

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

IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY
PERMANENT RATE

CASE NO.: NEPR-MI-2020-0001

NEPR

Received:

Oct 3, 2026

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**URGENT MOTION FOR CLARIFICATION REGARDING IMPLEMENTATION OF
SEPTEMBER 30, 2026 RESOLUTION AND ORDER**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (“PREPA”), through its undersigned legal representation, and respectfully STATES and REQUESTS as follows:

1. On September 30, 2026, the Puerto Rico Energy Bureau (“Energy Bureau”) entered a Resolution and Order establishing the quarterly adjustment clause factors applicable for the October through December 2026 period (the “September 30 Order”).

2. As part of its determinations, the Energy Bureau directed PREPA to retain within the electric system amounts that, upon completion of the corresponding evaluation, may be subject to deduction, setoff, or withholding from payments otherwise due to NFEnergía LLC (“NFE”). The September 30 Order further specified that this directive would initially apply to approximately \$17,649,888.46.

3. On October 2, 2026, PREPA filed an *Urgent Motion Regarding NFE Communication and Potential LNG Supply Implications* (the “October 2 Motion”), through which it informed the Energy Bureau of developments arising from NFE’s response to the September 30 Order. PREPA brought NFE’s position to the Energy Bureau’s immediate attention because of the potential implications identified by NFE for the continued availability of LNG to Puerto Rico.

4. PREPA also informed the Energy Bureau that the Third-Party Procurement Office (“3PPO”), in its capacity as Contract Administrator, had responded to NFE and expressly demanded continued contractual performance. The 3PPO advised NFE, among other things, that its obligation to deliver Gas remained in full force and effect and that any unexcused failure to make Gas available could give rise to the contractual remedies provided under the applicable Gas Sales Agreement.

5. Against that background, PREPA submits this Motion solely for the limited purpose of seeking clarification as to the sequence through which the retention directive should be implemented in relation to the contractual process established by the Gas Sales Agreement dated December 4, 2025, among NFE, as Seller, PREPA, as Buyer, and the Puerto Rico Public-Private Partnerships Authority (“P3A”) solely with respect to Section 22.13 (the “GSA”).

6. This Motion does not seek reconsideration, modification, or a stay of the September 30 Order. PREPA does not challenge the Energy Bureau’s determination that costs potentially attributable to a fuel supplier’s nonperformance should not be prematurely passed through to customers, nor does it challenge the Energy Bureau’s determination concerning the approximately \$17.65 million. Rather, PREPA seeks only clarification regarding the sequence for implementing the retention directive while the applicable contractual evaluation is completed. PREPA remains committed to performing its obligations under the GSA in accordance with its terms, while fully preserving all rights, claims, defenses, and remedies available to PREPA thereunder.

7. Under the GSA, determining whether NFE is responsible for a delivery shortfall requires a contractual evaluation of the quantities required and delivered, any asserted

Force Majeure or other contractual excuse, and the resulting unexcused DoP Quantity. Once that evaluation is completed, Sections 4.4.2 and 4.4.3 establish the methodology for calculating the corresponding DoP Payment, including the applicable replacement-fuel cost differential, and the GSA provides the invoicing and dispute-resolution process for asserting and resolving any resulting amount due from NFE.

8. The 3PPO, as Contract Administrator for the GSA, is responsible for the independent review, validation, reconciliation, documentation, and administration of these contractual processes, including nominations, deliveries, Force Majeure assertions, delivery shortfalls, DoP determinations, invoices, and related contractual remedies.

9. Accordingly, the 3PPO must complete the contractual evaluation necessary to determine: (i) whether NFE's asserted Force Majeure defense is supported under Article 11; (ii) the amount, if any, of an unexcused DoP Quantity under Section 4.4.1; (iii) the Replacement Fuel attributable to that deficiency; and (iv) the resulting DoP Payment under Sections 4.4.2 and 4.4.3. The more detailed contractual analysis prepared for this purpose likewise identifies this sequence and distinguishes the regulatory deferral from the subsequent contractual determination.

10. Within this contractual framework, PREPA respectfully submits that the most reasonable interpretation of the September 30 Order—particularly its express reference to amounts that, “following the corresponding evaluation,” may be deducted, set off, or withheld—is that the approximately \$17.65 million should remain protected from premature recovery from customers while the contractual evaluation is completed, and that any actual withholding, setoff, credit, or other adjustment against amounts otherwise payable to NFE should occur upon completion of, and to the extent supported by, that

contractual process. This interpretation gives effect to both the September 30 Order and the contractual process established by the GSA.

11. Thus, the September 30 Order may preserve the approximately \$17.65 million for the benefit of customers while the underlying contractual process proceeds, without treating that amount, before completion of the required evaluation, as a final and liquidated contractual liability of NFE available for immediate withholding or setoff.

12. PREPA respectfully submits that this interpretation gives full effect to the September 30 Order, protects customers from premature recovery of costs potentially attributable to Seller nonperformance, and simultaneously preserves the contractual procedures governing the determination and enforcement of NFE's liability.

WHEREFORE, PREPA respectfully requests that the Energy Bureau **CLARIFY whether** its September 30, 2026 Resolution and Order is to be implemented such that: (i) the approximately \$17,649,888.46 identified therein remains deferred from recovery from customers pending completion of the applicable contractual evaluation; and (ii) any actual withholding, setoff, credit, or other adjustment against amounts otherwise payable to NFE is to be implemented upon completion of, and to the extent supported by, the applicable contractual process under the GSA, including the evaluation of any asserted Force Majeure defense and the determination of any applicable DoP Quantity, DoP Payment, and corresponding contractual remedy. PREPA further respectfully requests such other relief as the Energy Bureau may deem appropriate and consistent with the foregoing.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of October 2026.

CERTIFICATE OF FILING AND SERVICE: It is hereby certified that this document was filed with the Office of the Clerk of the Energy Bureau through its electronic filing system, available at <https://radicacion.energia.pr.gov/login>. It is further certified that a file-stamped copy of the foregoing document was served upon the parties in the above-captioned proceeding at the following email addresses: LUMA Energy, LLC and LUMA Energy ServCo, LLC, through Margarita Mercado, margarita.mercado@us.dlapiper.com; Yahaira de la Rosa, Yahaira.delarosa@us.dlapiper.com; Katiuska Bolanos Lugo, katiuska.bolanos-lugo@us.dlapiper.com; RegulatoryPREBOrders@lumapr.com; Genera PR LLC through: Luis Román; lrn@roman-negron.com; legal@genera-pr.com; regulatory@genera-pr.com.

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