

November 2023

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE PUERTO  
RICO ELECTRIC POWER AUTHORITY**

**c/o Paul Hastings LLP, 200 Park Avenue, New York, New York 10166**

To the Holders of Class 12 General Unsecured Claims:

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the Title III case of the Puerto Rico Electric Power Authority (“PREPA”) is writing to you in connection with PREPA’s solicitation of your vote with respect to the enclosed proposed *Corrected Fifth Modified Third Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority*, dated October 27, 2023 (the “Plan”).<sup>1</sup> You should carefully read all the materials that accompany this letter (as it may be supplemented, the “Committee Letter”), including the instructions for completing and mailing your Ballot. All Ballots must be **received** by the Claims and Noticing Agent by **January 26, 2024 at 5:00 p.m. (Eastern Time) (the “Voting Deadline”)** to be counted.

**AT THIS TIME, THE COMMITTEE DOES NOT SUPPORT THE OVERSIGHT BOARD’S PROPOSED PLAN, INCLUDING THE PROPOSED PLAN DISTRIBUTION TO HOLDERS OF GENERAL UNSECURED CLAIMS IN CLASS 12—A DISTRIBUTION THAT, ACCORDING TO THE SUPPLEMENTAL DISCLOSURE STATEMENT, MAY RANGE ANYWHERE FROM 0.1% AND 50%, DEPENDING ON THE OUTCOME OF NUMEROUS CONTINGENCIES, INCLUDING THE OUTCOME OF THE AMENDED LIEN & RECOURSE CHALLENGE AND THE AMOUNT OF PREPA BONDS THAT ENTER INTO THE SECOND BOND SETTLEMENT AGREEMENT.**

**ACCORDINGLY, AT THIS TIME, THE COMMITTEE URGES ALL HOLDERS OF CLASS 12 GENERAL UNSECURED CLAIMS TO VOTE TO REJECT THE PLAN.**

However, the Committee remains in discussions with the Oversight Board regarding potential modifications to the Plan to improve the recovery to general unsecured creditors. **If such modifications are made, the Committee may supplement this Committee Letter, including to update its recommendation.** For that reason, if you have the ability to submit your Ballot online (in accordance with the procedures set forth on your Ballot), the Committee recommends that you hold off submitting your Ballot until we get closer to the Voting Deadline. Please visit the Committee’s website at [www.creditorspr.org](http://www.creditorspr.org) for any further updates.

**A. Introduction**

The Committee’s members were appointed by the United States Trustee, a unit of the United States Department of Justice, to represent, in a fiduciary capacity, the interests of all general unsecured creditors of PREPA (and other debtors under Title III of PROMESA). These unsecured creditors include, for example, employees, vendors, suppliers, service providers, and

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<sup>1</sup> All capitalized terms used but not defined in this letter have the meanings set forth in the Plan.

parties with litigation claims. The Committee's seven members serve without pay and represent a broad cross-section of the general unsecured class. Committee members include, among others, suppliers of goods and services, contract counterparties, and litigation claimants.

The Committee is a fiduciary to holders, like you, of unsecured claims<sup>2</sup> against PREPA, and it has worked tirelessly during PREPA's Title III case to protect your interests. Among other things, in October 2019, the Committee objected to a settlement between the Oversight Board and certain holders of PREPA's non-recourse bonds that, if approved, would have allowed more than \$8 billion in secured claims on account of such non-recourse bonds. The Committee believed then, and continues to believe today, that the collateral securing the non-recourse bonds consists only of limited funds on deposit (*i.e.*, approximately \$20 million) in certain specified accounts controlled by the bond trustee, and that, as non-recourse obligations, the non-recourse bonds have no additional or deficiency claim against PREPA. In July 2019, for the purpose of preserving PREPA's rights against the expiration of the statute of limitations, the Oversight Board filed a complaint against the bond trustee challenging the validity of its asserted security interest.

Several years after the Committee's October 2019 objection, the Government of Puerto Rico ultimately decided not to move forward with the proposed settlement, a decision the Oversight Board supported. In light of the termination of the settlement, in the fall of 2022, the Oversight Board filed an amended complaint and related summary judgment motion, adopting many of the Committee's positions, seeking a ruling from the Court that (a) the PREPA bond claims are secured only by very limited funds held in certain specified accounts (approximately \$20 million) and (b) the PREPA bondholders are not entitled to an unsecured deficiency claim for the difference between their more than \$8 billion in claims and the limited value of their collateral (*i.e.*, approximately \$20 million) because their bond claims have recourse only to the limited collateral in certain specified accounts. This litigation is referred to in the Plan and the Supplemental Disclosure Statement as the "Amended Lien & Recourse Challenge."

On March 22, 2023, the Court issued a summary judgment order (the "Summary Judgment Order") in the Amended Lien & Recourse Challenge, concluding, among other things, that the PREPA bondholders have (i) a secured claim equal to money actually deposited to the Sinking Fund, which is their only collateral (*i.e.*, approximately \$20 million) and (ii) an unsecured claim to be liquidated by reference to the value of future Net Revenues (as defined in the Trust Agreement) that would have become collateral upon being deposited in the specified funds and payable to the bondholders over the remainder of the term of the PREPA Revenue Bonds (*i.e.*, the Unsecured Net Revenue Claim). After further briefing and an evidentiary hearing as to the value of the Unsecured Net Revenue Claim, the Court entered an order estimating the value of this unsecured claim at \$2.388 billion, which represents a substantial reduction compared to the more than \$8.4 billion in asserted bond claims.

## **B. Treatment of Allowed Class 12 General Unsecured Claims**

The Plan provides that holders of allowed General Unsecured Claims in Class 12 will receive their *pro rata* share of the following:

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<sup>2</sup> Unsecured claims are claims that are not secured by any collateral.

- a. cash until distributions, in addition to Avoidance Actions Proceeds as of the Effective Date, reach \$108.12 million (*i.e.*, 13.515% of the Oversight Board’s \$800 million estimate of the aggregate amount of allowed General Unsecured Claims (namely, the Unsecured Claims Pool Estimate));
- b. the Avoidance Actions Proceeds;
- c. certain contingent value instruments (*i.e.*, CVI-1s); and
- d. certain surplus consideration possibly available after all mandatory distributions have been made.

According to the Supplemental Disclosure Statement, the Avoidance Actions Proceeds (item b. above) and the CVI-1’s (item c. above) are ascribed *de minimis* value and would, on their own provide holders of allowed General Unsecured Claims with an estimated recovery percentage of only 0.1%. And while it is possible that surplus consideration (item d. above) may become available after all mandatory distributions have been paid, the extent of any such surplus consideration is uncertain at this time, as it depends, among other things, on the amount of PREPA bonds that elect into the settlement under the Plan (which is not currently known).<sup>3</sup> **Accordingly, for all practical purposes, the only guaranteed recovery to holders of allowed General Unsecured Claims is approximately \$108.1 million in cash.**

**Please note that the \$800 million Unsecured Claims Pool Estimate means that, as further detailed in Section 2 below, the recovery percentage of holders of General Unsecured Claims will be lower if this estimate proves to be too low (but, conversely, their recovery percentage would be higher if this estimates proves to be too high). The Committee believes that the Unsecured Claims Pool Estimate is materially understated, given that the face amount of pending General Unsecured Claims in excess of \$5 billion.**

#### 1. Mandatory Distributions

The Plan contemplates that aggregate consideration of approximately **\$2.3 billion** in the form of New Bonds and/or cash (the “Aggregate Plan Consideration”) will be distributed to PREPA’s unsecured creditors, including the Fuel Line Lenders, Uninsured Bondholders, Monoline Insurers, and holders of General Unsecured Claims. Substantially all of that consideration is earmarked for various “mandatory”<sup>4</sup> payments, including **nearly \$500 million in fees and expense reimbursements to certain favored**<sup>5</sup> **creditor groups who have entered**

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<sup>3</sup> If the Title III Court’s holdings in connection with the Amended Lien & Recourse Challenge are affirmed by the First Circuit Court of Appeals (Appeal Outcome 2 below), such surplus consideration could increase the recovery of holders of allowed General Unsecured Claims as high as approximately 30.44% (again, assuming that the Oversight Board’s \$800 million Unsecured Claims Pool Estimate is correct). In the scenario where the First Circuit Court of Appeals determines the PREPA bonds are secured solely by, and recourse solely to, monies in the Sinking Fund (Appeal Outcome 1 below), recovery to holders of allowed General Unsecured Claims could be as high as 50.00% (assuming the \$800 million Unsecured Claims Pool Estimate is correct).

<sup>4</sup> While the Plan describes many of these payments as “mandatory”, this does not mean that they are legally mandated. The term “mandatory” is merely the term used to describe certain fixed distributions that are required to be distributed under the terms of the Plan and certain related documents.

<sup>5</sup> The Oversight Board disagrees with the characterization of settling creditors as “favored”.

**into settlements or other agreements with the Oversight Board, but no such fees go to holders of General Unsecured Claims.**

Importantly, these mandatory distributions create enormous disparities in recoveries between the various classes of unsecured creditors. The Committee’s constituents, *i.e.*, holders of General Unsecured Claims, would receive a guaranteed recovery of **only** 13.515% of their allowed claims (and possibly less if the Oversight Board’s \$800 million Unsecured Claims Pool Estimate proves too low), while (a) the Fuel Line Lenders receive a guaranteed recovery of more than 90% of their allowed claims (including fees), (b) certain bondholders receive a guaranteed recovery of more than 100% of their allowed claims (which is 50% of their asserted claim), and (c) National could receive a recovery of up to 262.8% of its allowed claim (which is 71.65% of its asserted claim)—even though all of these creditors hold, at best, unsecured claims just like the claims of general unsecured creditors.

Any surplus remaining after these “mandatory” distributions will be distributed pursuant to a complex waterfall mechanism under the Plan. At this time, it is impossible to say whether any such surplus will become available to make supplemental distributions (including to general unsecured creditors).

2. Estimated Recovery Percentages for Holders of Allowed General Unsecured Claims

The following table provides the estimated recovery percentages for holders of allowed General Unsecured Claims based on the outcome of two contingencies: (i) the resolution of any appeals of the Summary Judgment Order in the Amended Lien & Recourse Challenge and (ii) the aggregate amount of allowed General Unsecured Claims. In particular, as it relates to the Amended Lien & Recourse Challenge, the recovery table below illustrates three potential outcomes under the Plan:

- a. Appeal Outcome 1: the First Circuit ***affirms*** that the PREPA bondholders’ security interest is limited to the funds in certain specified accounts but ***reverses*** the District Court and rules that the bondholders have no recourse to PREPA’s assets beyond the funds in such specified accounts.<sup>6</sup>
- b. Appeal Outcome 2: the First Circuit ***affirms*** that PREPA bondholders’ security interest is limited to the funds in certain specified accounts, ***affirms*** that the bondholders’ unsecured claim is limited to the value of the Unsecured Net Revenue Claim, and ***affirms*** the District Court’s \$2.388 billion estimation of the Unsecured Net Revenue Claim.
- c. Appeal Outcome 3: the First Circuit ***reverses*** the District Court and finds that PREPA bondholders are secured by all of PREPA’s present and future revenues.

Moreover, as it relates to the aggregate size of allowed General Unsecured Claims, the recovery table below shows three illustrative examples, namely, \$800 million in allowed claims,

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<sup>6</sup> The Committee believes that in the event of Appeal Outcome 1, the Plan is not confirmable, including because bondholders should not be receiving a recovery on account of an unsecured deficiency claim that has been disallowed.

\$1.2 billion in allowed claims, and \$1.6 billion in allowed claims. Furthermore, the range of recovery percentages in the table below reflects the possibility that surplus consideration becomes available to holders of allowed General Unsecured Claims, the amount of which depends on how many PREPA Revenue Bonds elect into the settlements under the Plan.

*As the below table illustrates, the recovery percentages for holders of allowed General Unsecured Claims cannot be determined with any specificity at this time.<sup>7</sup>*

		Outcome in Amended Lien & Recourse Challenge		
		Appeal Outcome 1	Appeal Outcome 2	Appeal Outcome 3
Aggregate Amount of Allowed General Unsecured Claims	\$800 million	13.51%-50.00%	13.51%-30.44%	0.10%+
	\$1.2 billion	9.01%-33.33%	9.01%-20.29%	0.07%+
	\$1.6 billion	6.76%-25.00%	6.76%-15.22%	0.05%+

**C. What’s the Problem with the Plan?**

The Committee believes that the Plan is not confirmable, for a variety of reasons.<sup>8</sup> First and foremost, under the Plan, various groups of unsecured creditors stand to receive **substantially greater** recoveries than holders of General Unsecured Claims in Class 12.

For example, the Committee believes that:

- The Plan provides that unsecured Fuel Line Lenders (that hold unsecured claims, just like general unsecured creditors) receive a guaranteed distribution in the form of Series A Bonds and/or cash equal to approximately **92.7%** of their total allowed claims (including fees).
- The Plan provides the PREPA bondholders who reached a settlement with PREPA in connection with the prior plan of adjustment (*i.e.*, the Second Amended Plan) (such bondholders, the “First Settlement Bondholders”) with a guaranteed distribution (which does not depend on the outcome of any appeal of the Summary Judgment Order in the Amended Lien & Recourse Challenge) in the

<sup>7</sup> It is also possible that, within Appeal Outcome 2, the First Circuit will agree with the District Court that the PREPA bondholders’ recourse (and, therefore, deficiency claims) is limited to the value of the Unsecured Net Revenue Claim, but disagree with the value determined by the District Court. This adds even more uncertainty to the final percentage recovery available to holders of General Unsecured Claims.

<sup>8</sup> For the avoidance of doubt, the Oversight Board does not agree with the Committee’s views regarding the Plan, including the recovery percentages provided below for the Fuel Line Lenders, National, and the settling PREPA bondholders.

form of Series B-1 Bonds and/or cash equal to approximately **177.5%** of their total allowed claims.<sup>9</sup>

- The Plan provides that the unsecured claims of PREPA bondholders in Classes 3, 5, and 7, *i.e.*, the Uninsured Bondholders, Assured, and Syncora:
  - Receive a Base Bondholder Recovery equal to 12.5% of their Unsecured Net Revenue Claims;
  - Furthermore, PREPA bondholders that timely elect into the Second Bond Settlement Agreement on or before November 30, 2023 (“**Second Settlement Bondholders**”) receive a guaranteed recovery equal to approximately **57.7%** of the Unsecured Net Revenue Claims and waive their appeal rights regarding the Amended Lien & Recourse Challenge;<sup>10</sup>
  - Moreover, RSA Bondholders who agreed to purchase for cash approximately \$1.6 billion in par amount of Series B Bonds to be issued under the Plan (the “**Purchasers**”) receive a guaranteed recovery equal to approximately **80.7%** of their Unsecured Net Revenue Claims.<sup>11</sup>
- The Plan provides National (one of the monolines that insured PREPA’s non-recourse bonds) with an aggregate cash distribution of up to **262.8%** of its bond claims.

The Plan and the accompanying Supplemental Disclosure Statement take the position that enhanced recoveries offered to the Fuel Line Lenders, First Settlement Bondholders, Second Settlement Bondholders, the Purchasers, and National, as compared to holders of General Unsecured Claims, are justified as the result of settlements of the legal rights of these favored creditors and that nearly \$500 million in fees and expense reimbursements are also justified because these creditor have, among other things, assisted in formulating or negotiating the Plan and/or its related agreements or provide other value to PREPA.

However, the Committee does not believe these explanations are sufficient. The Committee believes that the settlements are not reasonable and cannot be approved under the applicable legal standards as required by the Bankruptcy Code. The Committee similarly believes that the enormous amount of fees cannot be approved and that, instead of compensating the settling creditors for value actually provided to PREPA, these fees are designed to enhance the recoveries to these creditors in exchange for their support of the Plan.

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<sup>9</sup> The Oversight Board asserts that the allowed claim of First Settlement Bondholders is the full amount of their asserted claim and not the lower claim as estimated by the Title III Court because the Oversight Board settled with First Settlement Bondholders, and agreed to allowance of their claims in full, prior to the Title III Court’s judgments in connection with the Amended Lien & Recourse Challenge.

<sup>10</sup> Provided they are among the first two-thirds (2/3) of PREPA bonds in their respective classes that opt into the Second Bond Settlement Agreement.

<sup>11</sup> A subset of the Purchasers—namely, the “Structuring Parties”—will also receive a “structuring” fee in the amount of approximately \$44.3 million, which further increases their guaranteed recovery to approximately **97.3%** of their Unsecured Net Revenue Claims.

**D. Committee's Recommendation**

Each creditor (including individual members of the Committee) must make its own independent decision as to whether the Plan is acceptable to that creditor and should consult with its own legal and/or financial advisor(s) before voting to accept or reject the Plan. **That said, for the reasons stated above, the Committee recommends that you vote to reject the Plan.**

As noted, the Committee remains in discussions with the Oversight Board regarding potential modifications to the Plan to improve the recovery to general unsecured creditors. **If such modifications are made, the Committee may supplement this Committee Letter, including to update its recommendation.** For that reason, if you have the ability to submit your Ballot online (in accordance with the procedures set forth on your Ballot), the Committee recommends that you hold off submitting your Ballot until we get closer to the Voting Deadline. Please visit the Committee's website at [www.creditorspr.org](http://www.creditorspr.org) for any further updates.

**E. Submitting Your Ballot**

The Oversight Board has provided Ballots herewith for holders of claims in Class 12 to utilize in order to vote to accept or reject the Plan, which Ballots must be returned in accordance with the procedures set forth in the ballot instruction sheet and the Supplemental Disclosure Statement. **Please read the directions on the Ballot carefully and complete your Ballot in its entirety before returning it. Your Ballot must be returned so as to be actually received by the Balloting Agent no later than the Voting Deadline, *i.e.*, 5:00 p.m. (Eastern Time) on January 26, 2024.**

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The positions taken by the Committee in this Letter are those of the Committee and/or its advisors and have not been approved by or endorsed by the Bankruptcy Court. Each creditor (including individual members of the Committee) must make its own independent decision as to whether the Plan is acceptable to that creditor and should consult with its own legal and/or financial advisor(s) before voting to accept or reject the Plan.

**YOU ARE URGED TO CAREFULLY READ THE DISCLOSURE STATEMENT, SUPPLEMENTAL DISCLOSURE STATEMENT, AND THE PLAN. THE DESCRIPTION OF THE PLAN IN THIS COMMITTEE LETTER IS INTENDED TO BE A SUMMARY ONLY.**

**THIS COMMITTEE LETTER MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN THE COMMITTEE'S VIEWS ON HOW TO VOTE ON THE PLAN, AND THE INFORMATION CANNOT BE RELIED UPON FOR ANY OTHER PURPOSE. THE COMMITTEE DOES NOT GUARANTEE ANY PARTICULAR RESULT IN PREPA'S TITLE III CASE. THE COMMITTEE CANNOT PROVIDE ANY ASSURANCES REGARDING THE AGGREGATE AMOUNT OF GENERAL UNSECURED CLAIMS THAT WILL ULTIMATELY BE ALLOWED, OR THE RATE OF RECOVERY THAT WILL ULTIMATELY BE REALIZED BY ANY HOLDER OF SUCH A CLAIM.**

**THIS COMMUNICATION DOES NOT CONSTITUTE, AND SHALL NOT BE CONSTRUED AS, A SOLICITATION BY ANY INDIVIDUAL MEMBER OF THE COMMITTEE.**

***THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF  
THE PUERTO RICO ELECTRIC POWER AUTHORITY***