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

IN RE: April 16, 2025, Bluesky Total Blackout Event	**CASE NO. NEPR-IN-2025-0003** **SUBJECT: LUMA's Response in Opposition to EcoEléctrica, L.P.'s "Petition to Participate"**

LUMA'S RESPONSE IN OPPOSITION TO ECOELÉCTRICA, L.P.'S "PETITION TO PARTICIPATE"

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

I. Relevant Procedural Background

1. On April 22, 2025, this Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("April 22nd Order") whereby it initiated the captioned proceeding pursuant to Act 57-2014, as amended[1], to investigate (the "Investigation") an outage event affecting the Puerto Rico electric system which occurred on April 16, 2025 (the "Event"). *See* April 22nd Order, p.1. The Energy Bureau ordered LUMA to provide, on or before April 24, 2025, a preliminary outage report of the cause of the Event. *See id*., p. 2.

2. In compliance with the April 22nd Order, on April 24, 2025, LUMA filed with the Energy Bureau, under seal of confidentiality, the preliminary outage report containing the information that LUMA had gathered thus far regarding the Event ("Preliminary Report"). *See Motion Submitting Preliminary Outage Report in Compliance with Resolution and Order of April*

[1] Known as the *Energy Transformation and Relief Act* ("Act 57-2014"), 22 LPRA §1051.

22, 2025, Request for Confidential Treatment and Memorandum of Law in Support of Confidential Treatment of Exhibit 1.

3. On May 30, 2024, EcoEléctrica, L.P. ("EcoEléctrica") filed a Petition to Participate ("EcoEléctrica Petition") in which it requested the Energy Bureau to allow it to participate in this Investigation. In it, EcoEléctrica argued, among others, that its interests were "adversely affected" by the Event, these "interests cannot be adequately represented by other parties in this proceeding", and "it is not aware of any alternate legal mechanism by which to ensure the protection of its rights before the [Energy Bureau]." *See* EcoEléctrica Petition, p. 2. EcoEléctrica also requested that the Energy Bureau provide access to the confidential Preliminary Report submitted by LUMA under a Non-Disclosure Agreement with the purpose of "assess[ing] the findings to date and, if necessary, proactively tak[ing] risk mitigation measures and prepar[ing] for potential future scenarios in light of such findings." *See id*., p. 3.

4. After other procedural events, on June 17, 2025, LUMA filed a motion notifying of its intent to file a response to EcoEléctrica's Petition to Participate in this Investigation and requested ten (10) days to submit this response.

II. Opposition to EcoEléctrica's Request

5. LUMA hereby opposes EcoElectrica's Petition to Participate in this proceeding, including EcoEléctrica's request to access LUMA's Preliminary Report, or any other records of this proceeding, even under a Non-Disclosure Agreement ("NDA").

A. Under applicable laws and regulations, EcoEléctrica has no right to intervene in a non-adjudicative proceeding as is this Investigation

6. EcoEléctrica's plea is, in essence, a request to intervene in this proceeding as a party. However, intervention is not allowed in this type of proceeding.

7. Specifically, the Government of Puerto Rico Uniform Administrative Procedure Act, Act. No. 38-2017 ("LPAU" for its initials in Spanish), provides that "any person having a legitimate interest in an **adjudicative proceeding** before an agency may file a written, duly supported petition for intervention or participation" in the proceeding. PR Laws Ann. Tit. 3, § 9645 (2025) (emphasis ours). It further provides that the agency may grant or deny the petition at its discretion taking into consideration, among others the following factors:

> (a) Whether the petitioner has an interest that may be adversely affected by the adjudicative proceeding.
> (b) Whether the petitioner's interests can be adequately protected by other legal means.
> (c) Whether the petitioner's interests are already adequately represented by existing parties to the proceeding.
> (d) Whether the petitioner's participation may reasonably be expected to assist in developing a sound record of the proceeding.
> (e) Whether the petitioner's participation may excessively broaden the issues or delay the proceedings.
> (f) Whether the petitioner represents or is the spokesperson for other community groups or entities.
> (g) Whether the petitioner may contribute information, expertise, specialized knowledge, or technical advice that otherwise would not be available in the proceeding.

Id.

8. The LPAU defines "intervenor" as "a person other than an original party **to any adjudicative proceeding** conducted by an agency and who shows that has [sic] standing or an interest in the proceeding". Id., § 9603(f) (2025) (emphasis ours).

9. Similarly, Section 5.05 of the Energy Bureau's *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, Regulation No. 8543, approved

December 18, 2014 ("Regulation 8543") provides that "a person with a legitimate interest in a case before the [Energy Bureau] present a duly grounded petition to intervene or participate in said case" and that the Energy Bureau "shall evaluate and attend to the petition according to the criteria set forth in [the LPAU][2], and its interpretative case law."

10. As mentioned, the LPAU only provides for intervention in adjudicative proceedings. Consistent with this approach, the Puerto Rico Supreme Court has stated that the right to intervene only exists within an adjudicative procedure. *Claro TV y Junta Regl. Tel. v. One Link*, 179 DPR 177, 209 (2010).

11. In conclusion, the concept of intervention is recognized only in adjudicative proceedings.

12. The present proceeding is not adjudicative. It is an investigation and, as such, is governed by Article XV of Regulation 8543. Section 15.01 of Regulation 8543 provides that the Energy Bureau, "on its own or through a designated person, may conduct investigations to make sure the energy public policy of the Commonwealth of Puerto Rico is being met efficiently, and to ensure compliance with the laws and regulations it administers". The Energy Bureau "may also investigate any matter related to the electric power industry, as well as any matter within its jurisdiction". *Id*.

13. Article XV of Regulation 8543 contains provisions governing: the mechanisms for the Energy Bureau to carry out the investigations, such as requests for production, admissions, meetings, interviews, among others (*see* Section 15.03), the duty to cooperate by persons under investigation (*see* Section 15.04); the rights of the person under investigation to raise objections to the mechanisms used by the Energy Bureau in the investigation (*see* Section 15.05); and requests

[2] This provision references Act No. 170 of August 12, 1988, as amended which is the predecessor to the current LPAU.

for extensions of time to respond to requests (*see* Section 15.06). Article XV further provides that once the Energy Bureau conducts an investigation, it "shall prepare a detailed report of the investigation" and "inform the investigated person of the [person's] right to answer or object to the report." *See id*. Section 15.07. The "investigated persons have the opportunity to submit, in writing, duly substantiated objections, arguments and comments" to the report. *See id*. Section 15.08. In the event that the "result of the investigation reveals a violation or breach of the public energy policy […], of any rule of the [Energy Bureau] or any other law whose interpretation or implementation falls under the jurisdiction of the [Energy Bureau]," the Energy Bureau has the discretion to "issue a Notice of Noncompliance to the noncomplying party or refer a copy of the report to the [Public Energy Policy Program] or the [Independent Consumer Protection Office] for the filing of a complaint or corresponding action before the [Energy Bureau]." *Id*. Section 15.09.

14. Finally, Article XV provides that "the records of ongoing investigations shall remain confidential while the investigation is in process" but that after the investigation concludes "any information classified as privileged during the course of the investigation, or any information that may violate the fundamental rights of third parties or the right to privacy of the person investigated, shall be duly protected". *Id*. Section 15.10.

15. As can be concluded from an examination of Article XV of Regulation 8543, investigations before the Energy Bureau are designed to provide the investigated person with a confidential proceeding in the pursuit of an appropriate determination of the investigated matter. None of the provisions in Article XV contemplate the intervention of parties. The language of Article XV only provides the Energy Bureau with an active role in this type of proceeding. Only the Energy Bureau (or its designated representative) can issue requests for information and discovery requests to the investigated person or any other person or entity under its jurisdiction

while the investigated person has the right to raise objections. The participation of any other party that is not the Energy Bureau in an investigative proceeding is incompatible with this process.

16. We must note that, during its years performing its responsibilities and duties as the Operator of the transmission and distribution system of Puerto Rico's electric system, LUMA has been involved in several investigations initiated *motu proprio* by the Energy Bureau. Notably, in none of these investigations has an entity been granted the right of intervention or participation. On the contrary, in at least two of these investigations it was determined that there is no right to intervene in an investigative proceeding. *See* July 16, 2024, Order, *In re: Interrupción de Servicio Eléctrico en la Subestación Santa Isabel afectando los Municipios de Santa Isabel, Coamo y Aibonito*, NEPR-IN-2024-0002, at p. 5 ("The petition for intervention of the OIPC is denied, since there is not a right to intervention in an investigative process. This process is not adjudicative, therefore, there are no 'parties' for the purposes of an administrative proceeding, nor a right to intervene. See, Sections 3.5 and 3.6 of Act 38-2017") (translation ours; footnote omitted); July 22, 2024, Order, *In re: June 12, 2024, Large-Scale Bluesky Customer Interruptions*, NEPR-IN-2024-0003, at p. 1 ("There is not a right to intervention in an investigative process. This process is not adjudicative, therefore, there are no "parties" for purposes of an administrative process, nor a right to intervene. See, Sections 3.5 and 3.6 of Act 38-2017") (translation ours).

17. In sum, the intervention requested by EcoEléctrica is not permitted in proceedings of an investigative nature such as this one.

B. LUMA's rights will be infringed if a right to intervene or access the record is recognized

19. Administrative agencies have the power to adopt rules of a legislative nature as delegated by the Legislature. *Buono Correa v. Secretary of Natural Resources*, 177 DPR 415, 449

(2009). Administrative agencies must comply with their own regulations once they are promulgated. *Ayala Hernández v. Consejo Titulares*, 190 DPR 537, 568 (2014).

20. As stated above, Regulation 8543 requires the Energy Bureau to maintain the record of an investigation confidential while the investigation is in process. Regulation 8543, Section 15.10. Said regulation further provides that "[t]he record shall be available to the general public **once the investigation report is notified to the investigated party or upon conclusion of any investigation** that does not require the [Energy Bureau] to prepare a report, as set forth in Section 15.07 of this Chapter". *See id*. (emphasis added). That is, documents filed in connection with ongoing investigations are received by this Energy Bureau and kept under seal of confidentiality until the investigation concludes, usually through a report by this Energy Bureau. In addition, Regulation 8543 also provides that "any information classified as privileged during the course of the investigation, or any information that may violate the fundamental rights of third parties or the right to privacy of the person investigated, shall be duly protected". *Id*. The foregoing protects the information so classified even after the conclusion of the investigation.

21. Article XV of Regulation 8543 contains no provisions allowing access by anybody outside the Energy Bureau to the records of an investigation before the investigation is completed. Maintaining the documents confidential is therefore a key aspect of the investigative proceedings. LUMA respectfully submits that this restriction has the purpose of protecting the integrity and impartiality of the investigation. Allowing a third party to access the record of this proceeding before the Investigation is concluded would affect the purity of the process and could turn this proceeding into a contentious one, contrary to the nature and purpose of an investigation. In addition, it would also risk unnecessary or unjustified disclosure of confidential information. In conclusion, giving EcoEléctrica access to the confidential record of this Investigation would

infringe on LUMA's right and interest to a confidential and impartial investigative process as contemplated under Article XV of Regulation 8543, as well as would be contrary to the regulation's provisions.

22. In addition, LUMA has submitted documents in this Investigation under seal of confidentiality because they are protected as (a) Critical Energy Infrastructure Information ("CEII") that garners protection from public disclosures pursuant to federal statutes and regulations (*see* 6 U.S.C. §§ 671-674; 18 C.F.R. § 388.113 (2020)) and the Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 20216, as amended by the Resolution dated September 16, 2016 ("Policy on Management of Confidential Information"), Section D2; (b) information subject to the constitutional right to privacy (*see* Const. ELA, Art. II, Sections 8 and 10; *see also e.g., Vigoreaux v. Quiznos*, 173 DPR 254, 262 (2008); *Bonilla Medina v. P.N.P.*, 140 DPR 294, 310-11 (1996), *Pueblo v. Torres Albertorio*, 115 DPR 128, 133-34 (1984)); and (c) trade secrets, protected under Puerto Rico law (*see e.g.,* 10 LPRA § 4131 (2024); R. Evid. 513, 32 LPRA Ap. IV, R. 513 (2024); *Colón Rivera v. Triple-S Salud, Inc.*, 2020 WL 8458051, page. *7 (Puerto Rico Court of Appeals, December 22, 2020)) and the Policy on Management of Confidential Information, Section D1, among others. These documents must continue to be protected and treated confidentially <u>during and after</u> the Investigation concludes. Providing access to EcoEléctrica to this information at any time (whether during or after this Investigation) would be contrary to these legal provisions.

23. The disclosure of the confidential information in this proceeding is not warranted even under an NDA. The Policy on Management of Confidential Information provides, in pertinent part, that:

> Confidential Information will be handled in conformity with this Resolution and **will receive the protection detailed in the Non-Disclosure Agreement (See**

Appendix A of this Resolution) and any other additional protection established by the [Energy Bureau].

The Non-Disclosure Agreement must be signed by the parties' authorized representatives, **including the Puerto Rico Electric Power Authority's,** who want access to Confidential Information presented by the parties in a proceeding before the [Energy Bureau]. The parties must submit to the [Energy Bureau] the Non-Disclosure Agreements signed by its authorized representatives. The [Energy Bureau] will maintain a list of the parties, and their authorized representatives, who have signed the Non-Disclosure Agreement. Said list will be shared with all the parties in a proceeding before the [Energy Bureau] and may be updated by the [Energy Bureau] at any time.

Id. (emphasis added)

24. The form of the NDA is included as Appendix A of the Policy for Management of Confidential Information. This document provides that the NDA's purpose is to "ensure the adequate protection of the confidential information that is presented by a party during any proceeding before the [Energy Bureau] and to which the [Energy Bureau] has granted confidential treatment, pursuant to Act 57-2014, Regulation 8543, and the applicable jurisprudence." *Non-Disclosure Agreement*, Part I, cl. 3. It further provides that "[t]he Receiving Party shall use Confidential Information **only to the extent necessary for its participation in the Proceeding**" and that "[t]he Receiving Party **will not use Confidential Information for any purpose unrelated to its participation in the Proceeding**." *Id*. Part III, cl. 4 & 5 (emphasis added).

25. Based on the foregoing, the Policy for Management of Confidential Information provides for the use of an NDA only for purposes of accessing confidential information necessary to participate in a proceeding. Conversely, it does not contemplate the use of an NDA with (and consequently the disclosure of confidential information to) third parties in an investigative proceeding where the mechanism of intervention does not exist.

26. In addition, EcoEléctrica's justification for its petition to access LUMA's Preliminary Report (*i.e.*., to represent its interests or protect its rights and "assess[ing] the findings

to date and, if necessary, proactively tak[ing] risk mitigation measures and prepar[ing] for potential future scenarios in light of such findings"), s*ee* EcoEléctrica Petition, p. 3., do not support a right to access the requested information. EcoEléctrica is not an investigated party in this proceeding, and, therefore, there are no interests or rights that it needs to protect before the Energy Bureau. Even if EcoEléctrica were to become an investigated party, Article XV provides mechanisms for investigated parties to protect their rights, including giving them the right to object to mechanisms used by the Energy Bureau in the investigation and submit objections, arguments or comments on the Energy Bureau's report. *See* Regulation 8543, Section 15.05 and 15.08. Furthermore, EcoElectrica's risk mitigation measures are not the subject of this proceeding; therefore, the use of the LUMA's confidential information for such purposes would be a purpose unrelated to this proceeding.

27. It must be noted that LUMA must be a party to any NDA allowing the disclosure of any CEII related to the electric system, and, therefore, LUMA's consent is required. The Policy on Management of Confidential Information states that the NDA "must be signed by the parties' authorized representatives, including the Puerto Rico Electric Power Authority's, who want access to Confidential Information presented by the parties in a proceeding before the [Energy Bureau]." *See* Policy for Management of Confidential Information, at p. 4. Per Section 5.6 of the OMA, LUMA "shall function as agent of [PREPA], and [PREPA]… irrevocably authorize[d] [LUMA] to (i) represent [PREPA] before PREB with respect to any matter related to the performance of any of the O&M Services provided by [LUMA] under th[e] [OMA], (ii) prepare all related filings and other submissions before PREB and (iii) represent [PREPA] before any Governmental Body and any other similar industry or regulatory institutions or organizations having regulatory jurisdiction. Therefore, LUMA, as PREPA's representative before the Energy Bureau with respect

to the transmission and distribution system, would have to execute the NDA to allow access to the information in question. LUMA does not consent to the execution of an NDA. LUMA has a duty to protect the confidential information related to the transmission and distribution system operations and must take reasonable measures to safeguard it. Granting an NDA without LUMA's approval would contravene the Energy Bureau's Policy on Management of Confidential Information.

28. It is also worth noting that the Energy Bureau will issue a report at the conclusion of the investigation with its findings. This report should wholistically take into consideration the information submitted by LUMA as well as any other information obtained by the Energy Bureau in this proceeding to arrive at conclusions regarding the causes of the Event. This report will be available to the public and EcoEléctrica.

29. In conclusion, EcoEléctrica's petition to participate in the captioned proceeding and to access the contents of LUMA's Preliminary Report is neither justified nor permitted under the laws, regulations and policies of the Energy Bureau governing this proceeding and/or the confidential information submitted to the Energy Bureau therein. Allowing EcoEléctrica to participate or intervene in this Investigation and/or to access the requested confidential information would be detrimental to LUMA's rights/interests in a confidential and impartial proceeding and in the protection of confidential information it has the duty to safeguard. For all these reasons, LUMA opposes EcoEléctrica's petition to participate and access any documents in this proceeding and respectfully requests the Energy Bureau to deny it.

WHEREFORE, LUMA respectfully requests that, for the reasons discussed above, the Energy Bureau **deny** EcoEléctrica's petition to participate and to access any records in this Investigation.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 25th day of June 2025.

We hereby certify that we filed this notice using the electronic filing system of this Energy Bureau and that we will send an electronic copy of this notice to counsel for EcoEléctrica to cfl@mcvpr.com and apc@mcvpr.com.

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