| In re:  THE FINANCIAL OVERSIGHT AND  MANAGEMENT BOARD FOR PUERTO RICO,  as representative of  THE COMMONWEALTH OF PUERTO RICO, *et al.*  Debtors.[[1]](#footnote-0) | PROMESA Title III  Case No. 17 BK 3283-LTS (Jointly Administered) |
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| In re:  THE FINANCIAL OVERSIGHT AND  MANAGEMENT BOARD FOR PUERTO RICO  as representative of  PUERTO RICO ELECTRIC POWER AUTHORITY,  Debtor. | PROMESA Title III  Case 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 *Fourth 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 runs a type of business business in Municipality, Puerto Rico. This business has been operating for # years, from YEAR to the present and currently employs \_\_\_ employees.
6. Mr./Ms. LAST NAME pays $ \_\_\_/month of electricity for his/her household. In addition, he/she pays $ \_\_\_/month for their business' electricity cost.
7. INSERT 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 and his/her household are concretely harmed 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, AND THE PROPOSED RATE INCREASES, IMPACTS AND WILL FURTHER IMPACT YOU**
11. Mr./Ms. LAST NAME is further impacted as the owner of a local business whose day-to-day operations depend on reliable and affordable access to electricity. **DESCRIBE HOW THE ELECTRICITY GRID'S FRAGILITY (FREQUENT POWER OUTAGES), AND THE PROPOSED RATE INCREASES, IMPACTS AND WILL FURTHER IMPACT YOUR BUSINESS.**
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 gravely threatens the stability and viability of Puerto Rico's small and medium business owners, as well as the island's economic growth.**
2. The proposed Plan of Adjustment's rate and increases and its 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 gravely affect small and medium business owners' ability to continue operating in Puerto Rico.
3. As FULL NAME's preliminary statement shows, his/her business is already facing substantial financial threats directly resulting from the electricity grid's lack of reliability and its unaffordability. Any increases to commercial rates, coupled with a failure to reconstruct the island's grid and ensure its stability, will make it increasingly difficult for Mr./Ms. LAST NAME to continue their business operations in Puerto Rico.
4. The closure of small and medium business in Puerto Rico will have devastating effects on the island's economy.
5. Given that the Plan of Adjustment severely threatens the viability of small and medium businesses in Puerto Rico, such as Mr./Ms. LAST NAME's, it runs afoul of Congress' intent when enacting PROMESA, as stated in the 48 U.S.C. § 2248. ("It is the sense of the Congress that any durable solution for Puerto Rico's fiscal and economic crisis should include permanent, pro-growth fiscal reforms…").
6. This Plan of Adjustment's rate increases and its failure to prioritize reconstructing and stabilizing the energy grid will harm business in such a ways that it does not create a "durable solution for Puerto Rico's fiscal and economic crisis." Therefore, the Plan should not be confirmed for failure to comply with Congress' legislative intent.
7. **The Plan of Adjustment is not feasible if it cannot demonstrate an ability to fix and maintain sustainable public services**
8. 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. The Plan's reliance on the availability of federal funds for disaster relief to reconstruct the island's energy grid are mere "hopes, desires and speculations". *In re City of Detroit,* supra, 524 B.R. at 220. Tenuously assuming –without evidence or reasonable certainty– that such funds will (a) be made available as rapidly as they are needed and (b) cover the full costs of the energy grid's capital investments squarely contradicts the statutory obligation to demonstrate reorganized PREPA's ability to provide basic municipal services while also paying its debts.
9. 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.
10. PREPA is well aware of the electricity grid's vulnerability to a *force majeure* event that will further damage an already deteriorated grid. *See* Disclosure Statement, ECF No. 4171, at p. 105. But instead of accounting for this vulnerability and ensuring a distribution of proceeds that will reasonably ensure the grid's reconstruction (and, thus, its ability to operate on a basic and sustainable level), the proposed Plan of Adjustment relies on (insufficient) speculations about the future availability of federal funds, thus deprioritizing the urgency of fixing a broken system. Indeed, the Plan's restructuring strategy is principally premised on increasing residential rates and allocating the proceeds of PREPA's revenues to the repayment of bondholders (the Legacy Charge), not on rebuilding or improving the energy infrastructure. *See* 2023 Certified Fiscal Plan for the Puerto Rico Electric Power Authority at p. 142. ("Given the antiquated and fragile nature of PREPA's infrastructure all incremental revenues generated from rate increases to pay restructured debt **could be used to transform PREPA** into a modern, efficient, clean utility. The Oversight Board, **however**, will use the revenues generated by such rate increases to repay creditors." (emphasis added)).
11. 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.
12. 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’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)