GOLDENTREE V.S. THE PEOPLE OF PUERTO RICO

JULY 2024

Currently ***GoldenTree owns $1 billion in PREPA bonds****, which it started to buy when the public corporation was already in bankruptcy and continued to increase its investments, buying up bonds at low prices with each new economic hit that the island suffered, including after Hurricane Maria destroyed the island's electrical grid system.*

Puerto Rico suffers from a weak and unstable electrical system where blackouts are a daily occurrence. More than seven years after the devastation caused by Hurricane Maria, which left whole regions of the archipelago without power for more than 6 months, the unreliable electrical infrastructure still impedes economic growth and quality of life. On top of this, the electric rate in Puerto Rico is 75% higher than the U.S. average, according to data from the U.S. Energy Information Administration and LUMA Energy. Customers pay one of the most expensive rates for the worst service.

This report describes the abusive actions of GoldenTree, a vulture investment fund that is seeking to raise rates further in Puerto Rico in order to make millions of dollars in profits. These actions include a recent decision by the First Circuit Court of Appeals in Boston in favor of GoldenTree, which could impact any U.S. municipality's ability to provide essential services.

INTRODUCTION

The Puerto Rico Electric Power Authority (**PREPA**), the public corporation that was in charge of the production and distribution of electricity in Puerto Rico for more than seven decades, is bankrupt and has been privatized to the benefit of corporations that have not improved service. PREPA's debt, however, was not privatized, amounting to more than $9 billion in bonds and lines of credit. The Fiscal Control Board, imposed by the U.S. Congress, is pushing a Plan of Adjustment to restructure this debt and reduce the amount to be paid, but this would still impose increases in electric bills for decades.

If this were not enough, Puerto Rico has spent years being preyed on by unscrupulous investors internationally known as "vulture funds." These investors take advantage of government crises and bankruptcies to buy up debt from the original creditors at very low prices and then, with their armies of lawyers, demand the maximum payment to profit handsomely at the expense of government budget cuts or increases in the costs of essential services.

GoldenTree has been the most aggressive of these vulture funds in Puerto Rico's government bankruptcy cases. Its desire to enrich itself by taking advantage of the government crisis led it to buy

$1 billion in PREPA bonds. GoldenTree started to buy PREPA bonds in the second half of 2018, when PREPA was already in bankruptcy and when the electrical system was experiencing its worst crisis ever after Hurricane Maria had destroyed a large part of the transmission and distribution infrastructure, with damages estimated at $20 billion.

It was well known since 2014 that PREPA had problems paying its debts. In 2017, with the approval of the PROMESA law and the creation of the Fiscal Control Board, PREPA entered into a bankruptcy process to be able to restructure and reduce its bond payments, given its inability to generate sufficient income to continue its operations. However, some creditors like GoldenTree bought bonds when PREPA was already in bankruptcy court but have refused to negotiate substantial debt reductions while demanding abusive electric rate increases to be repaid.GoldenTree is a Wall Street asset manager that has $53 billion in assets under management.
It is characterized by a questionable business model, taking advantage of financial, environmental and health crises to invest and profit, even when its actions have negative repercussions for the wellbeing of others. In fact, GoldenTree's actions in the PREPA bankruptcy case are not the first time that this vulture fund has sought to profit from an electric utility in crisis.

WHO IS GOLDENTREE?

It is important to highlight GoldenTree's role in the bankruptcy of California electric utility Pacific Gas & Electric (PG&E). This company's grid provoked several devastating fires that, among other tragedies, led to the deaths of 84 persons and destroyed about 14,000 homes. PG&E declared bankruptcy in January 2019, owing millions in compensation to thousands of families that had suffered the ravages of these fires. GoldenTree, together with other creditors, invested in the stock of the bankrupt PG&E as part of a plan to get the corporation out of bankruptcy, in which they also promised to purchase additional stock to stabilize the company so that PG&E could pay the fire victims. However, when PG&E achieved exit from bankruptcy, GoldenTree and other investors rapidly sold their holdings, achieving profits estimated at $2 billion total. This left the corporation without sufficient funds to pay the victims.

GoldenTree was founded in 2000 by Steven Andrew Tananbaum who, according to a report filed with the U.S. Securities and Exchange Commission (SEC), owns between 25% to 50% of the firm. Tananbaum is a board member of the Museum of Modern Art in New York City, where there have been protests demanding his resignation over GoldenTree's participation in Puerto Rico's debt crisis. In a move demonstrating the magnitude of his wealth, in 2013 Tananbaum and his wife bought a 14-room apartment in New York City for $23 million. The building's maintenance fee is $17,500 a month. Additionally, Tananbaum is an art collector and from 2013 to 2018 spent $10.9 million on payments for two sculptures.

GoldenTree was founded in 2000 by Steven Andrew Tananbaum (pictured)

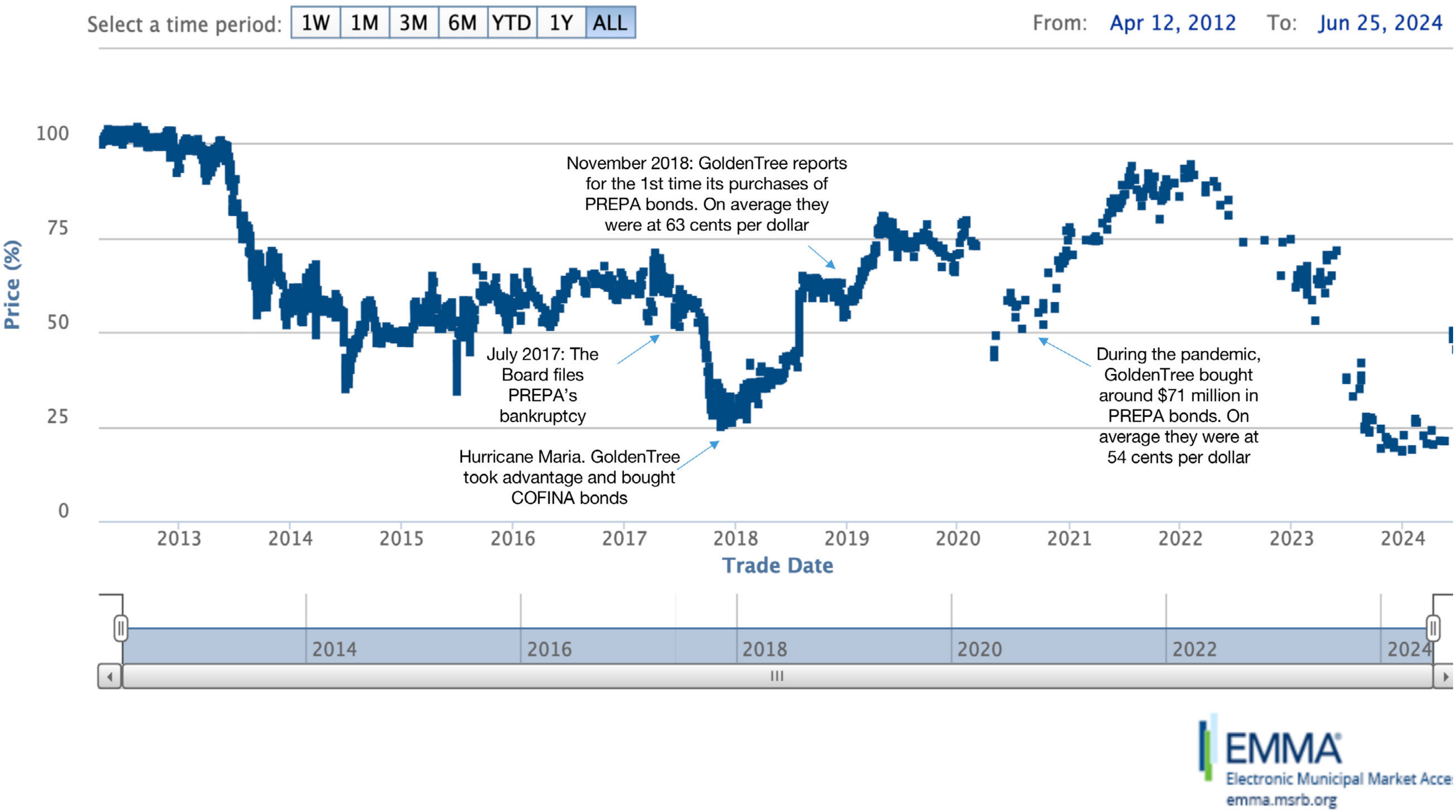
GOLDENTREE'S INVESTMENTS IN PREPA AND PUERTO RICO GOVERNMENT BONDS

GoldenTree invested in PREPA bonds knowing that the public corporation was already in bankruptcy and taking advantage of the precarious state of the electrical system. Why? They brought with them major legal firms and bet that they could litigate in order to make a profit on the bonds, demanding that electric rates be raised, not to improve the electrical infrastructure, but rather to pay off the PREPA debt.

On November 29, 2018, more than a year after Hurricane Maria, GoldenTree informed the bankruptcy court for the first time that it owned PREPA bonds, at that time $358 million. Four and a half years later, according to the most recent available financial report, dated February 24, 2023, GoldenTree had tripled its investment in PREPA bonds, reaching $1 billion. For context, that is about half the annual budget of the Puerto Rico Department of Education. The next graph shows the price behavior of one of PREPA's bonds, according to the Electronic Municipal Market Access' database (EMMA), and identifies some of GoldenTree's purchases, all of them done after Hurricane María.

Vulture funds own more than 60% of PREPA bonds. GoldenTree, like the other vulture funds that are seeking to increase electric rates, are not good-faith lenders that were themselves impacted by the crisis, but rather speculators seeking to enrich themselves from the crisis. The following table shows, from largest to smallest, the holdings of vulture funds in PREPA bonds, as stated in the most recently available financial reports.

GoldenTree, like the other vulture fund bondholders, are not good-faith lenders and were not impacted by the crisis.


Select a time period:
1W
1M
3M
6M
YTD
1Y
ALL
From: Apr 12, 2012
To: Jun 25, 2024
Price (%)
100
75
50
25
0
November 2018: GoldenTree reports for the 1st time its purchases of PREPA bonds. On average they were at 63 cents per dollar
July 2017: The Board files PREPA's bankruptcy
Hurricane Maria. GoldenTree took advantage and bought COFINA bonds
During the pandemic, GoldenTree bought around $71 million in PREPA bonds. On average they were at 54 cents per dollar
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
Trade Date
2014
2016
2018
2020
2022
2024
EMMA
Electronic Municipal Market Acce
emma.msrb.org

PREPA Bondholder Vulture Funds	
Nuveen Asset Management	$1,119,047,000
GoldenTree Asset Management	$1,005,638,935
BlackRock Financial Management	$736,032,190
MacKay Shields	$586,445,000
Invesco	$579,361,000
Goldman Sachs	$386,343,000
Franklin Advisers	$371,874,516
Massachusetts Financial Services Company	$259,560,000
Alliance Bernstein	$226,720,000
Macquarie Investment Management	$160,985,000
T. Rowe Price	$151,005,000
Capital Research and Management	$118,795,000
Whitebox Advisors	$117,260,000
Taconic Capital	$92,663,263
Aristeia Capital	$88,540,000
SIG Structured Products LLC	$71,525,000
Columbia Management	$65,675,000
Ellington Management Group	$33,595,000
Russell Investment Company	$25,630,000
Tower Bay Asset Management	$18,035,000
Total	$5,207,315,969

Source: PREPA Ad Hoc Group financial report dated October 4, 2023 and Majority Member PREPA Ad Hoc Group financial report dated November 3, 2023. GoldenTree data is contained in the Ad Hoc Group financial report of PREPA Bondholders' on February 24, 2023.

GoldenTree has been one of the principal actors and creditors in almost all of the other Puerto Rico debt restructuring cases brought under PROMESA, extracting millions of dollars in profits from a bankrupt government that has been impacted multiple times by hurricanes and earthquakes

As part of its questionable legal strategy, GoldenTree bought Syncora Guarantee, one of the insurers of PREPA bonds. Syncora is a bond insurance company that provided services to PREPA for many years, insuring a portion of its bonds. Thus, when the Fiscal Control Board filed PREPA's bankruptcy petition, Syncora became an important creditor. Two years after the bankruptcy petition was filed, in September 2019, GoldenTree acquired Syncora for $429 million. Syncora has followed in the footsteps of its new owner, supporting GoldenTree's legal offensive, rejecting the proposed PREPA Plan of Adjustment based on their understanding that Puerto Rico can afford to pay more, and backing the decision to appeal Judge Swain's decisions to the First Circuit Court of Appeals in Boston. According to page 14.16 of its 2023 annual report, Syncora has insured $100 million in PREPA bonds. Syncora is represented by the law firms Quinn Emanuel and Reichard & Escalera, who also participated in the negotiations to confirm the plans of adjustment for the Puerto Rico Sales Tax Financing Corporation (COFINA) and the Puerto Rico central government.

In addition to purchasing PREPA bonds, GoldenTree has been one of the principal actors and creditors in almost all of the other Puerto Rico debt restructuring cases brought under PROMESA, extracting millions of dollars in profits from a bankrupt government that has been impacted multiple times by hurricanes and earthquakes. For example, GoldenTree bought nearly $1.79 billion in COFINA bonds on the secondary market when that public corporation was also in bankruptcy; the source of repayment for the COFINA bonds are the revenues from Puerto Rico's sales and use tax (SUT). The "Public Accountability Initiative" (LittleSis), a U.S.-based organization, estimated that, as a result of the COFINA plan of adjustment backed by the Fiscal Control Board, GoldenTree obtained $278 million in profits on its investment in senior bonds and $159 million in profits on its investment in subordinated bonds just after the devastation of Hurricane Maria.

GoldenTree also participated in the restructuring of the Puerto Rico central government debt, in which it bought nearly $776 million (Exhibit H) in bonds. Similarly, it was the principal bondholder of the Puerto Rico Industrial Development Company (PRIDCO), where it achieved a restructuring agreement that paid 100% of the original value of the bonds, which GoldenTree had bought at a discount from the original bondholders.

GOLDENTREE SEEKS TO PROFIT BY RAISING ELECTRIC BILLS FOR MILLIONS OF PUERTO RICAN RESIDENTS

GoldenTree has been actively participating in the negotiations to restructure the PREPA debt since late 2018 and has consistently argued for much higher electric rate increases than those proposed by the Fiscal Control Board.

While negotiations with creditors stalled, Hurricane Fiona struck Puerto Rico on September 17, 2022, causing new damages to the electrical system, provoking a massive outage and resurrecting the collective trauma experienced during Hurricane Maria five years prior. Just two days after Fiona, while the vast majority of Puerto Rico was in darkness, GoldenTree and other vulture funds asked the bankruptcy court to dismiss the PREPA bankruptcy case, which would give bondholders the right to nominate a receiver with the power to increase electric rates to the level needed to repay 100% of the PREPA bonds.

The Fiscal Control Board went on the offense and brought a complaint questioning the bondholders' assertion that they have a right to all present and future PREPA revenues. The bankruptcy court, presided by Judge Swain, determined that the bondholders do not have the right to all current and future PREPA revenues. Swain found that the bondholders only had a right to the net revenues, i.e. the surplus after covering operational expenses, that had been deposited in specific PREPA accounts dedicated for debt service. Judge Swain also found, based on projections of PREPA's future net income, that the bondholders' claim had a value of $2.388 billion instead of the $8.5 billion that bondholders were demanding. These decisions of the bankruptcy court, in addition to strong opposition and citizen protests against more electric rate increases, led the Fiscal Control Board to present a new plan of adjustment for $2.5 billion, which implies an average cut of 80% to creditors (and for some up to 96.5% of the original debt) and a reduction in proposed electric rate increases.

These decisions issued by the judge in 2023, adverse to the bondholders, provoked a division amongst the members of the PREPA Ad Hoc Group, a group of bondholders that had been litigating jointly. The majority of the members of this group, led by the infamous vulture fund BlackRock, decided to negotiate a rapid exit with the Board and backed the proposed plan of adjustment. In spite of the fact that the Fiscal Control Board's proposal implied a cut of 87.5% to the original value of the bonds for bondholders that support the deal, it also includes a series of extra payments, effectively reducing the cut. For example, by committing to purchase $1.6 billion of the new bonds to be issued under the deal, these vulture funds will receive a payment of about $124 million. Additionally the BlackRock group would receive about $74 million in lawyer and consultant fees.

On top of this, the plan proposes additional payments over time through so-called Contingent Value Instruments (CVIs), which open the possibility that the bonds could be paid at 100% even though this would mean fewer resources over the medium and long-term for the maintenance of the electrical system. These CVIs are a type of additional bonus payment that is only activated if certain conditions are met. For example, if savings are achieved in the operation of PREPA's power plants, which are currently managed by the private company Genera PR (a subsidiary of New Fortress Energy), the BlackRock group would receive 25% of those savings, instead of those savings benefiting consumers through rate reductions or the maintenance or replacement of the power plants. A second CVI is based on whether PREPA is able to pay off the face value of the new bonds before their maturity date, which could occur, for example, if PREPA's income is greater than projected. In that case, the income collected from the proposed rate increase would go towards paying this CVI, again prioritizing payments to creditors above the urgent transformation of the obsolete electrical system.

GoldenTree and the other bondholders who don't support the Plan of Adjustment would suffer a cut of 96.5%. Therefore GoldenTree is aggressively opposing the Board's plan, arguing that the people of Puerto Rico can and should pay more. According to the report of GoldenTree's expert Maureen Chakraborty, PREPA could afford to pay nearly $4 billion more to its creditors, by raising rates above what the Board proposes.

GoldenTree has validated the opinions of "experts" that affirm that residential customers that are subject to the proposed rate increase ("Legacy Charge") can afford to pay more than what the Board proposes. According to GoldenTree's experts, the lowest income class of customers that will be subject to the Legacy Charge have an average housing cost of 18.7% of their income, which is much lower than the 30% threshold found in economic literature to be the maximum that a household should pay in housing. Thus, GoldenTree argues, these households could pay more in their electric bill. However, the data of these experts does not reflect the reality of Puerto Rico. First of all, the 30% threshold is a number that includes many other housing costs including water, internet, etc. Also, in contrast to what the bondholders have said, recent reports indicate that Puerto Rico is experiencing a crisis of high rental costs in which 1 in 7 Puerto Rico residents are paying more than 50% of their income on housing.

Similarly, GoldenTree's experts do not consider other key issues, including PREPA's inability to raise sufficient funds to both pay bondholders and complete the necessary repairs of the electrical system. Seven years after the imposition of the Fiscal Control Board, PREPA still does not have a balanced budget and needs billions of dollars of investment beyond the available federal funds to achieve an electrical system that meets basic reliability standards. From this perspective, it is evident that there is not a surplus of money to pay more to GoldenTree or other bondholders.

According to section 4 of Exhibit 2 of GoldenTree's declaration, its economic experts charged $1,150 an hour to develop their opinions to the court.

THE APPEAL IN BOSTON

GoldenTree's profit motive led it, together with other bondholders (Goldman Sachs, Alliance Bernstein and Invesco), to appeal Judge Swain's decisions in the First Circuit Court of Appeals in Boston. On June 12, 2024, this court issued its decision, largely favoring the bondholders.

The First Circuit found that the bondholders have a right to the current and future net revenue of PREPA, i.e. all of the revenue leftover after operational expenses, not just the revenues that were deposited in specific accounts for debt payment, as Swain had determined. On the other hand, the court ruled that this right is limited exclusively to net revenues, i.e. the bondholders do not have a right to other PREPA assets or properties.

This decision strengthens the bondholders' legal position as they are pressuring the FOMB for a better deal or for amendments to the current Plan of Adjustment. The appeals court rejected Judge Swain's determination that the value of the bondholders' claim is $2.388 billion, instead determining that the bondholders have a claim to the total $8.5 billion of the nominal value of the bonds. However, the appeals court made it clear that this does not mean that PREPA will have to pay bondholders the total value of the bonds. This is simply the bondholders' legal claim. If the net revenues of PREPA are not sufficient to pay the totality of the claim, then the bondholders do not have a right to further payment.

It is important to highlight that the appeals court did not make any reference to the deplorable state of Puerto Rico's electrical infrastructure nor the economic crisis of the utility, which is unacceptable given the frequent outages Puerto Rico is already suffering the impact that more rate increases would have on the economy.

Now the legal conflict again returns to Judge Swain's court to determine the value of future net revenues available to pay bondholders. The bondholders will of course state that PREPA and the electrical system have the capacity to generate high incomes and, therefore, they should be repaid the full value of the bonds.

In making its case to the First Circuit Court of Appeals, GoldenTree and the other bondholders had several allies.

In particular, a group of 14 Republican attorneys general appeared as "friends of the court." Additionally, they had the support of the Securities Industry and Financial Markets Association, a lobby group that defends the interests of creditors and other private actors in the municipal finance industry.

If the bondholders achieve their objective of being paid the full value of their bonds, they will keep PREPA and Puerto Rico's economy hostage for decades, provoking unsustainable rate increases to pay their claims and crowding out the use of income for operational expenses, maintenance and the reconstruction of the electrical system. According to experts, these unsustainable rate increases will cause a cascading impact on the cost of other goods and services, provoking increases in the cost of living, business closures and layoffs.

Additionally, **the First Circuit's decision sets a dangerous precedent for the provision of essential services in other U.S. municipalities that find themselves in fiscal distress**. The decision suggests that, irrespective of the social and economic condition of a bankrupt government, the bondholders/creditors may possess an unbreakable right to recover the full value of their claims, without taking into consideration whether they acquired that debt at a discount in time of crisis. In other words, the repayment of the bonds has priority over the provision of essential services to the population, implying abusive cuts, privatization or unsustainable increases in the cost of living.

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CONCLUSION

Currently, ***GoldenTree, owns $1 billion in PREPA bonds****, which it started to buy when the public corporation was already in bankruptcy and continued to increase its investments, buying up bonds at low prices with each new economic hit that the island suffered, including after Hurricane Maria destroyed the electrical system.*

GoldenTree has been the most aggressive vulture fund in the Puerto Rico government bankruptcy process. It seeks to use its legal resources to obtain the greatest profits possible, irrespective of the social impact. Currently it owns $1 billion in PREPA bonds, which it started to buy when the public corporation was already in bankruptcy and continued to increase its investments, buying up bonds at low prices with each new economic hit that the island suffered, including after Hurricane Maria destroyed the electrical system.

GoldenTree is seeking any means to achieve multi-million dollar profits by imposing extremely abusive increases to electric rates and the cost of living for millions of families in Puerto Rico, without real data that would support the viability of such rate increases. Its actions have been opposed by the Fiscal Control Board, the Puerto Rican government, and all social and economic sectors on the island.

With the recent decision of the First Circuit Court of Appeals in Boston, GoldenTree and the rest of the vulture funds are in a better position to pressure the FOMB, and other local governments in fiscal distress, to impose more increases to electric rates or other essential services to pay the totality of their bonds, regardless of the material and economic reality of local residents.

Now different sectors of civil society and local public entities, including the FOMB, must demonstrate to Judge Swain that it is impossible to comply with the payment that bondholders are demanding. More rate increases will only generate more poverty in Puerto Rico and, in the long term, will not even guarantee a higher payment to bondholders given that it is already projected that electricity sales will decline 60% by 2050, leaving only the poorest communities connected to the antiquated grid.

By granting more power to bondholders and creditors of public corporations, the First Circuit Court's decision sets a precedent that will negatively affect any municipality or local government in the United States that may find itself in fiscal distress due to changes in population, impacts of climate change or for other reasons. East coast cities at risk of hurricanes, for example, will have less fiscal autonomy to reduce their debts in moments of crisis in order to meet the needs of their citizens.

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No More Rate Hikes ("No Más Aumentos") is a Puerto Rico-based coalition that is organizing to prevent the rate increases and pension cuts proposed as part of the debt restructuring of the Puerto Rico Electric Power Authority and to demand energy justice for Puerto Rico. https://www.nomasaumentos.com/

The Citizens' Commission for a Comprehensive Audit of the Public Credit is a non-profit organization created to conduct research and comprehensive citizen audits related to Puerto Rico's public debt. We are a network of activists and organizers, multi-sectoral community leaders and representatives, public interest attorneys, economists, and other professionals mobilizing civil society around the island's public debt crises and tackling the government-imposed austerity measures that threaten Puerto Ricans' very livelihoods. https://www.comisionauditoriapr.org