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

In re: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	Case. No.: NEPR-AP-2023-0003

PREPA'S MOTION FOR THE ENERGY BUREAU TO RECONSIDER AND VACATE HEARING EXAMINER ORDER COMPELLING PRODUCTION OF PRIOR DRAFTS OF THE FTI REPORT

TO THE HONORABLE ENERGY BUREAU,

COMES NOW, the Puerto Rico Electric Power Authority ("PREPA"), through its undersigned legal counsel, and, very respectfully, states and prays as follows:

I. INTRODUCTION

1.1. On December 11, 2025, the Chairman of the Energy Bureau verbally directed PREPA to produce all prior drafts of what has been referred to in this proceeding as the draft FTI Report (the "Chairman's Request").[1] Subsequently, on December 22, 2025, the Hearing Examiner, Scott Hempling, issued an Order that purported to restate the Chairman's request but, in fact, materially expanded its scope, while erroneously concluding that the time for PREPA to seek reconsideration of the Chairman's Request had elapsed ("Hearing Examiner's Order" or "December 22 Order").

[1] The correct name of the document is "Assessment Report for Development and Execution of an Accounting Remediation Plan for Puerto Rico Electric Power Authority (PREPA)." For purposes of this motion, PREPA will denominate as the "Draft FTI Report" the draft version, dated October 2025, that PREPA sent to the Hearing Examiner on November 25, 2025, for *in camera* review and subject to its privilege claim.

1.2. PREPA respectfully moves the Energy Bureau to reconsider and vacate the Hearing Examiner's Order. As set forth below, the Hearing Examiner's Order rests on multiple, independent legal error and raises serious institutional and precedential concerns that warrant reconsideration, including:

a. The Chairman's Request was never formally issued by a majority of the Energy Bureau and therefore lacks legal force or effect;

b. The time to seek reconsideration of the Chairman's Request has not elapsed because, under controlling Puerto Rico Supreme Court precedent, a verbal directive does not trigger the running of reconsideration or administrative review deadlines;

c. Both the Chairman's Request and the Hearing Examiner's Order compel the disclosure of documents protected by the deliberative-process privilege, despite the absence of the "thorough showing" of a particularized need required under controlling precedent to overcome that privilege;

d. The drafts sought - each of which was superseded by the Draft FTI Report admitted into evidence over PREPA's deliberative-process privilege objection— are irrelevant and lack probative value, as affirmatively acknowledged by LUMA's counsel, and therefore cannot justify piercing a recognized governmental privilege or the important public policy it protects; and

e. Allowing the Chairman's Request and the Hearing Examiner's Order to stand would establish a dangerous precedent with a chilling effect

on inter-agency deliberations and communications among entities such as the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"), the Puerto Rico Public-Private Partnerships Authority ("P3A"), PREPA, its private operators, and even the Energy Bureau itself.

1.3. Each of the foregoing grounds independently requires that the December 22 Order be vacated.

1.4. Moreover, subsequent developments further underscore the absence of any need - let alone legal justification - to compel production of prior drafts. Specifically, on December 26, 2025, FTI Consulting issued the final version of the "Assessment Report for Development and Execution of an Accounting Remediation Plan for Puerto Rico Electric Power Authority (PREPA)" ("FTI Report"). Since this is the final version, and consistent with its position since the beginning of this controversy, PREPA hereby submits the FTI Report as **Exhibit A**.

II. RELEVANT PROCEDURAL BACKGROUND

2.1. On September 26, 2025, LUMA submitted a request for information ("ROI") to PREPA through the Accion discovery platform ("Accion"), ROI No. LUMA-of-PREPA-SUPPORT-9 ("ROI-9"), whereby it requested the following:

> Please describe PREPA's efforts at balance sheet remediation that can facilitate the evolution of rate based regulatory rate making as well as access to capital markets financing.
>
> a. When does PREPA anticipate that its balance sheet remediation will be complete?
>
> b. Identify the costs included in PREPA's rate petition that supports balance sheet remediation and provide the worksheets and/or any

supporting documents or analysis that show the derivation of such costs.

c. Provide the scoping report developed by FTI Consulting referred to in PREPA's certified fiscal plan. Please provide a detailed description of any and all conclusions, assessments, and recommendations included therein.

See LUMA-of-PREPA-SUPPORT-9 (Emphasis added).

2.2. On October 17, 2025, PREPA responded to ROI-9 as follows:

a. The process is being managed by the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"). Therefore, PREPA does not have an estimated timeframe for the completion of the accounting remediation process.

b. No costs were included in PREPA's rate petition that supports balance sheet remediation. As of the date of this response, the accounting remediation process is still being conducted and managed by AAFAF.

c. **See PREPA's response to part a.**

See PREPA's Response to ROI-9 (Emphasis added).

2.3. Without ever conferring with PREPA, and carrying out a good faith effort to resolve a discovery dispute before resorting the agency[2], on November 5, 2025, LUMA filed a *Motion to Compel PREPA's response to LUMA-of-PREPA-SUPPORT-9(c)* ("Motion to Compel"), whereby it **changed its original request** in ROI-9 and sought an order requiring PREPA to produce the ***latest version*** of the "Development and Execution of an Accounting Remediation Plan for Puerto Rico Electric Power Authority (PREPA)" informally known as the *FTI Scoping Report* (hereinafter, the "Draft FTI Report").

[2] *See* Rule 34 of the Puerto Rico Rules of Civil Procedure, 32 L.P.R.A. Ap. V.

2.4. Minutes later, and **without affording PREPA an opportunity to be heard**, the Hearing Examinerissued an e-mail granting LUMA's request. Specifically, the Hearing Examiner stated:

> Counsel, I am granting this motion. PREPA, provide the doc if it is in your possession. If is not in your possession, take all practical action to persuade the possessor of the document to provide it. Official order to follow.
>
> LUMA, really, I don't need 19 paragraphs to make a simple decision. Focus your resources on answering ROIs to you timely.
>
> *See* Hearing Examiner's e-mail of November 5th, at 12:55pm.

2.5. Shortly thereafter, PREPA responded to the Hearing Examiner's e-mail as follows:

> Mr. Hempling,
>
> This is the first time I am learning about LUMA's dissatisfaction with PREPA's response. Had LUMA sent me an e-mail or a follow up question, PREPA would have addressed its concern.
>
> PREPA can supplement its response to the original question to clarify that the scoping report developed by FTI Consulting referred to in PREPA's certified plan has not been formally issued.
>
> PREPA notes that the *Motion to Compel* attempts to change LUMA's original request. Originally, LUMA requested PREPA to "**c. Provide the scoping report developed by FTI Consulting referred to in PREPA's certified fiscal plan…"** In the *Motion to Compel*, LUMA now "seeks an order requiring PREPA to produce, within three (3) days, ***the latest version*** of the FTI Scoping Report and any attachments or appendices."
>
> PREPA opposes LUMA's new request for the production of drafts versions of the FTI Scoping Report, as the Energy Bureau should not make decisions based on documents that are not final.
>
> PREPA requests that its position be considered and addressed in the Order that will be issued.

See PREPA's counsel's e-mail of November 5, 2025, at 1:04pm.

2.6. Later that same day, the Hearing Examiner sent a second e-mail where he determined as follows: "Work something out and come back to me; **I will hold off on the order**. Act swiftly please." (Emphasis added).

2.7. Despite representing that he would "hold off on the order", two days later, on November 7, 2025, the Hearing Examiner issued and order setting the Agenda for the November 7 Conference. It stated:

> The attached agenda attempts to capture all outstanding questions of which I am aware. Please bring to the conference today at 2pm Atlantic any remaining questions requiring my attention." Additionally, in included an addendum with various topics (hereinafter, the "Agenda"). Despite the Hearing Examiner's Under part II of the Agenda, titled "Objections", the document read as follows:
>
> **II. Objections**
>
> A. LUMA to PREPA 5 Nov. re FTI scoping report
>
> I require PREPA to produce the latest version of the FTI Scoping Report, as requested by LUMA by way of LUMA-of-PREPA-SUPPORT-9(c) today. If PREPA does not have possession, PREPA should take all feasible actions to persuade the entity that has possession to provide it. This obligation is a continuing obligation

2.8. During the November 7, 2025, Prehearing Conference, both LUMA and PREPA argued their respective positions on the issue. Ultimately, the Hearing Examiner **denied** LUMA's Motion to Compel and decided not to order production of the Draft FTI Report because it was not a final document. However, he left the door open for the parties to file another motion in the future. Specifically, the Hearing Examiner made the following determination during the Prehearing Conference:

> **Scott Hempling, Hearing Examiner:** I confess I'm having trouble understanding the privilege, but you know more about it than I do, Ms. Valle. I'm just telling you that I never thought about a utility having a privilege about how it's going to use a report that it purchased from a consultant. Of course, if it's not a finished product, again, like I don't like my stuff getting out until I'm ready to publish it. So, look, if this thing is not coming out of the oven yet, then I don't have to make any decisions today. You all are still working on it, but try to make it go away, would you? I'm a very busy person right now.
>
> **Mirelis Valle, counsel for PREPA:** Mr. Hempling, I agree to produce it once it's finished. I mean, PREPA is the one … of transparency.
>
> **Scott Hempling, Hearing Examiner:** Ms. Valle, we're done. If they don't agree with you that it's finished, they'll file a pleading with me. I'm sorry. If they don't agree with you that it's not finished, they'll file a pleading with me, but I don't know what I'm going to do with that. Okay? **Ms. Mercado, I'm not going to order them to produce something to you that they're still working on.** Okay. If it's a finished product and the client is just thinking about how to use it, I'm more inclined to say, I want Mr. Smith to have it. Never mind whether you want it. I want Mr. Smith to have it. If it's not a finished document, I have a different issue. Okay. I don't want to spend a lot of time with my consultants looking at drafts. Okay. Now, what Ms. Valle is saying, it's not finished. But what Ms. Mercado is saying, she's seeing dialogue that says it is finished. Now, you two figure this thing out. Okay. Because it can't be both. And try to make it go away. Please. All right. But I will do the right thing when I get the right motion. Okay. Just try to think about everybody's workload. Both of you. Okay.

2.9. Undeterred, on November 22, 2025, LUMA filed its *Motion to Reiterate Request to Compel PREPA's Production of FTI Scoping Report* ("Second Motion to Compel"), whereby its rehashed its previous arguments.

2.10. The following day, the Hearing Examiner informally notified the draft order that would be issued on Monday, November 24, 2025, whereby he, *inter alia*, granted LUMA's Second Motion to Compel production of the Draft FTI Report ("Order") and reversed his November 7th decision not to require production of a draft document. **Once again, the Hearing Examiner decided to grant LUMA's**

request in less than 24 hours and without affording PREPA an opportunity to be heard. The formal Order was notified by the Energy Bureau's Clerk on November 24, 2025 (hereinafter, the "November 24 Order"). The relevant portion of the November 24 Order reads as follows which, notably, cites no authority to support its legal conclusions:

> **LUMA's November 22 "Motion to Reiterate LUMA's Request to Compel PREPA's Production of FTI Scoping Report" (LUMA-of-PREPA-SUPPORT-9)**
>
> Subpart (c) of this ROI, from LUMA to PREPA, states:
> *c. Provide the scoping report developed by FTI Consulting referred to in PREPA's certified fiscal plan. Please provide a detailed description of any and all conclusions, assessments, and recommendations included therein.*
>
> LUMA's request aside, I have now decided that I want the FTI Report, in whatever form it is, if PREPA has it. PREPA therefore must provide it, via the Accion platform. Its link to relevance is obvious, as LUMA states (Motion to Reiterate at 10-11):
>
> > The Energy Bureau's framework expects accounting consistent, to the extent feasible, with the FERC USoA, and – as explained by LUMA's Chief Financial Officer Andrew Smith – USoA presentation depends materially on the remediation of PREPA's legacy accounting records and the reconciliation of PREPA's balance sheet (LUMA Ex. 2.0, Qs. 38–40, pp. 34–35). The FTI Scoping Report bears directly on the path, scope, sequence, and timing of that remediation. Consistent with this testimony, the Energy Bureau's consultants, Ralph C. Smith and Mark S. Dady, have recommended that the Bureau require LUMA and PREPA to produce a reconciled, USoA-conforming balance sheet by June 30, 2026 (PC Ex. 62, § II, pp. 3–7). The FTI Scoping Report is the foundational scoping document that identifies the tasks, dependencies, and schedule necessary for reconciliation, and is therefore critical for the Energy Bureau to evaluate the feasibility of the recommended milestone and to oversee the steps required to meet it.
>
> This order is an order to produce, not an order on admissibility. Normally I do not allow drafts as evidence (see my rejection of one of the Sargent

> & Lundy reports accompanying the prefiled testimony of Justo Gonzalez). LUMA's experts, and the Energy Bureau's consultants, will benefit from seeing an independent expert's thoughts on the matters covered by the FTI Report. Having the Report now will assist the panelists' preparation for the Recordkeeping Panel.
>
> This document is not protected by the deliberative privilege. What might be so protected would be internal PREPA correspondence about what to do with the Report's recommendations. But that correspondence is not within LUMA's request. Privilege aside, I cannot imagine what self-interest the nonprofit PREPA has in disabling the Energy Bureau from learning all it can about steps toward recordkeeping remediation.
>
> In sum, PREPA must submit the Report to the Accion platform no later than Tuesday, November 25. PREPA should also e-mail the Report to me, and to PREB consultants RSmithLA@aol.com and msdady@gmail.com. Because LUMA will receive the report, PREPA need not provide the LUMA-requested "detailed description."

2.11. In partial compliance with the Hearing Examiner's Order, on November 27, 2025, PREPA notified the Draft FTI Report to the Hearing Examiner and other Energy Bureau consultants via e-mail. In its communication, PREPA stated the following:

> In compliance with your Order, PREPA hereby submits the latest draft it received of the "Development and Execution of an Accounting Remediation Plan for Puerto Rico Electric Power Authority (PREPA)" known as the FTI Report. As previously informed, this document is a draft subject to change.
>
> PREPA has designated the document as "Confidential" for purposes of the Rate Case because it continues to assert its deliberative-process privilege and will, in due course, seek reconsideration of your Order on that and other grounds. In its motion for reconsideration, PREPA will further substantiate its privilege claim/confidentiality request and its position that the document should not be disclosed to the other applicants, intervenors, or stakeholders. Accordingly, PREPA requests that the document be kept confidential and protected from disclosure.

2.12. At 8:52am of November 28, 2025 – a government holiday - the Hearing Examiner notified an e-mail to all stakeholders in the case whereby it set a procedural deadline in this case. Specifically, he granted PREPA until 5:00pm **of that same day** to submit its arguments for reconsideration of the Order. The full text of the aforementioned e-mail reads as follows:

> Dear LUMA Counsel,
>
> As you can see from the below, I have received the FTI Report, accompanied by PREPA counsel's insistence that I not disclose it to anyone beyond PREB consultants at this time, on grounds separately of confidentiality and privilege. As I have just looked at this message (I was teaching last night and occupied by other work deadlines early this morning), I have not given careful thought yet about what to do. As should be obvious, we have a situation where LUMA requires immediate access; but PREPA insists on my withholding that access until PREPA submits, at an unknown future time, arguments about confidentiality and privilege.
>
> This situation is beyond uncomfortable—a no-win situation for all. The longer LUMA's access is delayed, the less opportunity it has to prepare for the upcoming Recordkeeping Panel. If I provide access to LUMA today, I risk violating PREPA's asserted right to have reconsideration of its privilege claim—which I have already ruled against. It is not clear to me why PREPA could not have made these claims to me much sooner, rather than waiting until the sands in the hourglass have nearly run out.
>
> I can understand, temporarily at least, not disclosing the doc to the public. I do not understand, yet, any problem with disclosing the doc, subject to confidentiality, to LUMA and other NDA signatories. If I remember (I have written many orders), I have already ruled against a privilege claim. LUMA's status as PREPA's legal agent seems to me dispositive of the privilege claim. Especially concerning financial recordkeeping, there cannot be secrets between this principal and this agent.
>
> Maintaining confidentiality for now? Ok, because if erroneous, I can repair later. But delaying LUMA's access is a continuing problem, irreparable given the passage of time and the imminence of the

> upcoming Panel. Therefore: **I must have PREPA's arguments for reconsideration on privilege by 5pm today.**
>
> Better yet, working something out. Folks, I need this dispute like I need a hole in the head. I have literally 30 other tasks to complete before we return Monday. Help make it 29.
>
> (Emphasis added).

2.13. At 5:01pm of that same date, that is November 28, 2025, PREPA sent an e-mail to the Hearing Examiner explaining that the eight (8) hour deadline was impossible for PREPA to meet and requesting that the 5:00pm deadline be set aside. Specifically, PREPA's e-mail stated:

> Mr. Hempling,
>
> Please be advised that PREPA is working on its motion for reconsideration. Unfortunately, the eight-hour deadline referenced in your previous e-mail is impossible for PREPA to meet. PREPA respectfully requests that the 5:00 p.m. deadline be set aside. Notwithstanding, PREPA will submit its motion today.

2.14. In response, on that same date at 5:17pm, the Hearing Examiner replied to PREPA's counsel's e-mail with the following communication:

> Counsel Valle,
>
> With respect, I do not have sympathy for the eight-hour constraint on preparing a document explaining your reasons for withholding a document for many days. I have assumed you asserted privilege in good faith, meaning that you had done your research and thinking well ahead of using privilege as a basis for the withholding. I don't need Supreme-Court-brief quality. I need your reasons for asserting a privilege which I have already ruled has no basis.
>
> I therefore will not set aside the deadline. I have said before that if PREPA seeks to participate in this proceeding, and assert rights that require adjudication by me, it must staff its efforts with the necessary resources. The 5pm deadline having passed, I consider myself as having the power to act.

> At this point, I am going to instruct Accion to create a place on the platform where we can put this document, then restrict access, for now, to only one counsel per party. I will instruct counsel for each party not to share the document with anyone else, until I consider various other options. I ask all counsel to understand and accept the care and caution that I am applying to this situation, rather than immediately insist on broader access.
>
> Bottom line: At some point this evening, I will have to move from accommodating PREPA's situation—all of which was avoidable by bring these issues to me sooner—to accommodating the larger public interest.
>
> All: I will include a complete record of these e-mails in my order on this matter. This dialogue has now gone beyond the merely ministerial.
>
> Colleagues: We must find a better way. None of us has the hours to spend on this number of disputes.
>
> Be well.[3]

2.15. On that same date, at 5:31pm, the Hearing Examiner sent the following e-mail to all stakeholders in this case:

> Dear Colleagues,
>
> I apologize for troubling all night before holiday, but I must carry out my duties. If I do circulate the FTI document, I will, for now, restrict access as follows: For each party, one counsel and one other person (who could be a counsel or an advisor). I ask all to understand my purpose: to minimize any damage should my decision to share the document, if I make that decision, be wrong. We have more time to address the next steps. What matters to me now is to ensure reasonable preparation for the Recordkeeping Panel. I can safely determine that that goal does not require access by 130 people.
>
> I am not going bother the Accion staff (who, if rational, have left for the day) to set up something on the platform. I will act as the steward. Each party, send me (no need to copy all) your two e-mail

[3] It is worth noting that, despite asserting that "[he] will include a complete record of these emails in [his] order on this matter", no complete record of the emails was included in the December 1, 2025 Order cited below.

addresses. If I decide to circulate the document, I will circulate only to those people, for now. I am instruction all to allow no further circulation. So choose your two people wisely.

Thank you.

2.16. On that same date, at 6:10pm, counsel for PREPA sent the following e-mail to the Hearing Examiner, with copy to all stakeholders in this case:

Mr. Hempling,

This is not a matter of sympathy but one of due process and the rule of law. Section 3.15 of the Puerto Rico Administrative Procedure Act (LPAU) grants PREPA a statutory right to seek reconsideration within twenty (20) days. That period cannot be altered or shortened by the agency, much less by imposing an 8-hour deadline on a government holiday.

The order issued today [via e-mail] directing PREPA to file its reconsideration by 5:00 p.m. contravenes PREPA's statutory rights.

PREPA will exhaust all legal remedies.

18. In response, the Hearing Examiner sent the following three (3) e-mails:

a. **at 6:43pm**: "Ms. Valle, What is your view of the date from which the stated 20 days runs? That is, what is your view of the date on which I compelled production? Thank you."

b. **at 6:59pm**: "Sorry, I am informed by local counsel that the 20 days in sec. 3.15 is unambiguously for final or partial orders by the agency in the entire adjudicatory proceedings, not for procedural orders by a lowly hearing examiner. It means orders that create a right to judicial review."

c. **at 7:55pm**: "Last word on this subject: My official order on this matter issued November 24. My earlier e-mails were not orders, because I told parties to work it out. I will address this matter by Sunday AM. Please—everyone focus on enjoying the holiday."

2.17. Despite the Hearing Examiner's statement that he would "address this matter by Sunday morning," November 30, 2025, no communication or ruling

was issued on that date. Moreover, notwithstanding the Hearing Examiner's established practice of circulating draft versions of orders over the weekend preceding their formal issuance on Monday, no draft order was circulated during the weekend of November 29–30, 2025.

2.18. On December 1, 2025, after 5:00pm, the "Hearing Examiner's Order on Exhibits, FTI Report, and Miscellaneous Procedural Matters" (hereinafter, the "December 1 Order") was notified in the above-captioned case. For purposes of this motion, the relevant portions of the Order are the following:

> **The FTI Report**
>
> My Order of November 24, 2025, directed PREPA to provide the FTI report sought by LUMA via LUMA-of-PREPA-SUPPORT-9. I stated that independently of LUMA's interest, I wanted the document for the Energy Bureau and its consultants, in whatever form it currently exists. I requote here LUMA's explanation of its importance (LUMA's Motion to Reiterate (Nov. 22) at 10-11), which I adopt:
>
> > The Energy Bureau's framework expects accounting consistent, to the extent feasible, with the FERC USoA, and as explained by LUMA's Chief Financial Officer Andrew Smith USoA presentation depends materially on the remediation of PREPA's legacy accounting records and the reconciliation of PREPA's balance sheet (LUMA Ex. 2.0, Qs. 3840, pp. 3435). The FTI Scoping Report bears directly on the path, scope, sequence, and timing of that remediation. Consistent with this testimony, the Energy Bureau's consultants, Ralph C. Smith and Mark S. Dady, have recommended that the Bureau require LUMA and PREPA to produce a reconciled, USoA-conforming balance sheet by June 30, 2026 (PC Ex. 62, sec. II, pp. 37). The FTI Scoping Report is the foundational scoping document that identifies the tasks, dependencies, and schedule necessary for reconciliation, and is therefore critical for the Energy Bureau to evaluate the feasibility of the recommended milestone and to oversee the steps required to meet it.

2.19. In concluding that the deliberative process privilege did not apply to the Draft FTI Report, and without citing any legal authority in support, the Order determined that:

> The FTI report was not created by a government agency or any official within a government agency. **In any event, PREPA is not a government agency.** PREPA is a corporation created by the government; it not part of any branch of the government.
>
> (Emphasis added).[4]

2.20. Although the November 24 Order contained no notice (*advertencias*) to the parties of their right to seek reconsideration or appeal, in his December 1 Order, the Hearing Examiner concluded that the appellate procedure that needed to be followed in this particular instance had been established via prior **Hearing Examiner order** entered on April 25, 2025 (and not Energy Bureau adopted regulation). Specifically, the Hearing Examiner concluded, in pertinent part, the following:

> In fact, **my hearing rules** provide no opportunity for motions to reconsider my rulings. They do provide for appeals to the Energy Bureau, which must occur within five days of my ruling. See Order of April 25, 2025, at 6 ("the ROI recipient must file an appropriate appeal Motion with the Energy Bureau within 5 days of the Hearing Examiner's ruling."). The same Order states that "[a]ll days counted are calendar days." Id. at 5 (emphasis in original). The fifth day was a Saturday, November 29, a day when filing an appeal with the Energy Bureau was not possible. Having received no notice of an appeal by end of today, Monday, December 1, I now direct Accion to place the document in the appropriate confidential location and inform all parties of that location. I am therefore revoking my prior plan to limit access to only two individuals per party. I see no reason to single out this document for such a restriction.
>
> (Emphasis added).

[4] This determination by the Hearing Examiner is wrong as a matter of law as the PR UAPA, defines "Agency" as including public corporations. 3 L.P.R.A. § 9603 ("(a) Agency — Means any … public corporation…").

2.21. Through the December 1 Order, the Hearing Examiner *motu propio* made the Draft FTI Report available to all parties in this case.

2.22. On November 9, 2025, the "Hearing Examiner's Order on Miscellaneous Substantive and Procedural Matters" was formally notified, which in relevant part reads as follows:

> FTI report—confidentiality status
>
> The FTI report currently resides on the Accion platform, confidentially, at LUMA-of- PREPA-SUPPORT-9 (Ex. 944). I instruct PREPA to determine which portions of the FTI report must remain confidential. If a redacted version is possible, and if that version has anything of substance, I would like that version to be available to all parties before the Recordkeeping panel begins. I acknowledge the shortness of time. Please make a good-faith effort.

2.23. PREPA's claim was that the entire draft FTI Report is protected by the deliberation-process privilege. Because no redaction was possible to protect its claim, no redacted version was submitted by PREPA.

2.24. On December 10, 2025, the Record Keeping panel took place. At the beginning of the panel, PREPA reiterated its claim that the Draft FTI Report was subject to the deliberative process privilege.

2.25. PREPA's counsel further emphasized that the document was a draft and, as such, had no probative value. Shockingly, **LUMA's counsel joined PREPA's objection, also arguing that the document had <u>no</u> probative value**.

2.26. Notwithstanding the parties' joint objection, the Hearing Examiner admitted the Draft FTI Report into evidence. Once again, and without citing any supporting authority, the Hearing Examiner expressly stated that such admission

did not confer evidentiary weight or establish the truth of the document's contents, but that the draft was admitted solely "for discussion purposes."

2.27. Despite the parties' joint objection to the probative value of the draft FTI Report and PREPA's objection under the deliberative-process privilege, the Chairman of the Energy Bureau verbally directed PREPA to produce **all prior drafts of the draft FTI Report**. That unilateral directive, however, was never memorialized in a written order, much less by a majority of the Energy Bureau Commissioners.

2.28. On December 15, 2025, counsel for LUMA made a verbal motion whereby she followed up with the Hearing Examiner and requested that a deadline be set for PREPA to comply with the Chairman's Request for the production of all prior versions of the Draft FTI Report. In response to the Hearing Examiner's inquiry regarding when such drafts would be produced, counsel for PREPA stated that PREPA intended to seek reconsideration of the Chairman's Request on multiple grounds, including that: (i) the Chairman's Request would have a chilling effect on inter-agency communications among AAFAF, PREPA, and P3A; (ii) the Energy Bureau was improperly piercing the fundamental deliberative-process privilege to obtain materials of no evidentiary significance; and (iii) any prior drafts had been superseded by the most recent draft, which the Hearing Examiner had already determined lacked probative value, rendering earlier drafts even less probative.

2.29. In response to PREPA's argument, the Hearing Examiner asserted on December 15 that he would reconvene with the Energy Bureau's Commissioners to determine how they wished to proceed on this topic. The evidentiary hearings

of the Rate Case concluded on December 19, 2025, and PREPA never received any other written or verbal directive related to the production of the prior versions of the Draft FTI Report

2.30. Notwithstanding the fact that the evidentiary hearings had concluded, on December 22, 2025, the "Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues" was issued and served on the parties. In that Order, the Hearing Examiner purported to restate and **materially modify** the Chairman's Request as follows:

> **Drafts of the FTI report <u>and related e-mails</u>**
>
> On Thursday, December 11, 2025, the Chairman required PREPA to provide any drafts, ***and associated e-mails***, of the FTI report already submitted. The five days for petition for reconsideration, provided by the Energy Bureau's rules, have passed. PREPA shall provide this information no later that 5pm on Wednesday, December 24, 2025, to the Accion platform per any instructions from Kate Bailey.
>
> (hereinafter, the "December 22 Order") (Emphasis added).

2.31. The procedural history set forth above reflects a pattern of irregular actions that independently warrant reconsideration of the December 22 Order. Specifically, the production of the draft FTI Report was compelled through a series of informal communications and orders that (i) expanded the scope of LUMA's original request (ROI-9) to encompass draft materials and related e-mails, (ii) reversed prior rulings without explanation or notice, (iii) imposed abbreviated and extra-statutory deadlines that curtailed PREPA's right to seek reconsideration, (iv) relied on verbal directives that were never memorialized in a written order issued by a majority of the Energy Bureau, and (v) culminated - after the close of

evidentiary hearings - in a post-hearing order asserting, without authority, that PREPA's rights to administrative review had expired. Any one of these defects would justify vacatur; taken together, they underscore that the December 22 Order cannot stand.

2.32. These procedural defects are not harmless or technical in nature. They implicate fundamental requirements of Puerto Rico administrative law governing how agency directives must be issued, when reconsideration rights attach, and the limits of a hearing examiner's authority—particularly after the close of evidentiary hearings. The governing legal principles are set forth below.

III. APPLICABLE LAW

a. Legislative rules

Section 1.3(m) of Act No. 38 of June 30, 2017, as amended, known as the "Government of Puerto Rico Uniform Administrative Procedure Act", 3 L.P.R.A. sec. 9603 ("PR UAPA"), defines **"Rule or Regulation" as** "any agency rule or body of rules of general applicability that implements or interprets public policy or law, or that prescribes the procedure or practice requirements of an agency and has the force of law. The term includes the amendment, repeal, or suspension of an existing rule." Through the rulemaking process, agencies create rules of general applicability that define or interpret public policy or prescribe a legal norm. Under this framework, no rights or obligations of specific individuals are adjudicated.

Rules are classified into two categories: legislative rules and non-legislative rules. Sierra Club et al. v. Jta. Planificación, 203 D.P.R. 596, 605 (2019). Non-legislative rules "constitute administrative pronouncements that do not alter

the rights or obligations of individuals." These, in turn, are subdivided into two categories: internal rules and guidance documents.

Legislative rules "create rights, impose obligations, and establish a pattern of conduct that has the force of law." Sierra Club et al. v. Jta. Planificación, *supra*, pág. 605; Asociación Maestros v. Comisión, 159 D.P.R. 81, 93 (2003). In contrast to non-legislative rules, due to their significance and the effect they may have on the general public, the rulemaking process for legislative rules must comply with the following requirements established in the UAPA: (1) providing public notice of the regulation to be adopted; (2) affording an opportunity for public participation, including public hearings when necessary or required; (3) submitting the regulation to the Department of State for the corresponding approval; and (4) publishing the approved regulation. Secs. 2.1, 2.2, 2.3, 2.8, and 2.11 of the PR UAPA (3 L.P.R.A. secs. 9611-9613, 9618 y 9621). *See also* Sierra Club et al. v. Jta. Planificación, *supra*, pág. 606; Centro Unido Detallistas v. Com. Serv. Púb., 174 D.P.R. 174, 182 (2008).

It must be clearly established that compliance with the foregoing requirements is essential and unavoidable. Sierra Club et. al. v. Jta. Planificación, *supra.* This is so because the validity of a legislative rule is tied to strict observance of the rulemaking process. In other words, compliance with the rulemaking procedure is indispensable in order to recognize the promulgated rule as having the force of law, since it forms part of the procedural guarantees that permeate the entire statute. Sierra Club et al. v. Jta. Planificación, *supra*, pág. 606; Centro Unido Detallistas v. Com. Serv. Púb., *supra*, pág. 183. Thus, if the rule

or regulation does not conform to and comply with the provisions of the PR UAPA, it will lack the force of law and will be subject to judicial challenge. An agency is precluded from substituting the statutory procedure, on pain of rendering the adopted regulation null. Fernández Quiñones, DERECHO ADMINISTRATIVO Y LEY DE PROCEDIMIENTO ADMINISTRATIVO UNIFORME, 3ra ed., Colombia, Ed. Forum, 2013, p. 138. Accordingly, any regulation adopted in violation of the provisions of the PR UAPA shall be null and void. Sec. 2.7(a) of the PR UAPA, 3 L.P.R.A. sec. 9617(a).

b. Notice requirement and reconsideration

Section 3.15. of Act No. 38 of June 30, 2017, as amended, known as the "Government of Puerto Rico Uniform Administrative Procedure Act", 3 L.P.R.A. § 9655 ("PR UAPA"), provides that "[t]he party aggrieved by a **partial or final order or decision** may file a motion for reconsideration of such order or decision within twenty (20) days after the date of entry of the order or decision."

Section 1.3(h) of the PR UAPA defines "**Partial Order or Decision**" as "any agency action that determines **a right or duty**, **which disposes [of] a single aspect** rather than the whole matter."

Section 1.3(g) of the PR UAPA defines "**Order or Decision**" as "any agency statement or action of particular applicability that determines the rights or duties of a specific person or persons, or that impose administrative penalties or sanctions, except for executive orders issued by the Governor."

Section 3.14 of the PR UAPA provides, in relevant part, as follows:

> The **order or decision shall notify the right to request reconsideration by the agency or to file a petition for review as a matter of law before the Court of Appeals, as well as the parties to be served with notice of said**

> **petition for review, and the pertinent time limits therefor. The aforementioned time limits shall start to run once these requirements have been met**.
> (Emphasis added).

c. Verbal orders

Under the applicable legal framework, a verbal notification in open court of an interlocutory determination by the Court of First Instance in a civil case does not constitute the notification required to trigger the statutory period for filing a motion to reconsider or a petition for certiorari before the court of appeals. Sánchez Torres v. Hosp. Dr. Pila, 158 D.P.R. 255 (2002). The notification that triggers these deadlines must be in writing, and such written notice must be served on all the parties. Id.

d. Decisions by Energy Bureau

Section 6.5(c) of Act No. 57 of May 27, 2014, as amended, known as the "Puerto Rico Energy Transformation and RELIEF Act", 22 L.P.R.A. § 1054d, provides that "[t]he decisions of the Commission shall be made by the consent **of the majority** of the commissioners." (Emphasis added).

e. Relevance and timing of the production of the evidence

Rule of Evidence 401 defines "Relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without such evidence…." 32 L.P.R.A. Ap. VI. On its part, Rule of Evidence 402 provides that "All relevant evidence is admissible, except as otherwise provided

by constitutional mandate, by statute or by these Rules. Evidence which is not relevant is not admissible."

Section 3.13 of the PR UAPA govern the procedure during the administrative hearing. 3 L.P.R.A. § 9653. Section 3.13(b) of the PR UAPA provides that during the administrative hearing "The presiding officer, within a framework of relative informality, shall afford all parties the necessary latitude for full disclosure of all facts and issues in dispute, as well as the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as may have been restricted or limited by stipulations reached at the pre-hearing conference." After the conclusion of the administrative hearing, Section 3.13(f) of the PR UAPA states that "The presiding officer may grant the parties a period of fifteen (15) days after the conclusion of the hearing to submit proposed findings of fact and conclusions of law."

f. The deliberative-process privilege

The PR UAPA defines "Agency" as including public corporations. 3 L.P.R.A. § 9603 ("(a) Agency — Means any … public corporation…").

Among the fundamental categories of official privileged information is the information used by public officials during deliberative processes related to the development of public policy. Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 88–89, 2017 TSPR 173, 99 P.R. Offic. Trans. 5 (Sept. 15, 2017).[5] This category of official privileged information seeks to "promote candid communication among the

[5] Citing with approval Chiesa Aponte, *Tratado de derecho probatorio, supra*, at 292-293.

government officials tasked with deciding and enforcing the public policy of the State." Id. To assert the privilege, the government must show that the document in question is "deliberative" and "pre-decisional." Id.[6] Information is deliberative insofar as it is related to a process through which public policy is developed or formulated. Id. at 26-412.9. A document is "pre-decisional" where it has been prepared to **assist in the government's decision making, which is to say, prior to making them**. Id.

To determine whether this privilege prevails, similar to the privilege for official information, a balance of interests must be made. Chiesa Aponte, *Tratado de derecho probatorio, supra*, at 293. Among the factors that the court must consider when pondering the balance of interests are the following: (a) the interest of the private litigant, (b) the need for accurate judicial fact finding, (c) the public's interest in learning how effectively the government is operating, (d) **the relevance of the evidence sought**, (e) **the availability of other evidence**, (f) the role of the government in the litigation and issues involved, and (g) **the impact on the effectiveness of government employees**. Bhatia Gautier v. Gobernador, 199 D.P.R. at 88–89, 99 P.R. Offic. Trans. 5. **Additionally, the court must evaluate the effect that disclosure would have on the frank discussion of the policies and decisions in question**. Id.; F.T.C. v. Warner Communications Inc., 742 F.2d 1156 (9th Cir. 1984).

[6] Citing with approval *DMoore's Federal Practice, supra*, at 26-412.8

In short, **this privilege may yield when it has been thoroughly shown that the particular need to obtain the information overrides the reasons for non-disclosure**. Bhatia Gautier v. Gobernador, 199 D.P.R. at 88–89, 99 P.R. Offic. Trans. 5; *Moore's Federal Practice, supra*, at 26-412.11. **Courts must be flexible when evaluating this privilege so that we may ensure the protection of this deliberative process**. Id.

IV. ARGUMENTS

A. The Chairman's Request is not a legally binding Energy Bureau order and is a verbal request that does not trigger any deadline for reconsideration.

The Chairman's verbal request directing PREPA to produce all prior drafts of the Draft FTI Report was **not** issued by the consent of a majority of the Energy Bureau Commissioners and therefore does not constitute a legally binding order by the Bureau which triggers any deadline for reconsideration or appeal.

Section 6.5(c) of Act No. 57 unequivocally provides that "[t]he decisions of the Commission shall be made by the consent of the majority of the commissioners." 22 L.P.R.A. § 1054d. This statutory requirement is **unequivocal**. The Energy Bureau acts as a collegial body, and its directives acquire legal force only when adopted by a majority of its Commissioners and issued in accordance with statutory notice requirements. Here, the Chairman's Request was a unilateral verbal statement, never reduced to a written order, never adopted by a majority of the Energy Bureau, and never served on the parties. As such, it does not meet the legal criteria under Act No. 57 and therefore lacks legal force as a matter of law.

Even assuming *arguendo* that the Chairman's Request could be characterized as agency action - which PREPA expressly denies -, the Hearing Examiner's conclusion that "[t]he five days for petition for reconsideration, provided by the Energy Bureau's rules, have passed" is legally incorrect under the PR UAPA and controlling Supreme Court precedent.

As a threshold matter, the Energy Bureau has not adopted any regulation establishing a five-day deadline to seek reconsiderations of hearing examiner rulings. To the extent the Hearing Examiner relied on an appellate procedure purportedly established through a Hearing Examiner order dated April 25, 2025, that procedure is legally ineffective, as it constitutes an **improper legislative rule** that was not approved in compliance with Secs. 2.1, 2.2, 2.3, 2.8, and 2.11 of the PR UAPA. These sections require: (1) providing public notice of the regulation to be adopted; (2) affording an opportunity for public participation, including public hearings when necessary or required; (3) submitting the regulation to the Department of State for the corresponding approval; and (4) publishing the approved regulation.

Further, to the extent the Energy Bureau establishes an appellate review process by regulation, as required under the PR UAPA (which it did not in this case), any order subject to review must expressly notify the parties of their right to seek reconsideration or judicial review, identify the parties to be served, and specify the applicable time limits, in strict compliance with Section 3.14 of the PR UAPA, and fundamental principles of due process. Neither the Chairman's verbal

request, the Hearing Examiner's November 24 Order, nor his subsequent e-mails contained any such notice.

Compounding these defects, the December 22 Order did not merely "restate" the Chairman's verbal request, but materially expanded its scope by adding "associated e-mails". To make matters worse, the directive was made after the close of evidentiary hearings, effectively impeding the parties right to confrontation, while simultaneously asserting that PREPA's time to seek reconsideration had elapsed. In effect, the Hearing Examiner converted a non-binding verbal remark into an expanded written mandate, insulated from administrative review. That result is irreconcilable with basic administrative-law principles and deprives PREPA of the procedural protections afforded to it and expressly guaranteed by the PR UAPA and its jurisprudence.

If allowed to stand, the December 22 Order would establish a troubling precedent whereby informal verbal remarks—never adopted by the Energy Bureau as a collegial body and never issued in compliance with statutory notice requirements—could be expanded to include additional requests and converted into binding obligations insulated from reconsideration. Such a result is incompatible with fundamental principles of administrative law, due process, and orderly agency decision-making.

It is worth noting that the lack of formal regulation for discovery in the Rate Case – or *any* type of regulation related to the Rate Case - has severely affected PREPA's ability to protect and exercise its rights. Particularly, the Hearing Examiner's practice of issuing purported orders via e-mail, but then claiming they

are not orders, is deeply alarming, has mislead PREPA and has even driven PREPA to misuse its limited time and financial resources.

As an example, on November 28, 2025, at 8:52am, the Hearing Examiner required PREPA **via e-mail** to submit its motion for reconsideration and substantiate its privilege claim regarding the Draft FTI Report by 5:00pm on that same date, that is, an eight (8) hour procedural deadline for PREPA to submit its arguments for reconsideration on privilege on a government holiday. When PREPA's counsel requested the Hearing Examiner to set aside the 5:00pm deadline and allow it to submit its position later that night, the Hearing Examiner denied PREPA's request. This is particularly ironic because the order purportedly subject to reconsideration—the November 24 Order—remained subject to reconsideration even under the Hearing Examiner's own April 25 Order, making the imposition of an eight-hour deadline on a government holiday both arbitrary and devoid of any legal justification.

After multiple other e-mails, the Hearing Examiner sent an e-mail at 7:55pm where he asserted the following:

> Last word on this subject: My official order on this matter issued November 24. My earlier e-mails were not orders, because I told parties to work it out. I will address this matter by Sunday AM. Please—everyone focus on enjoying the holiday.

The foregoing communication from the Hearing Examiner is, at a minimum, deeply troubling. The Hearing Examiner relied on a series of informal e-mail communications to direct PREPA's conduct in a manner functionally indistinguishable from binding orders, notwithstanding the absence of a formally

issued written order and without adherence to the procedural safeguards required by PR UAPA and the Puerto Rico Rules of Civil Procedure.[7] After PREPA expended significant time and institutional resources attempting to comply with those directives, the Hearing Examiner subsequently asserted that the same e-mail communications "were not orders," creating material uncertainty as to PREPA's procedural obligations and available remedies. Compounding this uncertainty, the Hearing Examiner stated that he would "address this matter by Sunday AM" and encouraged the parties to "focus on enjoying the holiday," which reasonably led PREPA to believe that no further action was required during the Thanksgiving weekend. Contrary to that representation, no ruling was issued on Sunday. Instead, the Hearing Examiner waited until Monday, December 1, 2025, after 5:00 p.m., to issue an additional order adverse to PREPA, notwithstanding the absence of prior notice that further action would be taken at that time.

Critically, neither the Hearing Examiner's November 24th Order, nor his subsequent e-mails contained any notice (*advertencias*) advising the parties purported appellate or reconsideration procedure, the applicable deadlines, or the consequences of failing to pursue such relief. As previously explained, the Hearing Examiner's order of April 25, 2025, referenced in his December 1 Order, is

[7] See, for instance, Rule 65.3. Notice of orders, decrees, and judgments: (a) Immediately upon the filing in the record of a copy of the notice of entry of an order, resolution or judgment, the clerk shall serve notice thereof on the same date upon all party who may have appeared in the action in the manner provided by Rule 67. Such mailing shall be sufficient notice for all purposes for which notice of the entry of an order, resolution or judgment is required by these rules.

null and void to the extent it attempts to establish a generally applicable appellate procedure without compliance with Sections 2.1, 2.2, 2.3, 2.8, and 2.11 of the PR UAPA. Such an attempt constitutes an improper legislative rule that was never validly adopted.

Beyond the legal invalidity of the Hearing Examiner's April 25, 2025 Order, the overall handling of the Draft FTI Report discovery dispute reflects a pattern of procedural irregularity that undermines confidence in the fairness of the process. PREPA has been subjected to e-mails with instructions by the Hearing Examiner which are then subsequently withdrawn and later described as "not orders"; the orders that have been entered against PREPA have not contained any notice (*advertencias*) about the purported appeal process that it needed to follow to protect its rights; the Hearing Examiner asserted it would rule on a date, failed to do so, even failed to circulate the draft order as he always did, and waited until the purported appellate term had elapsed to then issue an order concluding that PREPA had failed to comply with the foregoing appellate procedure. The irregularities do not end there.

Among other things, the Hearing Examiner:

a. made the Draft FTI Report available to all parties after the evidentiary hearings of the Rate Case had already begun, despite the limited amount of time for meaningful review by the parties;

b. indicated in advance that it would be discussed during the Recordkeeping Panel;

c. notwithstanding earlier statements adopting LUMA's characterization of the Draft FTI Report as a "foundational scoping document" essential to evaluating reconciliation milestones, when LUMA later reversed course and opposed the document's admissibility during the Recordkeeping Panel—asserting that it lacked probative value—the Hearing Examiner once again aligned with LUMA's position, declined to admit the document for the truth of the matters asserted, and restricted its use to "discussion purposes," a limitation not recognized as a valid evidentiary basis;

d. deferred decision-making regarding the Chairman's lone verbal request for prior drafts by stating that he would consult with the Chairman or the Energy Bureau's Commissioners, only to later issue the December 22 Order unilaterally; and

e. materially expanded the scope of the Chairman's verbal request in the December 22 Order by adding "associated e-mails," despite the fact that no such materials had been requested by the Chairman.

Taken together, the irregularities in the Hearing Examiner's management of the discovery and admissibility of the Draft FTI Report reflect a pattern of inconsistent procedural treatment that materially impaired PREPA's ability to protect and exercise its rights in an orderly and predictable manner. **The record**

provides a stark illustration of this inconsistency when the treatment of LUMA's requests is compared to the treatment afforded to PREPA's requests.

The disparate treatment is evident. Extraordinary efforts were made to ensure that the Draft FTI Report—a non-final, deliberative document—was disclosed and discussed during the Recordkeeping Panel, notwithstanding that it had been produced only days earlier, leaving the parties with minimal time for meaningful review or preparation. By contrast, PREPA's request—filed on November 15, 2025, more than a month before the Federal Funds Panel scheduled for December 18–19—to permit the appearance of a senior official from the Central Office for Recovery, Reconstruction, and Resiliency ("COR3") was denied on the stated ground that LUMA and other parties would not have sufficient time to prepare for the testimony. That reasoning stands in sharp contrast to the accommodation afforded with respect to the Draft FTI Report, for which the parties were afforded even less time to prepare, notwithstanding its lack of finality and acknowledged absence of probative value.

The inconsistency was further exacerbated by the exclusion of a COR3 Certification formally issued and notified on December 8, 2025 by COR3's Executive Director, which explained --based on official records, systems, validations, and audit data-- LUMA's performance under the FEMA Public Assistance Program. The certification was excluded on hearsay grounds, even though the very witness capable of testifying to its contents and foundation was the COR3 official whose appearance PREPA had timely requested and whose

testimony the Hearing Examiner denied at LUMA's behest.[8] The result was a procedurally circular outcome in which authoritative, objective, and verifiable information directly relevant to the Energy Bureau's evaluation of LUMA's federal-funds performance was excluded as hearsay, while the sole means of curing that purported defect --live testimony from COR3-- was simultaneously foreclosed.

These procedural irregularities affect not only PREPA's due process rights, but also undermine the fairness and reliability of the Rate Case itself and erode the confidence of both the parties and the public in the Energy Bureau's fairness and impartiality as an institution.

Based on all the foregoing, PREPA requests the Energy Bureau to set aside the December 22 Order mandate requiring the production of all drafts of the Draft FTI Report and associated e-mails.

B. The December 22 Order improperly compels disclosure of privileged deliberative materials.

i. The deliberative privilege applies in this case.

Prior versions of the Draft FTI Report are paradigmatic deliberative materials. They contain pre-decisional communications reflecting the deliberations, advisory opinions, and recommendations exchanged among officials, representatives and agents of PREPA, AAFAF, and the P3A in the course of developing policy and making agency decisions. These drafts were generated precisely to facilitate candid inter-agency discussion and refinement of policy

[8] LUMA verbally opposed COR3's participation as a panelist in the Rate Case both at the prehearing conference of November 7, 2025, and at the conclusion of the evidentiary hearing of November 13, 2025, following the filing of "PREPA's Informative Motion about COR3 Panelist to Testify on the Subject of Federal Funding."

considerations and were not generated for public discussion or review by the Energy Bureau. Compelling their disclosure undermines the core purpose of the deliberative-process privilege.

Through the December 22 Order, the Hearing Examiner seeks to compel production of privileged preliminary drafts which were superseded by the most recent exchanged draft among governmental entities and the final version of the document submitted herein as Exhibit A. Such compelled disclosure constitutes improper scrutiny of protected inter-agency deliberations and intrudes into the executive decision-making sphere. Nothing in the record demonstrates a legal basis to disregard or override this privilege.

Neither the Hearing Examiner Order, nor the Chairman's Request identify any statutory authority empowering the Energy Bureau to compel production of privileged deliberative drafts or override the privilege as asserted by governmental entities engaged in policy formulation. PREPA is likewise unaware of any such authority under Act 57-2014 or the Puerto Rico Uniform Administrative Procedure Act. In the absence of express statutory authorization, the compelled disclosure of privileged executive deliberations exceeds the Energy Bureau's authority and constitutes a capricious and arbitrary agency action.

The Energy Bureau's role in this Rate Case is to establish rates that are just and reasonable. The final version of the FTI Report may assist the Energy Bureau in carrying out this mandate, insofar as it may inform the determination of which accounting-remediation costs are just and reasonable for ratemaking purposes. Prior drafts of the FTI Report, however, as well as related inter-agency

communications exchanged as part of the deliberative process underlying policy formulation, fall outside the scope of the evidentiary record properly before the Energy Bureau. Such preliminary materials are neither probative of the ultimate issues in this proceeding nor necessary to the Energy Bureau's ratemaking function, and their compelled disclosure would improperly intrude upon protected executive deliberations without advancing the merits of this Rate Case.

By compelling production of all drafts of the FTI Report, the December 22 Order exceeds the permissible bounds of administrative adjudication to obtain materials that advance no legitimate evidentiary purpose, due to their lack of probative value, in this Rate Case.

C. There has been no "thorough showing" of particularized need required to override the deliberative-process privilege as required by Bhatia Gautier.

When the factors articulated by the Supreme Court of Puerto Rico in Bhatia Gautier are applied to the record in this case, it becomes evident that piercing the deliberative-process privilege is unwarranted, as there is no basis --let alone the requisite "thorough showing" -- to justify doing so.

i. Interest of the private litigant

The interest of the private litigant weighs decisively against disclosure. Although LUMA initially sought production of the Draft FTI Report, it later joined PREPA's objection to the document's probative value and admissibility during the Recordkeeping Panel. Thus, the very party that moved to compel production ultimately conceded that the Draft FTI Report lacks evidentiary value. Where the requesting party itself disclaims reliance on the document to prove any issue in

dispute, there can be no cognizable private interest sufficient to justify piercing a recognized governmental privilege.

ii. Required drafts are unnecessary for accurate judicial fact-finding

The compelled drafts do not advance accurate fact-finding. The Hearing Examiner expressly admitted the Draft FTI Report "for discussion purposes only," disclaiming any evidentiary weight or truth-finding function. The joint position of both PREPA and LUMA that the draft lacks probative value confirms that it cannot meaningfully contribute to accurate adjudication. Earlier, superseded drafts—necessarily more tentative and incomplete—are even less capable of supporting reliable fact-finding. Compelling disclosure under these circumstances serves no adjudicative purpose.

iii. The evidence sought is irrelevant and lacks probative value

The relevance of prior, superseded drafts has never been established. The evidentiary hearings on revenue requirement had already concluded when the Chairman made his verbal request for all prior drafts, no foundation was laid establishing how earlier, superseded drafts relate to any issue properly before the Energy Bureau, and the Hearing Examiner acknowledged that drafts are normally excluded. Where relevance is uncertain and where both principal parties agree the document lacks probative value, it cannot justify overriding the privilege.

iv. Availability of other evidence

Other, non-privileged sources of information are available. The final, formally issued FTI Report has now been produced and submitted as part of this motion, without compromising deliberative processes. The availability of this

complete and final document weighs strongly against any compelled disclosure of privileged drafts.

v. Role of the government in the litigation and issues involved

PREPA is not acting as a private litigant but as an agency engaged in policy coordination with other governmental entities. The drafts were generated to assist in inter-agency policy formulation. Where the government acts in its policymaking capacity, heightened protection of deliberative materials is warranted. Bhatia Gautier, 199 D.P.R. at 88–89.

vi. Impact on the Effectiveness of Government Employees

This factor overwhelmingly favors non-disclosure. Compelling production of deliberative drafts signals to government officials that tentative analyses and evolving recommendations may later be exposed and scrutinized out of context by the Energy Bureau. The inevitable consequence is a chilling effect on candid inter-agency communications with PREPA and an increase in defensive, litigation-driven behavior, precisely the institutional harm the deliberative-process privilege is designed to prevent.

vii. Effect on Frank Discussion of Policy and Decision-Making

Regardless of the enumerated factors, Bhatia Gautier requires courts to assess whether disclosure would inhibit frank policy discussions. Here, that effect is self-evident. The December 22 Order compels disclosure of pre-decisional drafts exchanged among multiple governmental entities during an ongoing policy-development process, thereby undermining trust, candor, and institutional effectiveness.

If allowed to stand, the December 22 Order would establish a precedent that threatens to: (a) chill frank and candid policy deliberations among public agencies;

(b) encourage inter-agency disputes and unnecessary litigation among governmental entities, including PREPA, AAFAF, P3A, and the Energy Bureau itself; and (c) erode long-recognized executive protections essential to effective governance.

The precedent created by the December 22 Order does not operate in one direction only. By compelling disclosure of privileged deliberations of other agencies, the Energy Bureau risks opening its own internal deliberative communications to similar scrutiny by other governmental bodies asserting reciprocal entitlement. Such a result would be profoundly destabilizing to administrative governance.

The institutional harm posed by the December 22 Order is grossly disproportionate to any conceivable relevance of the requested drafts particularly where, as explained below, those drafts lack probative value altogether.

viii. Failure to Demonstrate a Particularized and Overriding Need

Ultimately, the balancing test fails for a dispositive reason: no party has made the "thorough showing" of a particularized need required under Bhatia Gautier to override the deliberative-process privilege. Most tellingly, both PREPA and LUMA have conceded that the Draft FTI Report lacks probative value. Under these circumstances, the privilege must prevail as a matter of law.

As explained below, the Hearing Examiner's Order and the Chairman's Request transgress fundamental protections afforded to agency deliberative processes in the development of public policy, by compelling the production of documents that LUMA has already acknowledged lack probative value. Simply put, the Energy Bureau has set aside a well-established privilege to obtain materials that advance nothing of value in this Rate Case --an outcome that is inconsistent with the applicable legal framework.

The Energy Bureau's decisions must be based on final, official agency documents; not drafts. If the Draft FTI Report produced in this case lacks probative value, as LUMA already conceded, then all prior and superseded drafts necessarily lack probative value as well. Neither LUMA nor the Hearing Examiner may selectively determine which draft is purportedly relevant or probative and which is not, particularly as the evidentiary hearings already concluded and the fact that the final version of the report has already been produced.

Based on the foregoing grounds, each of which independently warrants reconsideration and vacatur, PREPA respectfully requests that the Energy Bureau set aside the December 22 Order.

WHEREFORE, PREPA respectfully requests that the Energy Bureau **RECONSIDER AND SET ASIDE** the December 22 Order requiring the production of all drafts of the FTI Report.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 1st day of January 2026.

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at https://radicacion.energia.pr.gov/login, and notified via e-mail to the Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record, attorneys of the intervenors of record, and others: *LUMA Energy, LLC and LUMA Energy ServCo, LLC;* Margarita Mercado margarita.mercado@us.dlapiper.com; Jan Albino, Jan.AlbinoLopez@us.dlapiper.com; Andrea Chambers, andrea.chambers@us.dlapiper.com; Carlyn Clarkin, carolyn.clarkin@us.dlapiper.com; Katiushka Bolanos, katiuska.bolanos-lugo@us.dlapiper.com; Yahaira De La Rosa, Yahaira.delarosa@us.dlapiper.com; *Genera PR, LLC*, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Gabriela Castrodad, gcastrodad@sbgblaw.com; José J. Díaz Alonso, jdiaz@sbgblaw.com; Stephen Romero Valle, sromero@sbgblaw.com; Giuliano Vilanova-Feliberti, gvilanova@vvlawpr.com; Maraliz Vázquez-Marrero, mvazquez@vvlawpr.com; ratecase@genera-pr.com; regulatory@genera-pr.com; and legal@genera-pr.com; *Oficina Independiente de Protección al Consumidor*, hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; pvazquez.oipc@avlawpr.com; *Instituto de Competitividad y Sustentabilidad Económica*, jpouroman@outlook.com; agraitfe@agraitlawpr.com; *National Public Finance Guarantee Corporation*, epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; robert.berezin@weil.com; Gabriel.morgan@weil.com; Corey.Brady@weil.com; *GoldenTree Asset Management LP*, lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; iglassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; *Assured Guaranty, Inc.*, hburgos@cabprlaw.com; dperez@cabprlaw.com; mmcgill@gibsondunn.com; lshelfer@gibsondunn.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; *Syncora Guarantee, Inc.*, escalera@reichardescalera.com; arizmendis@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; *PREPA Ad Hoc Group*, dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; david.herman@dechert.com; michael.doluisio@dechert.com; stuart.steinberg@dechert.com; *Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica,* nancy@emmanuelli.law; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; monica@emmanuelli.law; cristian@emmanuelli.law; lgnq2021@gmail.com; *Official Committee of Unsecured Creditors of PREPA*, jcasillas@cstlawpr.com; jnieves@cstlawpr.com; *Solar and Energy Storage Association of Puerto Rico,*

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