

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

IN RE: Review of LUMA’s Terms of Service
(Liability Waiver)

CASE NO. NEPR-MI-2021-0007

SUBJECT: COMMENTS ON
PROPOSED LIABILITY WAIVER

IEEFA and CAMBIO Comments on Proposed Liability Waiver

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

We write on behalf of CAMBIO and the Institute for Energy Economics and Financial Analysis (IEEFA) to urge the Energy Bureau to reject LUMA Energy’s proposed Liability Waiver. The proposed Liability Waiver would waive any liability on the part of LUMA, PREPA, the P3 Authority and their employees, agents or contractors for losses related to the operation of the transmission and distribution system, including for acts of negligence, gross negligence or willful misconduct.

After viewing the Bureau’s technical workshop in this case and reading LUMA Energy’s May 22nd supplemental filing (“Supplemental filing”), it is clear that this liability waiver is far broader than standard liability waivers used in the United States’ private utility sector. LUMA’s supplemental filing lists numerous utility liability waivers but points to only one example, the BC Hydro Tariff, as a “liability waiver that explicitly includes gross negligence.” (Supplemental filing at 4). However, this isolated example is easily distinguishable as it pertains to a waiver clause negotiated by a public corporation owned by the government of British Columbia, Canada under Canadian law, which clearly is not applicable in Puerto Rico’s situation. Moreover, even this Canadian tariff does not waive all liability for BC Hydro, its representatives or agents in cases of willful misconduct.¹ The other utility liability waivers provided by LUMA in response to PREB’s request for information are also more limited in scope than what LUMA Energy is requesting in this proceeding.

We specifically note the liability waiver language in the Operations Services Agreement between the Long Island Power Authority and PSEG, a concession arrangement that has often been held up as a model for Puerto Rico’s grid privatization. That agreement states that there “shall be no limitation on the Service Provider’s [PSEG’s] liability” “for any Loss-and-Expense attributable to the Service Provider’s gross negligence or willful misconduct.”²

¹ Response TC-RFI-LUMA-MI-21-0007-210518-PREB-001, Attachment 1

² Amended and Restated Operations Services Agreement between Long Island Lighting Company d/b/a LIPA and PSEG Long Island LLC, December 31, 2013, Section 7.2(1).

We believe that Puerto Rico electrical customers should retain the right, which currently exists with PREPA, to hold LUMA accountable for injuries or damages that result from LUMA's own gross negligence or willful misconduct. Although LUMA cites the poor physical condition of PREPA's system as a reason for requesting this waiver (Supplemental filing at 13-17), the condition of the system has no relation to potential acts of gross negligence or willful misconduct on the part of LUMA or its employees or contractors.

As such, we urge the PREB to reject LUMA Energy's proposed liability waiver as overly broad and instead to protect the rights of Puerto Rico electrical customers to hold LUMA accountable for any acts of gross negligence or willful misconduct.



Ingrid Vila Biaggi, President
CAMBIO PR
ingridmvila@cambiopr.org



Cathy Kunkel, Energy Analyst
IEEFA
ckunkel@ieefa.org