

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

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, et al.

Debtors¹

PROMESA

Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtor.

PROMESA

Title III

Case No. 17-BK-04780 (LTS)

**ICSE'S REQUEST FOR LEAVE TO FILE
SURREPLY TO LUMA'S OMNIBUS REPLY**

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 ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HITA") (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 ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title case numbers are listed as Bankruptcy Case numbers due to software limitation.)

TO THE HONORABLE COURT:

COMES NOW INSTITUTO DE COMPETITIVIDAD Y SOSTENIBILIDAD ECONÓMICA DE PUERTO RICO (ICSE), represented by counsel and respectfully requests that the Court reject the Plan of Adjustment:

1. On October 9, 2025, LUMA filed its *Omnibus Reply in Support of Urgent Motion of LUMA to Enforce the Automatic Stay* (Dkt. No. 5842, Case No. 17-4780) (“LUMA’s Reply”).

2. On October 10, 2025, the Puerto Rico Department of Consumer Affairs (“DACO”) filed *DACO’s Motion for Leave to File Surreply in Response to LUMA’s Omnibus Reply in Support of its Motion to Enforce the Automatic Stay* (Dkt. No. 30050, Case No. 17-3283) (“DACO’s Request”). DACO requests leave on the basis that LUMA’s Reply introduced new factual allegations and arguments that were not raised in its *Urgent Motion of LUMA to Enforce the Automatic Stay* (Docket Entry No. 5819 in Case No. 17-4780).

3. DACO identifies the following: (1) purported political motivations attributed to the Commonwealth, (2) a novel interpretation of Section 4.5(p) of the T&D OMA, (3) a sweeping redefinition of the police-power exception under 11 U.S.C. § 362(b)(4), and (4) an improper conflation of regulatory oversight with interference in estate property.

4. On October 14, 2025, the Court granted DACO’s request for leave to file a surreply and directed DACO to file “on or before October 16, 2025.” *See* Dkt. No. 5847 in Case No. 17-4780.

5. ICSE also respectfully requests leave to file a short surreply for additional reasons beyond those correctly identified by DACO. ICSE will not repeat DACO’s arguments. Specifically, LUMA raised two additional arguments that were not part of their Urgent Motion: (1) relying on Section 18.2(a)(vii) of the T&D OMA while conveniently ignoring Section

18.2(a)(vi); and (2) characterizing a potential holding of Puerto Rico’s Supreme Court as a “Change in Regulatory Law” as defined Section 1.1 of the T&D OMA.

6. Local Rule 7 (d) provides in pertinent part that a party may request leave to file a surreply if “the reply raises new arguments not previously presented in the movant’s opening motion.”

7. In its reply, LUMA seeks to characterize consumer complaints as complaints subject to indemnity under Section 18.2(a)(vii), which are not carved out by Section 18.2(b). However, in its opening motion, LUMA ignores that Section 18.2(b) applies to section 18(a)(vi) which deals with “claims brought against [LUMA] by a T&D Customer.” The distinction between subsections 18.2(a)(vi) and (a)(vii) is fundamental insofar that it seeks to blow out of proportion the consequences of the state court litigation. If claims by customers against LUMA are “claims brought against [LUMA] by a T&D Customer” then PREPA would not be obligated to indemnify LUMA for its negligence on those tort claims. So LUMA’s negligence would not be passed through to PREPA’s customers.

8. The question of what constitutes a “Change in Regulatory Law” under the T&D OMA has not been addressed by this Court or any other of competent jurisdiction. LUMA’s construction would mean that any judicial ruling adverse to its position—even one issued by this very Court—would afford LUMA grounds to terminate the contract. This interpretation cannot stand: a future opinion by the Supreme Court, even if adverse to LUMA, would not constitute a change in law, but rather an interpretation of the law as it existed when the T&D OMA was executed. As such, this new argument by LUMA should be addressed.

9. ICSE does not intend to delay proceedings, so the ICSE respectfully requests the Court affords it the same term provided to DACO, on or before October 16, 2025.

CONCLUSION

WHEREFORE INSTITUTO DE COMPETITIVIDAD Y SOSTENIBILIDAD ECONÓMICA respectfully requests that the Court grant leave to file a surreply.

In San Juan, Puerto Rico, on October 14, 2025.

RESPECTFULLY SUBMITTED.

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CERTIFICATE OF SERVICE

I hereby certify that on this date we caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all **counsel of record**. I further certify that a copy of the foregoing was sent to **counsel of record in the Puerto Rico Supreme Court litigation** by email to: Valerie Rodríguez Erazo, Esq. (vrodiguez@daco.pr.gov); Gadiel Figueroa Robles, Esq. (gfigueroa@daco.pr.gov); Samuel Silva Rosas, Esq. (ssilva@daco.pr.gov); Margarita Mercado Echeagaray, Esq. (margarita.mercado@us.dlapiper.com); Yahaira de la Rosa Algarín, Esq. (yahaira.delarosa@us.dlapiper.com); Jan Albino López, Esq. (jan.albinolopez@us.dlapiper.com); Frank Torres Viada, Esq. (ftv@ftorresviada.com); José Andréu Fuentes, Esq. (jaf@andreu-sagardia.com); Juan Martínez Nevárez, Esq. (jmartinez@gmlex.net); Mirelis Valle Cancel, Esq. (mvalle@vcprlaw.com); Edgardo Rodríguez Cardé, Esq. (elrc@rclopr.com); Yarymar González Carrasquillo, Esq. (ygc@halspr.com); Charles A. Rodríguez Colón, Esq. (crodriguez@naleapr.com); Miguel Rodríguez Ramos, Esq. (miguellrrlaw@gmail.com); **and** Víctor Calderón Cestero, Esq. (victor@calderon-law.com).

In San Juan, Puerto Rico, on October 14, 2025.

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