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

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW

CASE NO.: NEPR-AP-2023-0003

SUBJECT: Objection to NPFGC Ex. 51

OBJECTION OF THE SISTEMA DE RETIRO DE LOS EMPLEADOS DE LA AUTORIDAD DE ENERGÍA ELÉCTRICA (SREAEE) TO THE TESTIMONY AND EXHIBITS SUBMITTED BY WITNESS ANTHONY HURLEY (NPFGC Ex. 51)

COMES NOW the Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica ("SREAEE"), through the undersigned legal counsel, and respectfully **states and requests** as follows:

I. INTRODUCTION AND BACKGROUND

On August 6th 2025, *El Nuevo Día* published an article titled *"AEE tendrá reserva de $683 millones"* by Manuel Guillana Capella. The report quoted Orlando Rivera Berríos, Executive Director of the Puerto Rico Office of Management and Budget ("OGP"), as stating that the Puerto Rico Department of Treasury would transfer approximately $683 million to an external fiduciary agent as part of an "Energy Sector Reserve" created to address future pension and debt obligations of PREPA.

Following that publication, Genera PR LLC submitted ROI # GENERA-of-PREPA-FIN-1 on August 6th, 2025, seeking information from PREPA regarding the alleged fund's purpose, sources, fiduciary administration, and potential uses. After reviewing its financial records, PREPA filed a sworn response on August 20th 2025, attested by Juan C. Adrover Ramírez, stating:

> "PREPA has not identified an 'Energy Sector Reserve' in the amount of $683,178,256. No account or fund designated as an 'Energy Sector Reserve' in the amount of $683,178,256 exists in PREPA's books or under its direct custody or control. Further, PREPA has not been provided documentation by any government agency indicating that it has access to, or authority over, said funds."[1]

PREPA's official response made clear that the Authority had no knowledge, custody, or control of any such reserve and had received no confirmation of its existence from other government entities. To verify the media report independently, PREPA subsequently sent letters on September 4th, 2025, to the Department of Treasury and the Office of Management and Permits, requesting information about the purported account.

Despite this prior record, on September 4th, 2025, during the evidentiary hearings in this rate-review proceeding, witness Mr. Anthony Hurley, testifying on behalf of the Bondholders, cited the same newspaper article as an example of Commonwealth funding available to PREPA and its operators. He stated:

> "The Commonwealth of Puerto Rico government is another source of funding for PREPA and its operators. For example, the director of the Puerto Rico Office of Management and Budget recently announced the creation of a $683 million "Energy Sector Reserve" fund with the purpose of addressing future needs related to legacy pension and debt service, but which could be used at the discretion of the government for other purposes as well".[2]

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[1] ROI # GENERA-of-PREPA-FIN-1 Response, Aug. 20 2025

[2] Anthony Hurley Testimony (Sept. 8th, 2025 Hearing), p. 18, ll. 6–10.

At the time of that testimony, PREPA's sworn denial of the fund's existence had already been filed in this docket and was publicly available to all participants.

Accordingly, Mr. Hurley's reference constitutes hearsay, relying on a disputed press report rather than on competent evidence in the administrative record. Moreover, his example mischaracterized a matter that had already been expressly disclaimed under oath by PREPA, further diminishing its credibility and probative value. As explained below, under Article 3.13 of the Ley de Procedimiento Administrativo Uniforme (LPAU for short), and the standards set forth in *Otero Mercado v. Toyota de Puerto Rico, Inc.*, 163 D.P.R. 716 (2005), the statement fails to satisfy the required guarantees of reliability and should therefore be excluded.

The reference in Mr. Hurley's testimony thus constitutes multiple layers of hearsay:

1. A public official's unsworn statement to the press;
2. A journalist's publication of that statement; and
3. A repetition of the article's content by a witness lacking personal knowledge.

II. LEGAL STANDARD: ADMISSIBILITY OF HEARSAY UNDER THE LPAU AND *OTERO MERCADO*[3]

Article 3.13(e) of the LPAU, 3 L.P.R.A. § 9653, provides that "the Rules of Evidence shall not apply to administrative hearings..." However, the Puerto Rico Supreme Court has clarified that this procedural flexibility does not eliminate the requirement that evidence admitted in administrative proceedings must possess sufficient guarantees of reliability and trustworthiness.[4]

The Puerto Rico Supreme Court, in *Otero Mercado v. Toyota de Puerto Rico, Inc.*, 163 D.P.R. 716 (2005), expressly adopted the analytical framework articulated by the U.S. Supreme Court in *Richardson v. Perales*, 402 U.S. 389 (1971), to determine when hearsay evidence may be admitted in administrative proceedings. The Court held that hearsay evidence may only be

[3] *Otero Mercado v. Toyota de Puerto Rico, Inc.*, 163 D.P.R. 716 (2005)
[4] *Comisionado de Seguros v. Real Legacy Assurance Co.*, 179 D.P.R. 692 (2010).

considered if it bears “sufficient guarantees of trustworthiness,” which are evaluated through eight factors:

1. the independence or bias of the declarant;
2. the type of hearsay evidence offered;
3. whether the statement is signed or sworn;
4. whether it is contradicted by direct testimony;
5. the availability of the declarant to testify;
6. the existence of other, more reliable evidence;
7. the declarant’s credibility; and
8. whether the hearsay is corroborated.

In short, although the Bureau may consider certain hearsay materials, it must assess them under these criteria to ensure that they meet the threshold of reliability demanded by the LPAU and *Otero Mercado*. Any hearsay failing to satisfy these safeguards should be excluded or assigned minimal probative weight.

III. APPLICATION OF THE OTERO MERCADO FACTORS TO THE CHALLENGED STATEMENT

In his sworn testimony, Mr. Anthony Hurley referenced an article from the newspaper “El Nuevo Día”. The article attributed to Orlando Rivera Berríos, Executive Director of the Office of Management and Budget (OGP), the assertion that a 683 million dollars “Energy Sector Reserve” fund had been created with the intent of, addressing future needs related to legacy pension and debt service, but which could be used at the discretion of the government for other purposes as well. [5] Neither Mr. Orlando Rivera Berríos nor Mr. Manuel Guillama Capella are announced witnesses in these proceedings.

Mr. Hurley cited that article as the basis for his statement that such a fund exists. This constitutes hearsay, because neither the journalist nor Director Rivera Berríos appeared as witnesses, and the statement is offered to prove the truth of the matter asserted. Applying the eight

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[5] *El Nuevo Día* article published on August 6, 2025, titled *“AEE tendrá reserva de $683 millones*

reliability factors adopted in *Otero Mercado v. Toyota*, 163 D.P.R. 716 (2005) (adopting *Richardson v. Perales*, 402 U.S. 389 (1971)), the statement fails to meet the necessary guarantees of trustworthiness:

1. **Independence or bias of the declarant.**
   This factor examines whether the declarant spoke from independent authority or under institutional constraints that may affect objectivity. The ultimate declarant, OGP Executive Director Orlando Rivera Berríos, is a government official whose statement, as reported by the press, concerned fiscal actions outside his direct authority. The alleged creation of the "Energy Sector Reserve" depended on authorization from the Financial Oversight and Management Board (FOMB) and on execution by the Department of the Treasury. According to Rivera Berríos, the Department of the Treasury could not issue any payment without FOMB authorization, and the Board's approval merely extended the validity of the account to allow completion of the accounting process. His remarks therefore described a pending administrative procedure rather than a completed act, reflecting an institutional position dependent on other entities' approval. These circumstances undermine both the independence and reliability of the declarant's statement.

2. **Type of hearsay evidence submitted.**
   The evidence on which Mr. Hurley relied is a newspaper article, an inherently unreliable form of hearsay because it conveys unsworn, secondhand information and often includes editorial interpretation. As the Eleventh Circuit explained in *United States v. Baker*, 432 F.3d 1189, 1211–12 (11th Cir. 2005), newspaper articles are typically inadmissible hearsay because they are "a reporter's account of what eyewitnesses reported," constituting "double hearsay". Mr. Hurley's statement suffers from that same defect: it repeats a journalist's unsworn account of comments attributed to a public official, without personal knowledge or verification. Under Article 3.13 of the LPAU and the reliability standard articulated in *Otero Mercado v. Toyota de Puerto Rico, Inc.*, 163 D.P.R. 716 (2005), such secondhand reporting lacks the guarantees of trustworthiness required for consideration in administrative adjudications.

3. **Whether the statement is sworn or signed.**

   Neither the journalist nor Director Rivera Berríos provided a sworn or subscribed declaration. Mr. Hurley's attestation under oath covers only his own testimony and belief; it does not convert the underlying newspaper's assertions into sworn evidence. While experts are permitted to rely on facts or data provided to them, Rules 702 and 704 of the Puerto Rico Rules of Evidence (2009) limit that discretion to information of a kind reasonably relied upon by experts in their field and based on sufficient, reliable data. A press article reporting secondhand statements by public officials does not meet that standard of reliability. Mr. Hurley's reference to such an article therefore exceeds the scope of permissible expert reliance and contravenes the foundational evidentiary principle, reflected in Rules 602, 702, and 704, that testimony, whether lay or expert, must rest on trustworthy information. This principle continues to guide the evaluation of reliability under Article 3.13 of the LPAU.

4. **Whether the statement is contradicted by direct testimony or recorded evidence.** PREPA's sworn response to ROI # GENERA-of-PREPA-FIN-1, filed on August 20th, 2025, and attested by Juan C. Adrover Ramírez, explicitly states that no account or fund designated as an "Energy Sector Reserve" exists in PREPA's books or under its custody or control, and that PREPA had received no documentation from any government entity granting it access to such funds. This sworn filing, made before Mr. Hurley's testimony, directly contradicts the newspaper's report on which his statement relied and demonstrates that PREPA had no knowledge of, or authority over, the alleged reserve. PREPA's subsequent correspondence to the Department of Treasury and the Office of Management and Permits on September 4th, 2025, seeking confirmation of the information reported in the article, further underscores that the Authority itself was attempting to verify a claim it had already denied knowing anything about.

5. **Availability of the declarant.**

   The party relying on Mr. Hurley's testimony bears the responsibility to present or identify the declarants whose statements underpin that testimony if it seeks to attribute any probative value to them. To date, neither the journalist who authored the article nor OGP

Executive Director Orlando Rivera Berríos (the ultimate declarant), has been identified as a witness or made available for cross-examination. Unless those declarants are produced, opposing parties will have no opportunity to assess their credibility or clarify the circumstances of their statements. This absence weighs heavily against the reliability of the hearsay evidence under *Otero Mercado*.[6]

6. **Existence of other, more reliable evidence.**

   The type of information Mr. Hurley described (creation and funding of a Commonwealth reserve), would ordinarily be evidenced through official fiscal records of the Department of Treasury or the Office of Management and Budget. Those primary sources are both identifiable and reasonably available to the parties, yet none have been produced. PREPA itself sought confirmation from those agencies through written correspondence dated September 4, 2025, demonstrating that it lacked any official verification of the alleged fund. When such readily verifiable evidence exists but is not offered, reliance on an unsworn newspaper report cannot satisfy the reliability threshold required by *Otero Mercado*[7].

7. **Credibility of the declarant witness**

   The statement was made to the press rather than in official filing or sworn communication. Nothing in the record establishes that Director Rivera Berríos possessed first-hand knowledge of the alleged transfer or had verified the information with the Treasury Department, further reducing the credibility of his statement.

8. **Corroboration**.

   No admissible corroboration exists.

Evaluated under these criteria, the statement made by Mr. Hurley lacks the reliability required by law. It is a multilayered hearsay, originating from an out-of-court declarant, transmitted through a

[6] *Otero Mercado v. Toyota de Puerto Rico, Inc.*, 163 D.P.R. 716 (2005

[7] *Otero Mercado v. Toyota de Puerto Rico, Inc.*, 163 D.P.R. 716 (2005)

journalist, and repeated by a witness without personal knowledge. Accordingly, the statement should be excluded from the evidentiary record.

IV. CONCLUSION AND PRAYER FOR RELIEF

The statement at issue concerning the alleged existence of a "$683 million Energy Sector Reserve Account" for legacy pension and debt purposes, rests entirely on secondhand information drawn from a newspaper article. Neither the journalist nor the quoted public official testified or provided a sworn declaration, and no documentary evidence corroborates the claim. Under Article 3.13 of the LPAU and the reliability test set forth in *Otero Mercado v. Toyota*[8], the statement lacks the minimal indicia of trustworthiness required for consideration in an administrative adjudication.

Permitting such unsworn and unverified hearsay to remain in the record would undermine the evidentiary integrity of this proceeding and invite speculation unsupported by competent evidence. In contrast, PREPA's official correspondence to the Department of Treasury demonstrates that the Authority itself lacks knowledge of the alleged fund and has sought clarification precisely because no such account has been identified in its records.

WHEREFORE, pursuant to Article 3.13 of the LPAU and the principles recognized in *Otero Mercado* and *Richardson v. Perales*, the Sistema de Retiro de Empleados de la Autoridad de Energía Eléctrica (SREAEE) respectfully requests that the Hearing Examiner and the Puerto Rico Energy Bureau:

1. Exclude from the evidentiary record the news article and all references of Mr. Anthony Hurley's testimony and other witnesses referring to the alleged "Energy Sector Reserve Account" and the attached newspaper article; or, in the alternative,
2. Assign no probative weight to that statement, finding that it constitutes unreliable hearsay lacking adequate guarantees of trustworthiness.

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[8] *Otero Mercado v. Toyota de Puerto Rico, Inc.*, 163 D.P.R. 716 (2005)

RESPECTFULLY SUBMITTED.

From Ponce to San Juan, Puerto Rico, on October 24, 2025

WE HEREBY CERTIFY that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Notice will be notified to:

Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record.

To wit, to the ***Puerto Rico Electric Power Authority***, through: Mirelis Valle-Cancel, mvalle@gmlex.net; Juan González, jgonzalez@gmlex.net; Alexis G. Rivera Medina, arivera@gmlex.net; Juan Martínez, jmartinez@gmlex.net; and Natalia Zayas Godoy, nzayas@gmlex.net; and to Genera PR, LLC, through: Jorge Fernández-Reboredo, jfr@gblawpr.com; Giuliano Vilanova-Feliberti, gvilanova@vlawpr.com; Maraliz Vázquez-Marrero, mvazquez@vlawpr.com; ratcsea@genera-pr.com; regulatory@genera-pr.com; and legal@genera-pr.com;

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