideration, and requests that ICSE's Motion for Partial Reconsideration be denied.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on May 15, 2026.

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.

Energy Bureau advisors:

RSmithLA@aol.com; dawn.bisdorf@gmail.com; msdady@gmail.com; mcranston29@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com; MWhited@synapse-energy.com; kbailey@acciongroup.com; PREBconsultants@acciongroup.com; zachary.ming@ethree.com; tara.hamilton@ethree.com; justo@maxetaenergy.com; guy@maxetaenergy.com; ron@maxetaenergy.com; gc@maxetaenergy.com; ralph@maxetaenergy.com; jorge@maxetaenergy.com; jaypgriffin5@gmail.com; roger@maxetaenergy.com; tim@maxetaenergy.com; rafael@maxetaenergy.com; chris@pluggedinstrategies.com; elrc@rclopr.com

Parties and Intervenors:

Damaris Billoch Colón <dbilloch@vvlawpr.com>; mvalle@gmlex.net <mvalle@gmlex.net>;
 arivera@gmlex.net <arivera@gmlex.net>; jmartinez@gmlex.net <jmartinez@gmlex.net>;
 jgonzalez@gmlex.net <jgonzalez@gmlex.net>; nzayas@gmlex.net <nzayas@gmlex.net>;
 Gerard.Gil@ankura.com <Gerard.Gil@ankura.com>; Jorge.SanMiguel@ankura.com
 <Jorge.SanMiguel@ankura.com>; Lucas.Porter@ankura.com <Lucas.Porter@ankura.com>;
 mdiconza@omm.com <mdiconza@omm.com>; golivera@omm.com <golivera@omm.com>;
 pfriedman@omm.com <pfriedman@omm.com>; msyassin@omm.com <msyassin@omm.com>;
 msyassin@omm.com <msyassin@omm.com>; katuska.bolanos-lugo@us.dlapiper.com
 <katuska.bolanos-lugo@us.dlapiper.com>; Yahaira.delarosa@us.dlapiper.com
 <Yahaira.delarosa@us.dlapiper.com>; margarita.mercado@us.dlapiper.com
 <margarita.mercado@us.dlapiper.com>; carolyn.clarkin@us.dlapiper.com
 <carolyn.clarkin@us.dlapiper.com>; andrea.chambers@us.dlapiper.com
 <andrea.chambers@us.dlapiper.com>; Regulatory <Regulatory@genera-pr.com>; legal
 <legal@genera-pr.com>; Maraliz Vázquez Marrero <mvazquez@vvlawpr.com>; Giuliano
 Vilanova Feliberti <gvilanova@vvlawpr.com>; Rate Case Genera <ratecase@genera-pr.com>;
 Jorge Fernandez-Reboredo <jfr@sbgbllaw.com>; hrivera@jrsp.pr.gov <hrivera@jrsp.pr.gov>;
 gerardo_cosme@solartekpr.net <gerardo_cosme@solartekpr.net>; contratistas@jrsp.pr.gov
 <contratistas@jrsp.pr.gov>; victorluisgonzalez@yahoo.com <victorluisgonzalez@yahoo.com>;
 Cfl@mcvpr.com <Cfl@mcvpr.com>; Nancy Medina-Damiani <nancy@emmanuelli.law>;
 jrinconlopez@guidehouse.com <jrinconlopez@guidehouse.com>;
 Josh.Llamas@fticonsulting.com <Josh.Llamas@fticonsulting.com>; Anu.Sen@fticonsulting.com
 <Anu.Sen@fticonsulting.com>; Ellen.Smith@fticonsulting.com
 <Ellen.Smith@fticonsulting.com>; Intisarul.Islam@weil.com <Intisarul.Islam@weil.com>;
 alexis.ramsey@weil.com <alexis.ramsey@weil.com>; kara.smith@weil.com
 <kara.smith@weil.com>; rafael.ortiz.mendoza@gmail.com <rafael.ortiz.mendoza@gmail.com>;
 Rolando Emmanuelli Jiménez <rolando@emmanuelli.law>; Mónica M. Camuy-Natal
 <monica@emmanuelli.law>; Lcdo. Cristian Pozo-Torres <Cristian@emmanuelli.law>; Luis G.
 Nieves Quiñones <luis@emmanuelli.law>; jan.albinolopez@us.dlapiper.com
 <jan.albinolopez@us.dlapiper.com>; Rachel.Albanese@us.dlapiper.com
 <Rachel.Albanese@us.dlapiper.com>; varoon.sachdev@whitecase.com
 <varoon.sachdev@whitecase.com>; javrua@sesapr.org <javrua@sesapr.org>;
 Brett.ingerman@us.dlapiper.com <Brett.ingerman@us.dlapiper.com>;
 brett.solberg@us.dlapiper.com <brett.solberg@us.dlapiper.com>; agraitfe@agraitlawpr.com
 <agraitfe@agraitlawpr.com>



Ortiz Mendoza & Farinacci Fernós,
LLC
Edificio Banco Cooperativo Plaza
623 Ponce de León Ave.
Suite 806-B
San Juan, PR 00917-4820
Tel: 787-963-0404

/s/ Rafael A. Ortiz-Mendoza
Rafael A. Ortiz-Mendoza, Esq.
USDC-PR: 229103
rafael.ortiz.mendoza@gmail.com

Co-counsel to SREAE



72 Ave. Tito Castro
Edificio Marvesa, Suite 106
Ponce, Puerto Rico 00716
Tel: (787) 848-0666
Fax: (787) 841-1435
notificaciones@bufete-emmanuelli.com

s/ Rolando Emmanuelli Jiménez
Lcdo. Rolando Emmanuelli Jiménez
RUA: 8509 CA: 9755
rolando@emmanuelli.law

s/ Mónica Camuy-Natal
Lcda. Mónica Camuy-Natal
RUA: 23,170 CA: 21306
monica@emmanuelli.law

s/ Cristian Pozo Torres
Lcdo. Cristian Pozo Torres
RUA: 23348
cristian@emmanuelli.law

RESUMEN DE LA OPOSICIÓN A LA MOCIÓN DE RECONSIDERACIÓN PARCIAL DE ICSE

El Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica (SREAEE) presenta esta Oposición a la Moción de Reconsideración Parcial sometida por el Instituto de Competitividad y Sostenibilidad Económica (ICSE) el 6 de mayo de 2026, en el caso NEPR-AP-2023-0003, solicitando que dicha moción sea denegada.

El SREAEE impugna el planteamiento del ICSE de que las pensiones de PREPA no deben ser cobradas a través de las tarifas. El SREAEE sostiene que dicho argumento descansa en una comprensión fundamentalmente errónea tanto de PROMESA como de la naturaleza de las obligaciones pensionarias de PREPA. Bajo la Sección 2141 de PROMESA, el Plan Fiscal Certificado no constituye una recomendación ni una preferencia de política pública, sino un documento legalmente operativo que rige la conducta fiscal de la entidad cubierta. En consecuencia, todas las determinaciones tarifarias deben conformarse a dicho plan, el cual expresamente clasifica los pagos al fondo de pensiones como “Gastos Corrientes” con prioridad dentro de la estructura de ingresos de la utilidad. Además, el propio informe de la Junta de Supervisión Fiscal sobre el Sistema de Retiro de PREPA concluye que los clientes de PREPA son la única fuente de pagos al sistema, dado que no existen otras fuentes de financiamiento disponibles.

El SREAEE refuta además la teoría del ICSE de que el efecto vinculante del Plan Fiscal es de todo o nada. La Junta de Supervisión no requiere que cada proyección u observación contenida en el Plan Fiscal obligue al Negociado de igual manera. Sin embargo, las obligaciones pensionarias son cualitativamente distintas de los gastos discrecionales, pues representan derechos acumulados

de empleados retirados que ya prestaron sus servicios y generaron esos beneficios. El Negociado no puede tratarlas como gastos operacionales opcionales, y las consideraciones de asequibilidad tarifaria, aunque relevantes, no autorizan al PREB a desconocer obligaciones legalmente reconocidas e incorporadas al marco fiscal certificado. Dejar de aprobar el financiamiento suficiente no sería un mero ajuste contable, sino que afectaría directamente el pago de beneficios ganados a pensionados, viudas e hijos dependientes.

Por todo lo anterior, el SREAEE concluye que la Orden Final correctamente reconoció que las obligaciones pensionarias de PREPA no pueden ser excluidas de las tarifas, y solicita respetuosamente que la Moción de Reconsideración Parcial del ICSE sea denegada.