

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO et
al.,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtors.

PROMESA

Title III

No. 17 BK 4780-LTS

MEDIATION TEAM'S SEVENTEENTH NOTICE AND REPORT

To the Honorable United States District Judge Laura Taylor Swain:

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 ("Commonwealth") (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); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

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PLEASE TAKE NOTICE that, on April 8, 2022, the Court entered an order (the “Appointment Order”)² appointing a Mediation Team comprising the Honorable Shelley C. Chapman as lead mediator, the Honorable Robert D. Drain, and the Honorable Brendan L. Shannon (collectively, the “Mediation Team”) to facilitate confidential negotiations among the Mediation Parties (and any other Mediation Party added in the Mediation Team’s discretion) regarding the Mediation Topics (the “Mediation”). On the same date, the Court entered its *Order Establishing the Terms and Conditions of Mediation* (the “Terms and Conditions Order”).

PLEASE TAKE FURTHER NOTICE that, on December 30, 2022, the Court entered its *Notice and Order Regarding Mediation Team* stating that, due to the retirement of the Honorable Robert D. Drain from judicial service on December 31, 2022, “effective December 31, 2022, and until further notice (including, without limitation, notice of reappointment of Judge Drain to the Mediation Team in a private capacity), the Mediation Team will consist of Hon. Shelley C. Chapman (ret.) and Hon. Brendan Linehan Shannon.”³

PLEASE TAKE FURTHER NOTICE that, on March 3, 2023, the Court approved the *Disclosure Statement for the Modified Second Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority*, dated March 1, 2023 (the “Disclosure Statement”). On March 22, 2023, the Court entered the *Opinion and Order Granting in Part and Denying in Part the Financial Oversight and Management Board for Puerto Rico’s Motion for Summary Judgment and the Defendant’s and Intervenor-defendants’ Cross-motion for Summary*

² Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Appointment Order.

³ Case No. 17-3283, Docket No. 23187; Case No. 17-4780, Docket No. 3137. Hereinafter, the term “Mediation Team” shall refer to the Hon. Shelley C. Chapman (Ret.) and the Hon. Brendan Linehan Shannon.

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Judgment (the “Lien Challenge Order”),⁴ among other things, directing certain parties to commence working with the Mediation Team to consensually resolve outstanding disputes regarding a plan of adjustment.

PLEASE TAKE FURTHER NOTICE that, on September 15, 2023, the Oversight Board filed the *Supplemental Disclosure Statement for Modified Third Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority* (the “Supplemental Disclosure Statement”).⁵ On November 17, 2023, the Court entered the *Order (I) Approving Supplemental Disclosure Statement, (II) Fixing Voting Record Date, (III) Approving Confirmation Hearing Notice, (IV) Approving Solicitation Packages and Distribution Procedures, (V) Approving Forms of Ballots and Voting and Election Procedures, (VI) Approving Notice of Non-Voting Status, (VII) Fixing Voting and Election Deadlines, and (VIII) Approving Vote Tabulation Procedures*.⁶ The hearing to consider confirmation of the *Modified Fourth Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority* (the “Plan”)⁷ took place in March 2024, and the decision on confirmation is *sub judice*.

PLEASE TAKE FURTHER NOTICE that, on July 10, 2024, the Court held a status conference. The Court’s directives on the record of the status conference were memorialized in its July 11, 2024 *Order Regarding PREPA Litigation Stay* (the “Stay Order”),⁸ pursuant to which the Court (i) stayed all PREPA confirmation and bond-related litigation for at least sixty (60) days, through and including September 8, 2024, and (ii) ordered the parties to meet with the Mediation Team immediately and through the duration of the stay period. The Court also

⁴ Adv. Pro. No. 19-00391, Docket No. 147.

⁵ Case No. 17-3283, Docket No. 25165; Case No. 17-4780, Docket No. 3961. The Supplemental Disclosure Statement states that is intended to supplement and should be read in conjunction with the Disclosure Statement.

⁶ Case No. 17-3283, Docket No. 25661; Case No. 17-4780, Docket No. 4181.

⁷ Case No. 17-3283, Docket No. 26561; Case No. 17-4780, Docket No. 4680.

⁸ Case No. 17-3283, Docket No. 27748; Case No. 17-4780, Docket No. 5286.

82254853.6

directed the Mediation Team to file a report regarding the status of mediation discussions and whether any modification of the Stay Order was recommended prior to the expiration of the stay period. The litigation stay imposed by the Stay Order (the “Litigation Stay”) has subsequently been extended by the Court multiple times. Pursuant to the *Order Extending PREPA Litigation Stay*, dated October 29, 2024,⁹ the Court extended the Litigation Stay through and including January 31, 2025.

PLEASE TAKE FURTHER NOTICE that the termination date of the Mediation (the “Termination Date”) has been extended by the Court multiple times. Pursuant to the Court’s *Order Concerning Mediation Team’s Sixteenth Notice and Report*, dated October 30, 2024 (the “October 30 Order”),¹⁰ the Court extended the Termination Date through and including January 31, 2025. The October 30 Order also directed the Mediation Team to continue filing monthly status reports.¹¹

STATEMENT OF MEDIATION TEAM

1. The Mediation Team respectfully submits this Seventeenth Notice and Report as a status report in accordance with (a) paragraph 4 of the April 24 Order, (b) the Stay Order, and (c) paragraph 4 of the October 30 Order.

2. At the hearing held before the Court on July 10, 2024, the Lead Mediator advised the Court that neither the Oversight Board nor the Bondholders seemed willing to make even modest moves toward each other to facilitate a settlement; the Lead Mediator stated on the

⁹ Case No. 17-3283, Docket No. 28326; Case No. 17-4780, Docket No. 5406.

¹⁰ Case No. 17-3283, Docket No. 28337; Case No. 17-4780, Docket No. 5410.

¹¹ This directive was originally set forth in the Court’s *Order Concerning Mediation Team’s Fourth Notice and Report*, dated April 24, 2023 (the “April 24 Order”), whereby the Court extended the Termination Date through and including July 28, 2023 and directed the Mediation Team to file monthly status reports, beginning on May 3, 2023, concerning “whether there has been genuine engagement in the Mediation process, including the number of completed scheduled mediation sessions that occurred during the preceding month and how many are at that point scheduled for the current month.” *See* Case No. 17-3283, Docket No. 24061; Case No. 17-4780, Docket No. 3404.

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record of the hearing that the Mediation Team has “no reason to believe that either side is prepared to move enough to facilitate a realistic settlement.”¹² The Lead Mediator further advised the Court that “[i]t appears that each side, notwithstanding the nod to mediation, is indeed committed to pursuing what we believe would be protracted [litigation] . . . which would lead to subsequent appeals and remands and would not once and for all end this in your Honor’s courtroom here or in San Juan, and that’s extremely unfortunate.”¹³ The Court challenged the Mediation Parties to prove the Lead Mediator wrong, stating that “the first challenge” is “to prove the mediator wrong in her belief that neither side at this point is willing to move enough to resolve this. Movement is necessary to resolve this Movement and everybody believing that everybody has moved appropriately is necessary to resolve this.”¹⁴ Since that date, the Mediation Team has continued to engage in discussions with certain of the Mediation Parties in the hope that common ground could be found and that modest moves would be made. While there were some faint signs of progress in the ensuing months, it ultimately has become clear that neither side is willing to compromise in any meaningful way.

3. Prior to the omnibus hearing held by this Court on November 7, 2024, the Oversight Board filed a status report with the Court. At the request of the Mediation Team, the report included the following statement from the Mediation Team: “There seems to be consensus at this juncture that there does not seem to be a path to a negotiated settlement without a ruling from the First Circuit and a ruling from Judge Swain on certain gating legal issues. Accordingly, the Mediators have advised the parties that they intend to convene a

¹² See Transcript of July 10, 2024 Hearing at 42:9-12.

¹³ See Transcript of July 10, 2024 Hearing at 41:13-19.

¹⁴ See Transcript of July 10, 2024 Hearing at 62:13-19.

82254853.6

mediated discussion of an agreed litigation schedule and scope.”¹⁵ During the November 7th hearing, the Court gave specific direction with respect to a litigation framework:

THE COURT: If we are to resume litigation on any disputed PREPA issues, I would need to be persuaded that the issues are framed narrowly enough to make a material difference in the restructuring process. The schedule would need to be tight. I would need to be persuaded that briefing on anything that goes forward would be actually responsive and constructive and not merely a bunch of speeches from different areas of the country.¹⁶

4. Acting on the Court’s direction, the Mediation Team has solicited the views of the various Mediation Parties with respect to the parameters of litigation that could be pursued in the coming months. Unfortunately, the parties have divergent views on how best to proceed. The Mediation Team is not at all convinced that any of the litigation paths that have been proposed would “make a material difference in the restructuring process,” as none of the proposals delivered to the Mediation Team will actually advance the case. Moreover, given the history of the case, the Mediation Team fully expects that the parties will appeal from any adverse decisions. And the fact is that a host of other issues will remain to be litigated even after certain “gating” questions were decided. The Mediation Team believes there is simply no prospect for any mediated or consensual resolution here -- and a litigated result is years away. This is nothing short of a tragedy for the people of Puerto Rico.

5. Given that (i) the PREPA fiscal plan for 2024 has not yet been certified and (ii) the Oversight Board has decided to seek yet another ruling from the United States Court of Appeals for the First Circuit, resuming litigation under the present circumstances seems, at best, impractical, and at worst, a waste of the Court’s (and the Debtor’s) limited resources.

Moreover, the arrival of the new administration in Puerto Rico as well as the advancement of

¹⁵ Status Report of Financial Oversight and Management Board in Connection with November 7, 2024 Omnibus Hearing, Case No. 17-3283, Docket No. 28381, at ¶ 6.

¹⁶ See Transcript of November 7, 2024 Hearing at 11:25-12:7.

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proceedings in the pending case before the Puerto Rico Energy Bureau relating to PREPA and LUMA's liquidity and cash flows present additional challenges – and perhaps additional opportunities for progress. The Mediation Team remains committed to finding a path forward and welcomes the opportunity to discuss a new approach with all stakeholders.

6. The Mediation Team respectfully requests that the Court allow the Mediators to appear remotely at the hearing scheduled to be held on December 11, 2024 to answer any questions the Court may have.

Dated: December 9, 2024

/s/ Hon. Shelley C. Chapman (Ret.)
HON. SHELLEY C. CHAPMAN (RET.)
Willkie Farr & Gallagher LLP

/s/ Hon. Brendan L. Shannon
HON. BRENDAN L. SHANNON
United States Bankruptcy Judge