

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

NEPR

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IN RE: THE UNBUNDLING OF THE ASSETS
OF THE PUERTO RICO ELECTRIC POWER
AUTHORITY

case: NEPR-AP-2018-0004

Direct testimony Puerto
Rico Manufacturer's
Association

**PUERTO RICO MANUFACTURER'S ASSOCIATION OPOSITION TO
LUMA'S MOTION TO URGENT REQUEST OF DENIAL OF ADMISSIBILITY
OF THE TESTIMONY OF MRS. YANDIA PEREZ**

TO THE HONORABLE ENERGY BUREAU:

Comes now the PUERTO RICO MANUFACTURER'S ASSOCIATION
("PRMA") by its undersigned counsel and respectfully states and prays:

1. On July 19, 2021, Luma Energy LLC and Luma Energy Services LLC
(hereinafter "LUMA") filled a motion requesting that PRMA's pre filled
testimony given by its Executive Vice President, Yandia Pérez, be declared
inadmissible, due to the fact that it must be prevented from being considered,
pursuant to the Rules of Evidence of Puerto Rico 602, 702, and 703.

2. LUMA seems to ignore the fact that according to our Administrative
Procedures Act, Law 38-2017, in **Section 3.13 (e) — Procedimiento
Durante la Vista.** (3 L.P.R.A. § 9653) declares that the Rules of Evidence
shall not apply to an adjudicative administrative proceeding.

3. This fact in itself should be more than sufficient for the Bureau to reject
LUMA's contentions.

4. Nevertheless, it should be noted, first, that Mrs. Pérez has not been
announced as an expert witness. LUMA recognizes this fact. Therefore, there
is no need or basis for the Bureau to consider her personal qualifications.

5. Nevertheless, LUMA, even recognizing such fact, invites the Bureau to apply Rules of Evidence 702, and 703 (relating to expert witnesses) to Mrs. Pérez testimony. Following that precedent would mean that any future non-expert witness heard by the Bureau must first be pre-qualified in order for its testimony to be heard and considered. Such an irrational requirement would jeopardize the Bureau's ability and capacity to gather public from parties potentially affected by its acts and decisions.

6. Second, since Mrs. Pérez testimony only represents the collective and institutional position adopted by the PRMA on an energy policy related issue. No special qualifications are needed to fulfill such role.

7. It should be noted than in presenting its testimony, the PRMA is only exercising a constitutionally protected right to state its position in a given public issue. Since *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958) the US Supreme Court has stated that members of a given association are free to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment. As indicated in a comment by the Legal Information Institute:

“It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” It appears from the Court's opinions that the right of association is derivative from the First Amendment guarantees of speech, assembly, and petition, although it has at times been referred to as an independent freedom protected by the First Amendment. The doctrine is a fairly recent construction, the problems associated with it having previously arisen primarily in the context of loyalty-security investigations of Communist Party membership, and these cases having been resolved without giving rise to any separate theory of association.” see [Right of Association | U.S. Constitution Annotated | US Law | LII / Legal Information Institute \(cornell.edu\)](#) , citing *NAACP v. Alabama ex rel.*

Patterson, 357 U.S. 449, 460–61 (1958) 357 U.S. at 460; *Bates v. City of Little Rock*, 361 U.S. 516, 522–23 (1960); *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 578–79 (1971); *Healy v. James*, 408 U.S. 169, 181 (1972). *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 461, 463 (1958); *NAACP v. Button*, 371 U.S. 415, 429–30 (1963); *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975); *In re Primus*, 436 U.S. 412, 426 (1978); *Democratic Party v. Wisconsin*, 450 U.S. 107, 121 (1981).

8. LUMA's request is tantamount to suppressing the PRMA's exercise of a constitutionally protected right by stating its position from a public proceeding in a highly regulated industry. It would also hinder the exercise of our constitutionally protected right to petition governmental officials. See Art. 2 Section IV, Puerto Rico Constitution.

9. Even though technically considered an adversarial administrative proceedings, rate cases are also public policy definition cases; in which the agency must also consider the affected parties positions and suggestions, beyond mere technical adjudicative facts.

10. LUMA is not just a private litigant in a private controversy; it is the holder of a public franchise related to an essential public service. Therefore, it cannot attempt to limit our constitutionality protected right to state our position.

Therefore, the PRMA respectfully prays to the Energy Bureau to deny LUMAS request.

Respectfully submitted in San Juan PR this 20 of July, 2021.

CERTIFICATE OF SERVICE: I hear by certify that a true and correct copy of this motion has been sent to all parties in the preceding.

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