| In re:THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,as representative ofTHE COMMONWEALTH OF PUERTO RICO, *et al.*Debtors.[[1]](#footnote-0) | PROMESATitle IIICase No. 17 BK 3283-LTS(Jointly Administered) |
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| In re:THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICOas representative ofPUERTO RICO ELECTRIC POWER AUTHORITY,Debtor. | PROMESATitle IIICase No. 17 BK 4780-LTS |

**FULL NAME OBJECTION TO THE CONFIRMATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY’S PLAN OF ADJUSTMENT**

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**TO THE HONORABLE DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO**

**COMES NOW** **FULL NAME**, as party in interest pursuant to 11 U.S.C. § 1109, appearing *pro se* pursuant to 28 U.S.C. § 1654, and respectfully requests that the Court deny the confirmation of the *Fifth Modified Third Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority*, **ECF No. 4170**, (“Plan of Adjustment”).

# **PRELIMINARY STATEMENT**

1. FULL NAME is a party in interest in the Puerto Rico Electric Power Authority’s (“PREPA”) Title III Bankruptcy. *See* 11 U.S.C. § 1109(b).
2. FULL NAME is a resident of Municipality, Puerto Rico.
3. He/She is \_\_\_ years old and lives in a household of \_\_\_ people. These include INSERT NAMES AND AGES OF MEMBERS OF FAMILY, AND THEIR RELATIONSHIP TO YOU.
4. Mr./Ms. LAST NAME's household, like that of most residents of Puerto Rico, does not enjoy a stable and basic access to energy. He/She loses power in his home at least # times a week. This trend of power outages has only been increasing during the past months and years.
5. Mr./Ms. LAST NAME is an employee of Government Agency. He/She worked for PREPA from YEAR to YEAR, and has been a member of the PREPA Employee Retirement System, SREAEE, since YEAR.
6. Mr./Ms. LAST NAME pays $ \_\_\_/month of electricity for his/her household. INCLUDE OTHER ELECTRICITY PAYMENTS, IF APPLICABLE.
7. INCLUDE OTHER FACTUAL DETAILS ABOUT HEALTH (PERSONAL OR A FAMILY MEMBERS'), LIVING EXPENSES, ETC.
8. The question of who is a “party in interest” should be answered on a case-by-case basis. The definition is non-exhaustive. It generally refers to anyone with a financial stake or significant legal or practical stake in the outcome of bankruptcy. *See, e.g., Savage & Assocs. P.C. v. K&L Gates LLP (In re Teligent, Inc.)*, 640 F.3d 53 (2d Cir. 2011). That should mean anyone who will be significantly impacted; *see also, Alan Resnick & Henry J. Sommer, Collier on Bankruptcy* ¶ 1109.01 (16th ed. 2011) (“The general theory behind the section [11 U.S.C. § 1109(b)] is that anyone holding a direct financial stake in the outcome of the case should have an opportunity ... to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest.”)
9. The Plan of Adjustment proposes to impose a Legacy Charge on the electric bills of residential and commercial customers for the next 35 years or more. The Plan of Adjustment's terms will also determine whether or not PREPA, LUMA and Genera can reconstruct Puerto Rico's fragile energy grid and provide a stable source of energy for consumers, which directly affects their financial and physical well-being.
10. Mr./Ms. LAST NAME lives with the uncertainty of not knowing what his/her future pension will be upon retiring, due to the Plan’s proposal to move active employees’ retirements to Commonwealth Defined Contribution accounts.. **DESCRIBE THE IMPACT OF A POSSIBLE REDUCTION IN THE PENSION ON YOUR BUDGET.**
11. Mr./Ms. LAST NAME is further impacted as a consumer of electricity from PREPA by the Plan of Adjustment's proposed rate increases and by the state of Puerto Rico's antiquated and severely deteriorated electricity grid. **DESCRIBE HOW THE ELECTRICITY GRID'S FRAGILITY (FREQUENT POWER OUTAGES), AND THE PROPOSED RATE INCREASES, IMPACTS AND WILL FURTHER IMPACT YOU .**
12. Therefore, **FULL NAME** is a party in interest that “may raise and may appear and be heard on any issue in a case under this chapter.” 11 U.S.C. § 1109(b).

# **PROCEDURAL BACKGROUND**

1. For over a decade, Puerto Rico’s economy has been in trouble and, by 2016, its massive debt became unsustainable. On June 30, 2016, PROMESA was signed into law. 48 U.S.C. § 2101 et seq. It created Title III to allow the territory access to bankruptcy relief for its instrumentalities. On July 2, 2017, the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) initiated a Title III case for PREPA. On December 16, 2022, the Oversight Board filed the first *Title III Plan of Adjustment of the Puerto Rico Electric Power Authority*. This Plan has been amended three (3) times. The current version of the Plan of Adjustment was filed on November 16 2023, ECF. No. 4170. Its supplemental disclosure statement was filed on November 16, 2023, ECF. No. 4171.

# **ARGUMENT**

1. **The proposed Plan of Adjustment's lack of adequate information and discriminatory treatment of SREAEE will leave PREPA employees and retirees in a state of grave financial and physical precarity**
2. The proposed Plan of Adjustment unfairly discriminates against SREAEE as a creditor for the reasons stated in *SREAEE'S Disclosure Statement Objection and Reservation of Rights*, **ECF. NO. 4026**.
3. The Plan of Adjustment's treatment of SREAEE has direct, materially adverse impacts on the financial and physical well-being of PREPA's current employees and retirees, such as Mr./Ms. LAST NAME.
4. The Plan of Adjustment will convert SREAEE active members' retirement plan to defined contribution accounts, pursuant to the Pension Claim treatment of Class 10, thereby creating great uncertainty regarding future retirement benefits.
5. These facts, coupled with the Plan's electricity rate increases and inability to articulate a path for the reconstruction and stable maintenance of Puerto Rico's energy grid, as explained in Arguments II and III below, will leave future PREPA retirees, such as Mr./Ms. LAST NAME and his/her family members in conditioning of great vulnerability during their old age.
6. **The Plan of Adjustment is not feasible if it cannot demonstrate an ability to fix and maintain sustainable public services**
7. Section 314 of PROMESA states the requirements for the confirmation of a Plan of Adjustment. 48 U.S.C. § 2174(b):

 The Title III court shall confirm a plan of adjustment so long as certain requirements are met, including that: the debtor is not prohibited by law from taking any action necessary to carry out the plan; . . . 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; . . . [and] the plan is feasible. *Fin. Oversight & Mgmt. Bd. for P.R. v. Federacion de Maestros de P.R., Inc. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 32 F.4th 67, 76 (1st Cir. 2022) (citation omitted).

1. “Under PROMESA, a plan of adjustment must be supported by financial projections that are ‘reasonable and demonstrate a probability that the debtor will be able to satisfy its obligations under the Plan.’” *In re Fin. Oversight & Mgmt. Bd.*, 637 B.R. 223, 302-03 (D.P.R. 2022).
2. This means asking: “Is it likely that the debtor, after the confirmation of the Plan of Adjustment, will be able to sustainably provide basic municipal services to the citizens of the debtor and to meet the obligations contemplated in the Plan without the significant probability of a default?” *Id; see also In re City of Detroit*, 524 B.R. 147, 220 (Bankr. E.D. Mich. 2014) ("Indeed a feasibility showing premised upon long-term repayment… may be particularly difficult for the [municipal] debtor, which must not only demonstrate a probability that it will be able to pay on pre-petition debt in accordance with the plan, **but most also demonstrate the probability that it can continue to provide public services while it repays debt.**" (emphasis added)).
3. This standard for determining a Plan of Adjustment's feasibility –which requires demonstrating with reasonable certainty the debtor's ability to maintain the provision of public services– is not just an express requirement under PROMESA, but moreover lies at the heart of any municipal bankruptcy proceedings' underlying goals and equitable doctrines. *See, e.g., In re City of Detroit*, 524 B.R. 147, 220 (Bankr. E.D. Mich. 2014) (citing *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 31 (Bankr. D. Colo. 1999)) ("[T]he feasibility of the plan depends upon **the City's ability to fix and maintain its broken governmental operations**. This is significant because the chapter 9 feasibility inquiry requires an analysis of whether the City can reasonably provide sustainable municipal services, as the court found in *In re Mount Carbon.*") (emphasis added)).
4. **The proposed Plan of Adjustment fails to demonstrate the debtor's ability to fix Puerto Rico's gravely deteriorated energy grid and to maintain it in good operating conditions in the near-to-long-term future.**
5. The proposed Plan of Adjustment offers little to no assurance that reorganized PREPA will be able to maintain and improve Puerto Rico's antiquated electricity grid, or to effectively provide services to its consumers.
6. As FULL NAME demonstrates here, Puerto Rico's electricity grid is gravely dysfunctional. *See* the FOMB's "2023 Certified Fiscal Plan for the Puerto Rico Electric Power Authority" at p. 40 ("The condition and performance of PREPA’s aging plants has continued to deteriorate availability of the system’s generating units dropped by approximately 18% from calendar year 2015 to 2022") and at p. 41 ("there are several significant systemic challenges and legacy practices that impact the operation and maintenance of today’s T&D system.). The system is already far from being a "reasonable provision of basic municipal services." Puerto Ricans exponentially suffer from the financial, physical, and emotional consequences of having an unreliable energy system on a daily basis.
7. Adequately fixing and maintaining this deteriorated municipal service –which should be the primary objective of this bankruptcy proceeding– thus requires substantial investments in repairs and infrastructural improvements. The proposed Plan of Adjustment’s terms, however, does not provide a reasonable projection of reorganized PREPA's ability to reconstruct and rehabilitate Puerto Rico's broken and fragile energy grid and maintain its operations. Instead, the proposed Plan of Adjustment speculates that PREPA will be able to generate sufficient revenue and disburse "federal grants… to enable PREPA to repair damage to its electric grid." *See* Disclosure Statement Supplement at 52 n. 58.
8. These proposed Plan's speculative estimates about the availability of federal funding falls short of the investment required to maintain a sustainable provision of energy for residents. In 2019, PREPA produced a transformation plan with a total price tag of $20.3 billion over the next 10 years. *See* "The Grid Modernization of Puerto Rico," published by PREPA and COR3. But the proposed Plan's underlying Fiscal Plan cites only "$12 billion of federal funding obligated [to PREPA] for permanent [reconstruction] work as of June 2, 2023." *See* 2023 Certified Fiscal Plan for the Puerto Rico Electric Power Authority at p. 88. And as of August 2023, PREPA has only received approximately $2.17 billion in federal disaster relief funding. *See* Disclosure Statement Supplement, **ECF No. 4171**, at p. 59. The Proposed Plan's reliance on $12 billion in federal funding for the grid's reconstruction work is not only speculative, but also ignores the gap between the expected $12 billion and the required $20.3 billion to complete rebuilding of the grid.
9. The current Plan of Adjustment does not offer reasonable projections about reorganized PREPA's ability to fix Puerto Rico's broken energy grid and offer a stable provision of this public service. Instead, it burdens citizens by increasing energy rates that will be used to pay off new debt and deprioritizes the need to invest in the grid's infrastructure, leaving this latter task to speculations about PREPA's future revenues and the possible availability of future federal funding.
10. The Plan of Adjustment further proposes future rate increases to pay SREAEE beneficiaries, increasing the energy burden for PREPA customers and the economic infeasibility of the plan.
11. This framework inverts the order of priorities, burdens Puerto Rico's ratepayers, such as **FULL NAME**, and gravely undermines PREPA, Luma, and Genera's ability to ensure the basic provision of municipal service while PREPA repays its debts. For the reasons stated above, the Plan of Adjustment is not feasible under PROMESA and runs afoul of municipal bankruptcy's basic tenet: ensuring that a government entity can provide reliable services without a significant probability of future default.

# **CONCLUSION**

1. In conclusion, this Court should not confirm the Plan of Adjustment because it does not meet the requirements under PROMESA. Additionally, the confirmation of the Plan of Adjustment would cause great prejudice to **FULL NAME** and the people of Puerto Rico.
2. PREPA employees and retirees, such as **FULL NAME**, will be especially affected by the proposed Plan of Adjustment's terms, as their pension benefits will be reduced, there is no certainty about their pension's future funding, and they will be subject to the life-threatening effects of an unstable and inefficient power grid that fails to ensure the provision of ordinary medical and health treatments that require electricity.
3. PREPA’s restructuring is very important, because electric power is necessary both for consumers and businesses alike. It is the driving force of Puerto Rico’s economy. If PREPA’s restructuring becomes too burdensome on the people and businesses of Puerto Rico, or if it fails to ensure the provision of a stable and reliable electricity service, it will affect any possibility of economic growth and development.

# **RELIEF REQUESTED**

**WHEREFORE**, **FULL NAME** respectfully requests that the Court take notice of the above stated and deny the confirmation of the Plan of Adjustment.

**I HEREBY CERTIFY** that on this same date I conventionally filed the foregoing with the Clerk of the Court.

In Municipality, Puerto Rico, this \_\_\_th day of Month YEAR.

HANDWRITTEN SIGNATURE

Signer’s Name

*Pro se*

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1. The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.) [↑](#footnote-ref-0)