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GOVERNMENT OF PUERTO RICO
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: Motion to Strike Expert Report of A. Hopkins**

MOTION TO STRIKE EXPERT REPORT OF A. HOPKINS[1]

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

1. On October 1, 2025, the Hearing Examiner issued an Order on Rate Case Procedures ("October 1st Order") in which the Hearing Examiner updated his directives on the rate case procedures, including procedures relating to objections to prefiled testimonies and establishing the deadline of October 20, 2025 to submit objections to PREB consultant reports submitted between that date and October 10, 2025.

2. On October 3, 2025, the Hearing Examiner issued an Order Submitting Expert Reports of Energy Bureau Consultants, in which the Hearing Examiner marked for identification,

[1] On May 9, 2025, this Energy Bureau issued a Resolution and Order, requiring that all substantive English-language filings be accompanied by concise Spanish summaries to enhance public accessibility and participation. *See also* Energy Bureau Resolution and Order of June 4, 2025 (clarifying that full translations are optional but summaries are mandatory). In compliance with the Energy Bureau's standing directives regarding accessibility and ensuring citizen participation, LUMA requests leave to submit the corresponding Spanish-language summaries on or before November 5, 2025.

to be admitted into evidence subject to objections, PC Ex. 58, EE Expert Report of D. Asa Hopkins ("Ex. 58 Report").

3. On October 17, 2025, the Hearing Examiner issued an Order Summarizing Results of October 16 Conference ("October 17th Order") in which, among other things, the Hearing Examiner established the new deadline of October 25, 2025 at 5:00 pm to submit objections to already-filed testimonies.

4. On October 22, 2025, the Hearing Examiner issued an Order Extending Deadline to Upload Documents Marked for Identification ("October 23rd Order") in which, among other things, the Hearing Examiner established the new deadline of October 31, 2025 for the parties to file objections to any material marked for identification.

5. For the reasons stated below, and in accordance with the October 1st, October 17th and October 22nd Orders, LUMA respectfully objects to the inclusion in the record of Ex. 58 Report.

6. The Ex. 58 Report, titled "Expert Report: Energy Efficiency Impact on Load Forecast and Billing Determinants", Case No. NEPR-AP-2023-0003, is a report from the Energy Bureau Consultant Dr. Asa Hopkins from Synapse Energy Economics ("Energy Bureau Consultant" or "Consultant"), dated October 2, 2025. This report states that it "covers the impact of energy efficiency on load forecasts and the billing determinants used when setting rates." Ex. 58 Report, Executive Summary.

7. In the Ex. 58 Report, the Energy Bureau Consultant states that energy efficiency has an effect in this rate case because "[e]nergy efficiency actions reduce sales" and "[s]etting the customers' base rates requires a forecast of sales: the rate is calculated by dividing the revenue requirement by billing determinants, and sales is the most important of the billing determinants.

Most revenues are collected proportional to sales". *See id*., Section 1.3. The Consultant further states that the purpose of the report is to "examine the available evidence to provide the Energy Bureau with the best possible estimate of the impact of energy efficiency on electric sales, and thereby to facilitate accurate billing determinants when setting rates". *See id*. According to the Consultant, when forecasting sales, both energy efficiency from utility programs and other non-utility program causes of increased efficiency must be accounted for. *See id*., Section 1.3.

8. Ex. 58 Report continues that the energy efficiency goals arise from Act 57-2014 and Act 17-2019, which require the Energy Bureau to ensure that Puerto Rico achieves thirty percent (30%) energy efficiency by 2040. *See id*., Section 1.2. The Energy Bureau adopted the Regulation on Energy Efficiency, Regulation 9367 ("Regulation 9367") establishing the rules for ratepayer funded energy efficiency programs. *See id*. Regulation 9367 defines the 30% statutory target as a reduction in comparison to PREPA's fiscal year 2019 sales. *Id*. The Energy Bureau Consultant asserts that this goal can be met "through a combination of customer-funded programs and other policies." *See id*.

9. As described by the Energy Bureau Consultant in the Ex. 58 Report, LUMA is ramping up energy efficiency programs through a transition period. *See id*. In addition, LUMA filed with the Energy Bureau, on July 22, 2025, an Energy Efficiency Plan in Case No. NEPR-MI-2022-0001, In re: Energy Efficiency and Demand Response Transition Period Plan ("EE Docket").[2] This plan was approved by the Energy Bureau on August 19, 2025[3] (the "FY26 EE Plan"). *See id*., Section 3.1. LUMA is also required to file by February 1, 2026, an Energy

[2] *See Motion to Submit Amended Energy Efficiency Program Plan for Fiscal Year 2026 in Compliance with Resolution and Order of June 26, 2025,* Exhibit 1, filed on July 22, 2025, in Case No. NEPR-MI-2022-0001.

[3] *See* Resolution and Order, Re: Fiscal Year 2026 Transition Period Plan Approval, Case No. NEPR-MI-2022-0001, August 19, 2025.

Efficiency and Demand Response Plan covering FY 2027 and 2028 ("Future FY27-FY28 EE/DR Plan"). *See id*., Section 3.1.

10. With respect to the forecast for FY26, which is based on the FY26 EE Plan, the Consultant "recommend[s] that the Energy Bureau assume that LUMA's energy efficiency programs for FY26 deliver energy efficiency savings as LUMA projects" in this plan. *See id*., Section 3.1.

11. Regarding the forecast for FY27 and FY28, the Consultant recognizes that, "while [he] cannot prejudge the outcome of the Energy Bureau's evaluation of [the Future FY27-FY28 EE/DR Plan]." *See id*. The Consultant states that "it is nonetheless necessary to develop an estimate of annual energy efficiency program impacts for the purpose of estimating the billing determinants in FY 27 and 28". *See id*. He also indicates that LUMA's general method to develop its proposed estimates for FY27 and FY28 "is reasonable given the information available to LUMA at the time [LUMA] made its filing [in this proceeding], although the rate of energy efficient resource acquisition is low compared with what would be required to approach 30 percent of 2019 sales by 2040". *See id*.

12. The Consultant then lays out "annual and cumulative programmatic energy savings values for fiscal years 2026 through 2028," basing these values on the FY26 EE Plan and "reasonable ramp rates for energy efficiency program delivery in fiscal years 2027 and 2028 informed by program performance in other states and **the Energy Bureau's recently published potential study**". *See id*. (emphasis added). The latter study refers to a Market Baseline and Potential Study commissioned by the Energy Bureau and made public by the Energy Bureau on

September 24, 2025 in the EE Docket,[4] which the Consultant attached to its report as PC Ex. 58.02. The Energy Bureau Consultant uses the information in the Market Baseline and Potential Study to forecast both programmatic and non-programmatic energy efficiency. *See id*., Sections 3.1 and 3.2.

13. Finally, the Consultant provides recommendations for annual adjustments to the sales forecast made by LUMA to account for programmatic energy efficiency; however, he does not recommend any adjustments to account for non-programmatic energy efficiency. *See id*., Section 3.3.

14. LUMA respectfully submits that the Ex. 58 Report should be excluded from the record.

15. As explained herein, the recommendations on annual adjustments to the sales forecast are based on information in the Market Baseline and Potential Study. The Market Baseline and Potential Study actually consists of two studies—a Market Baseline Study and a Potential Study—required under Regulation 9637 to assess and guide energy efficiency efforts on the island. *See* Regulation 9637, Sections 1.09(B)(29) and (38) and 3.02(A) and (B)[5]. The Market Baseline Study is an analytical study that assesses the current state of the market in Puerto Rico for energy efficiency and demand response technology or service, while the Potential Study is "an analytical study that quantifies the amount of the energy efficiency or demand response potential that exists, is cost-effective, and could be realized through the implementation of energy efficiency programs and policies in Puerto Rico". *See id*., Sections 1.09(B)(29) and (38). The initial Potential Study must include past and future energy savings resulting from utility and non-utility Contributing

[4] *See* Resolution, Re: Market Baseline Study and Potential Study Stakeholder Technical Workship and Comments, Case No. NEPR-MI-2022-0001, September 12, 2025 and https://energia.pr.gov/wp-content/uploads/sites/7/2024/10/20250924-MI20220001-PR-Baseline-and-EE-MPS-Report.pdf.

Entities[6], as well as quantify the cost-effective potential for EE in Puerto Rico. *See id*. Section 3.02(B). Regulation 9637 further provides that the results of the initial Market Baseline Study and the Potential Study are to be used to develop estimated annual savings expected to be achieved by PREPA's efficiency programs, among others, for each Program Year through 2040. *See id*. Section 3.02(E).

16. LUMA notes that by Resolution issued on September 12, 2025 in the EE Docket, the Energy Bureau informed that it had hired Optimal Energy, Inc. (since acquired by NV5 Global, Inc.) to conduct the Market Baseline and Potential Studies and that it would be releasing the combined study in advance of a Stakeholder Technical Workshop scheduled for September 25, 2025. *See* Resolution, Re: Market Baseline Study and Potential Study Stakeholder Technical Workship and Comments, Case No. NEPR-MI-2022-0001, September 12, 2025, p.1. The Energy Bureau also explained that the purpose of the Stakeholder Technical Workshop was "to introduce the stakeholders to the studies and their methods and facilitate written comments". *See id*. The Energy Bureau further directed that, following this workshop, it welcomed stakeholder comments regarding the studies, including the estimates for the contributions from Contributing Entities, on or before October 10, 2025. *See id*., p 2. The Market Baseline and Potential Study was made available to the public on September 24, 2025, and the Stakeholder Technical Workshop was held on September 25, 2025. *See* Resolution, Re: Market Baseline Study and Potential Study Stakeholder Technical Workship and Comments, Case No. NEPR-MI-2022-0001, September 12, 2025 and https://energia.pr.gov/wp-content/uploads/sites/7/2024/10/20250924-MI20220001-PR-Baseline-and-EE-MPS-Report.pdf.

[6] "Contributing Entities" are entities that conduct programs or activities designed to produce energy efficiency savings that contribute to Puerto Rico's statutory goal. *See id*. Section 1.09(B)(5).

17. Following the Stakeholder Technical Workshop, LUMA requested that the Energy Bureau provide additional time, until November 7, 2025, to have an interactive exchange of information with the Energy Bureau consultants who prepared the Market Baseline and Potential Study, in light of the short time provided to review the study prior to the workshop, which would then be followed by written comments. *See Informative Motion and Requests Relating to Timeframe to Submit Comments to Recently Issued Market Baseline and Potential Study and Timeframe Related to Draft Three-Year Plan,* NEPR-MI-2022-0001, October 7, 2025 ("October 7th Motion"), p. 8, and *Informative Motion Reaffirming LUMA's Requests in its October 7th Motion*, NEPR-MI-2022-0001, October 10, 2025 ("October 10th Motion"), p.2. LUMA also informed that it had not received the study appendices until October 8th. *See* October 10th Motion, p. 2. The Energy Bureau has not ruled on these requests and LUMA is working on its written comments to be submitted by the proposed November 7th date.

18. At present, the Market Baseline and Potential Study is still subject to stakeholder comments and the Energy Bureau's review. The Energy Bureau has not issued a determination adopting it. It is anticipated that, based on the comments the Energy Bureau receives, it will issue a determination on whether it will adopt the study as issued or not.

19. In its current form, relied on by the Consultant, the Market Baseline and Potential Study does not represent the Energy Bureau's final position or findings. Rather, it is a draft document that may undergo substantial revisions or clarifications. As such, reliance on this document at this time would be misleading and may result in decisions based on incomplete or inaccurate information that may later be invalidated or challenged.

20. Appreciating that the Energy Bureau is not a court of law and that the Rules of Evidence apply at the Energy Bureau's discretion[7], LUMA submits that reliance on draft positions or findings is improper and a basis for excluding an expert or an expert's specific opinions. Generally speaking, an expert opinion must rely on a foundation of reliable and sufficient facts or data. *See e.g., United States v. Payne-Pabon*, 2025 WL 1709942, at *3 (D.P.R. June 18, 2025). Judges, as gatekeepers of expert testimony, "may evaluate data offered to support an expert's bottom-line opinions to determine if that data provides adequate support to mark the expert's testimony as reliable." *Robles-Figueroa v. Presbyterian Cmty. Hosp., Inc.*, 2025 WL 304044, at *2 (D.P.R. Jan. 27, 2025). In doing so, the court determines "whether the reasoning or methodology underlying the testimony is valid and whether that reasoning properly can be applied to the facts in issue." *Zachar v. Lee*, 363 F.3d 70, 76 (1st Cir 2004) (*citing Daubert*, 509 U.S. at 592-93) (internal quotation marks and ellipsis omitted).

21. Pursuant to Puerto Rico Rule of Evidence 702, courts consider, among others, whether the expert testimony is based on sufficient facts or data, whether the testimony is the product of reliable principles and methods, and whether the witness has reliably applied the principles and methods to the facts of the case.[8] Ernesto Chiesa, leading Puerto Rico scholar on

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[7] Pursuant to Section 2.01 of *the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, Regulation No. 8543 of the Puerto Rico Energy Bureau, the Rules of Evidence may apply, in a supplemental manner to any [adjudicative proceeding] before the Energy Bureau when, in the exercise of its discretion to handle cases before it, the Energy Bureau determines it by way of an order." LUMA hereby requests that the Energy Bureau apply the principles set forth in Rules of Evidence 403.

[8] Puerto Rico Rule of Evidence 702 provides as follows:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert—pursuant to Rule 703—may testify thereto in the form of an opinion or otherwise.
>
> The probative value of the testimony shall depend, among other factors,
> on:
> (a) whether the testimony is based upon sufficient facts or data,
> (b) whether the testimony is the product of reliable principles and methods,

the law of evidence, comments that Rule 702 intertwines admissibility with probative value and requires that courts gauge admissibility in light of the criteria outlined in Rule 702, weighed against the risk of undue prejudice if the evidence is admitted. Ernesto L. Chiesa Aponte, *Reglas de Evidencia Comentadas,* at 240 (2016).

22. Here, a draft study that may undergo substantial revisions or clarifications is not a sound foundation by which to base an opinion. Until the Market Baseline and Potential Study has addressed stakeholder comments and the Energy Bureau's review, and is finalized thereafter, it remains an incomplete and potentially misleading document.

23. Consider *In re Rezulin Products Liab. Litig*., as an example. 309 F. Supp. 2d 531, 562 (S.D.N.Y. 2004). There, an expert relied on an unpublished FDA report in opining that the risk of the Rezulin drug outweighed its benefits. Referencing the "broad mandate requiring district courts to act as gatekeepers to prevent the admission of untrustworthy expert testimony," the court noted that it was "not bound merely to accept expert testimony based on questionable data….'" *Id*. at 562-63. The court explained that "under the FDA's own regulations the unpublished report did not qualify as an official position of the FDA," *id.,* at 562, and therefore found that the "report itself would appear to be untrustworthy when relied upon, as did Dr. Gale, as a definitive opinion of the FDA." *Id*. In large part due to the improper reliance on the unpublished FDA report, the court excluded the expert's opinion. *Id.,* at 563. This same analysis is applicable here.

> (c) whether the witness has reliably applied the principles and methods to the facts of the case,
> (d) whether the principle underlying the testimony is generally accepted by the scientific community,
> (e) the witness's qualifications or credentials, and
> (f) bias by the witness.
>
> The court shall rule on the admissibility of expert testimony in accordance with the factors listed in Rule 403.

32 LPRA Ap. VI R. 702 (2025).

24. More still, the Energy Bureau may limit or exclude an expert witness' testimony taking into consideration factors such as (i) the risk of undue prejudice; (ii) the risk of confusion; (iii) the unnecessary delay of the proceedings; and (iv) the unnecessary introduction of cumulative evidence vis á vis its probative value. *See* Rule 403 of the Puerto Rico Rules of Evidence, 32 LPRA Ap. VI, R. 403 (2025) (emphasis added). Having the Ex. 58 Report in the record will serve only to confuse the issues and introduce inaccurate or incomplete information, which would have little to no probative value to these proceedings.

25. As stated in the Surrebuttal testimony of Ms. Joseline Estrada, LUMA Exhibit 72, the Market Baseline and Potential Study was completed after LUMA prepared the load forecast that was submitted to support the rate case application. LUMA is reviewing and preparing comments to the Market Baseline and Potential Study. When and if the Energy Bureau accepts the Market Baseline and Potential Study, LUMA may incorporate its impact into future forecasts.

26. For these reasons, LUMA respectfully submits that the Ex. 58 Report and its attachments, including the PC Ex. 58.02, should be excluded from the record.

WHEREFORE, LUMA respectfully requests that this Energy Bureau strike from the record the Ex. 58 Report and grant LUMA leave to file the Spanish-language summary of this motion on or before November 5, 2025.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31st day of October, 2025.

WE HEREBY CERTIFY that this Motion was filed using 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@sbgblaw.com; Giuliano Vilanova-Feliberti, gvilanova@vvlawpr.com; Maraliz Vázquez-

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