

**Puerto Rico Electric Power Authority  
Public-Private Partnerships Authority Title III Transformation White Paper**

**November 10, 2020**

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## I. EXECUTIVE SUMMARY

This White Paper details the ongoing debt restructuring efforts of the Puerto Rico Electric Power Authority (“PREPA” or the “Authority”) under Title III of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”).<sup>1</sup> The purpose of this document is to provide a summary and update of the Title III process to parties (“Private Partners”) participating in the request for proposals (“RFP”) process in order to manage, operate, maintain, administer the asset management of, and decommission, where applicable, certain base-load generation plants and gas turbine peaking plants (the “Legacy Generation Assets”) located throughout the island of Puerto Rico pursuant to a long-term public private partnership contract (the “O&M Agreement”) with a term tied to the remaining useful lives of the Legacy Generation Assets. This White Paper is prepared for informational purposes only and does not purport to be all-inclusive or to contain all the information that a party may desire in investigating the potential project. The statements contained in this White Paper are made as of the date hereof, and there can be no assurance that the statements contained herein will be correct at any time after the date hereof.

## II. TITLE III BACKGROUND

### A. Significant Events Leading Up To PREPA’s Title III Filing.

PREPA was created in 1941, as a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (“Puerto Rico” or the “Government”) by Act No. 83 of the Legislative Assembly of Puerto Rico, approved May 2, 1941, as amended. PREPA generates, transmits, and distributes substantially all the electric power used in Puerto Rico. PREPA is one of the largest municipal utilities in the United States, ranking first in number of clients and revenues among public power utilities.

Prior to the Title III filing, PREPA faced historical challenges that resulted in degradation of its infrastructure and a dramatic deterioration of its financial and operating condition. The challenges included: (i) a prolonged recession leading to a significant drop in energy sales; (ii) legal requirements to provide power to certain customers at subsidized rates; (iii) relatively high levels of theft and other non-technical losses; (iv) inadequate capital investment leading to old, inefficient, and unreliable transmission, distribution, and generation facilities and outdated information and technology systems; (v) a high dependence on fuel oil and a non-diversified fuel mix; (vi) a lack of a strategic environmental compliance plan; (vii) a disorganized and ineffective customer service infrastructure; (viii) aging generation facilities that require costly maintenance; (ix) material operating liabilities; and (x) a significant debt burden leading to a debt crisis.

PREPA’s obligations can be divided broadly into two categories: financial indebtedness and other material liabilities. PREPA’s financial obligations include approximately \$8.3 billion in

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<sup>1</sup> PROMESA is codified at 48 U.S.C. §§ 2101-2241.

principal amount of power revenue bonds. Approximately \$2.25 billion in principal amount of PREPA's bonds are insured by "monoline" bond insurers. PREPA's financial obligations are also comprised of (i) approximately \$700 million in principal amount under two matured fuel line loans; and (ii) approximately \$52.2 million notional amount under two interest rate swaps.<sup>2</sup> PREPA's material non-financial liabilities fall into six primary categories: (i) accounts payable; (ii) obligations under collective bargaining agreements; (iii) pensions and other post-employment benefits; (iv) fuel, purchased power and obligations under renewable energy contracts; (v) environmental liabilities and litigation; (vi) contingent or unliquidated litigation liabilities; and (vii) potential administrative expense claims.

## **B. Title III Overview.**

### **1. *PROMESA.***

Recognizing the delicate fiscal condition of Puerto Rico, the U.S. Congress enacted PROMESA, which was signed into law on June 30, 2016. PROMESA provides a series of mechanisms to achieve fiscal and budgetary balance and restore access to the capital markets to spur revitalization of the infrastructure in Puerto Rico.

PROMESA established the Financial Oversight and Management Board for Puerto Rico (the "FOMB"), which is tasked with working with the people of Puerto Rico and the Government to create the necessary foundation for economic growth. The FOMB consists of seven members appointed by the President of the United States and one *ex officio*, non-voting member designated by the Governor of Puerto Rico.<sup>3</sup> The FOMB is the representative of PREPA, as debtor in the Title III case (PROMESA § 315), and the sole party that can file a plan of adjustment on PREPA's behalf (PROMESA § 312).

On January 18, 2017, the Puerto Rico Legislature adopted the *Enabling Act of the Puerto Rico Fiscal Agency and Financial Advisory Authority*, Act 2-2017, which created the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") and gave AAFAF sole governmental responsibility for (i) working with the FOMB, and (ii) restructuring public debt to present a "coordinated and global" response to Puerto Rico's unprecedented fiscal crisis. Act 2-2017 § 2. Act 2-2017 established AAFAF as the "fiscal agent, financial advisor, and reporting agent of all entities of the Government of Puerto Rico" and designated AAFAF as the exclusive governmental

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<sup>2</sup> As of the date of PREPA's Title III filing, PREPA had an additional financial obligation of approximately \$35 million in principal amount outstanding on a collateral line of credit from the Government Development Bank for Puerto Rico ("GDB"). On November 7, 2018, the United States District Court for the District of Puerto Rico approved a qualifying modification for GDB under Title VI of PROMESA. Pursuant to the qualifying modification, PREPA's deposit claims against GDB were offset against this obligation resulting in the obligation's full extinguishment.

<sup>3</sup> There are currently three FOMB member vacancies, created after Chairman Jose B. Carrión III, Carlos García and José González stepped down.

entity responsible for “collaboration, communication, and cooperation” between the FOMB, and Puerto Rico’s governmental entities. *See* Act 2-2017 § 5(a).

## **2. Key Provisions of PROMESA.**

### **a. Fiscal Plans and Budgets.**

One of the cornerstones of PROMESA is the development, approval, and enforcement of fiscal plans and budgets for the Commonwealth and its covered instrumentalities.<sup>4</sup> Such fiscal plans and budgets provide a framework for achieving fiscal responsibility and access to the capital markets. Fiscal plans are long-term planning tools, covering five or more fiscal years, while budgets cover at least one fiscal year.<sup>5</sup> Annual budgets must be consistent with the fiscal plan then in effect.<sup>6</sup>

PROMESA contemplates that the FOMB and Puerto Rico’s elected government will work together to adopt a fiscal plan.<sup>7</sup> The process begins with the FOMB providing the Governor with a schedule for the development, submission, and approval of fiscal plans for the Commonwealth and any covered instrumentality.<sup>8</sup> The Governor is then required to submit the proposed fiscal plan in accordance with such schedule.<sup>9</sup> Following submission, the FOMB may certify the proposed fiscal plan if it determines that the fiscal plan meets 14 statutory requirements set forth in PROMESA, which are designed to “provide a method to achieve fiscal responsibility and access to the capital markets.”<sup>10</sup> If the FOMB determines that the proposed fiscal plan does not meet these requirements, the Governor may submit a revised fiscal plan within the allotted schedule. If the Governor does not submit a compliant fiscal plan within the allotted time, the FOMB may develop and certify its own fiscal plan.<sup>11</sup>

On June 29, 2020, the FOMB certified, pursuant to PROMESA section 201(e)(2), the current fiscal plan for PREPA as developed by the FOMB, pursuant to PROMESA section 201(d)(2). On June 30, 2020, the FOMB issued a compliance certification to the Governor that the fiscal year 2021 budget for PREPA, as developed by the FOMB pursuant to PROMESA section 202(c)(2), is a compliant budget.

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<sup>4</sup> *See* PROMESA §§ 201–204.

<sup>5</sup> *See* PROMESA § 201.

<sup>6</sup> *See* PROMESA § 202.

<sup>7</sup> *See* PROMESA § 201(c).

<sup>8</sup> *See* PROMESA § 201(a).

<sup>9</sup> *See* PROMESA § 201(c)(2).

<sup>10</sup> *See* PROMESA § 201(b)(1).

<sup>11</sup> *See* PROMESA § 201(d).



b. Adjustment of Debts.

PROMESA provides the Government and its instrumentalities with two alternative methods to adjust unsustainable debt: (i) a voluntary debt modification process under Title VI of PROMESA, a largely out-of-court process through which modification of financial debt can be accepted by a supermajority of holders of such debt; and (ii) a court supervised proceeding under Title III of PROMESA, which includes a debt restructuring process substantially based upon incorporated provisions of the Bankruptcy Code.

PROMESA requires a debtor to work with the FOMB in any debt restructuring and creates a power sharing agreement by putting key restructuring tools in the hands of the FOMB, while preserving the Government's managerial and operational control of the debtor. PROMESA section 303 reserves the territory's political and governmental powers to the territory or "any territorial instrumentality thereof," subject only to Titles I and II of PROMESA.<sup>12</sup> The structure established by Titles I and II, alongside the reservation of territorial power in section 303, requires the FOMB and the territorial government to work together to establish a fiscally responsible path forward that is acceptable to the FOMB. Additionally, PROMESA section 305 is modeled after Bankruptcy Code section 904 and prevents the Title III Court from interfering with the Government's exercise of its political or governmental powers and use of its property and revenues, subject to the FOMB's consent as the debtor's representative under Title III.<sup>13</sup>

**3. Commencement of the Commonwealth's Title III Case.**

At a meeting on September 30, 2016, the FOMB designated the Commonwealth as an initial, covered entity subject to oversight under PROMESA. On May 3, 2017, the FOMB filed a petition for relief for the Commonwealth pursuant to PROMESA section 304(a), thereby commencing a case under Title III of PROMESA in the United States District Court for the District of Puerto Rico (the "Title III Court").<sup>14</sup> Pursuant to PROMESA section 315 (48 U.S.C. § 2175), the FOMB serves as the Commonwealth's representative in its Title III case, Case No. 17 BK 3283-LTS (D.P.R. 2017).

Pursuant to PROMESA, the Chief Justice of the Supreme Court of the United States appointed District Court Judge Laura Taylor Swain from the Southern District of New York to preside over the Title III cases filed in the Title III Court. On June 1, 2017, the Title III Court entered

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<sup>12</sup> See PROMESA § 303.

<sup>13</sup> See PROMESA § 305.

<sup>14</sup> All filings in the Commonwealth Title III case, and the related adversary proceedings, are available at: <https://cases.primeclerk.com/puertorico/>.

an order granting the joint administration of the Title III cases that had been filed to date for procedural purposes only.<sup>15</sup>

### **C. Overview of PREPA's Title III Case.**

#### **1. *Commencement of PREPA's Title III Case.***

The FOMB designated PREPA as an initial, covered entity subject to oversight under PROMESA and, on July 2, 2017, the FOMB filed a petition for relief for PREPA pursuant to PROMESA section 304(a), thereby commencing a case under Title III of PROMESA in the Title III Court.<sup>16</sup> Pursuant to PROMESA section 315 (48 U.S.C. § 2175), the FOMB served as PREPA's representative in its Title III case, Case No. 17 BK 4780-LTS (D.P.R. 2017). On October 6, 2017, the Title III Court extended the joint administration order to cover PREPA's Title III case. Upon commencement of PREPA's Title III case, an automatic stay of litigation related to the financial indebtedness and other obligations of PREPA immediately went into effect, which affords PREPA and its officers protection while PREPA continues efforts to negotiate with its creditors to adjust its debts.

#### **2. *Bar Date.***

On February 15, 2018, the Title III Court entered an order establishing May 29, 2018 at 4:00 p.m. (AST) as the general bar date to file proofs of claim (as defined in Bankruptcy Code section 101(5)) against the Debtors on account of claims arising, or deemed to have arisen, prior to the respective commencement dates for their Title III cases, and otherwise setting forth rules and procedures relating to proofs of claim (the "Bar Date Order"). On May 25, 2018, the Title III Court entered an order extending the claim bar date to June 28, 2018 at 4:00 p.m. (AST).

#### **3. *Post-Petition Financing Agreement.***

On February 22, 2018, in the aftermath of Hurricanes Irma and Maria, PREPA, as borrower, and the Commonwealth, as lender, entered into that certain Superpriority Post-Petition Revolving Credit Loan Agreement (the "Loan Agreement"), whereby the Commonwealth

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<sup>15</sup> The debtors in the jointly-administered Title III cases, along with each debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each debtor's federal tax identification number, as applicable, are: the (i) Commonwealth of Puerto Rico (Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (v) Puerto Rico Electric Power Authority ("PREPA") (Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) and (vi) Puerto Rico Public Buildings Authority ("PBA") (Case No. 19-BK-5523-LTS (Last Four Digits of Federal Tax ID: 3801) (collectively, the "Debtors").

<sup>16</sup> All filings in the PREPA Title III case, and the related adversary proceedings, are available at: <https://cases.primeclerk.com/puertorico/>.

agreed to provide PREPA with revolving loans in an aggregate principal amount not to exceed \$300 million, bearing interest at 5% per annum (the “Post-Petition Financing”).

In connection with the Post-Petition Financing, the Commonwealth was granted an allowed, superpriority, administrative expense claim pursuant to Bankruptcy Code section 364(c)(1) in PREPA’s Title III case for all obligations arising under the Loan Agreement.

On March 8, 2019, PREPA repaid all of the outstanding amounts under the Loan Agreement. Because PREPA’s ability to borrow under the Loan Agreement expired as of June 30, 2018, the Post-Petition Financing terminated in its entirety upon repayment by PREPA of all amounts due and payable thereunder. As of the date hereof, PREPA has not incurred any other similar financing arrangement.

#### **4. *Restructuring Support Agreement.***

##### **a. *RSA Background***

On July 30, 2018, the FOMB, AAFAF, and PREPA announced they had entered into a restructuring support agreement (the “Preliminary RSA”) with an ad hoc group of PREPA bondholders (the “Ad Hoc PREPA Bondholder Group”). The Preliminary RSA contemplated an exchange of the outstanding PREPA bonds for refunding bonds issued by a special purpose vehicle (“SPV”) through a PREPA plan of adjustment. Debt service payments on the refunding bonds by the SPV would be funded through a transition charge to be paid by power customers, collected by a servicer (expected to be the T&D system operator pursuant to a servicing agreement, as described in the following paragraphs), and paid to the SPV. Under the Preliminary RSA, the refunding bonds would be the obligation of the SPV only.<sup>17</sup>

At the time the Preliminary RSA was executed, the Ad Hoc PREPA Bondholder Group held approximately 57% of uninsured PREPA bonds representing 41% of the total bonds issued under the that certain trust agreement, between PREPA and U.S. Bank National Association, as Successor Trustee, dated as of January 1, 1974, as amended and supplemented through August’s 1, 2011 (the “PREPA Trust Agreement”). Certain additional parties joined the Preliminary RSA. The monoline insurers and the fuel-line lenders were not party to the Preliminary RSA).

On May 3, 2019, FOMB, AAFAF, PREPA, the Ad Hoc PREPA Bondholder Group, Assured Guaranty Corp., and Assured Guaranty Municipal Corp. (together with Assured Guaranty Corp., “Assured”) executed the Definitive Restructuring Support Agreement (together with the annexes, exhibits, and schedules attached thereto, as each may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms of the Definitive RSA, the

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<sup>17</sup> A similar charge is contemplated to be established to address PREPA’s legacy pension obligations in an amount to be determined under the PREPA Title III plan.

“Definitive RSA”).<sup>18</sup> On September 9, 2019, the Definitive RSA was amended to add Syncora Guarantee Inc. and National Public Finance Guarantee Corporation as parties.

If the Title III Court approves the 9019 Motion (defined below), the Definitive RSA is expected to form the foundation for PREPA’s broader Title III plan of adjustment by establishing agreed terms for the restructuring portion of the uninsured and insured bond debt, thus securing the support for such a potential plan from an impaired, accepting class of creditors.

The Definitive RSA contemplates the issuance of new securitization bonds in a plan of adjustment for the Authority, which securitization bonds would be payable from a Transition Charge imposed on the Authority’s customers and certain other electricity users (as described and defined in the following paragraph), through a special purpose issuer in order to restructure at a discount the Authority’s outstanding long-term debt. Under the Definitive RSA, the bondholders that are party to the Definitive RSA (the “Supporting Holders”) agree that they will support a future Title III plan of adjustment in which their existing PREPA bonds are exchanged for two types of new securitization bonds—Tranche A bonds and Tranche B bonds—with a “turbo” feature on outstanding principal paid from excess cash flows of the securitization vehicle after payment of bond interest and other obligations. The Tranche A bonds would have an exchange rate of 67.5% of the principal amount of the Supporting Holders’ outstanding bonds, while the Tranche B bonds will be “growth bonds” with an exchange rate of 10% of the principal amount of outstanding bonds of the Supporting Holders. The repayment of the Tranche B bonds is contingent on the repayment of the Tranche A bonds and total collection of Transition Charge revenues during the term of the Tranche B bonds, which could be fluctuate depending on electricity demand. As a result, it is possible that the Tranche B bonds will not receive any repayment if the electricity demand is lower than projected in the fiscal plan. Alternatively, these Tranche B bonds could be paid in full if the electricity demand is higher than projected in the relevant fiscal plan. Implementation of the securitization will require enactment of new legislation or the amendment of existing legislation (Act 4-2016), which will (among other things) govern the Securitization Bonds (as defined in the Definitive RSA), Transition Charge, and mechanisms intended to protect the revenues to be generated by collection of the Transition Charge.

The terms of the Definitive RSA also establish that the repayment of the bonds will be secured by a capped securitization charge to customers on a cent per kilowatt hour (c/kWh) basis that will flow to the securitization vehicle (the “Transition Charge”). The Transition Charge will be a fixed cost (denoted in c/kWh) for each customer’s electricity usage on their recurring bills and creditors will bear a material portion of electric demand/load reduction risk, subject to certain demand protections set forth in the Demand Protections Term Sheet (Schedule I-A to the Securitization Term Sheet attached to the Definitive RSA as Annex A).

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<sup>18</sup> A copy of the Definitive RSA can be found on EMMA at <https://emma.msrb.org/ER1221933-ER956373-ER1357358.pdf>.

The Securitization Term Sheet contemplates that the servicer of the transition charge will be the concessionaire, operator, or other service provider for the transmission and distribution system (the “T&D System”) and that the issuer and servicer will become party to a servicing agreement that will include terms and conditions specified in the Securitization Term Sheet, as well as other terms and conditions consistent with prudent mainland utility securitizations. The Securitization Term Sheet further provides for a third-party collection agent (the “Depository”) to receive amounts collected on PREPA’s charges, including the transition charge. Amounts held by the Depository are to be allocated between transition charges, electricity charges, and other permitted charges and transferred daily to the securitization trustee (in respect of transition charge collections), to the servicer of the Transition Charge for payment to PREPA or any successor(s) (in respect of electric and other charges), or to the owner of any other permitted charges (in respect of such other permitted charges) in accordance with a methodology to be agreed upon in the Servicing Agreement and other securitization documents.

The Securitization Term Sheet further provides that the definitive documents for the securitization shall provide that, at any time, Puerto Rico or PREPA and its subsidiaries and their respective legal successors (collectively, the “PREPA Parties”) or any private operator, manager, or concessionaire, to the extent such private operator, manager, or concessionaire is issuing debt payable from charges, taxes, or other fees on Puerto Rico electricity, shall be permitted to incur additional indebtedness to fund costs related to the T&D System and to impose charges, taxes, or other fees on electricity, and grant liens in support of any such indebtedness. Such additional indebtedness may be issued for the following purposes (to the extent permitted by applicable law):

1. In anticipation of funds from any agency of the U.S. Federal government if such funds have been committed, the indebtedness is solely related to the T&D System for purposes for which such funds have been committed, and the designated recipient has agreed to turn over such funds for repayment of the additional Indebtedness;
2. Indebtedness incurred to meet any local match or cost sharing requirements relating to receipt of funding related to the T&D System to be received from any agency of the U.S. government;
3. To fund any capital requirements for the T&D System;
4. To fund a cash operating reserve;
5. To finance emergency response to major disaster or emergency directly related to the T&D System; or
6. To refinance any indebtedness as described above.

The issuance of any additional indebtedness must also meet additional standards set forth in the Securitization Term Sheet.

In the period after Title III Court approval of the 9019 Motion and the effectiveness of PREPA's plan of adjustment, Supporting Holders under the Definitive RSA will be entitled to certain benefits detailed in the Definitive RSA, certain of which are contingent on approval of the 9019 Motion. The Definitive RSA provides for a "Settlement Charge" of 1 c/kWh that was to be implemented by PREPA and included in customer bills by July 1, 2019. Subject to certain requirements set forth in the Definitive RSA, commencing August 30, 2019, and ending on the plan effective date or termination of the Definitive RSA, Bonds subject to the Definitive RSA were to receive monthly settlement payments on a pro-rata basis based on the outstanding principal amounts of Bonds subject to the Definitive RSA calculated based on (a) the number of kilowatt hours billed in the previous month, multiplied by 92% (representing the projected collection percentage and certain statutory exceptions), multiplied by the Settlement Charge. In addition, if a Title III plan for PREPA has not been confirmed and has not gone effective by March 31, 2021, PREPA shall implement an increased Settlement Charge equal to the Transition Charge that would have gone into effect if the Effective Date (as defined in the Definitive RSA) had occurred (the "Increased Settlement Charge"). Collections of the Increased Settlement Charge will be paid monthly on a pro-rata basis to bonds subject to the Definitive RSA that were entitled to receive Settlement Payments. Bonds subject to the Definitive RSA will also be entitled, subject to the terms of the Definitive RSA, to a stipulated administrative expense claim, in an amount equivalent to Tranche A Bond (as defined in the Definitive RSA) interest payments that would have accrued if the bonds were issued, less any Settlement Payments received (an "Administrative Claim"). AAFAF and FOMB (together, the "Government Parties") have the option to pay the Administrative Claims in cash or in the form of Tranche A Bonds. The Definitive RSA provisions for the payment of the Settlement Payments and the Increased Settlement Payment are subject to entry of an order approving the 9019 Motion. At this time, no order has been entered approving the 9019 Motion and no hearing is scheduled, as the Government Parties have adjourned all proceedings on the motion in light of the current pandemic crisis, as noted below. As such, the Settlement Charge and Settlement Payments described above have not yet been implemented or commenced.

The foregoing summarizes certain provisions of the Definitive RSA that may be relevant to Private Partners and is qualified entirely by the terms and conditions of the Definitive RSA. All Private Partners are urged to review the Definitive RSA in its entirety.

b. *Litigation in connection with RSA.*

On May 10, 2019, the FOMB and AAFAF filed a joint motion to approve the Definitive RSA and settlements embodied therein (the "9019 Motion").

The FOMB and AAFAF filed a supplemental memorandum with supporting declarations on July 2, 2019. Between July and October 2019, the parties and potential objectors conducted voluminous discovery on the 9019 Motion. Certain parties filed objections to the 9019 Motion on October 30, 2019. An omnibus reply has not yet been filed by the FOMB and AAFAF.

In response to the spread of COVID-19 and its effects on the people and economy of Puerto Rico, on March 27, 2020, the FOMB and AAFAF asked the Title III Court to adjourn all hearing and briefing deadlines in connection with the 9019 Motion. The request was granted, and all the deadlines related to the consideration of the Definitive RSA are currently stayed. Pursuant to the District Court orders, the FOMB and AAFAF file periodic reports providing an update on the Authority's financial condition and proposing next steps with respect to the 9019 Motion and the settlements subject to the approval of the Title III Court.

On May 15, 2020, the FOMB, the Authority, and AAFAF filed a status report with the Title III Court providing an update on the Authority's financial condition and next steps with respect to seeking court approval of the Definitive RSA. The FOMB indicated that "it still lacks sufficient visibility into the Authority's prospects to determine the feasibility of the restructuring contemplated by the Definitive RSA." The Title III Court accepted the report, and, on May 22, 2020, entered an order adjourning all the proceedings related to the Definitive RSA until further order.

On July 31, 2020, the FOMB, the Authority, and AAFAF filed a further status report with the Title III Court informing the Court that the COVID-19 pandemic was continuing to unfold, and that more time was necessary to understand how and if the situation will impact the Authority. On August 5, 2020, the Title III Court directed the FOMB, the Authority, and AAFAF to file a status report on September 25, 2020, providing a further update on the Authority's financial condition and proposing next steps with respect to the Definitive RSA.

On August 18, 2020, the Official Committee of Unsecured Creditors (the "Committee") filed a motion to terminate the 9019 Motion. The Committee asserted the Title III Court no longer has subject matter jurisdiction over the 9019 Motion because the underlying 9019 RSA is effectively defunct. The FOMB, AAFAF, and the Authority objected to the Committee's motion because (i) termination is simply a dismissal without prejudice, and the absence of the 9019 Motion does not serve any constructive purpose; and (ii) there is no basis to grant the requested relief because the Committee cannot displace the FOMB's exclusive right to propose a plan of adjustment by taking control of a key issue. On September 11, 2020, the Court entered an order adjourning the hearing on the Committee's Motion to afford the Government Parties the opportunity to submit a status report. On September 25, 2020, pursuant to the Title III Court's order, the Authority, the FOMB, and AAFAF filed a status report regarding the ongoing COVID-19 pandemic and the ongoing review of the Definitive RSA. The report requested that the Title III Court set a deadline of December 9, 2020 for a further status report. The Committee objected to the status report and the Government Parties replied to the objection. On November 4, 2020, the Title III Court denied the Committee's motion to terminate the 9019 Motion, without prejudice to renewal after April 21, 2021. The Court has not set a date for a further status report.

## 5. ***Significant Litigation In Connection With PREPA's Title III Case.***

PREPA is, or was, a defendant, co-defendant, or respondent in various lawsuits brought as adversary proceedings or contested matters within its Title III case. The following lawsuits and contested motions do not comprise an exhaustive list of all litigation.

- a. *Motion of Ad Hoc Group of PREPA Bondholders, National Public Finance Guarantee Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. For Relief from the Automatic Stay to Allow Movants to Enforce their Statutory Right to Have a Receiver Appointed, Case No. 17-04780 (D.P.R. July 18, 2017).*

On July 18, 2017, a group of PREPA bondholders and bond insurers filed a request for relief from the automatic stay to commence an action in a Puerto Rico court for the appointment of a receiver.<sup>19</sup> The movants argued that the Title III Court should grant relief from the automatic stay for cause under Bankruptcy Code section 362(d)(1) to allow the movants to enforce certain rights under Puerto Rico law and pursuant to the PREPA Trust Agreement to install a receiver for PREPA.

On September 14, 2017, the Title III Court entered an order denying the motion for relief from the automatic stay, which the movants appealed. Among other things, the Title III Court found that (i) PROMESA section 305 prohibits the Title III Court from transferring control of PREPA's management and property to a receiver without the FOMB's consent; and (ii) under PROMESA section 306, the Title III Court has exclusive jurisdiction over all the debtor's property, and a grant of relief from the stay to permit movants to seek the appointment of a receiver would require the Title III Court to cede that jurisdiction to another court.<sup>20</sup>

On August 8, 2018, the First Circuit reversed and remanded the issue back to the Title III Court for further proceedings consistent with its opinion.<sup>21</sup> The First Circuit held that PROMESA sections 305 and 306 alone do not preclude the Title III Court from, with appropriate findings, granting the movants' request for relief from the automatic stay to commence an action against PREPA in a Puerto Rico court to seek the appointment of a receiver. Although sharing the Title III Court's concerns regarding the impact of a robust receivership, the First Circuit reasoned that it might be possible to grant tailored relief for the petitioning creditors to seek a receivership in appropriate circumstances, provided, that the receiver's role be limited to specific steps necessary to protect the creditor's collateral. Additionally, the First Circuit held that the exclusive jurisdiction provision of PROMESA section 306(b) keeps the bankruptcy process under the

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<sup>19</sup> See Case No. 17-7480, ECF 74.

<sup>20</sup> See Case No. 17-7480, ECF 299.

<sup>21</sup> See Appeal No. No. 17-2079, Document No. 00117323983. *In re Fin. Oversight & Mgmt. Bd.*, 899 F.3d 13 (1st Cir. 2018).



prerogative of the Title III Court, but allows the Title III Court to enlist or permit other courts to take action, which in turn enhances the control given to the Title III Court by PROMESA section 306. Importantly, the First Circuit advised that, on a renewed receiver motion, the Court must assess the prepetition value of the bondholders' collateral (if any security interests exist).<sup>22</sup> The First Circuit also ruled the Court must consider "whether the bondholders face a threat of uncompensated diminution in such value, whether the bondholders are seeking the protection of existing collateral or, instead, the creation of new collateral, and what, if any, adequate protection PREPA can offer short of a receiver being appointed to manage it if protection is warranted."<sup>23</sup>

On October 3, 2018, National Public Finance Guarantee Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. filed a new motion for relief from the automatic stay (discussed below). As of the date hereof, the other movants have not filed a new motion or joined in this motion. This motion is currently being held in abeyance as the movants are parties to the Definitive RSA. If the Definitive RSA is terminated (for any reason) the motion for relief from the automatic stay could be put back on the calendar.

- b. *Union de Trabajadores de la Industria Electrica y Riego ("UTIER") v. Puerto Rico Electric Power Authority, et al., No. 17-00228 (D.P.R. Aug. 7, 2017).*

UTIER, a labor union that represents approximately 3,600 of PREPA's 6,775 employees, has commenced two adversary proceedings against PREPA.<sup>24</sup> First, UTIER filed a complaint arguing that the appointment of FOMB's members violated the Appointments Clause of the US Constitution, and, consequently, the FOMB's acts are null and void, and the Title III cases must be dismissed.<sup>25</sup> UTIER alleges that the Appointments Clause, which requires the advice and consent of the Senate for Presidential nominees, conflicts with PROMESA's procedure for the appointment of members of the FOMB. UTIER alleges that the members of the FOMB are officers of the United States and, therefore, must be appointed in a manner consistent with the Appointments Clause. UTIER further argues that the FOMB should be given particularly close scrutiny given its broad authority.

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<sup>22</sup> *Id.* at 23.

<sup>23</sup> *Id.*

<sup>24</sup> See Case Nos. 17-228, 17-229.

<sup>25</sup> See Case No. 17-228, ECF 75. In addition to UTIER's lawsuit, several other lawsuits, outside of PREPA's Title III proceedings, have been filed similarly challenging the FOMB's appointment under the Appointments Clause. See "Objection and Motion of Aurelius to Dismiss Title III Petition," *In re: The Financial Oversight and Management Board for Puerto Rico, as Representative of The Commonwealth of Puerto Rico, et al.*, No. 17-BK-3283-LTS, Dkt. No. 913; *Assured Guaranty Corp.; Assured Guaranty Municipal Corp. v. FOMB, et al.*, No. 18-00087-LTS (D.P.R. July 23, 2018); *Hernandez-Montanez et al. v. Financial Oversight and Management Board for Puerto Rico et al.*, No. 18-00090-LTS (D.P.R. July 25, 2018).

On August 15, 2018, the Title III Court entered an order upholding the FOMB appointments.<sup>26</sup> UTIER appealed to the First Circuit, which heard the appeal on December 3, 2018.<sup>27</sup>

On February 15, 2019, the First Circuit held that PROMESA's appointments method for the FOMB is unconstitutional.<sup>28</sup> The First Circuit did not dismiss the Title III petitions as plaintiffs had requested, but instead expressly validated the FOMB's past acts and stayed its mandate for 90 days. On March 1, 2019, UTIER filed a motion seeking a panel rehearing or rehearing *en banc*, arguing that the FOMB's past acts cannot be validated and that the FOMB is acting without legal authority. On March 7, 2019, the First Circuit denied UTIER's petition for a rehearing.

On April 23, 2019, the FOMB filed a petition for writ of certiorari to the U.S. Supreme Court.<sup>29</sup> On April 24, 2019, the FOMB filed a motion to stay the First Circuit's mandate pending the Supreme Court's consideration of the petition for a writ of certiorari. On April 29, 2019, the President announced his intent to nominate the current FOMB members to serve out their terms.<sup>30</sup> On May 6, 2019, the First Circuit entered an order denying the request to stay the mandate pending Supreme Court disposition and instead extending the mandate until July 15, 2019. On May 24, 2019, Aurelius and UTIER filed responses to the petition for certiorari. The writ of certiorari was granted and, on June 1, 2020, the U.S. Supreme Court reversed the U.S. Court of Appeals for the First Circuit's judgment and upheld the District Court's determination that the FOMB members' appointments are constitutional and thus, valid.

c. *Union de Trabajadores de la Industria Electrica y Riego (UTIER) v. Puerto Rico Electric Power Authority, et al., No. 17-00229 (D.P.R. Aug. 7, 2017).*

UTIER also filed a complaint against PREPA, the Commonwealth, the FOMB, the Governor of Puerto Rico, PREPA's Executive Director, AAFAF's Executive Director, the Secretary of the Treasury, the Director of the Commonwealth's Office of Management and Budget, and the FOMB's Executive Director disputing the constitutionality of four Commonwealth employment statutes and the 2017 PREPA fiscal plan and budget for PREPA, arguing that they "alter, impair, take away without just compensation, or nullify" provisions of the collective bargaining agreement with PREPA related to the accrual and use of vacation and illness days, the mobility

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<sup>26</sup> See Case No. 17-228, ECF 130.

<sup>27</sup> See Appeal No. 18-1787.

<sup>28</sup> See *id.*

<sup>29</sup> See Appeal No. 18-1334.

<sup>30</sup> See "President Donald J. Trump Announces Intent to Nominate and Appoint Personnel to Key Administration Posts," April 19, 2019, available at: <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-personnel-key-administration-posts-24/>.

and transfer systems, and job classifications and are, therefore, invalid under the Contracts and Takings Clause of the US Constitution.<sup>31</sup>

On January 12, 2018, the defendants moved to dismiss the complaint on various grounds, including lack of ripeness and failure to plead violations of the Contracts and Takings Clauses. On September 26, 2018, the District Court issued an opinion granting in part and denying in part this motion to dismiss, determining UTIER had adequately pled causes of action premised on violation of the Contracts Clause, and dismissing all other counts.

On December 17, 2018, defendants answered the amended complaint, denying its allegations and asserting the following affirmative defenses: (i) lack of subject-matter jurisdiction due to absence of injury; (ii) lack of subject-matter jurisdiction due to mootness; (iii) lack of subject-matter jurisdiction due to unripeness; (iv) no substantial impairment of contract rights; (v) permissible exercise of police power as to alleged contract rights; (vi) relief barred by law of the case; (vii) failure to state a claim; (viii) statute of limitations; (ix) laches; (x) PROMESA section 106(e); and (xi) PROMESA sections 303 and 305.<sup>32</sup>

On August 30, 2019, UTIER filed a second amended complaint, which added a new claim for damages.<sup>33</sup> Defendants answered the second amended complaint on October 15, 2019.<sup>34</sup>

On October 21, 2020, the Title III Court entered an amended scheduling order for discovery and the filing of dispositive motions through August 13, 2021.<sup>35</sup> As of the date hereof, this litigation remains ongoing.

d. *Puerto Rico Elec. Power Auth., et al. v. P.R. Energy Comm'n, No. 17-00256 (D.P.R. Sept. 5, 2017).*

On PREPA's behalf, AAFAF seeks Title III court review of provisions of the rate orders issued by PREC (as defined below) as *ultra vires*.<sup>36</sup> PREPA argues that the rate orders infringe upon the FOMB's authority over fiscal and budgetary matters related to PREPA under PROMESA sections 201-205, as well as infringe upon PREPA's board and management's authority to manage its business and operations, as protected by PROMESA section 303. PREPA also argues that the rate orders conflict with PREPA's obligation to comply with its fiscal plan.

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<sup>31</sup> See Case No. 17-229, ECF 38.

<sup>32</sup> See Case No. 17-229, ECF 72–77.

<sup>33</sup> See Case No. 17-229, ECF 89.

<sup>34</sup> See Case No. 17-229, ECF 92-97.

<sup>35</sup> See Case No. 17-229, ECF 100.

<sup>36</sup> See Case No. 17-256, ECF 1.

On November 10, 2017, the Instituto de Competitividad y Sostenibilidad Economica de Puerto Rico (“ICSE”), a non-profit educational organization, filed a motion to remand the case to the Puerto Rico Court of Appeals and PREC, and to lift the stay to allow the rate case to continue in the appellate court and at PREC.<sup>37</sup> ICSE argues that, among other things, (i) PREC is the body that implements public energy policy and is the only body with the necessary expertise on rate review; (ii) PREC has committed no *ultra vires* acts; and (iii) the Puerto Rico Court of Appeals is the appropriate forum to adjudicate PREPA’s arguments. On March 28, 2018, Judge Swain denied ICSE’s motion, and referred the actions to Magistrate Judge Judith G. Dein for general pre-trial management.<sup>38</sup> A joint status report regarding the management of this proceeding is due by January 12, 2021.

e. *Urgent Motion for Entry of Order Confirming Appointment and Authority of Chief Transformation Officer, Case No. 17-04780 (D.P.R. Oct. 26, 2017).*

On October 26, 2017, the FOMB filed an urgent motion asking the Title III Court to confirm the appointment of a Chief Transformation Officer (“CTO”) that would act as the chief executive officer of PREPA and report directly to the FOMB.<sup>39</sup> The FOMB argued that it had authority to appoint a CTO as the sole “trustee” for PREPA under PROMESA section 301(c)(7). As “trustee,” the FOMB contended that its powers include the power to manage the Debtors’ operations when necessary to ensure the success of the restructuring process. The FOMB also argued that PROMESA section 315, which authorizes the FOMB to “take any action necessary on behalf of the debtor to prosecute the case of the debtor,” grants it the power to appoint a CTO. Finally, the FOMB argued that it had authority to appoint a CTO under PROMESA section 305 and Bankruptcy Code section 105 because it has consented to the Title III Court exercising its equitable powers with respect to PREPA’s governmental powers.

On November 16, 2017, after noting that the FOMB had not asserted that PREPA was non-compliant with a certified fiscal plan or budget, the Title III Court denied the FOMB’s motion, finding “no express provision within PROMESA and its incorporated Bankruptcy Code provisions, nor any inferential grant of power, that authorizes the FOMB to impose changes in structure or reporting lines within PREPA by appointing a CTO, or to exercise the authority of a chief executive officer, much less to delegate that authority to an agent of the FOMB.”<sup>40</sup> The Court noted, among other things, the structure of PROMESA “requires the FOMB and the territorial government to work together to establish a fiscally responsible path forward that is acceptable to the FOMB.”<sup>41</sup>

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<sup>37</sup> See Case No. 17-256, ECF 16.

<sup>38</sup> See Case No. 17-256, ECF 46.

<sup>39</sup> See Case No. 17-4780, ECF 361.

<sup>40</sup> *Opinion and Order Denying Urgent Motion of FOMB to Confirm Appointment of a Chief Transformation Officer* (Docket Entry No. 361), Case No. 17-BK-4780-LTS, ECF 417 at 19.

<sup>41</sup> *Id.* at 19.

The Title III Court also denied other various requests by Ad Hoc PREPA Bondholder Group, AAFAF, U.S. Bank National Association, the PREPA Governing Board, Assured Guaranty Corp., and Syncora Guarantee Inc. to appoint other forms of emergency managers and co-managers. On November 28, 2017, the FOMB announced in a press release that it would not appeal this decision.

f. *Puerto Rico Elec. Power Auth., et al. v. Puerto Rico Energy Commission ("PREC"), No. 18-00024 (D.P.R. Mar. 13, 2018).*

On PREPA's behalf, AAFAF seeks to remove to the Title III Court certain actions challenging and seeking review of provisions of the rate orders issued by PREC on November 17, 2017 and March 5, 2018, concerning PREPA's 2018 fiscal plan.<sup>42</sup> The first order requires that PREPA submit to PREC's authority and oversight regarding the contracting for restoration services, and the second requires PREPA to submit to PREC's oversight and authority with respect to the 2018 fiscal plan. AAFAF contends that these orders invade the FOMB's authority over PREPA under PROMESA and infringe on AAFAF's authority as the exclusive representative of the Governor.

On April 30, 2018, PREC voluntarily dismissed, without prejudice, the cause of action to enforce the March 5, 2018 fiscal plan compliance order.<sup>43</sup> The restoration services contract order expired by its terms in May 2018; thus, the remainder of the complaint may be moot.

On February 19, 2019, PREB<sup>44</sup> voluntarily dismissed the remaining cause of action and sought to dismiss the adversary proceeding without prejudice.<sup>45</sup> On February 20, 2019, the Title III Court entered an order dismissing the case without prejudice.<sup>46</sup>

g. *Rivera Rivera, et al. v. PREPA et al., No. 18-00047 (D.P.R. Apr. 27, 2018) (1st Cir. 20-1797).*

On March 22, 2018, former Governor Ricardo Rosselló issued Executive Order 2018-012, appointing PREPA's Board of Directors as trustees of PREPA's Retirement System to finalize and deliver information to AAFAF necessary for preparing PREPA's fiscal plan and budget for fiscal year 2019.

On March 27, 2018, plaintiffs—members of the Retirement System's board of trustees—filed a complaint in Puerto Rico court challenging the Executive Order. The complaint alleged

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<sup>42</sup> See Case No. 18-024, ECF 1.

<sup>43</sup> See Case No. 18-024, ECF 20.

<sup>44</sup> Act 120-2018 and Act 211-2018 modified the structure of PREC and changed its name to the Puerto Rico Energy Bureau ("PREB").

<sup>45</sup> See Case No. 18-024, ECF 44.

<sup>46</sup> See Case No. 18-024, ECF 45.

that the Retirement System is independent from PREPA, that its assets belong to its beneficiaries and are separate from PREPA's assets, and that the Governor lacked the authority to appoint the Board of Directors of PREPA to undertake duties designated to the Retirement System's board of trustees. The Oversight Board removed the case to the Title III Court on April 27, 2018.<sup>47</sup> Plaintiffs filed an amended complaint on February 6, 2019.<sup>48</sup>

On November 24, 2019, Governor Vázquez issued Executive Order 2019-060, formally withdrawing Executive Order 2018-012. Plaintiffs filed a second amended complaint on January 17, 2020, alleging that the now defunct Executive Order, and all actions taken thereunder—including potentially the certification of PREPA's fiscal plans, to the extent they are based on the data developed pursuant to the Executive Order—were null and void *ab initio*.<sup>49</sup>

On February 24, 2020, defendants filed a motion to dismiss, asserting that the second amended complaint was moot and that the court lacked subject matter jurisdiction of the action.<sup>50</sup> On July 30, 2020, the Title III Court dismissed the case, holding that it lacked jurisdiction because plaintiffs had not established a concrete controversy given that they were unspecific as to which actions taken pursuant to the repealed Executive Order they were challenging.<sup>51</sup> Plaintiffs appealed the case to the First Circuit, and their opening brief is due November 30, 2020.<sup>52</sup>

h. *Motion of National Public Finance Guarantee Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. for Relief from the Automatic Stay to Allow Movants to Enforce Their Statutory Right to Have a Receiver Appointed, Case No. 17-04780 (D.P.R. Oct. 10, 2018).*

On October 3, 2018, National Public Finance Guarantee Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc. (the "Movants"), filed a new motion seeking relief from the automatic stay in order to seek appointment of a receiver (the "Renewed Lift Stay Motion").<sup>53</sup> The movants argue that appointment of a receiver is necessary because, among other things: (i) PREPA's management is highly politicized and incompetent, which contributed to its fiscal crisis; (ii) PREPA obstructs PREC, its independent regulator; (iii) PREPA has not adequately maintained its generation, transmission, and

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<sup>47</sup> See Case No. 18-047, ECF 1.

<sup>48</sup> See Case No. 18-047, ECF 38.

<sup>49</sup> See Case No. 18-047, ECF 68.

<sup>50</sup> See Case No. 18-047, ECF 74.

<sup>51</sup> See Case No. 18-047, ECF 80.

<sup>52</sup> See Case No. 20-1797.

<sup>53</sup> See Case No. 17-4780, ECF 975.

distribution assets; (iv) PREPA has poor billing and collection practices; and (v) PREPA incentivizes municipalities to consume (and waste) electricity through the Contribution in Lieu of Taxes program. The FOMB, PREPA, and AAFAF (together, “Respondents”) are defending against the motion.

On February 25, 2019, the movants’ expert witness and two additional declarants filed declarations in support of the lift stay motion. On March 29, 2019, UTIER filed an objection to the lift stay motion and requested the appointment of an independent private-sector inspector general.<sup>54</sup> On May 2, 2019, UTIER filed an expert declaration in support of its objection.<sup>55</sup> On May 9, 2019, the Title III Court entered an order granting AAFAF and the FOMB’s motion to stay the PREPA receiver motion pending adjudication of the underlying settlements embodied in the Definitive RSA.

On May 10, 2019, the FOMB and AAFAF filed the *Financial Oversight and Management Board and AAFAF’s Memorandum of Law in Support of Motion Pursuant to Fed. R. Civ. P. 12(b)(6) to Dismiss Insurers’ Motion for Relief From The Automatic Stay To Seek Appointment of a Receiver [ECF No. 975]*, which seeks dismissal of the lift stay motion by arguing that without Assured, National and Syncora are barred from pursuing or maintaining an action that is supported by less than a fifth of outstanding bondholders. Litigation on the Renewed Lift Stay Motion is currently stayed pending a ruling on the 9019 Motion. If the Court grants the 9019 Motion, the Renewed Lift Stay Motion will be dismissed.

- i. *Joint motion to approve the Definitive RSA and settlements embodied therein (the “9019 Motion”), Case No. 17-04780, ECF 1235 (D.P.R. May 10, 2019).*

Refer to section II.C.4., *supra*.

- j. *UTIER v. Ortiz Vazquez et al., Case No. 19-00298 (D.P.R. July 1, 2019) (1st Cir. 20-1332).*

On December 28, 2018, then-PREPA Executive Director Jose Ortiz circulated a memorandum to PREPA’s employees announcing modifications to the health insurance plans available to PREPA’s employees. Ortiz asserted that the modifications were necessary in light of PREPA’s fiscal challenges and in order to comply with the certified fiscal plan and budget applicable to PREPA pursuant to PROMESA.

On April 24, 2019, UTIER filed suit in Puerto Rico court. UTIER alleged that the December 28, 2018 memorandum is unlawful because it is in violation of Act 26-2017, which according to UTIER requires PREPA and Ortiz to first identify additional savings and resources before making

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<sup>54</sup> See Case No. 17-4780, ECF 1158.

<sup>55</sup> See Case No. 17-4780, ECF 1211.

the challenged modifications. UTIER petitioned the court to issue a writ of mandamus compelling PREPA and Ortiz to comply with Act 26-2017.

On May 8, 2019, the Oversight Board removed the proceeding to the Title III Court.<sup>56</sup> Defendants moved to dismiss, and on January 23, 2020, the Title III court granted the motion, holding that it lacked jurisdiction to the extent UTIER is effectively challenging the certified fiscal plan and budget, and holding that UTIER had failed to demonstrate why mandamus relief is warranted given the availability of available alternative remedies.<sup>57</sup> On February 18, 2020, UTIER appealed the Title III Court's ruling to the First Circuit. The parties have filed their opening briefs, and UTIER's reply brief was due November 9, 2020, however it has yet to be filed.

k. *The Financial Oversight and Management Board for Puerto Rico v. U.S. Bank Nat'l Ass'n, Case No. 19-00391 (D.P.R. July 1, 2019).*

On July 1, 2019, the Authority, the FOMB, and AAFAF filed a complaint against U.S. Bank National Association (the "Trustee") asking the Title III Court to (a)(i) declare that the Trustee's security interest in the Authority's property is limited to funds deposited to the credit of the "Sinking Fund" and "Subordinate Funds"; (ii) declare the Trustee has not perfected any security interest in any of the Authority's property other than cash deposited to the credit of the Sinking Fund, only to the extent the Sinking Fund is held by the Trustee and that the Authority's interest in any such property is entitled to priority over any interest of the Trustee; (iii) avoid any security interest granted to the Trustee in any of the Authority's property other than cash deposited to the credit of the Sinking Fund, and preserving all avoided liens for the benefit of the Authority; (b)(i) declare contractual covenants and remedies set forth in the PREPA Trust Agreement are obligations of the Authority, not the Authority's property, and do not and cannot constitute collateral in which the Authority has granted a security interest to secure the Authority's bond debt; (ii) declare the Trustee has not perfected any security interest in any such covenants and remedies and that the Authority's interest in such is entitled to priority over any interest of the Trustee under Puerto Rico law; (iii) avoid any security interest in such covenants and remedies, and preserving all avoided liens for the benefit of the Authority; and (c) disallow all claims asserting security interests either not granted under the PREPA Trust Agreement or that are unperfected.

On July 16, 2019, the Title III Court entered an order staying the adversary proceeding until the earlier of: (i) 60 days after the Title III Court denies the 9019 Motion; (ii) the consummation of a plan of adjustment; (iii) 60 days after plaintiffs file a notice to resume litigation; or (iv) a further Court order.

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<sup>56</sup> See Case No. 19-298, ECF 1.

<sup>57</sup> See Case No. 19-298, ECF 19.



I. *Objection of Official Committee of Unsecured Creditors to Proof of Claim Number 18449, Case No. 17-04780, ECF 1691 (D.P.R. Oct. 30, 2019).*

On October 30, 2019, the Official Committee of Unsecured Creditors (“UCC”) filed an objection to Proof of Claim Number 18449 filed by U.S. Bank National Association, in its capacity as trustee for non-recourse PREPA bonds (“Trustee”), seeking entry of an order disallowing the proof of claim to the extent that the claim exceeds the amount credited to certain specified accounts held by the Trustee on July 2, 2017, the date on which PREPA filed its Title III debt adjustment petition under the PROMESA.

On January 3, 2020, the Title III Court ordered that the UCC’s objection will be adjudicated after resolution of the 9019 Motion.<sup>58</sup> The Court therefore terminated the UCC’s objection without prejudice to renewal after resolution of the 9019 Motion.

m. *Cortland Capital Market Services LLC v. The Financial Oversight and Management Board for Puerto Rico, Case No. 19-00396 (D.P.R. July 9, 2019).*

On July 9, 2019, Cortland Capital Market Services LLC, as successor administrative agent for lenders under the Credit Agreement, dated as of May 4, 2012, among the Authority, Scotiabank, and the lenders party thereto, and SOLA LTD, Solus Opportunities Fund 5 LP, Ultra Master LTD, and Ultra NB LLC, as lenders to the Authority under the “Trade Finance Facility Agreement,” dated as of July 20, 2012, among the Authority and Citibank, N.A., as predecessor to the existing lenders thereunder (the “Fuel Line Lenders”) filed a complaint against the Authority, the FOMB, AAFAF, U.S. Bank National Association, Assured Guaranty Corp., Assured Guaranty Municipal Corp., National Public Finance Guarantee Corporation, Syncora Guarantee Inc., and the Ad Hoc PREPA Bondholder Group asking the Title III Court to enter judgment declaring that all amounts owed to the Fuel Line Lenders are current expenses under the PREPA Trust Agreement, and therefore allegedly must be paid before any further payments are made to the Trustee or the bondholders. The Authority, FOMB, and AAFAF filed motions to dismiss the amended complaint on November 11, 2019 and, on December 5, 2019, Plaintiffs replied. However, due to the COVID-19 pandemic, all the deadlines and the hearings have been adjourned. Pursuant to the Title III Court’s order, a status report providing next steps with respect to this proceeding must be filed on or before September 25, 2020.

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<sup>58</sup> See Case No. 17-4780, ECF 1855.

- n. *Sistema de Retiro de los Empleados de La Autoridad de Energía Eléctrica v. Financial Oversight and Management Board of Puerto Rico, Case No. 19-00405 (D.P.R. Aug. 6, 2019).*

On August 6, 2019, Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica (“SREAEE”), a trust created under the Collective Bargaining Agreement with UTIER for the benefit of UTIER members, retirees and beneficiaries, filed a complaint against the Authority, the FOMB, the Commonwealth of Puerto Rico, AAFAF, the Governor of Puerto Rico, and U.S. Bank National Association asking the Title III Court to determine that all amounts owed to SREAEE are “Current Expenses” under the PREPA Trust Agreement because contributions made to pensions and the retirement system allegedly qualify as “Current Expenses” under the PREPA Trust Agreement. SREAEE asserts these “Current Expenses” must be paid before any further payments are made to the Trustee or the Authority’s bondholders. SREAEE filed an amended complaint on October 30, 2019, which added additional claims relating challenging the scope and priority of the PREPA bondholders’ lien.

The Authority, FOMB, and AAFAF jointly filed a motion to dismiss the amended complaint on November 13, 2019. On December 4, 2019, SREAEE filed its opposition, and on February 3, 2020, the Authority, FOMB, and AAFAF replied. However, due to the COVID-19 pandemic, all the deadlines and the hearings have been adjourned.

- o. *PREPA v. Vitol Inc. et al., Case No. 19-00453 (D.P.R. Nov. 14, 2019).*

In 2009 and 2012, PREPA filed suit in Puerto Rico court against Vitol S.A. and Vitol Inc, seeking to nullify six of its fuel supply contracts with defendants and seeking the return of approximately \$3.89 billion paid by PREPA pursuant to those contracts. Defendants assert a counterclaim against PREPA for approximately \$28.4 million in allegedly unpaid invoices.

In 2017, defendants removed the proceedings to the Title III Court.<sup>59</sup> On February 12, 2019, the Title III court remanded the case to the Puerto Rico court, holding that while it had jurisdiction over the matter, equitable factors warranted remand.<sup>60</sup> On June 30, 2019, the Special Claims Committee of the Oversight Board filed an avoidance action against defendants seeking the recovery of certain alleged fraudulent transfers made by PREPA to defendants related to PREPA’s contracts.<sup>61</sup> On November 14, 2019, defendants again removed the proceedings to the Title III Court, contending that the Oversight Board’s lawsuit warranted consideration of the case

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<sup>59</sup> See Case Nos. 17-218, 17-221.

<sup>60</sup> See Case Nos. 17-218, 17-221, ECF 31.

<sup>61</sup> See Case Nos. 19-388.

by the Title III Court. The Title III Court on March 13, 2020 denied the Oversight Board's motion on behalf of PREPA to remand the case back to the Puerto Rico court.<sup>62</sup>

On July 31, 2020, defendants filed a motion for summary judgment.<sup>63</sup> On November 9, 2020, PREPA filed its cross motion for summary judgment and opposition to defendants' motion for summary judgment.

- p. PREPA's motion for entry of an order authorizing PREPA to assume contracts, Case No. 17-4780, ECF 1951 (D.P.R. Apr. 1, 2020) (1st Cir. 20-1685).

Refer to section III.C.1.a, *infra*.

- q. PREPA's motion for entry of an order authorizing administrative expense claims, Case No. 17-4780, ECF 2053 (D.P.R. July 7, 2020).

Refer to section III.D, *infra*.

### III. IMPACT OF TITLE III ON PREPA'S OPERATIONS AND THE P3 PROCESS

#### A. Lack of Incorporation of Bankruptcy Code 363 into PROMESA.

PROMESA did not incorporate Bankruptcy Code provisions that would limit a debtor's ability to use of funds and assets outside of the ordinary course of business. As a result, PROMESA does not prevent PREPA from using its cash, including cash that is part of a secured lender's collateral. Specifically, Bankruptcy Code section 363(b), which, absent court approval, restricts a debtor's use, sale, or lease of property outside the ordinary course of business, does not apply in Chapter 9 or under PROMESA. *Compare* 11 U.S.C. § 363(b) with § 901(a) and PROMESA § 301(a) (no incorporation of Bankruptcy Code section 363). Accordingly, PREPA is not required to seek Title III Court approval prior to entering into any contracts regarding any use, sale, or lease of its property.

Confirmation of a plan of adjustment in PREPA's Title III case may be required, however, to release any valid liens against PREPA's assets and may help ensure that both the PREPA's generation units and related agreements are unencumbered and free and clear of other legacy liabilities of PREPA. Bankruptcy Code section 363(f) is also not incorporated into PROMESA and, thus, there is no express mechanism to sell assets free and clear of liens outside of a plan. But in Title III, similar to Chapter 9, a debtor can sell assets free and clear of liens under a plan.<sup>64</sup> To be

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<sup>62</sup> See Case Nos. 19-453, ECF 27.

<sup>63</sup> See Case Nos. 19-453, ECF 37.

<sup>64</sup> See PROMESA § 301, which incorporates Bankruptcy Code section 1123(a)(5)(D).

confirmed, a plan of adjustment must comply with PROMESA section 314 and the applicable provisions of Bankruptcy Code section 1129.

**B. FOMB Contracting Policy.**

As a covered governmental entity, PREPA is subject to the policies established by the FOMB. Pursuant to its authority under PROMESA section 204(b)(2), the FOMB has issued a policy regarding prior review of contracts (the “Contract Policy”).<sup>65</sup> The Contract Policy applies to “any contract that is proposed to be entered into by the [Government] . . . or any covered instrumentality.”<sup>66</sup> Pursuant to the Contract Policy, all contracts with an aggregate, expected value of \$10 million or more must be submitted to the FOMB for its approval before execution.

In addition to the mandatory submission of contracts, on a random basis or otherwise in its sole discretion, the FOMB will contact agencies or other governmental entities for review of contracts below the \$10 million threshold, to assure that they promote market competition and are not inconsistent with the relevant certified fiscal plan.

This policy is particularly relevant when considering how the proposed restructuring of the Authority will likely require approval of contracts that are entered into between the T&D Operator, the owner of the transmission and distribution system (“GridCo”) and the owner of the Legacy Generation Assets (“GenCo”) to facilitate continued operations of the electricity system (*i.e.*, a shared services agreement and a GridCo-GenCo Operating Agreement needed to pass through the GenCo’s costs to GridCo as part of the restructuring).

**C. Assumption/Rejection of Executory Contracts and Unexpired Real Property Leases.**

Bankruptcy Code section 365(a), as incorporated into PROMESA, provides that the FOMB, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.”<sup>67</sup> Therefore, to the extent any of PREPA’s contracts are to be assumed by PREPA, and assigned to the private party to a Partnership Contract, it will need Title III Court approval upon request by the FOMB on behalf of PREPA. Upon the effective date of a plan of adjustment,

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<sup>65</sup> PROMESA section 204(b)(2) provides that “the FOMB may establish policies to require prior FOMB approval of certain contracts . . . to ensure such proposed contracts promote market competition and are not inconsistent with the approved Fiscal Plan.”

<sup>66</sup> The Contract Policy applies to “all contracts or agreements in which the [Government] or any Covered Territorial Instrumentality is a counterparty, including those with the federal government, state governments, *private parties*, and nonprofit organizations” (emphasis added).

<sup>67</sup> Bankruptcy Code § 365(a). Under PROMESA section 301, which incorporates, among other things, Bankruptcy Code § 365(c)(4)(A), any unexpired lease of nonresidential real property is deemed to have been rejected unless the FOMB assumes it within 120 days after the Title III proceedings commenced, subject to extension by Title III court order. FOMB’s time to assume or reject existing leases of nonresidential real property pursuant to the foregoing was extended to January 31, 2019.

unless an executory contract or unexpired lease has already been assumed or rejected pursuant to an order of the Title III Court, such executory contract or unexpired lease may be deemed either assumed (or assumed and assigned) or rejected pursuant to the terms of the plan of adjustment. If a contract is assumed by PREPA, the FOMB on behalf of PREPA must (a) cure, or provide adequate assurance that any outstanding defaults will be promptly cured; (b) compensate any pecuniary loss as a result of the default, or provide adequate assurance that it will be promptly compensated; and (c) provide adequate assurance of future performance of the contract.

On April 22, 2019, the Title III Court entered an order approving a motion by AAFAF and the FOMB, on behalf of PREPA, for entry of an order approving procedures for assumption of PREPA's power purchase and operating agreements (each, a "PPOA").<sup>68</sup> PREPA, the FOMB, and AAFAF are evaluating which PPOAs PREPA will assume pursuant to the procedures approved by the Title III Court.

**1. *Renegotiation of Power Purchase Operating Agreements.***

In accordance with the PREPA 2020 Fiscal Plan, the Authority is renegotiating several PPOAs to procure a reduction in their current prices. It is expected that the Authority will renegotiate some PPOAs and reject others in the PROMESA Title III proceedings in accordance with the provisions of section 365 of the Bankruptcy Code. Progress to date on PPOA's includes amendments to the EcoEléctrica, L.P. and Naturgy Aprovevisionamientos S.A. PPOAs, and renegotiation and/or termination of existing PPOAs, as described below.

a. *EcoEléctrica and Naturgy Amended Power Purchase Operating Agreements.*

EcoEléctrica, L.P. ("ECO") and the Authority are parties to a power purchase operating agreement executed on March 10, 1995 (the "ECO PPOA"). Naturgy Aprovevisionamientos S.A. ("Naturgy") and the Authority are parties to a tolling service agreement and natural gas sale and purchase agreements ("GSPAs") dated October 31, 1997 and March 10, 2014, respectively. The ECO PPOA and GSPA (together, the "Contracts"), the Pre-Restatement Contracts provided the contractual basis for a program (the "LNG-to-Power Program") under which (i) Naturgy imported LNG into Puerto Rico at a LNG terminal facility, owned by ECO and located in Peñuelas (the "ECO LNG Terminal"), converted the LNG to natural gas and sold such natural gas to the Authority for supply to Costa Sur generation facility under the terms of the Pre-Restatement GSPA, and (ii) ECO imported LNG into Puerto Rico, converted the LNG into natural gas at the ECO LNG Terminal for supply to the ECO generation facility and sold the power generation capacity and energy of such facility to the Authority under the terms of the Pre-Restatement ECO PPOA. The Authority has historically sourced up to 40% of the baseload power in Puerto Rico through this LNG-to-Power

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<sup>68</sup> See Case No. 17-4780, ECF 1199.

Program. The Pre-Restatement GSPA expires in December 2020, and the Pre-Restatement PPOA expires in March 2022.

The Contracts (i) extend the LNG-to-Power Program until September 2032, (ii) restructure the fuel supply arrangements such that (a) Naturgy imports LNG, converts such LNG into natural gas through the ECO LNG Terminal and sells this natural gas to the Authority for delivery to each of the generation facilities, and (b) the Authority supplies (but does not sell) natural gas to the ECO generation facility, (iii) restructure the Pre-Restatement PPOA such that ECO makes available power generation capacity from the ECO generation facility for dispatch, utilizing the natural gas supplied by the Authority, in exchange for a monthly payment by the Authority (as further defined in the ECO PPOA, the “Capacity Payment”), and (iv) will reduce the Authority’s purchase costs of power and fuel on a net basis by approximately \$100 million annually through September 2032. Performance by the parties of one Contract depends on the performance by the parties of the other Contract.

The Authority’s ability to make available low-cost, EPA emission-compliant electricity on a secure basis to ratepayers from the Generation Facilities depends on a long-term source of uninterrupted supply of natural gas. The Contracts provide the only cost-effective option to dispatch natural gas generation sources in the southern part of Puerto Rico following the expiration of the existing PPOA and GSPA. Naturgy controls the entire, existing capacity of ECO’s import terminal to receive and vaporize LNG for the delivery of natural gas to the Generation Facilities. Third-party LNG suppliers have no access rights to this terminal. ECO’s low merit order position in Puerto Rico’s electricity sector and Naturgy’s *de facto* monopoly over the supply of gas into the southern part of the Island limit the Authority’s alternatives for a supplier of natural gas and power.

Renegotiating the Contracts at the current market rates, which are significantly lower than the rates set forth in the original contracts, provides ratepayers with immediate savings of approximately \$100 million per year. Approximately 70% of the estimated savings derive from operations at the ECO generation facility and the remaining 30% derive from operations at the Costa Sur generation facility.

Under the ECO PPOA, the Authority negotiated a reduction in the Capacity Payment equal to \$108 million annually. The Capacity Payment savings are partially offset by increased fuel costs, the net reduction still corresponds to approximately \$35 million annually in savings, which will be passed along to ratepayers.

Given the expectation for increased dispatch of the units as a result of improved contract terms, load requirements, and current available system capacity, the Authority estimates a total savings of \$71 million per year through operations at the ECO generation facility. The Authority has historically paid 12.4 cents/kWh for generation from the ECO generation facility (fixed plus variable costs), but will likely pay an average of 10.7 cents/kWh under the renegotiated

Contracts. The Authority has determined that such a reduction in generation costs will result in substantial savings to Puerto Rico's ratepayers.

Further, the renegotiated Naturgy GSPA removed a mechanism that acted as a built-in pricing hedge to oil. The Authority projects that removing the hedge to oil and reducing the adder fee will result in average savings for the Authority of approximately \$29.1 million per year for the Costa Sur Facility. These savings are based upon fuel commodity price forecasts, which predict that natural gas prices will remain much lower than oil prices over the next decade.

The Authority determined that the renegotiated Contracts provide the Authority with significant cost savings, which will be critical to its operations and ability to meet its debt service obligations while it proceeds through its Title III case, ensuring the utility a reliable and continuous source of power and natural gas on reasonable terms.

On December 26, 2019, the FOMB approved both the ECO PPOA and Naturgy GSPA under the contract review policy established pursuant to PROMESA section 204(b)(2), confirming the Authority's compliance with the PREPA 2020 Fiscal Plan (as defined below).

Further, PREB also approved the Contracts through a process whereby it was confirmed that the Authority provided a robust analysis of the contracts and agreed with the Authority that the terms of such contracts were favorable. However, UTIER and other environmental entities have filed requests for PREB to reconsider the decision and PREB has not issued a ruling yet. Also, on June 22, 2020, the Title III Court approved the assumption of the Contracts. However, UTIER, several environmental organizations, and a counterparty to another PPOA appealed to the U.S. Court of Appeals for the First Circuit. The appeal is in its early stages.

b. Renegotiation of Non-operational PPOAs.

The Authority and counterparties to 16 of 19 non-operating PPOAs that were executed on or around the years 2011 to 2013, reached agreements to have the price that the Authority will pay per kW/h amended. The renegotiated deals comprise over 590 MW of renewable energy generation and deliver over \$1 billion of savings to the Authority over the contract term (notional – undiscounted) versus the original agreements, assuming all proceed to commercial operation. These amendments represent a major step by the Authority toward meeting the renewable energy portfolio requirements placed on it by Act 17 and the operative Integrated Resource Plan (“IRP”).

The most relevant aspects of the amendments are:

- Forward cost savings of around 35%, valued in excess of \$1 billion over the term of the Subject Transactions (notional – undiscounted), versus the existing non-operating PPOAs;
- All-in pricing at or slightly below \$0.10 / kWh, with 2% escalation and capped at

\$0.141 / kWh, inclusive of renewable energy credits;

- 25-year terms starting from the commercial operation date, anticipated to be no later than three years after the receipt of the assumption order from the Title III Court; and
- Similar contracts to existing, non-operating PPOAs, with modest improvements except that the Authority is now assuming responsibility for reimbursing the project sponsors (via a monthly installment) for certain interconnection costs (estimated to be \$90-100 million in the aggregate for all projects) and bearing operation, maintenance, and repair responsibility for interconnection lines (which will be conveyed by the project sponsors to the Authority upon completion thereof).

Currently, PREPA is working to comply with a directive from the FOMB regarding the reach of renegotiated contracts. The FOMB has expressed to PREPA that it is limiting its approval of related new solar power generation to 150 MW, determining that approving the nearly 600 MW of proposed new solar generation embodied in these 16 PPOAs would result in energy rates higher than projected in PREPA's fiscal plan. On September 2, 2020, PREPA notified the 16 PPOA counterparties to communicate that it will only be evaluating contracts comprising up to 150 MW in renewable energy generation.

c. Renegotiation of Operational PPOAs.

The Authority and counterparties to six operating PPOAs that were executed on or around the years 2011 to 2013, reached agreements to have the price that the Authority pays per kW/h amended. The renegotiated deals comprise over 250 MW of renewable energy generation and deliver price reductions between 10-15%, which will produce approximately \$200 million in savings (non-discounted) over the remaining life of the amended contracts. Most of these transactions include both modest term extensions and possible increases in the amount of renewable energy generating capacity at the plants covered by the PPOAs, and, therefore, are expected to further support the Authority's efforts toward meeting the renewable energy portfolio requirements placed on it by Act 17-2019 and the operative IRP.

The amendments generally provide for possible capacity increases of 5-10 MW and term extensions of 5-10 years and represent cost savings of around 10-15%, valued in excess of \$200 million (non-discounted), over the term of the amended PPOAs versus the existing PPOAs.

The Authority will submit the amended PPOAs for PREB's and the FOMB's review and approval. After both entities approve the amended PPOAs, the Authority will ask the Title III Court to authorize the Authority to assume the amended PPOAs.



d. Rejection of PPOAs.

On July 7, 2020, the FOMB, as representative of the Authority, submitted a motion with the Title III Court seeking to reject twenty-seven (27) different non-operating PPOAs, or near equivalent agreements, that were executed between 2011 and 2013. The majority of the projects have not progressed beyond the early stages of development, and, despite good faith efforts to renegotiate, the counterparties declined to accept price reductions, as the Authority has required in similarly situated projects. The matter is still pending before the Court. On September 17, 2020, the Title III Court entered an order authorizing the rejection of the twenty-seven different non-operating PPOAs. The FOMB and the Authority are contemplating rejecting additional PPOAs in the near term.

**D. Transformation of the T&D System of the Authority and LUMA Energy Administrative Claim Motion**

AAFAF and the FOMB have determined, and the PREPA 2020 Fiscal Plan contemplates, that a complete transformation of Puerto Rico's energy system is necessary to deliver the safe, reliable, and affordable energy service that the people and businesses of Puerto Rico deserve. Transitioning the operation of PREPA's aging and outdated T&D System to a qualified and experienced private operator is widely acknowledged as key to the success of PREPA's transformation.<sup>69</sup>

To that end, on January 22, 2018, then-Governor Ricardo Rosselló announced that the government would begin the transformation of the Authority. On June 20, 2018, Governor Rosselló signed Act 120-2017, which establishes a legal framework for the disposition, transfer and sale of the Authority's assets, operations, functions and services, including a transaction under which operations of the T&D System would be assumed by a private manager with ownership remaining at PREPA. The Act also establishes the necessary safeguards to ensure a fair and transparent process for obtaining bids for the private operation and management of the T&D System.

On October 31, 2018, the Governor announced the request for qualifications from interested entities in managing and operating the Authority's electric power transmission and distribution system, pursuant to a long-term public-private partnership agreement. After a robust and competitive procurement process that lasted more than 18 months, the Partnership Committee (the "Partnership Committee") established by the Puerto Rico Public-Private Partnership Authority (the "P3 Authority") pursuant to Section 5 of Act 120, as amended,

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<sup>69</sup> See Puerto Rico Electric Power System Transformation Act, Act No. 120-2018 ("Act 120-2018"), Statement of Motives; 2020 Fiscal Plan for the Puerto Rico Electric Power Authority (Jun. 29, 2020) ("PREPA 2020 Fiscal Plan"); see also Puerto Rico Energy Public Policy Act, Act 17-2019 (requiring the unbundling of the electric system through the transfer of operation and maintenance responsibilities of PREPA's transmission, distribution and generation assets to private operators).

determined to recommend to the board of directors of the P3 Authority (the “P3 Authority Board”) that the contract (the “T&D Contract”) for the management, operation, maintenance, repair, restoration, and replacement of the Puerto Rico electric power transmission and distribution system (the “Project”) be awarded to a consortium composed of: (i) ATCO Ltd. (“ATCO”), Quanta Services, Inc. (“Quanta”) and Innovative Emergency Management, Inc. (“IEM”), which consortium has been incorporated as LUMA Energy (“LUMA Energy”).

On January 17, 2020, the Partnership Committee approved the final proposal of LUMA Energy and the form of the T&D Contract. On March 3, 2020, the P3 Authority submitted that form of the T&D Contract to the FOMB for approval. Pursuant to the Contract Review Policy and in accordance with PREPA 2020 Fiscal Plan, the FOMB reviewed the T&D Contract with the P3 Authority and suggested certain revisions, including a supplement to the T&D Contract that contemplates, to the extent necessary, LUMA Energy assuming operation and maintenance services, for a limited duration, prior to the emergence from the Title III Case. On April 14, 2020, the FOMB voted to approve the updated T&D Contract pursuant to its Contract Review Policy.

On May 18, 2020, the P3 Authority filed the final T&D Contract with PREB for the required regulatory approval. On June 17, 2020, PREB issued a resolution and order (the “PREB Resolution and Order”) approving the T&D Contract. The PREB Resolution and Order determined “the Proposed Contract (as modified) complies with Puerto Rico Energy Public Policy and the regulatory framework.”

On June 22, 2020, the Governing Board and the Government of Puerto Rico, pursuant to the procedures set forth in Act 29-2009 (as amended), each approved the T&D Contract. Following these approvals, the T&D Contract was then signed by the parties on June 22, 2020.

Pursuant to the T&D Contract, LUMA Energy will assume responsibility for the management, operation, maintenance, repair, restoration, and replacement and other related services for the T&D System, including electric transmission, distribution and load serving, long-term planning, dispatch, asset management, community and media relations, public and employee safety, billing and collection, reporting and record keeping, finance and accounting, emergency response, and customer service, among others (collectively, the “O&M Services”). In addition to the day-to-day operations and maintenance functions, and as part of the O&M Services, LUMA Energy will play an integral role in executing PREPA’s energy-grid modernization strategy, as well as actively participating and assisting in the deployment of federal funding for grid reconstruction.

Pursuant to the T&D Contract, LUMA Energy will be responsible for all electric transmission, distribution, load serving and related activities for the safe and reliable operation and maintenance of the T&D system, including (1) expansions and replacements to meet the contract standards, including fleet, asset management, asset acquisition/procurement, IT infrastructure, as further provided in this document and preparation and implementation of

required components of the Authority's IRP, while prioritizing expansion and replacement projects that improve the safe, reliable and economic dispatch of the T&D System's connected generating units; (2) management and performance of construction of improvements thereto, including compliance with approved FEMA scope of work for projects that are eligible for federal funding and required maintenance; (3) delivery of electricity to customers; (4) billing and collections implementation and optimization; (5) maintenance and improvement of public lighting system; (6) maintenance of fiber optic cable structure infrastructure, as set forth in lease agreement between the Authority and PREPA Networks, LLC; (7) compliance with interconnection of renewables in accordance with applicable law; (8) management of the system operation principles to meet safe and reliable system operations in accordance with prudent utility practices and the system operation principles; and (9) recordkeeping and reporting in accordance with applicable law or prudent utility practices.

The T&D Contract will be in effect for fifteen (15) years from service commencement, unless extended or earlier terminated in accordance with the terms thereof.

Prior to assuming full operational control over PREPA and commencing the O&M Services, the T&D Contract contemplates a "Front-End Transition Period" during which LUMA Energy will provide front-end transition services (the "Front-End Transition Services") to ensure an orderly transition of the responsibility for O&M Services. The T&D Contract provides for payment by PREPA of the "Front-End Transition Service Fee" to LUMA Energy, consisting of: (i) a one-time fixed amount of \$60 million (payable in twelve monthly installments of \$5 million starting at the commencement of the Front-End Transition Period); plus (ii) (a) the hourly rate for each category of employee of LUMA Energy providing Front-End Transition Services, as listed in Annex V of the T&D Contract, multiplied by (b) the number of hours worked by each employee in providing Front-End Transition Services; plus (iii) all other reasonable costs and expenses incurred by LUMA Energy that are necessary and reasonable in the course of providing the Front-End Transition Services and satisfying certain conditions precedent to handover of the operation of the T&D System to LUMA Energy. The T&D Contract also provides that PREPA will indemnify LUMA Energy and its affiliates primarily for any claims or damages arising from PREPA's operation of the utility.

The T&D Contract requires confirmation that any accrued and unpaid Front-End Transition Period obligations have administrative expense priority as a condition to LUMA Energy agreeing to begin the Front-End Transition services. On July 7, 2020, the FOMB, PREPA and AAFAF filed a motion seeking administrative expense status for all compensation related to the Front-End Transition Period Services (the "LUMA Administrative Expense Motion"). Numerous parties have objected to the LUMA Administrative Expense Motion, including the Committee, UTIER and SREAEE. The motion has been fully briefed and was heard on September 16, 2020.

On October 19, 2020, the Title III Court issued an opinion and order finding that the Front-End Transition obligations incurred and payable under the T&D Contract, other than late fees, are reasonable and necessary expenses of preserving PREPA under section 503(b)(1)(A) of the

Bankruptcy Code and thus are entitled to administrative expense priority (the “LUMA Administrative Expense Decision”). With respect to the late fees, the Title III Court found insufficient evidence to determine at this point that such fees are reasonable and necessary, so denied an administrative expense priority for such late fees, without prejudice against further application at a later date. On October 26, 2020, UTIER and SREAEE appealed the LUMA Administrative Expense Decision to the First Circuit.