

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

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY

Debtor.

PROMESA
Title III

No. 17 BK 4780-LTS

**REPLY IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE OF RETIRED
EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO
REGARDING REPRESENTATION OF PREPA RETIREES**

¹ The Debtors in these jointly-administered PROMESA 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: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric and Power Authority (Bankruptcy Case No. 17 BK 4780) (Last Four Digits of Federal Tax ID: 3747).

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”) respectfully files this reply in support of its motion (the “**Motion**”) [Dkt. 3056] for entry of an order providing for the representation of the retirees (the “**PREPA Retirees**”) of the Puerto Rico Electric Power Authority (“**PREPA**”) and states as follows:

REPLY

1. As the Motion explains, the PREPA Retirees face a significantly underfunded pension system and a fiscal plan that contemplates a switch to a defined contribution plan and a 10% cut in pension benefits.² Against this backdrop, the Retiree Committee filed the Motion to ensure that the PREPA Retirees’ interests are adequately represented in PREPA’s Title III case and to clarify any confusion over whether the Retiree Committee is representing those interests. These remain the Retiree Committee’s primary objectives.

2. Three parties formally responded to the Motion. The Financial Oversight and Management Board (the “**FOMB**”) and the Official Committee of Unsecured Creditors (the “**UCC**”) both support the Motion, but only to the extent the Court directs the United States Trustee to appoint the Retiree Committee to represent the PREPA Retirees. (FOMB Response [Dkt. 3115] at ¶ 3; UCC Response [Dkt. 3114] at 1.) The Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica (the “**SREAEE**”; referred to in the Motion as the “**PREPA Retirement System**” or “**PRS**”), however, opposes the Motion on the basis that the SREAEE alleges it “is willing and able to appear and represent the retirees’ interests in PREPA’s Title III.” (SREAEE Opposition [Dkt. 3154] at ¶ 27.)³

² See PREPA Fiscal Plan, <https://juntasupervision.pr.gov/wpcontent/uploads/wpfd/50/5ad90880bf3a7.pdf> at 27-28, 35.

³ The United States Trustee also contacted the Retiree Committee, requesting that if the Court grants the Retiree Committee’s Motion, the proposed order be revised. A revised proposed order is attached hereto as Exhibit A.

3. The Retiree Committee is neutral as to whether the Retiree Committee or some other entity or official committee represents the PREPA Retirees, so long as that entity or committee can capably and adequately represent the interests of *all* PREPA Retirees. The Retiree Committee submits that with respect to the SREAEE, there may be inherent conflicts that preclude it from doing so. These conflicts include the composition of the SREAEE's 8-member board, which, upon information and belief, comprises 4 members designated by PREPA management, 3 active-employee members, and just 1 retiree member. In addition, the SREAEE is engaged in active litigation against the Commonwealth, PREPA, the Governor, and others in which the opposing parties argue that the PREPA Retirement System is actually a part of PREPA with no independent existence. *See generally Rivera v. Commonwealth of Puerto Rico*, Civil No. SJ2018cv01670, Commonwealth of Puerto Rico Court of First Instance, San Juan Superior Court; *Financial Oversight and Management Board v. PREPA*, Adv. Proc. No. 18-00047 (D.P.R.) (removal of *Rivera* to U.S. District Court, which SREAEE has sought to remand). The Retiree Committee takes no position on this legal issue, other than to note that the parties' advocacy in the *Rivera* lawsuit may give rise to conflicts with legal positions that may be in the best interest of the PREPA Retirees.

4. In considering these issues and potential conflicts, the Retiree Committee has requested of the SREAEE, but has not yet received, documentation supporting the SREAEE's statement that "retirees had expressed, through the organizations which group them, that they want to be represented by SREAEE in these Title III proceedings." (SREAEE Response at ¶ 27.) The Retiree Committee has also asked SREAEE to clarify whether this support has been expressed by individual retirees, as well as groups, and whether such individual retirees were informed of SREAEE's potential internal conflicts before being solicited to support the SREAEE. The Retiree

Committee believes that these questions must be answered, and these potential conflicts vetted, before the Court can determine whether the SREAEE is capable of providing adequate representation to the PREPA Retirees.

5. The Retiree Committee filed the Motion because it is imperative that the PREPA Retirees have proper representation. Ultimately, the question of whether the PREPA Retirees are or can be adequately represented by the SREAEE is for this Court to decide based on the facts and circumstances of the case. Regardless of how the Court decides, however, its ruling will provide much needed clarity to the situation, as the PREPA Retirees will have certainty that they have an advocate representing their pension and retirement benefit interests in PREPA's Title III case.

May 30, 2018

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By:

/s/ Robert Gordon

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Respectfully submitted,

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Exhibit A

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PROMESA
Title III

No. 17 BK 4780-LTS

**[PROPOSED] ORDER DIRECTING THE APPOINTMENT OF AN OFFICIAL
COMMITTEE OF RETIRED EMPLOYEES IN PREPA'S TITLE III CASE**

¹ The Debtors in these jointly-administered PROMESA 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: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric and Power Authority (Bankruptcy Case No. 17 BK 4780) (Last Four Digits of Federal Tax ID: 3747).

Upon consideration of the *Motion of Official Committee of Retired Employees of the Commonwealth of Puerto Rico Regarding Representation of PREPA Retirees*, filed May 14, 2018, requesting entry of an order providing for the representation of the retirees of the Puerto Rico Electric Power Authority (“**PREPA**”), it is:

HEREBY ORDERED THAT:

1. Pursuant to 11 U.S.C. § 1102(a)(4), made applicable in this case by section 301(a) of PROMESA, 48 U.S.C. § 2161(a), the United States Trustee is directed to expand the membership of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico to ensure the adequate representation of retired employees in PREPA’s Title III case.

2. [*Alternative Relief*] Pursuant to 11 U.S.C. § 1102(a)(2), made applicable in this case by section 301(a) of PROMESA, 48 U.S.C. § 2161(a), the United States Trustee is directed to appoint an official committee of retired employees in PREPA’s Title III case.

3. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

SO ORDERED.

Dated: _____, 2018

HON. LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE