

**COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY BUREAU**

**IN RE: PUERTO RICO ELECTRIC  
POWER AUTHORITY RATE  
REVIEW**

**CASE NO.:** NEPR-AP-2023-0003

**SUBJECT:** Petition of PREPA Bondholders to  
Intervene in Rate Review Proceeding

**NEPR**

**Received:**

**Apr 10, 2025**

**2:48 PM**

**PETITION OF PREPA BONDHOLDERS  
TO INTERVENE IN RATE REVIEW PROCEEDING**

**TO THE PUERTO RICO ENERGY BUREAU:**

Petitioners National Public Finance Guarantee Corporation (“National”), GoldenTree Asset Management LP (“GoldenTree”), Syncora Guarantee, Inc. (“Syncora”), Assured Guaranty Inc. (“Assured”), and the PREPA Ad Hoc Group<sup>1</sup> (collectively, the “Bondholders”), by and through the undersigned counsel, hereby submit this petition to intervene in the above-captioned proceeding to review PREPA’s rates (the “Rate Review”), pursuant to Section 6.25 of Act 57-2014, Section 5.05 of Regulation 8543, and discussions with the Energy Bureau’s consultants at hearings on January 10, 2025, February 1, 2025, and March 7, 2025.

The undersigned Bondholders hold or insure a majority of PREPA bonds, which represent billions of dollars that PREPA borrowed over the years. The Bondholders have a lien on all PREPA’s past, present, and future Net Revenues. Accordingly, the Bondholders have an undeniable interest in PREPA’s rates and expenses, and no current party to the proceeding has or

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<sup>1</sup> The members of the PREPA Ad Hoc Group are listed in the *Seventh Verified Statement of the PREPA Ad Hoc Group pursuant to Bankruptcy Rule 2019*, ECF No. 5605, filed in *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-04780-LTS (D.P.R. Apr. 9, 2025).

will protect those interests. The Bondholders therefore seek intervention in this case to participate in the Rate Review and to protect their interests.<sup>2</sup>

### **BACKGROUND**

Puerto Rico passed the Puerto Rico Electric Power Authority Act in 1941, which permits PREPA to raise money by issuing revenue bonds.<sup>3</sup> In 1974, PREPA executed the Trust Agreement, with First National City Bank as Trustee, under which PREPA issued revenue bonds to raise money for its system.<sup>4</sup> PREPA committed to repay its bondholders in accordance with the Trust Agreement,<sup>5</sup> but PREPA defaulted on its payment obligations in 2017 and remains in default.<sup>6</sup> Each of the undersigned Bondholders holds and/or insures PREPA bonds issued pursuant to the Trust Agreement, and these Bondholders collectively hold or insure over 60 percent of the outstanding principal amount of the PREPA bonds.<sup>7</sup>

On June 30, 2023, the Energy Bureau initiated this Rate Review, which it indicated would proceed in three phases.<sup>8</sup> The scope of the Rate Review is broad: To “cover the full scope of revenues and expenditures involved in providing electric service in Puerto Rico.”<sup>9</sup> On March 15,

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<sup>2</sup> Certain issues are currently before or will be before, and within the exclusive jurisdiction of, the Title III court, and the Bondholders reserve all rights to litigate and appeal any issues in the appropriate forum(s). The Bondholders’ participation in this ongoing proceeding shall not be construed as a waiver of any such rights, remedies, or arguments.

<sup>3</sup> See P.R. Laws Ann. tit. 22, § 206(e)(1); *see also id.* § 196(o).

<sup>4</sup> *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 23-2036, Doc. No. 00118214209, at p.6 (1st Cir. Nov. 13, 2023).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at p.10.

<sup>7</sup> See *Joint Informative Motion of GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., National Public Finance Guarantee Corporation, and the PREPA Ad Hoc Group regarding Extension of Term of Cooperation Agreement*, Case No. 17-04780-LTS, ECF No. 5316, at p.2 (D.P.R. Aug. 19, 2024).

<sup>8</sup> See *Resolution and Order re: Initiating Rate Review*, Case No. NEPR-AP-2023-0003, at p.2 (Mar. 15, 2024).

<sup>9</sup> *Resolution and Order re: Preliminary Guidance on Rate Case Procedures and Notice of Upcoming Conference*, Case No. NEPR-AP-2023-0003, at p.1 (Dec. 16, 2024).

2024, the Energy Bureau issued a Resolution and Order setting forth an “Expected High-Level Timeline” for the Rate Review, according to which LUMA would have filed by June 1, 2024 a proposed revenue requirement to consider in setting PREPA’s future base rate.<sup>10</sup> In that order, the Energy Bureau emphasized that the Financial Oversight and Management Board (“FOMB”) had filed and sought confirmation of a proposed plan of adjustment concerning PREPA’s debt and pension obligations, and that following confirmation of the FOMB’s then-proposed plan, PREPA and the FOMB would submit the resulting information to the Energy Bureau to factor into a new rate.<sup>11</sup>

On April 12, 2024, the Energy Bureau set aside the above schedule, noting the recent plan confirmation proceedings and stating: “The Title III Court’s final decision on the Amended Plan will directly affect this proceeding because, once confirmed, future electricity rates will need to incorporate a Legacy Charge (as may be amended or modified), while also funding the operators of Puerto Rico’s electricity system – PREPA, LUMA, and Genera – and PREPA’s pension obligations.”<sup>12</sup> In short, the Energy Bureau determined to pause this Rate Review “until the Title III Court has rendered its decision on the confirmation of the Amended Plan,”<sup>13</sup> apparently reasoning that the FOMB’s proposed plan would soon be confirmed, and the new rate would be set accordingly.

The FOMB’s plan, however, was not confirmed. Instead, two months later, the United States Court of Appeals for the First Circuit issued an opinion reversing key holdings of the

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<sup>10</sup> *Resolution and Order re: Guidance for Phase 2 Rate Review Filing and Scheduling of Technical Conference*, Case No. NEPR-AP-2023-0003, at p.6 (Mar. 15, 2024).

<sup>11</sup> *See id.* at pp.1-3.

<sup>12</sup> *Resolution and Order re: Milestones and Deadlines*, Case No. NEPR-AP-2023-0003, at pp.2-3 (Apr. 12, 2024).

<sup>13</sup> *Id.* at p.3.

Title III court on which the FOMB’s proposed plan of adjustment was based.<sup>14</sup> The First Circuit vindicated the Bondholders’ longstanding position, finding that they hold a perfected, secured, and unavoidable lien on all of PREPA’s past, present, and future Net Revenues. Despite two subsequent attempts by the FOMB and the official committee of unsecured creditors to overturn the First Circuit’s decision, it remains binding on PREPA and the Title III court.

For the next six months, apart from a small number of information responses from LUMA, there were no public filings or orders in the Rate Review. Then, on December 10, 2024, the Energy Bureau announced that its consultants had engaged in preliminary discussions with “relevant parties” to establish the filing requirements for the Rate Review, and that it expected to finalize the requirements by early February 2025.<sup>15</sup> Later that month, the Energy Bureau issued additional orders regarding Rate Review procedures and scheduled technical conferences for December 20, 2024 and January 10, 2025.<sup>16</sup>

At the January 10, 2025 technical conference, the Energy Bureau’s consultants and the operators discussed various matters. As particularly relevant to the Bondholders, the discussion turned to calculation of PREPA’s outstanding bond obligations for use in the revenue requirement that will be considered in setting a new rate. During this conference, the Bondholders’ counsel learned that certain documents related to the Rate Review had been shared informally with the operators on January 3, 2025 but not posted to the docket; counsel have since received those

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<sup>14</sup> See *In re Fin. Oversight & Mgmt. Bd. For Puerto Rico*, 104 F.4th 367 (1st Cir. June 12, 2024), *subsequently amended*, 121 F.4th 280 (1st Cir. Nov. 13, 2024).

<sup>15</sup> *Resolution and Order re: Notice of Upcoming Rate Filing Requirements*, Case No. NEPR-AP-2023-0003, at p.1 (Dec. 10, 2024).

<sup>16</sup> See *Resolution and Order re: Preliminary Guidance on Rate Case Procedures and Notice of Upcoming Conference*, Case No. NEPR-AP-2023-0003 (Dec. 16, 2024); *Resolution and Order re: Requests of Information and Scheduling of Technical Conference for January 10, 2025*, Case No. NEPR-AP-2023-0003 (Dec. 20, 2024).

documents, which include, among other things, questions and potential proposals related to the calculation and treatment of PREPA's outstanding bond obligations. Counsel were also informed by the Energy Bureau's consultant, Scott Hempling, that the Bondholders can seek intervention prior to LUMA filing its rate application. The Bondholders were invited by another Energy Bureau consultant, Dr. Asa Hopkins, to weigh in on the issue of calculating PREPA's outstanding bond obligations by January 17, 2025, in response to Requests of Information that had been previously issued to the operators.<sup>17</sup> The Bondholders promptly submitted their responses by the deadline.<sup>18</sup>

On January 15, 2025, Mr. Hempling clarified that case participants need not obtain intervenor status prior to the Bureau setting a procedural schedule; instead, he stated that participants could continue to participate simply by notifying the Bureau's consultants.<sup>19</sup> The Bondholders' counsel promptly did so.

On February 20, 2025, Mr. Hempling provided the participants with a proposed schedule whereby, as relevant here, participants could submit petitions to intervene starting immediately, which would be ruled on by April 2, 2025, the day after LUMA was then scheduled to submit its rate application.<sup>20</sup> Following a hearing on February 21 and other procedural events, however, Mr. Hempling provided the participants with a revised proposed schedule.<sup>21</sup> The revised proposed schedule changed the dates for submitting a rate application and ruling on intervention petitions to

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<sup>17</sup> *Resolution and Order re: Requests of Information and Scheduling of Technical Conference for January 10, 2025*, Case No. NEPR-AP-2023-0003 (Dec. 20, 2024); *see also* January 3, 2025 informally received documents.

<sup>18</sup> *See Responses of PREPA Bondholders to Consultant Questions*, Case No. NEPR-AP-2023-0003 (Jan. 17, 2025).

<sup>19</sup> *See* Jan. 15, 2025 3:16pm E-mail from S. Hempling to case participants.

<sup>20</sup> *See Rate Case Procedural Schedule Draft 19 Feb*, Case No. NEPR-AP-2023-0003 (Feb. 20, 2025).

<sup>21</sup> *See Rate Case Procedural Schedule (Revenue Requirements Phase)*, Case No. NEPR-AP-2023-0003 (Mar. 6, 2025).

April 30 and May 1, respectively.<sup>22</sup> Since that time, the Bondholders have not received any further revised proposed schedule, so presumably the above deadlines remain operative. The Bondholders therefore submit their petition for intervention prior to LUMA's rate application in order to expedite matters, as suggested by Mr. Hempling.

### **LEGAL STANDARD**

A petition to intervene is evaluated based on the following factors:

- (1) Whether the petitioner has an interest that may be adversely affected by the proceeding;
- (2) Whether the petitioner's interests can be adequately protected by other legal means;
- (3) Whether the petitioner's interests are already adequately represented by existing parties to the proceeding;
- (4) Whether the petitioner's participation may reasonably be expected to assist in developing a sound record of the proceeding;
- (5) Whether the petitioner's participation may excessively broaden the issues or delay the proceedings;
- (6) Whether the petitioner represents or is the spokesperson for other community groups or entities; and
- (7) Whether the petitioner may contribute information, expertise, specialized knowledge, or technical advice that otherwise would not be available in the proceeding.<sup>23</sup>

The Energy Bureau applies these factors "liberally."<sup>24</sup> As described below, these factors all support granting the Bondholders' Petition.

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<sup>22</sup> *See id.*

<sup>23</sup> *See Uniform Administrative Procedures Act of the Government of Puerto Rico*, Act No. 38-2017, § 3.5 (as amended), P.R. Laws Ann. title 3, § 9645.

<sup>24</sup> *Id.*

### **FACTORS 1-3: THE BONDHOLDERS' SUBSTANTIAL INTEREST**

The first three intervention factors relate to a petitioner's interest in the proceeding. The Bondholders hold and/or insure over 60 percent of the outstanding principal amount of PREPA bonds issued pursuant to the Trust Agreement, which the First Circuit held are secured by PREPA's past, present, and future Net Revenues. Accordingly, the Bondholders are directly and adversely affected to the extent PREPA's rates fail to sufficiently reflect the cost of covering its debt service, with a debt service coverage ratio of at least 1.20.

As discussed in the Background section above, the Rate Review "cover[s] the full scope of revenues and expenditures involved in providing electric service in Puerto Rico," which includes the cost of debt service.<sup>25</sup> The Energy Bureau is required to approve a rate that "allows electric power service companies to recover all ... financing costs," and the Bureau must consider information concerning "the expenditures related to the Authority's debt repayment." Act 57-2014 § 6.25(b), 22 L.P.R.A. § 1054(b).

As also discussed above, participants in the Rate Review have already raised the issue of how PREPA's outstanding bond obligations should be calculated and treated for purposes of determining the revenue requirement. Orders and information requests in this proceeding have likewise raised the issue of PREPA's debt obligations.<sup>26</sup> For these reasons, the Energy Bureau's

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<sup>25</sup> *Resolution and Order re: Preliminary Guidance on Rate Case Procedures and Notice of Upcoming Conference*, Case No. NEPR-AP-2023-0003, at p.1 (Dec. 16, 2024); *see also Resolution and Order re: Requests of Information and Scheduling of Technical Conference for January 10, 2025*, Case No. NEPR-AP-2023-0003 (Dec. 20, 2024) ("[T]his rate case will map all costs ... regardless of source or payee.").

<sup>26</sup> *See, e.g., Consultants' Request of Parties Arising from Technical Conference of January 10, 2025*, Case No. NEPR-AP-2023-0003, at p.2 (Jan. 10, 2025) (including questions regarding treatment of "Legacy debt"); *Order Establishing Scope and Procedures for Rate Case*, Case No. NEPR-AP-2023-0003, at pp.18, 29, 31 (Feb. 12, 2025) (including filing requirements related to PREPA's debt); *Hearing Examiner's Order Requiring Certain Information in the Rate Case Application or Accompanying Prefiled Testimony*, Case No. NEPR-AP-2023-0003, at pp.9, 14 (Mar. 24, 2025) (including information requests regarding "Title III Debt").

consultants have implicitly recognized the Bondholders' substantial interest here by inviting them to submit responses on January 17, 2025 (which they did), in another submission due March 13, 2025 (which they also did<sup>27</sup>), and to intervene in this proceeding. The Bondholders' interest in the Rate Review is substantial and undeniable.

The Bondholders' interests are not adequately represented by other parties to the proceeding. The Bondholders do not expect that PREPA, LUMA, or Genera would adequately represent them. PREPA, for its part, is attempting to restructure its bond obligations in the Title III court, over the Bondholders' objections. While the Bondholders would prefer to reach a fair and reasonable settlement with PREPA (and they believe they have made such an offer), PREPA and the FOMB appear determined to continue litigating. LUMA and Genera also cannot be expected to adequately represent the Bondholders' interests. They are private entities whose commercial interests are in maximizing their profits from their engagements with PREPA, which diverts PREPA's funds from other purposes. Because the private operators' revenues and the Bondholders' debt service are both paid from the same overall rate, LUMA and Genera will presumably prioritize their own private financial interests over debt service (and other parties' interests) in the ratemaking process.<sup>28</sup>

The lack of alignment between the current participants' interests and the Bondholders' interests was illustrated, for example, at the January 10, 2025 technical conference. When the issue of calculating PREPA's debt obligations arose, LUMA advocated using the FOMB's extremely low, discounted bond recovery levels from the FOMB's prior proposed plan of

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<sup>27</sup> See *Response of PREPA Bondholders to Hearing Examiner's March 10, 2025 Order*, Case No. NEPR-AP-2023-0003 (Mar. 13, 2025).

<sup>28</sup> Likewise, Windmar is a private renewable energy company that cannot be expected to adequately represent the Bondholders' interests. And the OIPC is a consumer advocacy organization.



adjustment. Yet, as National’s counsel explained at the conference on behalf of the Bondholders, that proposed plan was contested and has been superseded by the First Circuit’s ruling discussed above. The Bondholders strongly disagree that the Rate Review should prejudge the outcome of PREPA’s contested Title III proceedings in the FOMB’s favor—particularly in light of its recent major losses.<sup>29</sup>

Therefore, these three factors regarding the Bondholders’ interest in the proceeding support granting the Bondholders’ Petition.

#### **FACTORS 4 AND 7: THE BONDHOLDERS’ ABILITY TO ASSIST**

Factors 4 and 7 relate to whether a petitioner can assist with developing the record of the proceeding, for instance by contributing information, expertise, specialized knowledge, or advice. The Bondholders represent a group of sophisticated, diverse financial entities, and they and their advisors collectively have extensive knowledge of the municipal finance and monoline insurance markets, as well as the utility industry. Most of the Bondholders have been longtime stakeholders of PREPA, as well as other Commonwealth entities, and are very familiar with PREPA’s history and the history of the Title III proceedings. They are therefore uniquely positioned to assist in this process.

Indeed, the Bondholders have already been assisting with developing the record of this proceeding. Such participation, which has included appearing at hearings, submitting filings, and responding to questions from the Energy Bureau’s consultants, amply demonstrates the

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<sup>29</sup> In this and other proceedings, LUMA has also continued to advocate for positions that are adverse to the Bondholders’ interests. For example, LUMA has attempted to restructure this proceeding in a manner that would allow it to charge customers what the Bondholders believe will be overstated provisional rates for as long as possible, while delaying any true-up that could bring such rates down to appropriate levels. *See Response of PREPA Bondholders to Hearing Examiner’s March 10, 2025 Order*, Case No. NEPR-AP-2023-0003, at pp.2-5 (Mar. 13, 2025).

Bondholders’ ability to assist. To take just one recent example, at a hearing on March 7, 2025, counsel for National (on behalf of the Bondholders) raised a question that the other case participants had not considered, that Mr. Hempling deemed important, and that was ultimately incorporated into a formal list of questions issued to the case participants.<sup>30</sup>

Several of the Bondholders also have a history of participating in Energy Bureau proceedings. For example, National and Assured were permitted to intervene in PREPA’s 2015 IRP case,<sup>31</sup> and National intervened in PREPA’s 2018 IRP case as well.<sup>32</sup> National has also contributed to many other regulatory proceedings, including but not limited to the Regulation for Energy Efficiency and Demand Response,<sup>33</sup> the Interconnection Regulations,<sup>34</sup> the Regulation on Electric Cooperatives,<sup>35</sup> and the Unbundling Rate.<sup>36</sup> What’s more, the Bondholders were permitted to intervene in PREPA’s ongoing cash-flow investigation.<sup>37</sup>

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<sup>30</sup> See *Hearing Examiner’s List of Legal and Practical Questions to Consider, Response of PREPA Bondholders to Hearing Examiner’s March 10, 2025 Order*, Case No. NEPR-AP-2023-0003, at p.4 (Mar. 10, 2025) (Question #5 adopted from question raised by bondholder counsel at hearing).

<sup>31</sup> See *Resolución y Orden asunto: Conferencia Técnica; Participación de Interventores en el Proceso de Evaluación del Plan Integrado de Recursos*, CEPR-AP-2015-0002 (Oct. 23, 2015).

<sup>32</sup> See *Order re: Petition of National Public Finance Guarantee Corporation to Intervene*, CEPR-AP-2018-0001 (Aug. 5, 2019).

<sup>33</sup> See *National’s Comments re: Preliminary Demand Response Regulation*, Case No. NEPR-MI-2019-0015 (Aug. 3, 2020).

<sup>34</sup> See *National’s Comments re: Interconnection Regulations*, Case No. NEPR-MI-2019-0009 (July 5, 2019).

<sup>35</sup> See *National’s Comments re: Regulation on Electric Cooperatives*, Case No. NEPR-MI-2019-0004 (Apr. 15, 2019); *National’s Supplemental Comments*, Case No. NEPR-MI-2019-0004 (May 16, 2019).

<sup>36</sup> See *Order re: Procedures for the Development of an Unbundling Rate*, Case No. NEPR-AP-2018-0004, at p.2 (Dec. 23, 2020) (Energy Bureau noting that it “appreciates” National’s participation and “close attention to the issues”).

<sup>37</sup> See *Hearing Examiner’s Order on Bondholders’ Petition to Intervene*, Case No. NEPR-IN-2024-0004 (Dec. 6, 2024). While LUMA has since disputed the propriety of this order granting the Bondholders’ intervention petition, the order remains operative and binding at this time, and the Bondholders have duly opposed LUMA’s arguments.

If allowed to intervene, the Bondholders will continue to draw on the extensive experience they have gained with PREPA over the years to assist in further developing the record here. These factors also support granting the Petition.

**FACTOR 5: THE BONDHOLDERS WILL NOT CAUSE DELAY**

The Bondholders' intervention would neither excessively broaden the issues nor unduly delay the Rate Review. First, the issues would not be broadened, because the Energy Bureau, its consultants, and/or the current participants have already raised issues and questions related to PREPA's bond obligations—thus, the matter is already under consideration. Second, the Bondholders will not interpose undue delay and will seek to comply with all applicable case deadlines, as they have already been doing. This factor further weighs in favor of granting the Petition.

**FACTOR 6: THE PETITIONERS REPRESENT A SUBSTANTIAL MAJORITY OF PREPA BONDHOLDERS**

Lastly, the Energy Bureau considers whether a petitioner represents other groups or entities. The petitioners here represent a substantial majority of the holders and insurers of PREPA's multibillion-dollar bond debt. This group comprises a diverse range of entities, including monoline insurers that help keep interest rates low for municipal borrowers like PREPA (and, by extension, the customers of municipal borrowers), as well as financial institutions with different clients, among them retirees and pensioners. Not only do the petitioners directly represent various such entities, but as PREPA's largest creditor group, the Bondholders share the community's general interest in having PREPA emerge from bankruptcy as a well-managed, reliable utility that can drive economic growth. This factor, too, favors intervention.

**WHEREFORE**, the Bondholders respectfully request that the Energy Bureau:

- a. Grant the Bondholders full leave to intervene and admit them as a party to the Rate Review proceeding, with all attendant rights and privileges;
- b. Serve copies of all notices, motions, resolutions, orders, requests for information and responses thereto, reports, exhibits, or other documents relating to the Rate Review proceeding—whether exchanged formally or informally, and whether deemed confidential or otherwise—on the undersigned counsel at the addresses provided below;
- c. Permit the Bondholders to participate in any proceedings in the Rate Review proceeding, including but not limited to any exchanges of information, discovery, depositions, hearings, or conferences;
- d. Permit the Bondholders to submit motions, filings, discovery requests, deposition notices, and responses in the Rate Review; and
- d. Grant any other relief that the Energy Bureau deems just and proper.

RESPECTFULLY SUBMITTED,

THIS 10th DAY OF APRIL 2025

**CERTIFICATE OF SERVICE:** We hereby certify that the foregoing petition was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System, and courtesy copies were sent via electronic means to the **Hearing Examiner** at shempling@scotthemplinglaw.com; to the **Consultants** at ahopkins@synapse-energy.com, guy@maxetaenergy.com, clane@synapse-energy.com, and rafael@maxetaenergy.com; to **PREPA** through its counsel at jgonzalez@gmlex.net, jmartinez@gmlex.net, and arivera@gmlex.net; to **LUMA** through its counsel at margarita.mercado@us.dlapiper.com, Yahaira.delarosa@us.dlapiper.com, andrea.chambers@us.dlapiper.com, and julian.angladapagan@us.dlapiper.com; to **Genera** through its counsel at legal@genera-pr.com and regulatory@genera-pr.com; to **ICSE** through its counsel at agraitfe@agraitlawpr.com; and to **OIPC** through its counsel at pvazquez.oipc@avlawpr.com.

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