

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO**

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i></p> <p>Debtors.<sup>1</sup></p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 3283-LTS (Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA) <i>et al.</i></p> <p>Debtor</p>	<p>PROMESA Title III</p> <p>Case No. 17-BK-4780-LTS</p>

**LIMITED JOINDER OF SISTEMA DE RETIRO DE LOS EMPLEADOS DE LA  
AUTORIDAD DE ENERGÍA ELECTRICA TO DEBTOR’S OBJECTION TO PREPA  
BONDHOLDERS’ MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE  
CLAIM [ECF NO. 5621-2]**

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

<sup>1</sup> 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.)

**COMES NOW**, Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica ("SREAEE"), by and through undersigned counsel, hereby files this Limited Joinder to the Debtor Puerto Rico Electric Power Authority's ("PREPA" or "Debtor") Objection (ECF No. 5621-2) (the "Debtor's Objection") to PREPA Bondholders' Motion for Allowance of Administrative Expense Claim (the "Bondholder's Motion"). SREAEE joins in and supports the Debtor's Objection to the extent it relies on arguments consistent with SREAEE's position regarding the definition and priority of "Current Expenses" under the Trust Agreement governing the PREPA Bonds.

### **PRELIMINARY STATEMENT**

1. As set forth in the Complaint filed in the adversary proceeding *The Official Committee of Unsecured Creditors of PREPA, et al. v. Financial Oversight and Management Board for Puerto Rico, et al.*, Adv. Proc. No. 23-0094 (LTS) (ECF No. 1) (the "UCC Complaint"), SREAEE holds claims against PREPA that constitute "Current Expenses" as defined in the Trust Agreement. Specifically, SREAEE's claims are based on amounts owed to the pension fund, which the Trust Agreement expressly includes within the definition of "Current Expenses" ("any payment to pension or retirement funds").
2. SREAEE's position, as articulated in the UCC Complaint, is that all amounts validly owed as Current Expenses must be paid before any payments are made to the PREPA Bond Trustee or the holders of the PREPA Bonds (the "Bondholders"). This assertion is grounded in the priority scheme established by the Trust Agreement. Indeed, the Bondholders have previously asserted that only Current Expenses, as defined and limited by the Trust Agreement, may be paid before Revenues are credited to the Sinking Fund. The UCC Complaint also contends that the Trust Agreement constitutes a valid

subordination agreement under Bankruptcy Code § 510(a), which subordinates the Bondholders' claims to the payment of Current Expenses.<sup>2</sup>

### **ARGUMENT**

3. The Debtor's Objection raises several defenses that are consistent with and supportive of SREAEE's position regarding the priority of expenses necessary for PREPA's operation over the claims of bondholders, particularly their attempt to assert an administrative expense claim:

#### **I. Pension Contributions Constitute Current Expenses with Priority Over Bondholder Claims**

4. **Expenses as "Current Expenses" or "Necessary Operating Expenses"**: The Debtor argues that the funds the bondholders claim were misused were actually spent on prioritized expenses necessary for PREPA's operation and maintenance. The Debtor contends that these expenses were properly paid as "Current Expenses" under the Trust Agreement or are properly deductible as "necessary operating expenses" under Bankruptcy Code § 928(b). This aligns with SREAEE's argument that necessary operational expenses, including pension contributions, are Current Expenses with priority over bondholder claims.
5. The Trust Agreement governing PREPA's obligations expressly prioritizes the payment of "Current Expenses" before any deposits into the sinking fund for bondholder debt service. The Trust Agreement defines "Current Expenses" to include, among other items:

"[A]ny payment to pension or retirement funds, and all other expenses required to be paid by the Authority under the provisions of the 1947 Indenture, this

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<sup>2</sup> SREAEE reserve all right regarding allegations and the arguments presented in the UCC Complaint.

Agreement or by law, or permitted by standard practices for public utility systems..."<sup>3</sup>

6. Under the Trust Agreement's priority waterfall, PREPA must first apply available revenues to the payment of Current Expenses before making any deposits to the sinking fund or distributing funds to the Bondholders.
7. SREAEE has consistently maintained, including in prior litigation before this Court, that PREPA's failure to adequately fund the retirement system constitutes an ongoing breach of its obligations to cover Current Expenses.<sup>4</sup> The systemic underfunding of pensions directly jeopardizes the financial security of former and current employees and violates PREPA's contractual and fiduciary duties.

## **II. The Bondholders Cannot Elevate Subordinated Claims Through §503(b)**

8. **Challenging the Bondholders' Attempt to Elevate Their Claim:** Both the Debtor and SREAEE challenge the Bondholders' efforts to obtain a priority claim that supersedes the established hierarchy of payments. The Debtor argues that the Bondholders cannot convert their nonrecourse claim for alleged diminution of collateral value into a recourse administrative expense claim under Bankruptcy Code § 503(b) or § 922(c). The Debtor cites numerous cases holding that a prepetition creditor is not entitled to administrative expense priority for depreciation of collateral, particularly where adequate protection under §§ 362, 364, or 922 was not previously provided by the court or debtor. This position is consistent with SREAEE's argument that the Bondholders' claims are contractually subordinated to Current Expenses and cannot gain higher priority through other means.

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<sup>3</sup> Trust Agreement 1974, p. 20-21.

<sup>4</sup> See Complaint ¶¶ 38-41, Adv. Proc. No. 23-0094 (LTS) (describing PREPA's contractual duties and payment failures).

9. Section 503(b) of the Bankruptcy Code does not permit a bondholder to override the express subordination established under a prepetition Trust Agreement. As the Oversight Board notes, the Bondholders may only reach moneys available for debt service pursuant to the priority waterfall set forth in the Trust Agreement.<sup>5</sup>
10. The administrative expense framework under §503(b) is not a blank check to reallocate funds protected by valid contractual priorities. The bondholders' attempt to recharacterize their claims as administrative in nature does not cure the inherent subordination of their right to payment.

### **III. Granting the Bondholders' Motion Would Threaten the Viability of the Pension System**

11. **PREPA's post-petition funds are limited.** Recognizing the Bondholders' administrative expense claims would divert resources that are legally and contractually obligated to fulfill pension obligations.
12. Such a result would not only breach PREPA's obligations under the Trust Agreement but would also have devastating practical consequences for thousands of Puerto Rican families who rely on timely pension payments to survive. These obligations are not discretionary; they are rooted in law, public policy, and the government's duty to protect public servants.<sup>6</sup>

### **CONCLUSION**

**WHEREFORE**, SREAEE respectfully joins in part the Oversight Board's objection and requests that the Bondholders' Motion be denied to the extent it seeks administrative expense priority for claims subordinated by contract to SREAEE's Current Expenses.

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<sup>5</sup> See Objection of the Financial Oversight and Management Board to the Motion for Allowance of Administrative Expense Claim Filed by Certain PREPA Bondholders ¶¶ 6–9, ECF No. 5599, Case No. 17-BK-4780-LTS.

<sup>6</sup> See Complaint ¶ 41, Adv. Proc. No. 23-0094 (LTS) (describing PREPA's pension-related obligations as structural and ongoing).

**WE HEREBY CERTIFY** that on this same date we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all participants and Standard Parties. A courtesy copy of this Motion will be delivered to the Court by email to SwainDPRCorresp@nysd.uscourts.gov as provided in *Third Amended Standing Order*.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 2<sup>nd</sup> day of May, 2025.



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