

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

NEPR

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IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Partial Response to Resolution and Order
of September 18, 2023, Request for Reconsideration
and Submission of Motion by Genera**

**PARTIAL RESPONSE TO RESOLUTION AND ORDER OF SEPTEMBER 18, 2023,
REQUEST FOR RECONSIDERATION AND SUBMISSION OF MOTION BY GENERA**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo"), (jointly referred to as "LUMA"), and respectfully state and request the following:

1. On May 31, 2021, this honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued and published a Resolution and Order approving LUMA's Initial Budgets ("May 31st Resolution and Order").

2. In the May 31st Resolution and Order, the Energy Bureau listed "requirements for LUMA to fulfill during the Interim Period and going forward" for reporting on the Initial Budgets T&D System spending amounts and federal funding activity listed in Section IV, paragraphs 2 and 3 thereof, respectively. *See* May 31st Resolution and Order at pp. 36-37. The reporting requirements included quarterly reports on expenditures, including federal funding activities. *See also* Resolution and Order of July 16, 2021 (modifying the requirement to report on federal funding activities under the May 31st Resolution and Order to include the mount of federal funding applied and the cumulative and monthly amount of federal funding received.)

3. On February 27, 2023, this Energy Bureau issued a Resolution and Order whereby it approved the Certified Budgets for Fiscal Year 2023, required that the quarterly reports explain and justify variances. *See* February 27 Order, page 28.

4. In compliance with the quarterly reporting requirements, on August 14, 2023 LUMA submitted its Comprehensive Quarterly Report of Fiscal Year 2023, for the Fourth Quarter ending June 30, 2023 (“Q4 Report”).

5. On September 18, 2023, this Energy Bureau issued a Resolution and Order directing that within ten business days, on or before October 2, 2023, LUMA should (a) submit additional information on the reported variances in spending for federal funding activities, including information on expenditures for those activities that were completed and those that were not; (b) provide explanations on the drivers of the variance between revenue forecasts and actuals; (c) provide explanations on how to address variances on shared services costs; and (d) submit GenCo’s and HoldCo’s Q4 Report in a similar presentation format as the one that LUMA uses to report on Transmission and Distribution (“T&D”) expenses.

6. On September 28, 2023, LUMA requested an extension until October 10, 2023, to submit to this Energy Bureau the information requested on federally funded capital projects.

7. In *Exhibit 1* of this Motion, LUMA submits the information requested in the September 18th Order on the drivers of the variance involving revenues and explanation regarding shared services costs.

8. In the September 18th Order, this Energy Bureau also stated that because LUMA filed with this Energy Bureau consolidated budgets for the electric power system (“System Budgets”) it should prospectively submit the budgets to actuals information for the System, that

is, consolidated reports for GridCo,¹ GenCo,² HoldCo³ and Genera PR, LLC (“Genera”) as Operator of the Legacy Thermal Generation Facilities. LUMA respectfully disagrees and requests that this Energy Bureau reconsider said order.

9. LUMA’s duties and obligations arise under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated June 22, 2020 (“T&D OMA”). Under the T&D OMA, however, LUMA only acts on behalf of the Puerto Rico Electric Power Authority (“PREPA”) in connection with LUMA’s role as Operator of the T&D System.

10. Article 5 of the T&D OMA outlines the general services that LUMA, as Operator, will provide to PREPA, as Owner. It states that Operator shall provide “management, operation, maintenance, repair, restoration and replacement and other related services for the T&D System ... and establish policies, programs and procedures with respect thereto ... the Contract Standards. ... Operator shall be entitled to exercise all of the rights and perform the responsibility of Owner in providing the O&M Services and have the autonomy and responsibility to operate and maintain the T&D System and establish the related plans, policies, procedures and programs with respect thereto as provided in [the T&D OMA].” (the “O&M Services”). In turn, Annex I of the T&D OMA sets forth O&M Services in addition to those contained in Article 5 of the T&D OMA. While Annex I provides that it is “not intended, nor should it be deemed, to be an exclusive list of O&M Services,” it also provides that “the [T&D OMA], including this Annex I, absent subsequent changes agreed to by the Parties, sets forth the entire scope of O&M Services to be provided by

¹ Per the T&D OMA, “GridCo” is “the entity, which may be directly or indirectly owned by Owner or an Affiliate of Owner, that acquires or obtains ownership of the T&D System after the reorganization of PREPA.

²Per the T&D OMA, “GenCo” means the entity, which may be directly or indirectly owned by Owner or an Affiliate of Owner, that acquires or obtains ownership of the Legacy Generation Assets after the reorganization of PREPA.” *See also* PREPA’s Petition for Leave to Create Subsidiaries and for Approval of the Puerto Rico PREPA-GENCO-HYDROCO Operating Agreement, pages 12 and 13.

³ This Energy Bureau has construed that HoldCo supports PREPA’s administrative functions and those of its subsidiaries HydroCo, PREPA Holdings LLC and Property Co. *See* Resolution and Order of June 25, 2023, page 2, note 9.

pursuant to the [T&D OMA].” Annex I includes a comprehensive list of services and activities deemed to be O&M Services ranging from electric transmission and distribution to billing and collections, maintaining, improving and developing a culture of safety, and producing, reviewing and maintaining operating logs and maintenance records.

11. Among the services identified in Annex I, LUMA agreed to being “responsible for preparing, presenting, defending current or future [...] rate cases or other regulatory or legal matters as they relate to the Agreement, as the Owner’s representative before the Energy Bureau.” *See* OMA Annex I, Sections I.G and I.H. The delegation of responsibility for regulatory and legal filings before this Energy Bureau is limited and does not encompass matters outside the scope of LUMA’s duty to provide O&M Services. Annex I puts a limit on the universe of regulatory and legal matters that were assumed by LUMA under Sections I.G (Planning, Environmental and Regulatory) and I.H (Legal Services) of Annex I by providing that LUMA would provide these services to the extent “they relate to the [OMA].”

12. Although not meant to be an exhaustive list, the T&D OMA and Annex I provide a clear understanding of the extent of the scope of services which the parties were agreeing LUMA would provide as part of the O&M Services. **In all cases, the activities and responsibilities identified therein are related to the operation and maintenance of the T&D System,⁴ and nowhere is it contemplated that LUMA would assume activities related to Owner responsibilities that are not the result of the operation of the T&D System** such as reviewing and filing reports on HoldCo’s and HydroCo’s costs and expenditures or reviewing and filing reports with this Energy Bureau on Genco’s or Genera’s spending on Generation activities.

⁴ Per the Supplemental Agreement, the scope of the O&M Services to be provided by LUMA during the Interim Period are defined as those “services with respect to the T&D System constituting O&M Services under the O&M Agreement.” *See* Section 3.1.

13. Section 5.6(a) of the T&D OMA provides that Operator shall “function as agent of Owner, and [...] authorizes Operator to represent Owner before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under th[e] [T&D OMA], prepare all related filings and other submissions before PREB and represent Owner before any Governmental Body.” Furthermore, “Operator, as agent of Owner, shall make all filings and applications and submit all reports necessary to obtain and maintain all Governmental Approval in the name of Owner or, if required by Applicable Law.” Among the services identified in Annex I, LUMA agreed to being “responsible for preparing, presenting, defending current or future [...] rate cases or other regulatory or legal matters as they relate to the Agreement, as the Owner’s representative before the PREB.” As is the case with Annex I of the T&D OMA, Section 5.6 of the T&D OMA limits LUMA’s duties as agent of PREPA in connection with filings before this Energy Bureau, to those that relate to LUMA’s performance of O&M Services.

14. The T&D OMA does not impose obligations on LUMA in connection with expenditures incurred by HydroCo or HoldCo, nor did LUMA assume the responsibility to review and file reports required by this Energy Bureau on GenCo’s or Genera’s spending of an approved Generation Budget. The fact that pursuant to Section 7.3(a) of the T&D OMA, LUMA submits the consolidated System Budgets to the Puerto Rico Public Private Partnerships Authority (“P3A”) (including the Generation Budget that refers to the Pass-Through Expenditures incurred in providing Power and Electricity,⁵ and the T&D Budget that includes the Operating Budget and the

⁵ Per the T&D OMA the Generation Budget

means, for any given Contract Year, the budget of the Generation Pass-Through Expenditures for such Contract Year, together with the projected budget of the Generation Pass-Through Expenditures for the following two (2) Contract Years, in each case, including monthly budgets of such expenditures and cash flows, as such budget may be amended or adjusted from time to time in accordance with the terms and conditions of the GridCo-GenCo PPOA, the Shared Services Agreement and any Generation Supply Contract.

T&D Capital Budgets, Federally Funded and Non Federally Funded), does not render LUMA Genco's (or Genera's), HydroCo's or HoldCo's agent before this Energy Bureau in connection with preparing or filing reports on quarterly and annual spending, nor impose on LUMA a duty to report on spending in connection with an approved Generation Budget.

15. In the September 18th Order, this Energy Bureau did not outline its reasoning to support the conclusion that consolidated reporting on spending for approved System Budgets relates to LUMA's duty to provide O&M Services. LUMA respectfully submits that the T&D OMA does not contemplate LUMA providing GenCo (or Genera), HydroCo, or HoldCo, services related to reporting on their financial activities. Those are not O&M Services under the T&D OMA. The T&D OMA does not designate LUMA as PREPA's agent in any matter not directly related to the operation of the T&D System and does not designate LUMA as Genera's agent before this Energy Bureau. Thus, LUMA respectfully requests that this Energy Bureau reconsider the directives of the September 18th Order that LUMA shall prospectively submit the budgets to actuals information for approved System Budgets. *See* September 18th Order, page 4.

16. Without waving the aforementioned request for reconsideration and preserving the right to separately discuss with this Energy Bureau, LUMA's legal objections and practical concerns with a requirement to prospectively submit with this Energy Bureau, consolidated reports on expenses and spending for FY204, LUMA is hereby submitting PREPA's Q4 Report as received from PREPA, *see Exhibit 2* of this Motion. Similarly, without waving the request for reconsideration and argument that LUMA is not Genera's agent before this Energy Bureau, as requested this evening by Genera, LUMA is submitting today as *Exhibit 3* of this Motion, a motion signed by Genera's counsel, *see Exhibit 3* of this Motion. LUMA did not prepare, edit or change the Motion nor did the undersigned counsel for LUMA provide any advice to Genera on the

substance of said filing. The fact that LUMA is submitting Genera's Motion, *Exhibit 3*, should not be construed as an endorsement of the Motion nor requests stated therein by Genera, nor acceptance by LUMA of any role as Genera's agent in this proceeding.

17. Additionally, as this Honorable Energy Bureau is aware, LUMA and PREPA (and beginning on FY2024, Genera), submit budget to actuals reports each quarter to the Fiscal Oversight and Management Board for Puerto Rico ("FOMB"). The FOMB then consolidates these reports. LUMA has been in discussions with the FOMB regarding consolidation of budget to actuals reporting. Through those discussions, LUMA and FOMB have agreed that the FOMB will continue to consolidate the budget to actuals received from each entity following the end of each quarter. In an effort to avoid duplication of efforts and maintain efficient operations, LUMA proposes to file with this Energy Bureau the budget to actuals, as consolidated by the FOMB, following the end of each fiscal quarter. LUMA is in discussions with FOMB to determine how much time the consolidation process will take the FOMB. LUMA will work with the FOMB to determine when the consolidated budgets could be filed with the Energy Bureau following the end of each fiscal quarter. It is important to note that this proposal is dependent on all entities providing information timely to the FOMB, and the FOMB in turn consolidating and providing the reporting to LUMA in a timely manner. It is respectfully submitted that this proposal will serve the interest pursued by this Energy Bureau in the September 18th Order to received consolidated budget to actuals information for the System Budgets. LUMA is available to discuss this proposal further with the Energy Bureau.

WHEREFORE, LUMA respectfully requests that this honorable Energy Bureau **take notice** of the aforementioned; **deem** LUMA in compliance with those portions of the September 18th Order to: (a) submit information on drivers of the variances between revenue forecasts and

actuals; (b)submit information regarding the variances on shared services costs; and (c) submit GenCo's and HoldCo's Q4 Report; **reconsider** the order to LUMA to prospectively submit with this Energy Bureau, consolidated quarterly reports on expenses and spending for approved System Budgets; **take notice** of Exhibit 3; and **accept** LUMA's alternative proposal to submit the FOMB's consolidated quarterly budget to actuals reports.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2nd day of October 2023.

I hereby certify that this motion was filed using the electronic filing system of this Energy Bureau. I also certify that copy of this motion will be notified to the Puerto Rico Electric Power Authority, through its attorney of record: jmarrero@diazvaz.law and to Genera PR LLC, through its counsel of record Jorge Fernández-Reboredo, jfr@sbglaw.com and Alejandro López Rodríguez, alopez@sbglaw.com.



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Exhibit 1
LUMA's Partial Response to September 18th Order



Review of Quarterly Report for the Fourth Quarter of Fiscal Year 2023

NEPR-MI-2021-0004

Responses to September 18, 2023 Requests

October 2, 2023

List of Responses and Attachments

Response ID	Document Type	Response Subject
ROI-LUMA-MI-2021-0004-20230918-PREB-002	Response in PDF	Variance in Consumption and Base Revenue
ROI-LUMA-MI-2021-0004-20230918-PREB-003	Response in PDF	Shared Services

Review of Quarterly Report for the Fourth Quarter of Fiscal Year 2023

NEPR-MI-2021-0004

Response: ROI-LUMA-MI-2021-0004-20230918-PREB-002

SUBJECT

Variance in Consumption and Base Revenue

REQUEST

The Energy Bureau orders LUMA to explain what drives the variance in Revenue from the forecast and what actions LUMA intends to take to recover the Revenue shortfall, as required in the 2017 Rate Order or other.

RESPONSE

The difference in budgeted base revenues and energy consumption versus actuals in FY2023 was 5.85% and 12.47%, respectively. Various factors contributed to the difference between the FY2023 consumption forecasts and actuals. Based on LUMA's review, Hurricane Fiona was the largest contributor to the variance in consumption. The outages caused by Fiona had a negative impact on the electric system and reduced energy sales after September 20, 2022. Billing adjustments in the demand charge, specifically to commercial customers served in the primary voltage level, impacted base revenue. Due to the configuration of the billing cycle, the lower sales brought on by the Fiona outages were recorded on October 22, 2022. Excluding October 2022, the net deviation of consumption from forecast for FY2023 was 3.4%.

Another important contributor to lower consumption and base revenues was the substantial increase in enrollment of net metering customers, especially after October 2022. Overall system consumption declined as energy demands were met (fully or partially) by photovoltaic systems owned by customers rather than the grid. Actual production from net metering customers was 4.1% more than forecasted. The average monthly increase in number of additional net metering customers exceeded the forecast by 89.5%. The net metering program has two key impacts on base revenue. First, there is a natural reduction in consumption when net metering customers draw energy from their own facilities, and, second, net metering customers receive credits which result in higher costs and a net decrease in base revenues.

The following table compares the forecast with the actuals for the net energy metering program:

<i>FY2023</i>	Forecast	Actual	Variance	Variance (%)
Average Monthly Increase in Customers	1,510	2,861	1,351	89.5%
Total Capacity (kW)	452,636	471,317	18,681	4.1%
Estimated Production (kWh)	793,018,272	825,748,140	32,729,868	4.1%

LUMA continues to monitor revenues and expenses. LUMA intends to finalize accounting for the full year at the end of October.

Review of Quarterly Report for the Fourth Quarter of Fiscal Year 2023

NEPR-MI-2021-0004

Response: ROI-LUMA-MI-2021-0004-20230918-PREB-003

SUBJECT

Shared Services

REQUEST

The Energy Bureau orders LUMA to provide what actions LUMA intends to recover \$7.2 million shortfall for the shared services rendered.

RESPONSE

LUMA provides Shared Services to PREPA under the Shared Services Agreement at PREPA's sole direction. Shared Services are reimbursed at LUMA's cost, and without markup for profit. As noted in previous filings to the PREB, the variance based on preliminary results for FY2023 is entirely due to 1. insurance premium costs for the generation fleet that were \$8.2 million higher than the budgeted \$44.1 million, and 2. one-time expenses related to the Genera (and PREPA) transition activities. Notably, all other Shared Services were lower than budgeted costs.

The amortized cost of the higher-than-expected insurance premiums has been reported to PREPA every calendar month of FY2023 formally in the monthly Shared Services invoice and informally in numerous communications among the parties. The costs of substantially all these premiums were known and communicated to PREPA near the outset of FY2023 (premiums costs are typically determined annually with policy renewal and paid in advance).

The one-time costs of the Genera (and PREPA) transition activities were unbudgeted in FY2023 because both the timing and scope of the requested transition support were not known or established coincident with the FY2023 budget.

Shared Services costs during FY2023 are part of PREPA's responsibilities to monitor and manage. During FY2023, LUMA provided Shared Services as agreed and directed by PREPA.

Exhibit 2
PREPA's Q4 Report submitted via email

Exhibit 3

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

IN RE:

REVIEW OF LUMA’S INITIAL BUDGET

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Request for Amendment and Clarification of Resolution and Order Dated September 22, 2023

**REQUEST FOR AMENDMENT AND CLARIFICATION OF RESOLUTION AND
ORDER DATED SEPTEMBER 22, 2023**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC (“Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),¹ through its counsels of record, and respectfully state and request the following:

I. Introduction

On September 22, 2023, the Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order titled *Determination on the Request for Partial Revision on the FY 2023 Annual Budgets by LUMA, GENERA, and PREPA* (“September 22nd Resolution”) to address the requests for reconsideration submitted by LUMA, Genera, and PREPA in response to the Energy Bureau’s Resolution and Order of June 25, 2023 (“June 25th Order”). In what is pertinent to this Motion, through the September 22nd Resolution, the Energy Bureau denied

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority, Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before PREB with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

Genera's request for reconsideration concerning its decision to reduce Genera's proposed labor expenses budget for FY2024 from \$79.5 million to \$55.03 million.

Additionally, the September 22nd Resolution further altered Genera's budget for FY2024 by revising the Total Non-Federally Funded Electric Utility Expenditures. Previously, in the June 25th Order, the Energy Bureau had suggested it would be prudent to collect the incentive fee in FY2024, a year before it becomes due and payable. However, alleging the need for critical services in FY2024, the Energy Bureau has now decided that these funds should be allocated for the FY2024 budget and paid in FY2025 from that Fiscal Year's Budget. It is important to note that while Genera recognizes the Energy Bureau's authority, the matter of the Non-Federally Funded Electric Utility Expenditures and Genera's incentive budget revision was not a matter raised by Genera in its Requests for Reconsideration. This additional determination by the Energy Bureau leads to renewed operational challenges for Genera, which Genera has not had the opportunity to express itself on.

Lastly, the Energy Bureau did not accompany the September 22nd Order with an adequate notice informing the affected parties (in this case, Genera) of their right to present a reconsideration or to seek judicial review and the corresponding terms to pursue these actions. Considering this, Genera now finds itself unclear regarding its legal procedural options. The September 22nd Resolution both addresses a Request for Reconsideration from Genera and includes a new determination to which Genera did not have the opportunity to respond. However, the Energy Bureau does not provide the statutory legal warnings required for Genera to proceed with a review of the decisions.

Consequently, Genera hereby requests that the Energy Bureau amend and clarify the September 22nd Resolution to include adequate notice, informing affected parties of their right to

request reconsideration regarding the new determinations in the September 22nd Resolution or to file an appeal for judicial review in the Court of Appeals within the terms established by Law.

II. Background

On May 16, 2023, LUMA Energy, LLC, and LUMA Energy ServCo, LLC (collectively, “LUMA”) filed a document with the Energy Bureau titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026*, in which LUMA submitted to the Proposed Consolidated FY24 Budget composed of proposed T&D Budgets developed by LUMA, the proposed GenCo Budgets revised by Genera on behalf of PREPA for the PREPA subsidiary GenCo LLC (“GenCo”), and the proposed HydroCo Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC (“HydroCo”) and PREPA Property Co, LLC.

On June 9, 2023, after various Requirements of Information (“ROI”) issued by the Energy Bureau to LUMA, PREPA, and Genera, the Energy Bureau conducted a Technical Conference (“June 9th Technical Conference”) to deliberate on the budget filings and ROI responses submitted by LUMA, Genera, and PREPA.

On June 12, 2023, the Energy Bureau issued a Resolution and Order (“June 12 Order”), which included a post-June 9th Technical Conference ROI, reflecting the additional information required from LUMA, PREPA, and Genera following the discussions of the June 9th Technical Conference.

On June 15, 2023, Genera filed a document titled *Motion to Submit Genera PR LLC Responses in Compliance with the June 12 Order* in response to Bench Orders issued at the June 9th Technical Conference. Continuing its responses, on June 16, 2023, Genera filed a document

titled *Motion to Submit Genera PR LLC's Supplemental Response to the June 12 Order*, addressing the Bench Orders issued at the June 9th Technical Conference.

As stated above, on June 25, 2023, the Energy Bureau issued the June 25th Order titled *Determination on the FY24 Annual Budgets for the Electric Utility System – LUMA, Genera, and PREPA*. Through this order, the Energy Bureau amended the Proposed Consolidated FY24 Budget submitted by LUMA, and approved the revised budgets, provided the orders included in the Resolution and Order were complied with. The June 25th Order, amongst other things, reduced Genera's labor operating expenses budget.

Consequently, on June 30, 2023, Genera filed a document titled *Urgent Motion in Compliance with Resolution and Order of June 25, 2023 and for Partial Reconsideration* ("Genera's June 30th Motion") whereby it requested that the Energy Bureau reconsider the determinations made in the June 25th Order in compliance with the mandates of the June 25th Order which required Genera to "ensure that the legacy generation plants are adequately staffed to ensure reliable and efficient operations and to promptly report to any staffing shortages or difficulties in maintaining adequate personnel to staff the plants."²

On June 30, 2023, the Energy Bureau issued a Resolution and Order ("June 30th Resolution"), through which it notified that it would not consider Genera's June 30th Motion because its submission did not comply with provisions of the T&D OMA³ which stated that LUMA is the entity charged with the responsibility to represent PREPA and Genera before the Energy Bureau regarding any regulatory or legal matters as they relate to the OMA including budget policy and carry out other tasks in connection thereto before the Energy Bureau.

² See page 19 of the June 25th Order.

³ *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* ("T&D OMA"), dated June 22, 2020, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"), LUMA Energy LLC as ManagementCo, and LUMA Energy Servco, LLC as ServCo.

On June 30, 2023, LUMA filed a document titled *Submission of Motions for Reconsideration by PREPA and Genera and Notice of Intent to Request Reconsideration of Resolution and Order of June 25, 2023* (“June 30th Motion”), through which LUMA submitted Motions for Reconsideration of the Energy Bureau’s FY 2024 Budget Determination on behalf of PREPA (“PREPA Reconsideration Motion”) and Genera (“Genera Reconsideration Motion”) and provided notice of its intention to request reconsideration on its behalf.

On July 5, 2023, the Energy Bureau issued a Resolution and Order titled (“July 5th Resolution”) through which it took notice of LUMA's June 30th Motion and granted LUMA until Monday, July 10, 2023, to file i) LUMA's position pertaining the June 25th Resolution, including proposed amendments, and ii) LUMA's position regarding Exhibits 2 and 3 of LUMA June 30th Motion.⁴ The Energy Bureau specified that any proposed amendments by LUMA to the June 25th Order must consider the amendments proposed in Exhibit 2 and Exhibit 3 of LUMA June 30th Motion.

As mentioned in the Introduction section of this Motion, on September 22, 2023, the Energy Bureau issued the September 22nd Resolution through which, amongst other things, it found without merit Genera’s Request for Reconsideration and decided that in light of the need for critical services in FY2024, Genera’s Incentive Payment for FY2024 should be utilized for budgetary purposes in FY2024 and be budgeted and paid in FY2025 from that Fiscal Year’s Budget.

On September 28, 2023, the Energy Bureau issued a Nunc Pro Tunc Resolution whereby, in accordance with the provisions of Section 11.01 of the Energy Bureau’s Regulation 8543, this resolution corrected Footnotes 41, 44, and 45, as well as the sixth paragraph on page 23 of the

⁴ Exhibit 2 refers to PREPA’s reconsideration motion and Exhibit 3 refers to Genera June 30th Motion.

September 22nd Resolution. Importantly, the Nunc Pro Tunc Resolution does not amend the original resolution to include the necessary legal warnings concerning the terms under which affected parties must submit a Motion for Reconsideration or request judicial review with the Court of Appeals.

III. Legal Basis for Request for Amendment and Clarification of Order

The Energy Bureau's September 22nd Resolution, which denied Genera's Request for Reconsideration of the June 25th Order and further altered Genera's budget for FY 2024, lacks certain formalities that obstruct Genera from exploring all the legal remedies available to it under the law and guarantee Genera's due process rights.

Article II § 7 of the Constitution of the Commonwealth of Puerto Rico recognizes the right to due process of law as a safeguard against deprivations of liberty or property. See *Torres Rivera v. Policía de P.R.*, 196 DPR 606 (2016). In the procedural context, due process of law mandates that the State's components ensure that, when interfering with a person's property interests, a fair and equitable procedure is consistently followed. *Picorelli López v. Depto. de Hacienda*, 179 DPR 720 (2010). Additionally, the Supreme Court of Puerto Rico has affirmed that when the State provides remedies following a resolution or administrative decision, these remedies constitute a protected interest, forming the basis for a statutory due process claim. *Hospital Dr. Domínguez Inc. V. Ryder Memorial Hospital, Inc.*, 161 DPR 341 (2004).

Expanding on this constitutional mandate, the Supreme Court of Puerto Rico has consistently emphasized that adjudicative proceedings must adhere to certain minimum guarantees, including **(1) timely and adequate notice**; (2) a process before an impartial judge; (3) the opportunity to be heard; (4) the right to cross-examine witnesses and examine evidence presented against one; (5) the assistance of an attorney; and (6) a decision based on the record.

Almonte et al. v. Brito, 156 DPR 475 (2002). Inadequate notice compromises a party's ability to contest the specifics of a given administrative determination, thereby breaching the principles of due process. *R&G Mortgage v. Arroyo Torres et al.*, 180 DPR 511 (2010). Furthermore, the rights and obligations stemming from an administrative determination remain unenforceable when adequate notification has not been provided in accordance with legal requirements. *Cotto v. Depto. de Educación*, 138 DPR 658 (1995).

In alignment with the above, Section 3.14 of the Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico (“LPAU,” for its initials in Spanish), Act No. 38 of June 30, 2017, as amended, incorporates the criteria that lend validity and enforceability to a final administrative order or resolution. To this end, it stipulates as follows:

“The order or resolution will warn of the right to request reconsideration before the agency or to initiate the appeal for review as a matter of law in the Court of Appeals, as well as the parties that must be notified of the appeal for review, specifying the corresponding terms. Once this requirement is met, such terms will begin to elapse.”

3 LPRA § 9654.

Section 4.2 of the LPAU provides a procedure for judicial review of orders, resolutions, and decisions issued by agencies or administrative officials of the Commonwealth of Puerto Rico:

" A party adversely affected by a final order or resolution from an agency, and who has exhausted all remedies provided by the agency or the corresponding appellate administrative body, may file a request for review with the Court of Appeals within a period of thirty (30) days counted from the date of filing in the record of the copy of the notification of the agency's final order or resolution, or from the applicable date as set forth in Section 3.15 of this Act, when the term for seeking judicial review has been interrupted by the timely filing of a motion for reconsideration.[...]."

3 LPRA § 9672

Within this context, it is firmly established that the right to challenge an agency's determination through corresponding judicial review is an integral aspect of due process of law. *IM Winner, Inc. v. Junta de Subastas*, 151 DPR 30, 35 (2000). While the Energy Bureau's Regulation 8543 stipulates in its Section 11 that "[a]ny party dissatisfied with the [Bureau's] final decision may bring an action for judicial review before the Court of Appeals" it does not provide a specific procedural mechanism to pursue such action. Similarly, Section 9 of Act No. 211 of August 12, 2018, as amended, also known as the "Act for the Implementation of the Puerto Rico Public Service Regulatory Board Reorganization Plan", provides that "[a] party adversely affected by an order, resolution, decision, or final determination of the Energy Bureau created by virtue of the Plan may only file a petition for review with the Court of Appeals of Puerto Rico." Given these gaps in procedural guidance, there is a compelling need for clarification and amendment of the September 22nd Resolution to ensure full compliance with due process requirements.

It is evident from the September 22nd Resolution that the Energy Bureau, within the adjudicative context, has issued a final order and resolution regarding its determination to reduce Genera's labor expense budget. The Energy Bureau states in the September 22nd Resolution that:

"The Energy Bureau's decision is rooted in a comprehensive analysis of Genera's operational obligations and the financial resources assigned to it for fulfilling its labor commitments. The Energy Bureau remains confident that, based on the representations of required personnel to operate the Legacy Generation Assets ("LGAs"), Genera possesses sufficient monies to meet its labor obligations responsibly." ⁵

However, the Energy Bureau failed to include any provision or notice in its resolution warning Genera of its right to request reconsideration before the agency or to initiate an appeal for review as a matter of law in the Court of Appeals. Therefore, Genera argues that the September

⁵ See September 22nd Resolution, p.12.

22nd Resolution fails to comply with the requirements recognized by the LPAU, which aim to ensure that adversely affected parties have the opportunity for judicial review. For this reason, Genera respectfully contends the September 22nd Resolution constitutes inadequate notification, hindering Genera from taking any subsequent steps, whatever they may be, concerning the determinations of the Resolution.

To safeguard Genera's administrative due process rights, Genera hereby requests that the September 22nd Resolution be amended to include adequate notice regarding the judicial mechanisms available for challenging the determinations of the September 22nd Resolution.

WHEREFORE, Genera respectfully requests that this Honorable Energy Bureau **take notice** of the above for all purposes and **amend** the September 22nd Order to include an adequate legal notice stating Genera's right of appeal and corresponding terms.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2nd day of October 2023.

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CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System and that we will send an electronic copy of this motion to Joannely Marrero-Cruz, at jmarrero@diazvaz.law; Maralíz Vázquez-Marrero, at mvazquez@diazvaz.law; Margarita Mercado Echegaray, at margarita.mercado@us.dlapiper.com; and Ana Margarita Rodríguez Rivera, at ana.rodriguezrivera@us.dlapiper.com.

In San Juan, Puerto Rico, this 2nd day of October 2023

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez