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

IN RE: PERFORMANCE TARGETS FOR LUMA ENERGY SERVCO, LLC	CASE NO. NEPR-AP-2020-0025 SUBJECT: Puerto Rico Electric Power Authority Request to Intervene
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DEPARTAMENTO DE ENERGIA DE PUERTO RICO

MOTION TO INTERVENE AS AMICUS CURIAE

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. In the current case the Bureau established April 30, 2021 as the date to file petitions for appearance as Amicus Curiae.
2. The ICSE, recognizing that the date (April 30, 2021) has passed, respectfully request to be admitted as Amicus Curiae.
3. Intervention is requested for the ICSE, both under the Puerto Rico Administrative Procedure Act. Law 38 of June 30, 2017 3 LPRA § 9645 and Regulation on Adversary Procedures No. 8543, Section 5.05.

On April 11, 2019 Law 17 was approved, significantly amending Law 57.

Since the original Law 57 the legislated mandate has been Section 1.2 (o):

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

Section 1.2 was particularly amended in 2019 to read:

“Section 1.4.- Principles of Transparency and Accountability. (a) In accordance with the public policy established in Section 1.2 of this Act, every information, data, delivered demand, statistics, reports, plans, and

documents received and/or disclosed by any of the entities created under this Act, the Authority, its successor, the transmission and distribution network Contractor, and every electric power company shall be subject to the following principles: (1) ... (b) ...”

Law 57, Section 1.2 (cc) states:

“(cc) “Citizen Participation” - Shall mean the various mechanisms that allow customers of 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, administrative meetings of PREPA where customer focus groups participate, regional meetings open to PREPA’s customers in such region, public hearings, and the establishment of vehicles that enable participation by electronic means.”

And include a Section 1.4, which state:

“Section 1.4.- Principles of Transparency and Accountability.

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

(1) The information shall be complete, except for privileged information which shall 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 form, not modified. In addition to the original text of any document where such information or data appears, documents where such information is organized and shown so that it may be easily handled by persons without expertise in the disciplines addressed therein may understand them shall be published and made available to customers;

(4) The information shall not be subject to confidentiality standards broader than those required;

(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 secret. Reasonable restrictions based on doctrines of privacy, security, and evidentiary privileges may apply; and

(8) Such data must be available in nonproprietary format; that is to say, no one shall have exclusive control over it.”

As it is clearly stated, Law 17 of 2019- amplifies the right to participation of consumers in energy processes.

The Law requires PREB to approve regulations, which have not been approved, and PREB has maintained the 2016, 8815 Regulation, which do not incorporate Law 17 new mandates:

“The Energy Bureau shall have the following powers and duties:

(a) Oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico;

(b) Establish by regulations the public policy rules regarding electric power service companies, as well as any transaction, action or omission in connection with the electric power grid and the electric power infrastructure of Puerto Rico, and implement such public policy rules. These regulations shall be consistent with the public policy on energy set forth through legislation;..”

In addition, Law 17, Section 6.4, on the jurisdiction of PREB states:

“(c) Complaints for noncompliance with the public policy on energy.

(1) At the request of any affected party with legal standing, and as provided in this Act, PREB, may address complaints alleging or claiming that an electric power service company is not complying with the public policy on energy of the Government of Puerto Rico set forth in the “Puerto Rico Energy Public Policy Act” and the current rule of law. Likewise, PREB may address those complaints regarding legal transactions or acts related to the purchase of energy or fuel; agreements between the Authority or its successor, the transmission and distribution network Contractor, independent power producers, and energy companies; cases and controversies among them; wheeling rates and interconnection charges; and cases and controversies regarding wheeling or electric power interconnection between the Authority, its successor or its subsidiaries or the transmission and distribution network Contractor, and any person that is connected, or wishes to connect, to the electric power grid within the Government of Puerto Rico, or any person with a direct or indirect interest in these electric power services.”

Law 17 amendments to Law 57 and the stronger transparency and citizen participation standards, establish a new standard for citizens participation.

Act 38-2017 identify the factors to be considered by an agency to evaluate whether to grant or deny intervention.

Petitioner "Not For Profit" complies with all applicable factors.

a) Whether the petitioner's interests may be adversely affected by the adjudicatory procedure.

ICSE, has been active in PREB and PREC Proceedings, including contract cases, two IRP's and the rate case among others. ICSE, has also been active in the PROMESA PREPA Bankruptcy proceedings. ICSE represents the widest group of electric power consumers residential, commercial, and industrial. The "not for profit" is the only group of entities 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, 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.

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

e) 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, it, will appear and litigate in a professional, independent, competent manner, bringing a fresh different perspective. Currently no party represents the same interests of intervenor.

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

ICSE, is an organization which includes manufacture, services, commercial, and residential consumers and as such can claim to represent a broad public interest. The intervenor had an important part in the conceptualization, drafting and approval of the Law 17 of 2019, and as such duly represent significantly the public interest.

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, and the other not for profits, is unique, bringing specialized, practical, commercial, industrial, economic knowledge, currently not present in the proceedings, as well as knowledge on modern governance of government entities.

4. Contrary to public statements, LUMA's contract is not a mere contract to "administer" the T&D system, the GRID.

5. A detailed revision of the PREPA/LUMA contract is in fact the defenestration of PREPA's operation and the wholesale transfer of all PREPA responsibilities and authority to a private entity, pretending even to transfer the fiduciary duties and obligations that PREPA has with the people of Puerto Rico, by law.

6. The only opportunity, the only forum, that the Puerto Rico's energy consumers have to protect its interest, and to verify that the interest protected by Law 57-2014 and 17-2019 are in fact implemented, is before the PREB.

7. The PREPA Board of Director is missing in action, concerning the LUMA/PREPA contract. The Authority for Public-Private Projects lacks the resources to even pretend to supervise LUMA's compliance with its obligations to PREPA and to the Puerto Rico consumer.

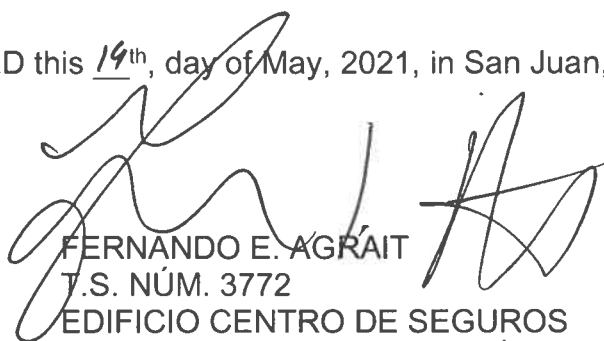
Only PREB stands between PREPA's and Public Private Authority abandonment of their duties and responsibilities for the well being of the consumer, the Puerto Rico economy, and the implementation of Law 17-2019 mandates.

8. These are reasons enough for PREB to have the flexibility of permitting responsible than party interests to represent legitimate interest of the Puerto Rico people.

WHEREFORE, it is respectfully requested for Amicus Curiae status by authorized to ICSE.

CERTIFICATE OF SERVICE I hereby certify that, on this same date, we have filed this motion to: margarita.mercado@us.dlapiper.com; jmarrero@diazvaz.law; kbolanos@diazvaz.law; hrivera@jrsp.pr.gov and contratistas@jrsp.pr.gov.

RESPECTFULLY SUBMITTED this 19th, day of May, 2021, in San Juan, Puerto Rico.



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