

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

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| NEPR Received: Jul 20, 2021 5:04 AM |
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IN RE:

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

CASE NO. NEPR-AP-2018-0004

**SUBJECT: Admissibility of Testimony filed by the
PRMA.**

**URGENT REQUEST ON ADMISSIBILITY OF TESTIMONY OF MRS. YANDIA
PÉREZ FILED ON BEHALF OF THE PUERTO RICO MANUFACTURER'S
ASSOCIATION**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now **LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as the “Operator” or “LUMA”), and respectfully state and request the following:

1. Pursuant to a Resolution and Order issued by this honorable Puerto Rico Energy Bureau (“Energy Bureau”) on June 22, 2021, which amended in part the Resolution and Order and procedural calendar issued on February 5, 2021, pre-hearing procedures in this proceeding would include discovery that ended on June 30, 2021, and then filing of pre-filed testimonies by intervenors on July 9, 2021; after discovery closed. *See* June 22nd Resolution and Order at page 2.
2. The procedural calendar in this proceeding did not allow LUMA to conduct discovery on the testimonies that intervenors would file ten days prior to the evidentiary hearing scheduled for July 19th through the 21st.
3. On July 9, 2021, the Puerto Rico Manufacturer’s Association (“PRMA”) submitted the pre-filed testimony of its Vice-President, Mrs. Yandia Pérez (“Mrs. Pérez”).

4. On July 15, 2021, the Energy Bureau issued a Resolution and Order that, among others, set the agenda for the evidentiary hearing. Pursuant to the agenda, Mrs. Pérez will appear to answer questions on July 20, 2021. The agenda was later amended by the Energy Bureau on July 17, 2021.
5. On July 19, 2021, the PRMA filed a *Motion to Amend Direct Testimony of the Puerto Rico Manufacturer's Association by Mr[s] Yandia Pérez, Vice President*. (“PRMA’s July 19th Motion to Amend Pre-Filed Testimony”). In said request, the PRMA requested leave to strike a portion of the answer to the sixth question of the pre-filed testimony where electricity rates in the State of Illinois were referenced.
6. In the sixth question of the pre-filed testimony, Mrs. Pérez provides testimony on whether the retail supply credit (labeled tariff in the testimony) is a competitive tariff, and in the seventh question she requests that the Energy Bureau reject the Cost of Service Study that has been filed in this proceeding. However, in the pre-filed testimony, Mrs. Pérez did not state her knowledge and qualifications to render said opinion. The pre-filed testimony does not identify the documents and information that the witness reviewed to offer that opinion or the data and the basis of her opinion. The only background information included in the pre-filed testimony is that she is the Vice-President of the PRMA. No additional facts are included to reasonably ascertain the knowledge and qualifications of the declarant regarding the Cost of Service Study and the proposed unbundled tariffs as to which Mr. Pérez seeks to opine.
7. LUMA respectfully posits that the legal foundations have not been laid to render admissible the testimony of Mrs. Pérez.

8. This requests is made pursuant to Section 9.03 of the Regulation on Adjudicative, Notice of Non Compliance, Rate Review and Investigation Proceedings, Regulation Number 8543 (“Regulation 8543”)¹, which endows the Bureau with discretion over presentation of evidence in adjudicative proceedings and Section 2.01 of Regulation 8543 which provides that the Rules of Evidence may apply, in a supplemental manner in any adjudicative proceeding before the Energy Bureau according to the Bureau’s discretion.²
9. The Bureau should first consider application of Puerto Rico Rule of Evidence 602 which provides that, except for witnesses that are qualified as experts under the Rules, a witness may only testify on matters as to which he/she has personal knowledge. 32 LPRA Ap. VII. R. 602. If a party raises an objection on the basis of lack of personal knowledge, that personal knowledge shall be demonstrated before the witness offers his/her testimony. *Id.* The person’s personal knowledge may be established through admissible evidence, including the witness’s own testimony. *Id.*
10. Secondly, although Mrs. Pérez has not been announced or qualified to provide opinion testimony as an expert witness, it is respectfully submitted that the Energy Bureau should also consider that the amended pre-filed testimony fails to state the qualifications and specialized knowledge, skill, experience, training, or education of the witness to provide opinion testimony

¹ Section 9.03 of Regulation 8543 provides in pertinent part, that “The parties may submit documental and testimonial evidence subject to the [Bureau’s] orders or directives on the method used for the presentation of evidence[,] . . . and the Bureau “may question witnesses in the manner it deems appropriate, in accordance with the nature of the case, the nature and amount of evidence, and the agility and efficiency of the proceedings.”

² Section 2.01 of Regulation 8543 provides that: “The Rules of Civil Procedure and the Rules of Evidence may apply, in a supplemental manner to this Regulation, in any [adjudicative] proceeding before the Commission when, in the exercise of its discretion to handle cases before it, the Commission determines it by way of an order.”

on the subject matter of unbundled rates and whether the proposed supply energy credit is competitive.

11. Puerto Rico Rule of Evidence 702 provides that when scientific, technical or specialized knowledge may assist the trier of fact to understand the evidence or adjudicate a factual controversy, a person qualified as an expert³ per Rule 703 of Evidence may provide opinion testimony or otherwise. 32 LPRA Ap. VI. R. 702.⁴ The admissibility of said testimony will be determined by the trier of fact applying the criteria set forth in Puerto Rico Rule of Evidence 403. *Id.* In turn, the analysis on admissibility of expert testimony under Rule of Evidence 403 entails evaluation of whether the probative value of the evidence is substantially outweighed by several factors that include danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” 32 LPRA Ap. VI. R. 403.

12. Additionally, pursuant to Puerto Rico Rule of Evidence 703, “[a]ny person is qualified to testify as an expert witness if [he/she] possesses sufficient knowledge, skill, experience, training, or education to qualify him/her as an expert in the subject matter as to which [he/she] will testify. *If there is an objection regarding said specialized knowledge, skill, experience,*

³ Section 8.01 of Regulation 8543 addresses the general standards for disclosure of expert reports.

⁴ The probative value of the testimony will depend on:

- (1) whether the testimony is based on sufficient facts or data;
- (2) whether the testimony is the product of reliable principles and methods;
- (3) whether the expert has reliably applied the principles and methods to the facts of the case;
- (4) whether the underlying principle of the testimony has been generally accepted in the scientific community;
- (5) the qualifications and credentials of the witness; and
- (6) the partiality of the expert witness.

32 LPRA Ap. VI. R. 702 (translation provided).

training, or education, the same shall be established before the witness may testify as an expert.” 32 LPRA Ap. VI. R. 703 (translation provided) (emphasis added).

13. LUMA respectfully requests that the Bureau exercise crucial gatekeeping functions before the testimony of Mrs. Pérez is admitted and apply the afore-cited Rules of Evidence 602, 702 and 703 to make an initial determination of admissibility of the testimony and her qualifications as a witness on the subject matter, as allowed by Puerto Rico Rule of Evidence 109 (a). 32 LPRA Ap. VI. R. 109 (a) (endowing adjudicators with authority to ascertain admissibility of evidence through preliminary determinations).
14. Given the technical nature of the subject matter of cost of service studies and unbundling, and considering the complexity of the filings made by PREPA and LUMA that were prepared by their consultant, Guidehouse, it would benefit proceedings and aid the Bureau’s decision in this case, to make an initial determination on the qualifications of Mrs. Pérez to provide opinion testimony. As stated above, the pre-filed testimony does not include information or evidence on how and to what extent, Mrs. Pérez is qualified to offer testimony on the competitiveness of the proposed default supply credit or tariff that the Guidehouse consultants developed using the results of the marginal cost of service study. It is respectfully submitted that the amended pre-filed testimony is insufficient on its face to establish that Mrs. Pérez possesses the requisite personal knowledge and/or specialized knowledge, experience or training that are necessary to render admissible her proposed opinion testimony on a technical subject-matter.
15. This request is made prior to the July 20th proceeding where the testimony of Mrs. Pérez is set to be admitted. It is also timely particularly since the pre-filed testimony was amended on July

19, 2021. This request is also filed without prejudice to present other arguments, objections or requests in the evidentiary hearing.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned request or objection to the admissibility of the testimony of Mrs. Pérez and **make** an initial determination of admissibility of the testimony of Mrs. Pérez as requested in this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of July 2021.

I hereby certify that I filed this Motion using the electronic filing system of this Puerto Rico Energy Bureau. I hereby certify that I will send notice of this filing to intervenors: Cooperativa Hidroeléctrica de la Montaña, via Ramón Luis Nieves Esq, ramonluisnieves@rlnlegal.com; Office of the Independent Consumer Protection Office, hrivera@opic.pr.gov and contratistas@oipc.pr.gov; Puerto Rico Manufacturer's Association via Manuel Fernández Mejías Esq.,, manuelgabrielfernandez@gmail.com; and Ecoeléctrica via Carlos Colón, Esq., ccf@tcm.law. It is also certified that I will serve notice of this motion to counsel for the Puerto Electric Power Authority, Katuska Bolaños, kbolanos@diazvaz.law.



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