

**IN THE 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,

Debtor.

PROMESA

Title III

No. 17-BK-4780-LTS

(Jointly Administered)

Re: ECF No. 5477

**RESPONSE OF THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD TO
MEDIATION TEAM'S EIGHTEENTH NOTICE AND REPORT**

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); (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).

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as Title III representative of the Puerto Rico Electric Power Authority (“PREPA” or the “Debtor”) in this Title III case pursuant to section 315(b) of the *Puerto Rico Oversight, Management and Economic Stability Act* (“PROMESA”),² respectfully submits this informative motion (the “Informative Motion”) in respect of (a) the *Mediation Team’s Eighteenth Notice and Report* [Case No. 17-3283, ECF No. 28760] (the “Report”) wherein the Mediation Team³ requested an extension of the litigation stay (the “Litigation Stay”) imposed by the *Order Regarding PREPA Litigation Stay* [Case No. 17-3283, ECF No. 27748] (the “Stay Order”), and (b) the PREPA bondholders’ (the “PREPA Bondholders”) joint informative motion dated January 29, 2025 (the “Bondholders’ Motion”) [Case No. 17-3283, ECF No. 28781] agreeing and disagreeing with various part of the Report, and respectfully states as follows:

OVERSIGHT BOARD POSITION

1. The Oversight Board appreciates the Mediation Team’s continued availability and expresses gratitude for its service to date. As an accommodation to the Mediation Team, the Oversight Board agreed to present to the Court the Mediation Team’s proposed retention agreement with PJT Partners which the Mediation Team negotiated. We understand PJT Partners is preparing its disclosure declaration which would accompany the presentment. The Board currently takes no position on that retention.

² PROMESA is codified at 48 U.S.C §§ 2101–2241.

³ “Mediation Team” refers to Honorable Shelly C. Chapman (ret.) and the Honorable Brendan L. Shannon.

2. By order dated January 29, 2025 [Case No. 17-3283, ECF No. 28767], the Court extended mediation through April 30, 2025 and extended the Litigation Stay through March 24, 2025.

3. The Oversight Board does not oppose termination of the Litigation Stay to allow for simultaneous mediation and litigation, for the following reasons.

4. The Oversight Board believes that moving on a dual track that includes mediation, on the one hand, and proceeding with an amended plan of adjustment, on the other hand, would serve valuable purposes, and submits that if there's any plausible prospect of a negotiated settlement, the plausibility will only increase by the pendency of litigation that will result (i) in a definitive determination of the non-settling bondholders' allowable claims and (ii) a successful confirmation of an amended restructuring plan for PREPA as long as it provides for satisfaction of all the non-settling bondholders' allowable claims. As the Mediation Team acknowledged, despite the now-resolved appeals before the First Circuit, "the Mediation Parties have not moved closer to a potential consensual resolution." Report ¶ 2. Indeed, the Mediation Team advised the Court in December 2024 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." *Mediation Team's Seventeenth Notice and Report* [Case No. 17-3283, ECF No. 28555], at ¶ 3. While the Oversight Board will continue mediating with all parties, and is optimistic there will be "tremendous engagement", it has not been advised of a single fact showing the Mediation Team's observation in November should be any different now. Notably, no party disagreed with the Mediation Team's observation in November, and the Bondholders' Motion shows they have not changed their minds. In fact, all parties proffered to the Court their respective identifications of

the gating legal issues requiring rulings before a settlement could likely be negotiated. Nothing has changed.

5. The Oversight Board views the First Circuit's decision as providing a clear path forward for this Title III case. Specifically, the decision establishes that the Trust Agreement provides the non-settling bondholders an allowable secured claim corresponding to PREPA's Net Revenues and no allowable unsecured deficiency claim because the bonds are nonrecourse like virtually all special revenue bonds. The First Circuit reinstated the Bondholders' accounting claim for misappropriation of their Net Revenues, but ruled it could only be satisfied out of future Net Revenues. The Oversight Board is committed to paying in full the value of the non-settling bondholders' allowable secured claim (i.e., the value of Net Revenues serving as collateral) through an amended Title III Plan. If the non-settling bondholders have other allowable claims, the Oversight Board will undertake to satisfy them, although it currently believes they do not exist. The surest path to restructuring PREPA is to proceed with litigation that will resolve the gating issues, while trying to settle along the way. Mediation without such litigation creates delay without any solid prospect of a resolution.

6. While the non-settling PREPA Bondholders and Mediation Team contend prosecution of an amended nonconsensual plan of adjustment would waste time and resources, it is undisputable that the plan's confirmation would successfully restructure PREPA and benefit the people of Puerto Rico. Thus, the non-settling PREPA Bondholders and Mediation Team can only be correct if the amended plan is patently unconfirmable. A plan that pays the non-settling PREPA Bondholders the full amount of their secured claim and satisfies whatever other allowable claims they have, cannot be unconfirmable. Moreover, they may have no other allowable claims.

7. Notably, the non-settling PREPA Bondholders oppose the Litigation Stay insofar as it applies to their claims other than their secured claim. But, given that their other claims are premised on confirmation issues (i.e., how Net Revenues should be computed and whether their other claims are nonrecourse), there is no tenable reason not to resolve those issues in the confirmation context that may result in a successful restructuring. The PREPA Bondholders' entire position is premised on their assumption that they win and their allowable claims cannot be satisfied.

8. The Oversight Board is eager to confirm an amended Title III plan and see PREPA emerge from Title III. The Mediation Parties possess the sophistication and resources to make substantial progress on both the litigation and the plan processes in parallel. Accordingly, the Oversight Board believes the termination of the Litigation Stay to allow mediation and litigation, is warranted.

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Dated: January 30, 2025
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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