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GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU

IN RE: PERFORMANCE TARGETS FOR LUMA ENERGY SERVCO, LLC	CASE NO. NEPR-AP-2020-0025 SUBJECT: Commencement of Proceeding for the Establishment of a Performance-Based Incentive Mechanism Targets
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MOTION REQUESTING INTERVENTION AND AN OPEN ADJUDICATORY
PROCESS CONCERNING PERFORMANCE BASED INCENTIVE MECHANISM
TARGETS

TO THE BUREAU:

Now comes Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico
(ICSE) represented by appearing counsel and respectfully alleges and prays:

1. On December 23, 2020 the Bureau issued a Resolution, which states:

"On December 23, 2020 the Energy Bureau issued a Resolution and Order under Case No. NEPR-MI-2019-0007 ("December 23 Resolution"), through which it commenced a proceeding to establish the baseline (i.e., PREPA's current performance) and the targets or minimum compliance benchmarks with which the Puerto Rico's electric system should comply ("Baseline Proceeding").

As established in the aforementioned resolution, the performance baseline and performance compliance benchmarks to be determined in the Baseline Proceeding will be subsequently used by the Energy Bureau to establish the corresponding targets to be applicable to certified electric service companies. As indicated in the December 23 Resolution, the Energy Bureau will open a separate proceeding to establish performance-based incentives and penalties ("PIMs") for specific certified electric service companies."

2. On December 23, 2020 issued a separate Resolution that in the conclusion states:

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REGISTRADO DE ENERGIA
DE PUERTO RICO

"In light of the foregoing, the Energy Bureau **ORDERS** PREPA and LUMA to ensure that any filing to be presented before the Energy Bureau pursuant to Section 4.2 of the OMA: (i) takes into consideration the outcomes of the proceeding under Case NEPR-MI-2019-0007; and (ii) at a minimum, align its proposal to the principles enumerated in Part IV of this Resolution and Order.

In order to ensure that the above referenced filing is aligned with the principles enumerated in Part IV above, the Energy Bureau **ORDERS** PREPA and LUMA representatives to attend a Pre-Filing Technical Conference to be held remotely on **January 14, 2020 at 10:00 am**. The Technical Conference will be streamed via the Energy Bureau's YouTube Channel. During the Technical Conference, PREPA and LUMA may present its questions regarding the filing compliance requirement established herein and regarding the information and documents that should be included in the filing, in order to place the Energy Bureau in position to timely evaluate the same.

The Energy Bureau **WARNS** PREPA and LUMA that, noncompliance with any provision of this Resolution and Order, may result in the imposition fines under Act 57-2014 and the applicable Energy Bureau's regulations and/or any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau."

3. The Certification of the second Resolution establishes:

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 23, 2020. I also certify that on this date a copy of this Resolution and Order was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, Legal@lumamc.com, wayne.stensby@lumamc.com, mario.hurtado@lumamc.com, y Ashley.engbloom@lumamc.com.

I also certify that today, December 23, 2020, I have proceeded with filing the Resolution and Order issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to:

Puerto Rico Electric Power Authority

Attn.: Astrid I. Rodríguez Cruz

Jorge R. Ruíz Pabón

PO Box 363938

Correo General

San Juan, PR 00936-3928

LUMA ENERGY, LLC

Attn. Wayne Stensby

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4. What these resolutions do is to treat this process as a private process, not open, not transparent, not consistent with the mandates of Law 17 of 2019?

5. Under what theory of Law, a process to determine “performance-based incentive mechanism targets on LUMA-PREPA relations, which encompasses each and every PREPA function, save production of energy, which specifically places on LUMA the responsibility for consumer relations, can be run as a private matter of LUMA and PREPA, without consumer participation?

6. Intervention is requested for ICSE, both under the Puerto Rico Administrative Procedure Act. Law 38 of June 30, 2017 3 LPRA § 9645.

Act 38-2017 identify the factors to be considered by an agency to evaluate whether to grant or not intervention. The seven factor are:

- a) Whether the petitioner's interests may be adversely affected by the adjudicatory procedure.
- b) Whether there are no other legal means for the petitioner to adequately protect his interests.
- c) Whether the petitioner's interests are already adequately represented by the parties to the procedure.
- d) Whether the petitioner's participation may help, within reason, to prepare a more complete record of the procedure.
- e) Whether the petitioner's participation may extend or delay the procedure excessively.
- f) Whether the petitioner represents or is the spokesperson of other groups or entities in the community.

- g) Whether the petitioner can contribute information, expertise, specialized knowledge or technical advice which is otherwise not available in the procedure. 3 LPRA § 9645.

Petitioner ICSE complies with each and every factor.

ICSE, has been active in PREB and PREC Proceedings, including among others two IRP's and the rate case. ICSE, has also been active in the PROMESA PREPA Bankruptcy proceedings. ICSE represents the widest group of electric power consumers residential, commercial, and industrial. ICSE is the only group that represents all electric power consumers and not any particular group or interest. PREB's decision directly impacts the interests represented by ICSE.

- b) Whether there are no other legal means for the petitioner to adequately protect his interests.

Due to PREPA, both management and Board of Directors, and PREB's decision to handle this matter behind to back of the consumers, as it if were a private matter, the appearing party has no other forum or legal proceeding to present its position and protect its interests.

- c) Whether the petitioner's interests are already adequately represented by the parties to the procedure.

There are no other parties in the current case which represent the same interests as those of appearing party.

- d) Whether the petitioner's participation may help, within reason, to prepare a more complete record of the procedure.

PREPA and LUMA are not opposing parties. They are representing a same interest which is to have the LUMA contract in operation.

The LUMA contract as it currently stands is a "private monopoly" of public power without any PREPA control.

If intervention is not permitted the record will not be complete for PREPA/ LUMA will limite the record to what fits its predetermined interest. This is certainly not what transparency and participation is all about.

b) Whether the petitioner's interests are already adequately represented by the parties to the procedure.

ICSE is represented by counsel who has extensively litigated in the PREB, the PREC and the PROMESA Court Case. As such ICSE will appear and litigate in a professional, independent, competent manner, bringing a fresh different perspective.

f) Whether the petitioner represents or is the spokesperson of other groups or entities in the community.

ICSE, is an entity which protects all consumers manufacture, services, commercial, and residential, and as such can claim to represent a broad public interest. This intervenor had an important part in the conceptualization, drafting and approval of the Law 17 of 2019.

g) Whether the petitioner can contribute information, expertise, specialized knowledge or technical advice which is otherwise not available in the procedure. 3 LPRA § 9645.

Petitioner have been activatively involved in energy field for the last 6 years.

The collective knowledge and experience of ICSE, is unique, bringing specialized, practical, economic knowledge, currently not present in the proceedings.

This motion is timely.

Petitioner has filed within the timeframe available for reconsideration and/or appeals of PREB's determinations, and while the case is ongoing.

The Covid Pandemic has created havoc in the legal proceedings in Puerto Rico's Courts and in the Governments Agencies. This motion is reasonably timed in spite of the Covid impact.

7. PREB should ask: What is the level of transparency, and access of the citizens to the electric energy decision process mandated by law; What happens is that PREB, PREPA and LUMA decided, once again, to ignore Puerto Rico's Law 17 Mandate for transparency and jointly decided, without any real meaningful public participation to consider LUMA's performance case in the tradition of "closed rooms". This does not mean that there are no legitimate interested parties, like ICSE that have the right to participation, to ask for reconsideration on the public interest issue and to appeal if so decides.

The "Puerto Rico Energy Transformation and RELIEF" Act and the beginning of Citizen Participation.

1. The electric power generation industry and consequently the PREPA operations are the most important sector and subject in qualitative terms in the development of our economy and our society. Let us remember that from 1941 to 2014, the PREPA operated without the supervision of an independent governmental regulatory entity to regulate its operations in favor of the public interest. That created a culture of self-preservation that many times ignored or left on the fringes the common interests of the rest of society. This was remedied by the Legislator through the adoption of the different amendments to the PREPA organic law, above all, Act 57-2014, the Puerto Rico Energy Transformation and RELIEF Act.

2. At these important times, more than any time before in history, it is vitally important that all of the social sectors participate in the process of transforming this industry, as embodied in the public policy set forth in Act 57-2014 and Act 17 of 2019. That, in turn, may only be possible if the legislative intent of imbuing transparency and the opening up of the operational processes takes the shape of concrete and specific actions that allow for its full achievement.

3. The Puerto Rico Energy Transformation and RELIEF Act, 57-2014 established several cardinal principles of public policy that are aimed at radically transforming the principles that govern the production and distribution of electric power in Puerto Rico. One of these principles involves **transparency and citizen participation** in the energy processes, especially as far as the PREPA operations are concerned. It is provided that this legislation is to promote transparency and citizen participation in all the processes related to the Puerto Rico power service. Article 1.3 (cc) defines citizen participation as:

“Citizen Participation” - Shall mean the variety of mechanisms that allow customers of the PREPA and electric power generation companies certified in Puerto Rico to have a forum to express their concerns, make suggestions, and be included in the decision-making processes. These mechanisms shall include, but not be limited to, the request and receipt of comments, photographs, and other documents from the public, meetings of the PREPA administrators with customer focus groups, regional meetings open to PREPA’s customers in that region, public hearings, and the establishment of vehicles that make participation by electronic means possible.”

Following this precept, Article 1.2 (o) of Act 57-2014 provides that:

“As an essential element for competitiveness and the economic development of the Commonwealth of Puerto Rico it is necessary for there to be a transformation and restructuring of our electric sector. For that reason, it is declared as a public policy of the Commonwealth of Puerto Rico that:

(o) Transparency and citizen participation shall be promoted in every process related to electric power service in Puerto Rico;

While Article 1.4 (A) of Act 57-2014 provides that the information generated by the PREPA in the course of its operations will be presumed to be public, except for anything that is classified as confidential under the Rules of Evidence of the General Justice Court. In its relevant sections, it indicates as follows:

“Article 1.4 – Principles of Transparency and Accountability.

(a) In accordance with the public policy established in Section 1.2(o) of this Act, all information, data, statistics, plans, reports and documents received and/or disclosed by any of the entities created under this Act, by the Authority, and by every electric power company shall be subject to the following principles:

(1) The information must be complete, except for privileged information which should be suppressed in accordance with the Rules of Evidence adopted by the Judicial Branch of Puerto Rico;

(2) The disclosure of the information shall be timely;

(3) The data shall be in a raw and detailed format and not modified. In addition to the original text of any document where such information or data appears, documents shall be published and made available to customers where said information is organized and shown so that it may be easily handled and allow persons without specialized knowledge in the subject areas to understand them;

(4) The information shall not be subject to any confidentiality rules that are broader than those necessary;

(5) The data must be machine processable;

(6) The public may access such information electronically without the need to register or create an account, and free of charge;

(7) Data produced by employees, officials, or contractors working for the Commonwealth of Puerto Rico shall not be subject to any copyright, patents, trademarks, or trade secrecy. Reasonable restrictions based on doctrines of privacy, security, and evidentiary privileges may apply; and

(8) Such data must be available in a nonproprietary format, that is, no one shall have exclusive control over it. (Boldface type added.)

The legislative intent is obvious, that being to promote the broadest disclosure of the PREPA operational information, so that its users are in a better position to contribute both technical and financial opinions and suggestions about its operational processes. **The new Act on energy public policy specifies the interest in transparency as a basis for public policy. See Act 17-2019.**

8. What is PREB to do when there is no opportunity for any party to present counter evidence and counter arguments to PREPA's - LUMA self-serving arguments.

Who would represent in PREB's proceedings a contrary view, a different perspective a different economic analysis, a consumer not PREPA centered perspective.

This was after all what laws 57 and 17 tried to accomplish. But instead we get, with PREB imprimatur, more of the same. No debate, no independent analysis and more sweet heart deals, closed rooms deals. It is the competitors or potential competitors who can bring the contrary perspective to an issue, just what PREB needs. See, San Antonio Maritime v. Puerto Rico Cement, 2001 TSPR 16.

9. The main issue raised by this case, in the end, is what is the role of the PREB, what is the responsibility it has under Laws 57 of 2014 and 17 of 2019 to independently regulate, to non-politically implement the very clear, transparency and renewable energy policy established with bipartition support under Laws 57 and 17.

In other words, the issue is whether the PREB will be the main promoter of the new policies and whether it will forcefully implement the main determination of dismantling

the pernicious integrated monopoly that PREPA has been and that so much damage has caused to Puerto Rico, as PREB and the PREC have concluded in prior proceedings.

The new laws can be a harbinger of progress or another case of dead letter law. If after law 57 and law 17 PREPA continues working in closed rooms, making deals without any public debate- as has been the case with the LUMA contract- then the legislation has failed and PREB has failed. The cost is paid by the people of Puerto Rico, the consumers of electric energy.

The particular contract and the targets are not the result of a new policy, a new attitude, a new paradigm. It is not the result of independent, nonpolitical, competent professional regulation, which the PREB is expect to be. The approval would be a more of the same, PREPA centered mentality which is exactly what law 57 and 17 intended to eliminate, by opening up participation by stakeholders.

Where is the transparency that both laws announce as the new legal norm?

Back room deals by PREPA's monopoly was the norm to be eliminated, but that is exactly what the LUMA contract is, and as such is has to be subject to metrics, result of an open process.

10 Law 17 of 2019 states:

"STATEMENT OF MOTIVES

The electric power system should be reliable and accessible, promote industrial, commercial, and community development, improve the quality of life at just and reasonable cost, and promote the economic development of the Island. Electric power services in Puerto Rico are inefficient, unreliable, and provided at an unreasonable cost to residential, commercial, and industrial customers despite the existence of a vertically integrated monopolistic structure. This is mainly due to a lack of infrastructure maintenance, the inadequate distribution of generation vis-à-vis demand, the absence of the necessary modernization of the electrical system to adjust it to new technologies, energy theft, and the reduction of the Electric Power Authority's personnel. Likewise, the electrical system of the Island is highly polluting as a result of poor energy diversification, the

hindering of the integration of distributed generation and renewable energy sources, and high fossil fuel dependency. Consequently, the power plants of the Electric Power Authority have become the main polluters of our environment given their high greenhouse gas emissions.

...

The Electric Power Authority (PREPA or the Authority) holds hostage approximately 1.5 million customers which represent close to \$3.45 billion in total revenue. The electric power generation system is approximately thirty (30) years older than the electric power industry average in the United States. Our electric power system includes two thousand seven hundred and forty-eight (2,748) miles of transmission lines, thirty-one thousand four hundred and eighty-five (31,485) miles of distribution lines, and three hundred and thirty-four (334) substations. The transmission lines include 230 kV, 115 kV, and 38 kV circuits that transmit energy from the power plants to the distribution substations to be delivered to consumers through lower voltage distribution lines. The Authority generates two-thirds of the Island's power and purchases the rest. Energy demand has decreased from a peak of three thousand six hundred and eighty-five megawatts (3,685 MW) in Fiscal Year 2006 to three thousand one hundred and fifty-nine megawatts (3,159 MW) in Fiscal Year 2014, and three thousand sixty megawatts (3,060 MW) by August 2017, which shows a clear tendency towards lower energy demand. Despite the foregoing, the Authority has a generation capacity of five thousand eight hundred and thirty-nine megawatts (5,839 MW) which includes the nine hundred and sixty-one megawatts (961 MW) provided by the EcoEléctrica Power Plant and AES through twenty (20)- year power purchase agreements. In addition, the main generating units are located in the south area of the Island while the highest energy demand is in the north. See, Build Back Better: Reimagining and Strengthening the Power Grid of Puerto Rico, December 2017. Even though the Authority controls the Island's energy supply, its financial statements as of June 30, 2014, show debts totaling over \$11.7 billion. The Authority's bankruptcy conditions have been known for years and have transformed this public corporation into an unsustainable burden for the people of Puerto Rico. Its fragile fiscal situation forced the Authority to undergo a bankruptcy process under Title III of the 2016 Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

...

Section 1.4.- Guiding Principles of the Puerto Rico Electrical System.

The activities or functions related to the electric power service shall be governed by the principles of efficiency, quality, continuity, adaptability, impartiality, solidarity, and equality.

i) The efficiency principle compels the correct allocation and use of resources to guarantee that services are rendered at the lowest possible cost and that resources which compose the Electrical System are developed according to the best industry practices;

ii) By virtue of the quality principle, electric power services rendered must meet the technical requirements and the reliability and quality standards established therefor;

iii) The continuity principle implies that services shall be rendered without interruptions, other than those programmed due to technical reasons, force majeure, or fortuitous events, or as a penalty when a customer fails to fulfill his obligations, and even in the event of bankruptcy, liquidation, audit, or substitution or termination of contracts entered into with the companies responsible for rendering such services;

iv) The adaptability principle leads to the incorporation of scientific and technological advances that improve the quality and efficiency of services rendered at the lowest possible cost;

v) The impartiality principle requires that, under the same conditions, consumers are treated equally regardless of their social condition and purchasing power, or the technical conditions or characteristics of the service rendered;

vi) The solidarity principle establishes that the design of the rate structure shall take into account the goal of providing affordable electricity prices to all consumers, particularly to low-income consumers.

vii) The equity principle promotes the attainment of a balanced and appropriate energy service coverage in the various regions and sectors of the Island in order ensure that the basic needs of the entire population are met.”

Does the approval of these metrics without consumer participation represent a faithful implementation of these mandates?

What does transparency really mean? It is more of the same? Is it approving metrics with no public debate?

WHEREFORE, It is respectfully requested from the Bureau to accept ISCE's Intervention and open up the current procedures.

CERTIFICATE OF SERVICE I hereby certify that, on this same date, we have filed this motion notified by electronic mail to: kbolanos@diazvaz.law and jmarrero@diazvaz.law and mail to:.

Puerto Rico Electric Power Authority

Attn.: Astrid I. Rodríguez Cruz

Jorge R. Ruíz Pabón
PO Box 363938
Correo General
San Juan, PR 00936-3928

LUMA ENERGY, LLC

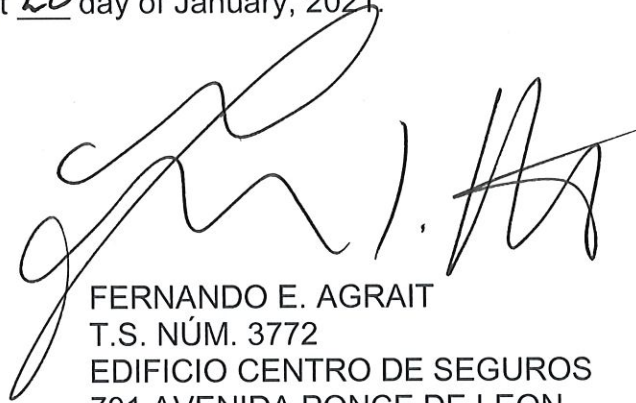
Attn. Wayne Stensby

644 Fernández Juncos Ave., Suite 301
San Juan, PR 00907

LUMA ENERGY SERVCO, LLC

644 Fernández Juncos Ave., Suite 301
San Juan, PR 00907

In San Juan, Puerto Rico, at 20 day of January, 2021.

A handwritten signature in black ink, appearing to read 'FERNANDO E. AGRAIT', is written over the printed name and address.

FERNANDO E. AGRAIT

T.S. NÚM. 3772

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