

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284-LTS) (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); (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Plaintiff/Counterclaim-Defendant,

PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS, UNION DE TRABAJADORES DE LA INDUSTRIA ELECTRICA Y RIEGO INC., AND SISTEMA DE RETIRO DE LOS EMPLEADOS DE LA AUTORIDAD DE ENERGIA ELECTRICA,

Intervenor-Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE,

Defendant/Counterclaim-Plaintiff,

THE AD HOC GROUP OF PREPA BONDHOLDERS, ASSURED GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION, AND SYNCORA GUARANTEE, INC.,

Intervenor-Defendants/Counterclaim-Plaintiffs.

Adv. Proc. No. 19-00391-LTS

PROMESA Title III

ORDER REGARDING PROCEDURES FOR THE JUNE 6-8, 2023 CLAIM ESTIMATION HEARING

The Court will receive evidence and hear argument in connection with the *Order Regarding Claim Estimation Discovery and Briefing* (Docket Entry No. 168 in Adv. Proc. No. 19-00391, the “Hearing”) beginning on **June 6, 2023**, at **9:30 a.m. (Atlantic Standard Time)**. The Hearing will resume at **9:30 a.m. (Atlantic Standard Time)** on **June 7, 2023**, and on **June 8, 2023** (following the conclusion of the omnibus hearing scheduled for that day). The

Court will conduct the hearing in Courtroom 17C of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY 10007 (the “New York Courtroom”), and by video teleconference in a courtroom to be designated in the United States District Court for the District of Puerto Rico, Clemente Ruiz Nazario US Courthouse, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767 (the “San Juan Courtroom”). The Hearing shall be governed by the following procedures.

Registration for In-Person Attendance and Listen-In Facilities for Attorneys, Members of the Public and Press

1. **In-Person Participation of Counsel.** Judge Swain will be present in the New York Courtroom. **All attorneys who are scheduled to participate in the Hearing are expected to appear in person (either in the San Juan Courtroom or the New York Courtroom).** Counsel who are not scheduled to present argument or examine witnesses have the following options to access the Hearing: (i) observe in person in the New York Courtroom; or (ii) observe a video feed of the Hearing in person in the San Juan Courtroom. **Counsel who have entered their appearance in the Title III proceedings and intend to participate in the Hearing in person (in the San Juan Courtroom or the New York Courtroom) must file an informative motion,** as set forth in paragraph 7 below. Witnesses providing testimony, counsel proffering them, and counsel intending to examine them are expected to appear in person in the New York Courtroom, as set forth in paragraph 6 below. Informative motions are due **no later than June 2, 2023, at 5:00 p.m. (Atlantic Standard Time).**

2. **Listen-Only Public Access to the Hearing.** Members of the public, press, and attorneys may **listen to but not participate in** the Hearing by dialing (888) 363-4749, and, when prompted, entering the access code (7214978) and security code (7533) for listen-only access. This telephonic access line for the press and the general public will be in listen-only

mode at all times. Recording and retransmission of the proceedings by any means are prohibited.

3. **Live Observation or Video Feed of the Hearing.** Counsel and members of the public and press who wish to **view but not participate in** the Hearing may do so by appearing in person at the San Juan Courtroom or the New York Courtroom.

4. **Press Room.** A live video feed of the proceedings will be available for viewing in the press room in the San Juan courthouse. Members of the press should contact presscredentials@prd.uscourts.gov (San Juan) regarding viewing facilities and space availability. Members of the press may also view the proceedings in the New York Courtroom or dial into the listen-only line.

5. **Hearing Structure and the Agenda.** The Hearing will proceed as follows:

June 6, 2023 Legal Argument	
Burden of Proof and Applicable Legal Standards in a Claim Estimation Proceeding	20 minutes
Temporal Scope of Equitable Remedy Access to Net Revenues for Purposes of Estimation of Unsecured Net Revenue Claim	40 minutes
Applicable Law/Statute of Limitations	30 minutes
Valuation Concepts: Discounting to Present Value, the Distinction (if any) between “Claim Amount” and “Claim Value”	30 minutes
Scope of Operational Expenses to be taken into Account in Determining Net Revenues	45 minutes
Blackrock’s 2016 Relending Bonds	20 minutes
Evidentiary Hearing Opening Statements (Limited in Scope to the Issues Identified in paragraph 6(c) below)	60 minutes
June 7, 2023 Evidentiary Hearing	
Cross-Examination and Redirect	
• David Plastino	90 minutes
• Maureen M. Chakraborty, Ph.D.	90 minutes
• Susan Tierney, Ph.D.	60 minutes
• John S. Young, Jr.	60 minutes
Evidentiary Hearing Closing Statements (Limited in Scope to the Issues	1 hour 15

Identified in paragraph 6(c) below	minutes
June 8, 2023 (following the Omnibus Hearing)	
Closing Argument	3 Hours

6. **Witness Testimony.** The court expects that all witnesses be available for in person cross-examination at the New York Courthouse during the Hearing. Rule 43(a) of the Federal Rules of Civil Procedure, made applicable by Rule 9017 of the Federal Rules of Bankruptcy Procedure, provides that for “good cause in compelling circumstances” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Any motions to allow a witness to provide remote testimony shall be due no later than **June 1, 2023, at 5:00 p.m. (Atlantic Standard Time).**

a. The original proponent of a witness will be responsible for (a) arranging in-person participation at the Hearing, (b) providing a certified interpreter if the witness requires translation services, and (c) confirming witness attendance by emailing SwainDPRCorresp@nysd.uscourts.gov by **3:00 p.m. (Atlantic Standard Time) on June 5, 2023.**

b. The Court will review all declarations that have been submitted in support of or opposition to the estimation of the Unsecured Net Revenue Claim in advance of the Hearing. The deadline for all Parties to file witness declarations to be used at the Hearing is **June 1, 2023.** All such declarations are deemed submitted as direct testimony.

c. **Scope of Cross-Examination.** Cross-examination of the witnesses will be limited to the below issues:

1. Addressing the Rate of Increase Formula applied by the expert.
2. Addressing the basis, role and sensitivity of load factor assumptions in expert’s claim computations.
3. Addressing the Surplus Revenue Calculation applied by the expert.

4. Addressing how a statute of limitations, if applied, would change the assumptions underlying the computations in the expert report.
5. How would a claim adjustment for future risks change the assumptions underlying the computations in the expert report?
6. If an Additional Rate could be charged to customers to determine the Rate of Increase Formula, how and to what extent would that change the assumptions underlying the computations in the expert report?
7. Any additional issues raised by the Court at the Hearing.

Debtors' counsel shall email a proposed agenda to the Court, including final proposed time allocations and identifying counsel intending to present legal argument of examine a witness, by **June 2, 2023, at 12:00 p.m. (Atlantic Standard Time)**.

Party Informative Motion, Exhibit List Procedures, and Witness Testimony

7. **Party Informative Motion.** Counsel for each Party that wishes to participate in the Hearing must complete the attached Party Appearance Sheet, Witness Cover Sheet, and Exhibit Cover Sheet, annexed hereto as Exhibit A, Exhibit B, and Exhibit C. Each sheet must be attached as an exhibit to a Party's Pretrial Informative Motion. In accordance with paragraph 1, a Party must file an informative motion by **June 2, 2023, at 5:00 p.m. (Atlantic Standard Time)**, identifying (a) the Party for which they intend to appear, (b) the name(s) and email address(es) of the attorney(s) who will appear, and (c) if the Party wishes to cross-examine any declarant.

8. **Party Appearance Cover Sheet (Exhibit A).** Counsel must use the Party Appearance Cover Sheet to identify all counsel who intend to appear in connection with the Hearing. Whether participating in the Hearing, counsel's name must be listed on the Party Appearance Cover Sheet.

9. **Exhibits Cover Sheet (Exhibit B).** Counsel who have already filed exhibits in connection with the section 502 Hearing **and wish to reference those exhibits** during (i) the legal argument, or (ii) in connection with the evidentiary hearing, must complete the Exhibit Cover Sheet. Counsel **are not required** to refile their exhibits. The Exhibit Cover Sheet should list the docket entry numbers of those exhibits that have already been filed in connection with the claim estimation briefing. The Exhibit Cover Sheet is divided into two sections (a) a list of exhibits whose admissibility into evidence for purposes of the Hearing is agreed, and (b) a list of exhibits whose admissibility into evidence is not agreed. Thus, all parties must meet and confer prior to filing their Exhibit Cover Sheets.

10. **Demonstratives or Visual Aids.** To the extent that a Party intends to rely on demonstratives or visual aids at the Hearing and wishes those visual aids to be electronically displayed at the Hearing, the party shall file a separate informative motion with the word “Demonstrative” in the title no later than **12:00 p.m. (Atlantic Standard Time) on June 3, 2023**. The item must be attached to the informative motion as a separate, text searchable document. Counsel who intend to display demonstratives or visual aids will be required to bring a personal computer with internet capability to the courtroom on the date of the hearing. The Court will provide further instructions regarding certain technical requirements in the New York Courtroom or San Juan Courtroom to display the demonstrative or visual aid.

11. **Witness Cover Sheet (Exhibit C).** Each party who intends to cross-examine any of the witnesses or reserve the right to redirect a witness at the Hearing, must file a Witness Cover Sheet.

12. **Electronic Binder Submission.** Parties must meet and confer in advance of the Hearing to use their best efforts to agree on the admissibility of the proposed exhibits into

evidence. By no later than **June 2, 2023**, at **5:00 p.m. (Atlantic Standard Time)**, the Parties shall, through the Oversight Board's counsel, provide to the New York courthouse (a) a list of exhibits whose admissibility into evidence for purposes of the Hearing is agreed, (b) a list of exhibits whose admissibility into evidence is not agreed, and (c) hard copies of all witness direct testimony declarations and expert reports.

13. **Electronic Device Policy in New York.** Counsel with New York bar credentials are permitted to bring one cellular telephone into the New York courthouse in accordance with the Fifth Amended Standing Order M10-468.² Counsel seeking to bring additional electronic devices into the New York Courtroom for the Hearing must complete the Electronic Device General Purpose Form available on the Court's website at <https://www.nysd.uscourts.gov/forms/fillable-form-electronic-devices-general-purpose> and submit the completed form to the following address: swaindprcorresp@nysd.uscourts.gov by **June 2, 2023**, at **12:00 p.m. (Atlantic Standard Time)**. Such requests must be compliant with S.D.N.Y. Standing Order M10-468. The Court directs counsel's attention to the technical and device usage restrictions detailed in the Fifth Amended Standing Order. Devices may not be used for communications purposes in the courtroom and no photography, recording or transmission of the proceedings is permitted.

14. **Electronic Device Policy in San Juan.** Counsel with Puerto Rico bar credentials are permitted to bring electronic devices into the San Juan courthouse. Counsel authorized to appear Pro Hac Vice in the Title III proceedings shall present (i) a paper or hard copy of the order granting Pro Hac Vice admission, and (ii) current government-issued photo

² The Fifth Amended Standing Order is available at <https://nysd.uscourts.gov/sites/default/files/2022-04/20mc316%205th%20amd%20standing%20order.pdf>.

identification.³ Devices may not be used for communications purposes in the courtroom and no photography, recording or transmission of the proceedings is permitted.

SO ORDERED.

Dated: May 30, 2023

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

³ The electronic devices policy for the United States District Court for the District of Puerto Rico is available at <https://promesa.prd.uscourts.gov/electronic-devices-policies>.

EXHIBIT A¹
PARTY APPEARANCE SHEET

Name of Party		
ATTORNEY 1	Appearance Method	In Person NY <u>or</u> In Person PR
	Name	
	Law Firm	
	Email	
	Phone Number	
	Docket Entry No. of Notice of Appearance	
ATTORNEY 2	Appearance Method	In Person NY <u>or</u> In Person PR
	Name	
	Law Firm	
	Email	
	Phone Number	
	Docket Entry No. of Notice of Appearance	

¹ This Party Appearance Sheet must be attached to a party in interest’s Informative Motion as **Exhibit A.**

EXHIBIT B¹
PARTY EXHIBIT COVER SHEET

Name of Party	
Does the Party intend to offer evidence?	
Note: Pursuant to Bankruptcy Local Rule 9037-1(a), parties and counsel are solely responsible for redacting the personal identifiers enumerated in Fed. R. Bank. P. 9037(a).	

Exhibits whose Admissibility into Evidence for Purposes of the Hearing is <u>Agreed</u>		
Exhibit Identifier ²	Docket Entry No. of Exhibit	Is there a pending request to seal this Exhibit?

Exhibits whose Admissibility into Evidence for Purposes of the Hearing is <u>Not Agreed</u>		
Exhibit Identifier ³	Docket Entry No. of Exhibit	Is there a pending request to seal this Exhibit?

¹ This Party Exhibit Cover Sheet must be attached to a party-in-interest’s Informative Motion as **Exhibit B**.

² Each Exhibit should be named in sequential party-identified numbering (e.g., “FOMB Ex. 1” or “UCC Ex. A”).

³ Each Exhibit should be named in sequential party-identified numbering (e.g., “FOMB Ex. 1” or “UCC Ex. A”).

EXHIBIT C¹
PARTY WITNESS COVER SHEET

Name of Party			
Are you the proponent of a witness?			
If you are the proponent of the witness, does the witness require interpretation services?			
Do you intend to cross-examine a witness?			
Total Number of Witnesses to Examine			
Name of Witness	Docket Entry No. of the Witness Declaration	Scope of Cross-Examination	

*The Court does not provide interpreters for witness testimony.

¹ This Party Witness Cover Sheet must be attached to a party-in-interest's Informative Motion as **Exhibit C**.