

THE BOND BUYER

Judge seems skeptical of PREPA bondholders' request for appeal certification

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Puerto Rico Electric Power Authority bondholders, the bond trustee, and bond insurers asked for certification of their appeal on bondholder liens but there are signals the judge isn't inclined to grant it.

On Friday morning District Court Judge Laura Taylor Swain not only rejected considering issues bondholders wanted treated separately, but she also set deadlines in April for the parties to present positions and documents. She kept the bankruptcy on track for a plan of adjustment hearing in July rather than postponing deadlines to accommodate a bondholders' appeal.

While the bond parties asked her to pause the process of estimating the bonds' claim as they appealed her lien decision, she is moving ahead with it.



PREPA bondholders want bankruptcy Judge Laura Taylor Swain to certify an immediate appeal of her ruling but she seemed to signal a different approach. *Bloomberg News*

Swain said she expects the parties "to address the impact of the trust agreement, economic projections, relevant contingencies, and any relevant bankruptcy and non-bankruptcy law on the estimation of the [unsecured bond] claim."

On Wednesday, the PREPA bond parties filed a motion asking Swain to "certify" an interlocutory appeal of her late March decision that [bondholders did not have liens on revenues](#) the authority collected after the board put PREPA in bankruptcy in 2017.

Certification would make the First Circuit Court of Appeals more likely to consider the appeal, said Puerto Rico Attorney John Mudd. However, even if Swain did certify it, the appeals court would have the right to reject the appeal.

The appeals court is likely to ask the bondholding parties to wait until Swain approves a plan of adjustment before it considers any sort of appeal, he said.

If Swain denies an interlocutory appeal, it would pressure bondholders to reach a consensual deal with the board, Mudd said, and this is something she desires. He believes Swain will reject certification.

Shortly after Wednesday night's motion, the bond parties filed two similar filings asking Swain to consider certain topics separately.

The bond parties said they wanted Swain to clarify that they had the right to collect for their bonds indefinitely and not just until the bonds' maturity dates. They said any estimation of the allowed amount for bondholders "unsecured claim" should wait for Swain to rule on certifying the lien appeal and for the subsequent First Circuit ruling.

The Puerto Rico Oversight Board, Puerto Rico Fiscal Agency and Financial Advisory Authority and the Unsecured Creditors Committee wrote other sections of Wednesday's motion and did not ask Swain for the certification.

In its Wednesday filing, the board said all parties should file documents and proposed orders in April on whether bondholders have perfected security liens on money in PREPA's Construction Fund and Capital Improvement Fund. The board said the same should be done concerning the Reserve Maintenance Fund, which the board says Swain approved for the bondholders based on a misstatement by one of the board's attorneys.

The board said Swain has already rejected five of seven counterclaims the bond parties filed in October. The bond parties, in their Wednesday filing, said Swain has only rejected two of the seven.

In mid-March Magistrate Judith Dein [rejected intervention in the bond parties' complaints about the board's](#) alleged lack of cooperation in the discovery process.