

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p>Debtors.¹</p>	<p>PROMESA Title III</p> <p>Case No. 17-BK-3283-LTS</p> <p>(Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as a representative of</p> <p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p>Debtor.</p>	<p>PROMESA Title III</p> <p>Case No. 17-BK-4780-LTS</p>

**NOTICE OF SUBPOENA FOR THE 30(b)(6) DEPOSITION TESTIMONY OF
LUMA ENERGY, LLC AND LUMA ENERGY SERVCO, LLC
IN CONNECTION WITH THE TITLE III PLAN OF ADJUSTMENT FOR THE
PUERTO RICO ELECTRIC POWER AUTHORITY**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 9016 of the Federal Rules of Bankruptcy Procedure and Section 310 of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Puerto Rico Electric Power Authority (“PREPA” or the “Debtor”) pursuant to PROMESA Section 315(b), will take the deposition upon oral examination pursuant to Federal Rule of Civil Procedure 30(b)(6) of the person(s) designated by LUMA Energy, LLC and LUMA ServCo, LLC (collectively, “LUMA”) with respect to the topics set forth in the Attachment, Schedule A: LUMA 30(b)(6) Rider.

LUMA will be required to appear and provide testimony at a deposition on December 5, 2023 at 9:30 a.m. remotely through a link to be provided, or at such other time and place as agreed to by the parties. The deposition will be taken pursuant to all applicable rules of the Court before a notary public or other such person authorized by law to administer oaths. The deposition will be recorded by stenographic means and video.

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 30(b)(6), LUMA must designate one or more officers, directors, or managing agents, or other persons who consent to testify on their behalf, with respect to the matters set forth in the attached Schedule A: LUMA 30(b)(6) Rider.

UNITED STATES DISTRICT COURT

For the _____ District of _____ Puerto Rico

In re Puerto Rico Electric Power Authority

Debtor

Case No. 17-bk-4780 (LTS)

(Complete if issued in an adversary proceeding)

PROMESA Title III

Plaintiff

v.

Adv. Proc. No. _____

Defendant

**SUBPOENA TO TESTIFY AT A DEPOSITION
IN A PROMESA TITLE III CASE (OR ADVERSARY
PROCEEDING)**

To: LUMA Energy, LLC and LUMA Energy ServCo, LLC

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this Title III case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE	Remote via Zoom or similar	DATE AND TIME
		December 5, 2023; 9:30 a.m.

The deposition will be recorded by this method:
Stenographically and videotaped.

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/1/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Margaret A. Dale
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)
Financial Oversight and Management Board for Puerto Rico, who issues or requests this subpoena, are:

Margaret A. Dale; Eleven Times Square, New York, NY 10036; mdale@proskaer.com; 212-969-3000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A: LUMA 30(b)(6) Rider

DEFINITIONS

The terms used herein shall have the meanings ascribed to them in the definitions set forth below and, if not set forth below, in the Supplemental Disclosure Statement and Plan as defined below, and should be given their most expansive and inclusive interpretation unless otherwise expressly limited. This includes, without limitation, the following:

1. “Commonwealth” means the Commonwealth of Puerto Rico and its instrumentalities, its present and former officials, directors, employees, and known agents.

2. “2023 PREPA Fiscal Plan” refers to the 2023 Certified Fiscal Plan for the Puerto Rico Electric Power Authority, as certified by the Oversight Board on June 23, 2023.

3. “LUMA,” “You,” and “your” refers to LUMA and its members, employees, officers, and known agents reasonably likely to possess information relevant to said subjects.

4. “Plan Depository” refers to the repository of documents relevant to PREPA’s Title III case, managed by the Oversight Board and available at <https://titleiiiplandataroom.com/>.

5. The terms “all”, “any”, and “each” shall be construed as all, any, and/or each as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

6. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. The use of the singular form of any word shall include the plural and vice versa.

TOPICS OF EXAMINATION

1. LUMA's load forecast for FY2024, uploaded to the Plan Depository as FOMB_PREPA 00343557 and provided to the Oversight Board during the development of the 2023 PREPA Fiscal Plan, including LUMA's process for developing the FY2024 load forecast, any backup or supporting files, and any calculations or forecasts of gross load, net load, and any modifiers used to develop the FY2024 load forecast.

2. LUMA's FY2024-FY2026 budget, including its process for developing the estimates and calculations of LUMA's sales, revenues, necessary maintenance expenses, capital expenses, operating expenses, and any other line item in the FY2024-FY2026 budget.

3. Costs associated with the operation of PREPA's transmission and distribution network, including, among other things, fuel and purchased power costs, contributions in lieu of taxes ("CILT"), Commonwealth subsidies available to consumers, and the energy efficiency rider or any other costs imposed by Commonwealth law or otherwise.

4. Models used by LUMA to calculate or estimate the costs in Topic No. 3 and provided to the Oversight Board during the development of the 2023 PREPA Fiscal Plan, such as the FY2024 PROMOD fuel and purchased power results, uploaded to the Plan Depository as FOMB_PREPA 00343601, and the Aurora model and its results, uploaded to the Plan Depository as FOMB_PREPA 00345041.

5. LUMA's system remediation plan, uploaded to the Plan Depository as FOMB_PREPA 00022086 and FOMB_PREPA 00021679, including LUMA's analysis of the state of PREPA's transmission and distribution system and LUMA's efforts to "advance several aspects of the T&D System and organization to the minimum industry standards and progress to modernize utility operations in Puerto Rico." *See* FOMB_PREPA 00344184 at 13.

6. The “factors outside of LUMA’s control” which LUMA states in its FY2024-FY2026 budget have “contributed to increased expenditures, including, lack of PREPA cooperation, omissions and deficiencies and unfunded regulatory mandates, requirements, and reporting.” *See* FOMB_PREPA 00344184 at 11.

7. The “spending constraints” referenced by LUMA in its FY2024-2026 budget, which it states have “slowed, extended or delayed some of LUMA’s improvement programs,” *see* FOMB_PREPA 00344184 at 13, including the sufficiency of capital expenditure and other funding made available to LUMA through the 2023 PREPA Fiscal Plan, PREB, or other sources.

8. Projections, estimates, or forecasts prepared or relied on by LUMA regarding the adoption of photovoltaic solar panels and other distributed energy sources by PREPA consumers.

9. Risks associated with the projections in the 2023 PREPA Fiscal Plan being too optimistic, including those for load forecasts and expenses, and how any deviations from those projections would affect LUMA’s operations.

10. LUMA’s access to and use of federal funding, including the process through which federal funds are requested and received and any limitations on the use or allocation of federal funds.

[Remainder of page intentionally left blank]

Dated: December 1, 2023
San Juan, Puerto Rico

PROSKAUER ROSE LLP

/s/ Margaret A. Dale

Martin J. Bienenstock
Paul V. Possinger
Ehud Barak
Margaret A. Dale
Daniel S. Desatnik
Julia D. Alonzo
Laura Stafford
(Admitted *Pro Hac Vice*)
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Attorneys for the Financial Oversight and
Management Board as representative for the
Commonwealth of Puerto Rico and the Puerto
Rico Electric Power Authority*

O'NEILL & BORGES LLC

/s/ Hermann D. Bauer

Hermann D. Bauer
USDC No. 215205
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

*Co-Attorney for the Financial Oversight and
Management Board as representative of the
Debtor*