

**IN THE UNITED STATES DISTRICT 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.*,

Debtors.¹

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
("PREPA"),

Debtor.

PROMESA

Title III

Case No. 17 BK 4780-LTS

PREPA'S URGENT MOTION FOR PROTECTIVE ORDER

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 ("Commonwealth") (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 ("HTA") (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); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (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).

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Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 9014, and Federal Rule of Civil Procedure 26(c), made applicable to these proceedings by Section 310 of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”)² (48 U.S.C. § 2170), the Puerto Rico Electric Power Authority (“PREPA”) by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as PREPA’s representative pursuant to section 315(b) of PROMESA, and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) as PREPA’s representative pursuant to Act 2-2017, respectfully submit this *Urgent Motion for Protective Order* (the “Motion”) regarding the discovery served on PREPA on April 14, 2020, by Unión de Trabajadores de la Industria Eléctrica y Riego Inc. (“UTIER”) in connection with PREPA’s *Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with EcoEléctrica, L.P. and Gas Natural Aprovechamientos SDG, S.A.* (ECF No. 1951) (the “Motion to Assume”).³ In support of the Motion, PREPA states as follows:

INTRODUCTION

1. As stated more fully in its Motion to Assume, PREPA has requested the Court to approve PREPA’s assumption of an amended fuel supply contract and an amended power purchase agreement with an electricity supplier as a proper exercise of PREPA’s business judgment. These contracts are critical to PREPA’s operations and have been approved by PREPA’s Governing Board, the Puerto Rico Energy Bureau (“PREB”), and the Oversight Board. *See* Mot. at pp. 12–14. As PREB has determined, “the benefits of approving the Proposed Amendments are greater than the costs, when compared to not approving the Proposed Amendments.” *See* PREB Resolution and Order at 9.

² PROMESA has been codified in 48 U.S.C. §§ 2101–2241.

³ Unless otherwise stated, defined terms shall have the same meaning as in the Motion to Assume.

2. In connection with its opposition to the Assumption Motion, UTIER has propounded broad discovery that is plainly inappropriate. UTIER seeks “all documents and communications” relating to over three dozen topics, 94 interrogatories (since consolidated into 25 no less burdensome requests), and 38 deposition topics (inclusive of subtopics). These requests seek information regarding an impossibly overbroad array of subject matters, including the negotiations of the contracts at issue, the impact the contracts will have on UTIER, details regarding operation of the Costa Sur power plant and the EcoEléctrica LNG Terminal, and consistency of the contracts with PREPA’s proposed Integrated Resource Plan (“IRP”). The breadth and irrelevance of UTIER’s discovery is hard to overstate and includes demands such as “all documents and communications that show dimensions of the ships and/or LNG carriers that have delivered LNG to the EcoEléctrica terminal in the last five years.” RFP No. 24. One interrogatory asks that PREPA explain its “factual basis for why the proposed agreements are not a tying arrangement in violation of antitrust law.” Interrogatory No. 25.

3. UTIER’s blunderbuss discovery is fundamentally incompatible with the judicial consensus that proceedings on motions to assume or reject executory contracts are summary in nature and “not the time or place for prolonged discovery.” *See, e.g., In re BankVest Capital Corp.*, 360 F.3d 291, 302 (1st Cir. 2004), *cert. denied*, 542 U.S. 919 (2004) (quoting *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098–99 (2d Cir.1993)). The Motion to Assume does not afford UTIER a forum to object generally to the merits of PREPA’s fuel and electricity supply contracts, to complain about the claimed effects of those contracts on UTIER, or to challenge the decisions of the Oversight Board and PREB to approve them. Rather, the Motion to Assume (like every motion to assume) presents the straightforward question of whether the debtor has met its burden under the business judgment rule, which “requires the court to look at whether the

decision to assume or reject is beneficial to the estate.” *In re Sabine Oil & Gas Co.*, 547 B.R. 66, 72 (Bankr. S.D.N.Y. 2016). The economic impact assumption of the contracts may have on third parties, including UTIER, is not part of the analysis. *Id.* The Court must decide “whether a reasonable business person would make a similar decision under similar circumstances,” considering what is beneficial from the debtor’s perspective, and deferring to the “debtor’s determination as to whether rejection of an executory contract is advantageous, unless the decision to reject is the product of bad faith, whim, or caprice.” *Id.*; *accord In re Caribbean Petroleum Corp.*, 444 B.R. 263, 268 (Bankr. D. Del. 2020); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001).

4. In its objection to the Motion to Assume, UTIER argues incorrectly that the Court should apply a “balance of the equities” standard and that discovery is necessary to allow it to probe issues like “the interest of the consumer and ratepayers,” “the environmental impact of the [contracts],” and “the public interests.” Opp. ¶ 87. None of these are germane to the Motion to Assume. Contrary to UTIER’s suggestion, the issue is whether PREPA reasonably exercised its business judgment in deciding to assume the contracts at issue. Viewed in light of the correct legal standard, there can be no question that the discovery UTIER seeks is out of bounds.

5. PREPA has already provided evidence showing the valid exercise of its business judgment through the Declaration of Fernando M. Padilla, Administrator of the Program Management Office of Restructuring and Fiscal Affairs with PREPA. ECF No. 1952 (the “Padilla Declaration”). In addition, PREPA has voluntarily provided UTIER with non-confidential materials it submitted to PREB in connection with regulatory proceedings seeking approval of the contracts at issue in the Motion to Assume. No further discovery is necessary to test PREPA’s business judgment in this summary assumption proceeding.

6. UTIER's demand for voluminous and burdensome discovery, which would inject months of delay into the pending motion, impose significant expense and consume the time of PREPA officials whose attention must be directed to pressing operational matters, is fundamentally inconsistent with the swift administration of PREPA's bankruptcy and the legal standard governing the Motion to Assume.

RELIEF REQUESTED

7. For these reasons, and as more fully explained below, PREPA respectfully requests that this Court enter a protective order, substantially in the form of the accompanying proposed order at Exhibit A.

JURISDICTION AND VENUE

8. The United States District Court for the District of Puerto Rico has subject matter jurisdiction pursuant to PROMESA § 306(a).

9. Venue is appropriate in this District pursuant to PROMESA § 307(a).

10. The bases for the relief requested herein are Federal Rule of Civil Procedure 26(c), made applicable to these Title III cases by Bankruptcy Rules 7026 and 9014, PROMESA §§ 301(a) and 310, Rule 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico and the *Eleventh Amended Notice, Case Management and Administrative Procedures*, Case No. 17-03283, ECF No. 11885-1, Case No. 17-03283-LTS) (the "Case Management Procedures").

FACTUAL BACKGROUND

11. On April 1, 2020, PREPA filed its Motion to Assume. The Oversight Board, at UTIER's request, agreed to a short extension of the briefing schedule on the Motion to Assume. See ECF No. 1958. On April 13, 2020, PREPA voluntarily provided UTIER with non-confidential materials submitted to its regulator, PREB, during the course of the regulatory

proceeding in which PREPA sought and obtained approval of the contracts at issue in the Motion to Assume. These documents include: (1) submissions to PREB regarding Capacity and Payment Liability Risk, Natural Gas Supply Interruption Risk, Fuel Price, Projected Savings per Year; (2) a Sargent & Lundy Report regarding the EcoEléctrica and Naturgy Contract Renegotiations; (3) the Draft Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and PREPA; (4) the Draft Amended and Restated Natural Gas Sale and Purchase Agreement Between Naturgy Aprovevisionamientos, S.A. and PREPA; (5) an EcoEléctrica, L.P. and Naturgy Proposed Contract Extension Presentation; (6) the PREPA Board Resolution dated October 31, 2019; and (7) a Memorandum to PREPA CEO and IRP Team from Siemens PTI/AB dated October 2, 2019.

12. Notwithstanding this production, UTIER served on PREPA the following discovery: (1) First Request for Production of Documents to Debtor Puerto Rico Electric Power Authority and the Commonwealth of Puerto Rico (the “RFPs”); (2) First Set of Interrogatories to Debtor Puerto Rico Electric Power Authority and the Commonwealth of Puerto Rico (the “Interrogatories”); and (3) Notice of 30(b)(6) Deposition of PREPA (the “Deposition Notice” and collectively, the “April 14 Requests”), copies of which are attached as Exhibits B, C, and D.

13. The RFPs seek “all documents” or “all documents and communications” concerning topics that are far beyond the scope of what the Court can permissibly consider on the Motion to Assume, including:

- the impact of the contracts on PREPA’s operating expenses, UTIER and ratepayers (RFPs 1-4, 10, 15);
- the contract negotiations, PREPA’s decision to assume the contracts, PREPA’s retention of consultants to evaluate the contracts, and discussions of particular contract terms (RFPs 6-7, 13-14, 22-23, 29-30, 34-35);
- competitive bidding and competitor interest (RFPs 16-17, 31-32);

- submissions to PREB (RFP 18);
- earthquake damage to the EcoEléctrica terminal and the adjacent Costa Sur generating facility (RFPs 5, 25-26);
- operation of the EcoEléctrica terminal and the Costa Sur generating facility (RFPs 8-9, 19-21, 24, 27-28);
- the impact of the contracts on “PREPA’s achievement of the goals contained in Act 17-2019” (RFP 11);
- the impact of the COVID-19 emergency (RFP 12);
- plans to use LNG purchased through the EcoEléctrica terminal (RFP 33); and
- alleged antitrust implications of the contracts (RFPs 37-38).

See generally Exhibit B. UTIER similarly seeks deposition testimony regarding these same issues. *See* Exhibit D (noticing 38 topics, inclusive of subtopics).

14. UTIER also purported to propound 94 interrogatories, many of which had multiple subparts, concerning “Amended Contracts” (Nos. 1-4), “Negotiations and Analysis” (Nos. 5-29), “Consultation and Experts” (Nos. 30-37), “Projected Savings” (Nos. 38-41), “Pricing” (Nos. 42-50), “Capacity Payments” (Nos. 51-60), “Costa Sur Plant” (Nos. 58-60), “PREPA’s Bankruptcy” (Nos. 61-64), “LNG Terminal and Tolling Agreements” (Nos. 65-84), “Operations” (Nos. 85-89), and “Regulations” (Nos. 90-94). *See* Exhibit C.

15. On April 22, 2020, PREPA sent counsel for UTIER a letter explaining that UTIER’s requests were overly broad and unduly burdensome given the summary nature of assumption proceedings and advising that absent UTIER’s withdrawal of these requests, PREPA would seek relief from this Court. *See* Exhibit E. PREPA also noted that it had already voluntarily provided UTIER with its submission to PREB (*see* RFP 18), and agreed to confer with UTIER regarding an appropriately tailored exchange of information. *Id.*

16. On April 23, 2020, UTIER responded that it would amend its interrogatories to

comply with the 25-interrogatory limit, but otherwise would not amend its original requests. *See* Exhibit F. On April 26, 2020, UTIER served a revised First Set of Interrogatories, covering essentially the same subjects as the original 94 using fewer questions. *See* Exhibit G.

17. On April 27, 2020, counsel for PREPA and UTIER met and conferred via telephone about the April 14 Requests. PREPA reiterated its position that the requests were overbroad and inconsistent with the limited discovery allowed in a summary proceeding. UTIER refused to withdraw or further narrow its requests. Also on April 27, 2020, UTIER filed a *Motion in Opposition to PREPA's Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with Ecoeléctrica, L.P. and Gas Natural Aprovevisionamientos SDG, S.A.* (ECF No. 1974) (the "Opposition").

LEGAL STANDARD

18. Discovery is permissible only if it is relevant to any party's claim or defense and proportional to the needs of the case considering the burden or expense of the proposed discovery. Fed. R. Civ. P. 26(b)(1) (made applicable to this proceeding by Fed. R. Bankr. P. 7026 and 9014). "In order to protect parties and witnesses, Courts are authorized to impose certain terms and conditions on a certain disclosure or discovery, specify what method should be used, or forbid it all together." *Gonzalez Berrios v. Mennonite Gen. Hosp., Inc.*, 2019 WL 4785701, at *2 (D.P.R. Sept. 30, 2019) (granting protective order); *see also Ameristar Jet Charter, Inc. v. Signal Composites, Inc.*, 244 F.3d 189, 193 (1st Cir. 2001) (affirming order granting protective order); *Int'l Jr. Coll. of Bus. & Tech., Inc. v. Duncan*, 937 F. Supp. 2d 202, 204 (D.P.R. 2012), *aff'd*, 802 F.3d 99 (1st Cir. 2015) (granting protective order and directing plaintiffs not to serve further discovery requests without leave of court).

19. When a party seeks to take discovery that is of limited probative value relative to the burden it imposes, "[t]he court may, for good cause, issue an order to protect a party or

person from . . . [that] undue burden or expense . . . [including] forbidding the disclosure or discovery.” Fed. R. Civ. P. 26(c)(1)(A); *see also Ameristar*, 244 F.3d at 193 (affirming protective order quashing subpoenas as unduly burdensome); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 2019 WL 4723730, at *2 (D.P.R. July 29, 2019) (granting protective order to preclude deposition in part because probative value “is substantially outweighed by the prospect of multiplication of the 9019 Motions proceedings”) (Swain, J.). Discovery into matters irrelevant to the issues before the court is by its very nature unduly burdensome. *Cf. U.S. v. Sosa*, 78 F. Supp. 2d 20, 24 (D.P.R. 1999) (motion seeking discovery into issues “irrelevant to the present controversy,” was “burdensome” and a “bad faith attempt to harass”); *see also In re Fin. Oversight & Mgmt. Bd. for P.R.*, 2019 WL 4723730, at *2 (granting protective order to preclude deposition in part because witness’s testimony would concern issues beyond the scope of the issues before the Court). Here, the Court should forbid all of the discovery sought by UTIER.

ARGUMENT

I. THE RELEVANT STANDARD ON THE MOTION TO ASSUME IS WHETHER PREPA APPROPRIATELY EXERCISED ITS BUSINESS JUDGMENT.

20. A motion to assume triggers a summary proceeding “intended to efficiently review the trustee’s or debtor’s decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.” *BankVest*, 360 F.3d at 302. Accordingly, courts have long recognized that a proceeding on a motion to assume “is not the time or place for prolonged discovery or a lengthy trial with disputed issues.” *Orion*, 4 F.3d at 1098–99 (vacating bankruptcy court judgment regarding merits of breach of contract claim as beyond the scope of the inquiry on a motion to assume); *accord In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 463 (Bankr. S.D.N.Y. 2014); *In re Vent Alarm Corp.*, 2016 WL 1599599, at *3 (Bankr. D.P.R. Apr. 18, 2016). A motion to assume is not the vehicle to adjudicate legal disputes between

parties regarding an underlying contract. *Orion*, 4. F.3d at 1099 (“In reviewing a trustee’s or debtor-in-possession’s decision to assume an executory contract, then, a bankruptcy court sits as an overseer of the wisdom with which the bankruptcy estate’s property is being managed by the trustee or debtor-in-possession, and not, as it does in other circumstances, as the arbiter of disputes between creditors and the estate.”); *In re Docktor Pet Center, Inc.*, 144 B.R. 14, 16 (Bankr. D. Mass. 1992) (“[A] motion to assume an executory contract is ... not the place for an extended breach of contract suit.”); *BankVest*, 360 F.3d at 302-03 (to same effect).

21. Under Bankruptcy Code section 365(a), a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease.” 11 U.S.C. § 365(a); 48 U.S.C. § 2161 (PROMESA Section 301, incorporating 11 U.S.C. § 365). The assumption or rejection of an executory contract or unexpired lease is subject to review under the business judgment rule. Under this standard, “a debtor must simply put forth a showing that assumption or rejection of the executory contract or unexpired lease will benefit the [d]ebtor’s estate.” *Vent Alarm*, 2016 WL 1599599, at *3. “A court will normally approve the assumption of an executory contract upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is in an exercise of sound business judgment.” *Genco Shipping*, 509 B.R. at 462 (collecting cases). The debtor’s decision “must be summarily approved unless it is the product of bad faith, or whim or caprice.” *In re Trans World Airlines, Inc.*, 261 B.R. at 121.

22. The April 14 Requests are not remotely tailored to eliciting evidence to test PREPA’s business judgment that assumption of the contracts at issue will benefit PREPA. Indeed, the documents PREPA already voluntarily provided are more than sufficient to demonstrate PREPA’s exercise of its sound business judgment to assume the contract. These materials provide UTIER with ample data to evaluate PREPA’s exercise of its business judgment

as described in the Motion to Assume and the accompanying declaration, and show that PREPA's decision here is not the product of "bad faith," "caprice," or "whim."

23. UTIER's April 14 Requests instead are patently intended to facilitate UTIER's second-guessing of particular contract provisions with specific goals in mind—to support UTIER's speculation that the amended contract could have a negative impact on UTIER's members or on ratepayers, that continuing to purchase liquefied natural gas is inconsistent with renewable energy goals in light of "the imminent threat of climate change," and that the contracts at issue purportedly violate antitrust law. *See, e.g.,* Opp. ¶¶ 93-95, 102-114, 143-54. None of these arguments, even if correct, would warrant denial of the Motion to Assume.

24. No doubt recognizing that the discovery it seeks does not comport with the applicable standard, UTIER attempts to justify its expansive demands by arguing that a less deferential "balance of the equities" standard should apply because PREPA is an energy provider and the interests of ratepayers, the environment, and public are affected by PREPA's decision to assume the contracts at issue. *See* Opp. ¶¶ 42-47, 80-88, ¶¶ 171-180 (relying on *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513 (1984); *In re Mirant*, 378 F.3d 511 (5th Cir. 2004); *In re FirstEnergy Solutions Corp.*, 945 F.3d 431 (6th Cir. 2019)). This argument lacks legal support.

25. Public impact alone does not justify applying a heightened standard of review of a contract assumption or rejection. *See In re Pilgrim's Pride Corp.*, 403 B.R. 413, 425 (Bankr. N.D. Tex. 2009) ("If the bankruptcy court must second-guess every choice by a trustee or debtor in possession that may economically harm any given locale, the business judgment rule applicable to contract rejection and many other decisions . . . will be swallowed by a public policy exception."). The "balance of equities" standard articulated in *Bildisco*, *Mirant*, and *FirstEnergy* applies in one limited context: where a debtor's decision to *reject* a regulator-

approved contract poses a potential conflict between the regulator's authority and that of the bankruptcy court. *See In re Pilgrim's Pride*, 403 B.R. at 423 (distinguishing *Bildisco* and *Mirant* because those cases involved "a potential conflict between the power to reject contracts under the Code and the role of a regulatory agency" and approving contract rejection under the business judgment rule); *accord In re Old Carco LLC*, 406 B.R. 180, 189 (Bankr. S.D.N.Y. 2009) (distinguishing *Bildisco* and *Mirant* because in those cases "the authority to reject under § 365(a) conflicted with the policies designed to protect the national public interest underlying other federal regulatory schemes"); *see also in re Caribbean Petroleum*, 444 B.R. at 269 (policy concerns reflected in Federal Petroleum Marketing Practices Act to protect franchisees from arbitrary or capricious termination do not justify deviating from business judgment rule).

26. In *Bildisco*, the Supreme Court held that under the National Labor Relations Act, Congress intended a higher standard than the business judgment rule to apply to review of a decision to reject a collective bargaining agreement, and, as such, the debtor should instead be required to show that the equities balance in favor of rejecting the labor contract. 465 U.S. at 526. Specifically, the Court held that before a debtor may reject a collective bargaining agreement, it must show efforts to negotiate a voluntary modification were made but were unsuccessful, and the failure to reach an agreement threatens to impede the debtor's successful reorganization. *Id.* In *Mirant*, the Fifth Circuit held that application of the business judgment standard to the decision to reject a FERC-regulated contract for the sale of electric energy in interstate commerce would be inappropriate because the lower court needed to "ensure rejection does not cause any disruption in the supply of electricity to other public utilities or consumers." 378 F.3d at 525. The appellate court further suggested that FERC participate in the proceeding "to assist the court in balancing these equities." *Id.* at 525-526. In *FirstEnergy*, the Sixth Circuit

likewise held that the business judgment standard does not apply to a debtor's motion to reject a FERC-approved power purchase agreement. 945 F.3d at 454-55 (“[W]hen a Chapter 11 debtor moves the bankruptcy court for permission to reject a filed energy contract that is otherwise governed by FERC, via the FPA, the bankruptcy court must consider the public interest and ensure that the equities balance in favor of rejecting the contract, and it must invite FERC to participate and provide an opinion in accordance with ordinary FPA approach . . .”).

27. The concerns at issue in *Bildisco*, *Mirant*, and *FirstEnergy* do not apply where, as here, the debtor is seeking to assume a contract the relevant regulator—PREB—has approved. *See* PREB Resolution and Order.⁴ Unlike those cases, PREPA is acting in accord with the regulator, not against it. Moreover, that PREPA is the sole energy provider in its service area does not bring the Motion to Assume within the “balancing of the equities” standard. The Bankruptcy Court for the Northern District of California has approved debtor PG&E’s motion to assume amendments to power purchase agreements under the business judgment rule notwithstanding that PG&E is the energy provider for nearly 16 million California residents.⁵ *See In re PG&E Corp.*, No. 19-30088, ECF No. 4574 (Bankr. N.D. Cal. Nov. 4, 2019) (approving assumption as “a sound exercise of the Utility’s business judgment”). Even if a “balancing of the equities” standard applied here (and it does not) the equities to be balanced would not be general public interest concerns, but deference to PREB’s regulatory purview. This Court has already addressed that concern by requiring Oversight Board approval and, to the extent needed, PREB approval as a precondition of assumption. *See* ECF No. 1199 ¶ 2.a.

⁴ *Mirant* and *First Energy* are also not applicable here because, unlike the wholesale electric power purchase and sale agreements at issue in those cases, the agreements PREPA seeks to assume are not contracts for the transmission or sale of electric energy in interstate commerce and hence are not subject to FERC’s jurisdiction under the Federal Power Act. *See* 16 U.S.C. §824(b)(1) (2012). Electric energy produced and transmitted within Puerto Rico does not move in interstate commerce.

⁵ PG&E, Company Profile, https://www.pge.com/en_US/about-pge/company-information/profile/profile.page (last accessed Apr. 29, 2020).

28. Permitting UTIER’s discovery risks turning every contested motion to assume or reject an executory contract into a mini-trial that would take months of discovery to complete, in direct contravention of the intention that such a motion be a “summary proceeding” to “efficiently review” the decision “in the course of swift administration” of the bankruptcy case. *BankVest*, 360 F.3d at 302; *Orion*, F.3d at 1098-99.

29. UTIER has argued that it is entitled to expansive discovery on the theory that the contracts at issue are new contracts and therefore not the proper subject of summary assumption proceedings. If that were the case, which it is not, that would hardly justify UTIER’s requested discovery since there is no requirement under PROMESA for the Court to review entirely new post-petition contracts, and therefore no court proceeding that would justify the April 14 Requests. *See* Opp. ¶¶ 56-79 (arguing lack of jurisdiction to review the contracts). While PREPA disagrees with UTIER’s position, if resolved in UTIER’s favor it would eliminate any procedural basis for its discovery requests.

II. UTIER’S DISCOVERY REQUESTS ARE UNDULY BURDENSOME AND DISPROPORTIONATE TO ANY NEED TO TEST PREPA’S EXERCISE OF ITS BUSINESS JUDGMENT.

30. UTIER seeks the production of “all documents and communications” regarding more than three dozen topics. *See* Exhibit B. These requests are not tethered to the reasonableness of PREPA’s business judgment—they are in furtherance of UTIER’s attempt to exercise a veto power over contracts to which it is not a party and has no approval rights.

31. For example, to support its contention that the contracts are inconsistent with public policy goals supporting a reduction in reliance on fossil fuels, UTIER seeks all documents and communications concerning: “the impact of assuming, executing or amending the ECO PPOA and Naturgy GSPA on PREPA’s achievement of the goals contained in Act 17-2019” and “PREPA’s decision to assume, execute or amend the ECO PPOA and Naturgy GSPA rather than

explore renewable resource alternatives.” *Compare* Ex. B, Nos. 11, 13 *with* Opp. ¶¶ 122-129.

32. Similarly, to support its speculation that the contracts may violate antitrust law, UTIER seeks all documents and communications “where any party advised PREPA of the possibility that Ecoeléctrica might try to force PREPA to purchase power from Ecoeléctrica at avoided costs if it did not agree its pricing request” and all communications relating to “whether PREPA being required to buy LNG from Naturgy, as a condition to using the LNG terminal either to obtain electricity or LNG for Costa Sur, was an illegal tying arrangement under US or Puerto Rico laws.” *Compare* Ex. B, Requests 34, 37 *with* Opp. ¶¶ 145-148.

33. These issues have nothing to do with whether the determination that the contract amendments at issue are beneficial to PREPA was a reasonable exercise of PREPA’s business judgment. Moreover, the delay complying with these requests would inject into these proceedings is significant. By comparison, in UTIER’s adversary proceeding against PREPA regarding alleged impairment of its collective bargaining agreements, (Case No. 17-00229), UTIER propounded requests for all documents and communications regarding 16 topics. Completing the document production in response to these requests took three-and-a-half months. Similarly, in the 9019 Motion regarding PREPA’s RSA (ECF No. 1235), it took PREPA four months to complete its response to document requests from UTIER (and others) seeking communications regarding negotiations. Here, given the breadth of UTIER’s requests and the logistical difficulties PREPA faces in collecting documents in light of the COVID-19 stay-at-home orders,⁶ responding to the April 14 Requests would take at least as long, and likely longer.

34. This Court should not require PREPA—or any Title III debtor—to spend millions of dollars and months on months of discovery every time the debtor seeks to assume contracts it

⁶ The stay at home order has been further extended – with some additional exceptions – until May 25, 2020. *See*, Executive Order No. 2020-038.

determines in the exercise of its business judgment are vital to its continued operations. Nor should it disregard the substantial burden that responding to discovery responses would impose upon PREPA officials, who are responsible for maintaining utility operations and overcoming the impacts of recent earthquakes and the COVID-19 pandemic. Protracted discovery is flatly inconsistent with the summary nature of a motion to assume or reject an executory contract. Accordingly, this Court should grant PREPA a protective order on the grounds that UTIER's discovery is unduly burdensome and disproportionate to the needs of the case. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 2019 WL 4723730, at *2 (granting protective order to preclude deposition of the Oversight Board's economist because the discovery requested would be unduly burdensome and its probative value "is substantially outweighed by the prospect of multiplication of the 9019 Motions proceedings," and because allowing discovery posed a "material risk of unfair prejudice arising from waste of time and [was] not in the interest of efficient proceedings and use of judicial resources.').

CONCLUSION

35. WHEREFORE, PREPA respectfully moves the Honorable Court to enter a protective order, substantially in the form of the proposed order attached hereto as Exhibit A.

NOTICE & CERTIFICATION

Notice of the Motion has been provided to UTIER or UTIER's counsel. Pursuant to Local Rule 9013-1 and paragraph I.H of the Case Management Procedures, PREPA certifies that it has (a) carefully examined the matter and concluded that there is a true need for an urgent hearing; (b) not created the urgency through a lack of due diligence; (c) made a bona fide effort to resolve the matter without a hearing; (d) made reasonable, good faith communications in an effort to resolve or narrow the issues being brought to the court; and (e) conferred with counsel for UTIER, who have indicated their intent to oppose the Motion.

Dated: May 1, 2020
San Juan, Puerto Rico

Respectfully submitted,

PROSKAUER ROSE LLP

/s/ Paul V. Possinger

Martin J. Bienenstock (*pro hac vice*)
Paul V. Possinger (*pro hac vice*)
Ehud Barak (*pro hac vice*)
Daniel S. Desatnik (*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*

LUIS F. DEL VALLE-EMMANUELLI

By: /s/ Luis F. Del Valle-Emmanuelli
By: Luis F. del Valle-Emmanuelli
USDC-PR No. 209514
P.O. Box 79897
Carolina, Puerto Rico 00984-9897
*Co-Attorney for the Financial Oversight and
Management Board as representative of the
Debtor*

MARINI PIETRANTONI MUÑIZ LLC

/s/ Luis Marini

Luis C. Marini-Biaggi
USDC No. 222301
250 Ponce de León Ave., Suite 900
San Juan, Puerto Rico 00918
Tel: (787) 705-2171
Fax: (787) 936-7494

*Co-counsel for the Puerto Rico Fiscal Agency
and Financial Advisory Authority*

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C

/s/ Katuska Bolaños

Katuska Bolaños
USDC No. 231812
290 Jesús T. Piñero Ave.
Oriental Tower, Suite 1105
San Juan, PR 00918
Tel.: (787) 395-7133
Fax: (787) 497-9664

*Counsel for Puerto Rico Electric Power
Authority*

O'MELVENY & MYERS LLP

/s/ Elizabeth L. McKeen

John J. Rapisardi
Nancy A. Mitchell
7 Times Square
New York, New York 10036
Tel: (212) 326-2000
Fax: (212) 326-2061

-and-

Peter Friedman
1625 Eye Street, NW
Washington, D.C. 20006
Tel: (202) 383-5300
Fax: (202) 383-5414

-and-

Elizabeth L. McKeen
Ashley M. Pavel
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660
Tel: (949) 823-6900
Fax: (949) 823-6994

*Attorneys for the Puerto Rico Fiscal Agency
and Financial Advisory Authority and Puerto
Rico Electric Power Authority*

EXHIBIT A

**IN THE UNITED STATES DISTRICT 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.*,

Debtors.¹

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
("PREPA"),

Debtor.

PROMESA

Title III

Case No. 17 BK 4780-LTS

**[PROPOSED] ORDER GRANTING PREPA'S URGENT MOTION
FOR PROTECTIVE ORDER**

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 ("Commonwealth") (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 ("HTA") (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); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (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).

Upon consideration of *PREPA's Urgent Motion for Protective Order* (the "Motion") filed by the Puerto Rico Electric Power Authority ("PREPA") by and through the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), as PREPA's representative pursuant to section 315(b) of PROMESA, and the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"), as PREPA's representative pursuant to Act 2-2017, and the Court having found and determined that the Court has jurisdiction over this proceeding and the Motion pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2166(a) and venue of this proceeding and the Motion is proper under 28 U.S.C. § 1391(b) and 48 U.S.C. § 2167(a), the Court hereby GRANTS the Motion to Assume for the reasons set forth herein.

1. The Court recognizes that the debtors in these Title III cases are governmental entities, and that therefore the debtors' determinations to assume pre-petition contracts will invariably implicate matters of great public import and public concern. Nevertheless, concerns for judicial efficiency of these Title III case require that a motion to assume or reject an executory contract or unexpired lease pursuant to Bankruptcy Code Section 365(a) be "a summary proceeding, intended to efficiently review the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate. It is not the time or place for prolonged discovery or a lengthy trial with disputed issues." *See, e.g., In re Bankvest Capital Corp.*, 360 F.3d 291, 302 (1st Cir. 2004), *cert. denied*, 542 U.S. 919 (2004) (quoting *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098–99 (2d Cir.1993)). Accordingly, a motion to assume is not the vehicle to adjudicate legal disputes between parties regarding an underlying contract. *In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2d Cir. 1993) ("In reviewing a trustee's or debtor-in-possession's decision to assume an executory contract, then, a bankruptcy court sits as an overseer of the wisdom with which the bankruptcy estate's property

is being managed by the trustee or debtor-in-possession, and not, as it does in other circumstances, as the arbiter of disputes between creditors and the estate.”); *In re Docktor Pet Center, Inc.*, 144 B.R. 14, 16 (Bankr. D. Mass. 1992) (“[A] motion to assume an executory contract is generally, and should be, a summary proceeding. It is not the place for an extended breach of contract suit.”); *In re BankVest Corp.*, 360 F.3d at 302-03 (to same effect).

2. In furtherance of the efficient administration of these Title III cases, the Court will not evaluate motions to assume pre-petition contracts under the “balancing of the equities” standard that has sometimes been applied to a debtor’s request to reject a contract that is subject to regulatory oversight. *Cf. e.g., N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513 (1984); *In re Mirant*, 378 F.3d 511 (5th Cir. 2004); *In re FirstEnergy Solutions Corp.*, 945 F.3d 431 (6th Cir. 2019). The concerns regarding potential conflict between the bankruptcy code and other federal regulatory regimes animating those cases are not present in the context of a motion to assume.

3. The assumption or rejection of an executory contract or unexpired lease is subject to review under the business judgment rule. Under this standard, “a debtor must simply put forth a showing that assumption or rejection of the executory contract or unexpired lease will benefit the [d]ebtor’s estate.” *In re Vent Alarm Corp.*, 2016 WL 1599599, at *3 (Bankr. D.P.R. Apr. 18, 2016). “A court will normally approve the assumption of an executory contract upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is in an exercise of sound business judgment.” *In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 462 (Bankr. S.D.N.Y. 2014) (collecting cases). In approving the assumption of an executory contract, the court “will generally not second-guess a debtor’s business judgment regarding whether the assumption or rejection of a contract will benefit the debtor’s estate.” *Id.* at 462–63; *see also In*

re Maiden Brooks Farm LLC, 435 B.R. 81, 83 (Bankr. D. Mass. 2010) (noting that courts afford deference to debtors under the business judgment rule).

4. Against this legal framework and the Court having found good cause to grant the relief requested therein, it is **HEREBY ORDERED THAT:**

- a. The Motion is GRANTED.
- b. The (1) First Request for Production of Documents to Debtor Puerto Rico Electric Power Authority and the Commonwealth of Puerto Rico; (2) First (and Revised) Set of Interrogatories to Debtor Puerto Rico Electric Power Authority and the Commonwealth of Puerto Rico; and (3) Notice of 30(b)(6) Deposition of PREPA propounded by UTIER are quashed as unduly burdensome and beyond the scope of the issues before the Court.

SO ORDERED.

Dated _____, 2020

HONORABLE JUDITH G. DEIN

EXHIBIT B

**UNITED STATES DISTRICT COURT
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

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
(PREPA)

Debtor

PROMESA

Title III

No. 17 BK 4780-LTS

**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEBTOR PUERTO
RICO ELECTRIC POWER AUTHORITY AND THE COMMONWEALTH OF
PUERTO RICO**

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,

Marvesa Building Suite 106,

Ponce, PR 00716

Tel: (787) 848-0666

Fax: (787) 841-1435

rolando@bufete-emmanuelli.com

jessica@bufete-emmanuelli.com

notificaciones@bufete-emmanuelli.com

Dated: April 14, 2020

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 "HTA") (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 III case numbers are listed as Bankruptcy Case numbers due to software limitations).

PLEASE TAKE NOTICE THAT pursuant to Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure, incorporating by reference Rules 26 and 34 of the Federal Rules of Civil Procedure, made applicable to contested matters through Rule 9014 of the Federal Rules of Bankruptcy Procedure, made applicable to this contested matter under Section 310 of PROMESA (48 U.S.C. § 2170), Unión de Trabajadores de la Industria Eléctrica y Riego Inc. (“UTIER”), hereby serves this First Request for Production of Documents to the Puerto Rico Electric Power Authority (“PREPA”). These Requests are to be responded to fully and in accordance with the definitions and instructions set out below. These requests are without waiver of UTIER’s rights to serve further discovery requests upon PREPA or any third party based on the information that may be disclosed in response to these requests or other developments in this litigation, and UTIER expressly reserves all such rights.

DEFINITIONS

1. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), made applicable to this proceeding by Bankruptcy Rule 7034 and Section 310 of PROMESA (48 U.S.C. § 2170), including, but not limited to, all written, electronically stored, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communications or records of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, and including audio or video recordings of communications, occurrences or events. This definition includes, but is not limited to, any and all of the following: correspondence, minutes, notes, messages, records, memoranda, telephone memoranda, diaries, contracts, agreements, orders, invoices, acknowledgements, receipts,

bills, statements, checks, check registers, financial statements, journals, ledgers, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, emails, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. The terms “Document” and “Documents” shall include all preliminary versions, drafts or revisions of the foregoing, and all copies of a Document shall be produced to the extent that the copies differ from the Document produced due to notations, additions, insertions, comments, enclosures, attachments or markings of any kind. Also, the term includes any original, whether or not it has been sent or received, and any existing copy of that original, whether or not identical to the original, any final version, whether or not it was sent or received, and any draft prepared in advance of the final version for any purpose. The term “Document” shall also include Electronically Stored Information (“ESI”) within the meaning of the Federal Rules of Civil Procedure. “Including” means including, but not limited to, the referenced subject. 17. “Person” means any individual or legal organization or entity. 18. “Relating to,” “relate to,” “related to,” “referred to,” “refer to,” “reference,” and “referring to” mean analyzing, addressing, concerning, consisting of, regarding, referring to, refuting, discussing, describing, evidencing, constituting, comprising, containing, setting forth, 4 showing, disclosing, explaining, summarizing, memorializing, reflecting, commenting on, or otherwise having any logical or factual connection to the subject matter of the Document.

2. The terms “each” and “any” shall be deemed to include and encompass the words “every” and “all.”

3. 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.
4. “Person” or “Persons” means any natural or artificial person, business entity or other legal entity, including, but not limited to, individuals, sole proprietorships, associations, companies, firms, partnerships, joint ventures, corporations, employees or former employees, or any other business, governmental, or labor entity, and any divisions, departments, or other units thereof.
5. “You” or “Your” means PREPA as defined above.
6. “Communication” or “Communications” includes every manner of transmitting or receiving facts, information, opinions, or thoughts from one person to another person, whether orally, by documents, writing, e-mail, text message, web messaging, or any other form of instant messaging, or a copy thereof, and to words transmitted by telephone, radio, or any method of voice recording.
7. “Identify” means to identify the information requested in a complete and specific fashion so as to avoid any ambiguity or vagueness and to ensure that your answer is in no way incomplete or misleading.
8. “Indicate”, as used in these interrogatories regarding to any document or documents, requires that you specify the type of document and its date, name, address and phone number of the person(s) who prepared it, and the name, address and phone number of the persons(s) if any, to whom the original document or copy was sent. It also requires that you confirm if you have the original of the document or a copy. If you do not have the document or any copy, provide the name and address of the person(s) that have the original or any copy thereof.
9. “Including” means including, but not limited to, the referenced subject.

10. “Concerning” and/or “relating to” means, without limitation: describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising therefrom.
11. “PREPA” means and refers to the Puerto Rico Electric Power Authority and its governing board, and any of its affiliates, parents, subsidiaries, partners, associates, divisions, agencies, instrumentalities, departments, offices, officers, directors, shareholders, members, agents, attorneys, representatives, employees, predecessors or successors in interest and/or anyone acting on PREPA’s behalf.
12. “Commonwealth” means the Commonwealth of Puerto Rico.
13. “UTIER” means the Unión de Trabajadores de la Industria Eléctrica y Riego, Inc., as well as its affiliates, predecessors, successors, partners, parent company, subsidiaries, principals, officers, directors, attorneys, agents, employees, representatives, and other Persons acting on its behalf.
14. “PREB” means Puerto Rico Energy Bureau.
15. “Naturgy” means Naturgy Aprovechamientos S.A.
16. “ECO PPOA” means the Power Purchase and Operation Agreement between PREPA and Ecoeléctrica.
17. “Naturgy GSPA” means the Gas Sales and Purchase Agreement between PREPA and Naturgy.
18. “FERC” means the Federal Energy Regulatory Commission.
19. “IRP” means the Integrated Resource Plan.

20. "Qualifying Facility" means a power plant that qualifies under PURPA to require utilities to buy power from it.
21. "Act 17-2019" means the *Puerto Rico Energy Public Policy Act*, Puerto Rico Law 17-2019.
22. "Act 83-1941" means *Ley de la Autoridad de Energía Eléctrica* Puerto Rico Law 83 of May 2nd, 1941, P.R. Laws ann. tit. 22 §§ 191 et seq, as amended.
23. "Rule 7026" means Federal Rule of Civil Procedure 26(e), made applicable to this matter by Federal Rule of Bankruptcy Procedure 7026 and Section 310 of PROMESA (48 U.S.C. § 2170).
24. The singular form of a noun or pronoun shall be considered to include, within its meaning, the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted.

INSTRUCTIONS

1. All terms defined above shall have the meanings set forth therein.
2. Each Request must be responded to separately and specifically.
3. Each Request operates and should be construed independently and, unless otherwise indicated, no Request limits the scope of any other Request.
4. Each Request shall be answered fully unless it is in good faith objected to, in which in that case, the reason for Your objection shall be stated in detail, as set forth below.
5. If you raise a claim of privilege and/or an objection to any Interrogatory, or any subpart thereof, and an answer is not provided on the basis of your assertion of that objection, you must identify the nature of the privilege or reasons for nondisclosure asserted and provide the following information:
 - A. For documents:

- (1) the reasons for withholding the document;
- (2) a statement of the basis for the claim of privilege, work product protection or other ground for non-disclosure; and
- (3) a brief description of the document, including:
 - (a) the date of preparation of the document and any date identified on the document;
 - (b) its number of pages, attachments and appendices;
 - (c) the name or names of its authors or preparers and an identification by employment and title of each such person;
 - (d) the name of each person who was sent or shown, or blind or carbon copied on the document, or who has had access to or custody of the document, together with an identification of each such person;
 - (e) the present custodian; and
 - (f) its subject matter and, in the case of any document referring or relating to a meeting or conversation, an identification of such meeting or conversation.

B. For oral communications:

- (1) the name of the person making the communication and the name of all persons present while the communication was made, and, where not apparent, the relationship of the persons presents to the person making the communication;
 - (2) the date and place of the communication; and
 - (3) the general subject matter of the communication.
6. If an objection pertains only to a portion of a request, or a word, phrase or clause contained within it, You are required to state Your objection to that portion only and to respond to the remainder of the Requests.

7. Each Request contained herein extends to all Documents: (a) in Your possession, custody, or control; or (b) in the possession, custody, or control of anyone acting on Your behalf, including Your counsel or other representatives or advisors. A Document is to be deemed in Your possession, custody or control if: (a) it is in Your physical custody; or (b) it is in the physical custody of any other Person and You (i) own such Document in whole or in part, (ii) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such Document on any terms, (iii) have an understanding, express or implied, that You may use, inspect, examine, or copy such Document on any terms, or (iv) have, as a practical matter, been able to use, inspect, examine or copy such Document when You sought to do so.
8. If You are requested to produce a Document that is no longer in Your possession, custody, or control, then Your response must state: (a) whether such Document (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred, voluntarily or involuntarily, to others, or (iv) was otherwise disposed of; (b) the reason for, and the facts and circumstances surrounding, such disposition; (c) the Persons who authorized such disposition; (d) the date or approximate date of such disposition; (e) when the Document was most recently in Your possession, custody or control; and (f) the identity of the Person, if any, presently in possession, custody, or control of such Document.
9. Each Document shall be produced in its entirety. You shall include any exhibits or attachments thereto. Except pursuant to a claim of privilege or work product, no Document should be altered, defaced, masked, or redacted before production.
10. If You cannot provide a requested Document (after exercising due diligence to secure it) that was formerly in Your possession, custody, or control, then: (a) Your response must (i) describe in detail the nature of the document and its contents, identify the person(s) who prepared or

authored the Document (and, if applicable, the Person(s) to whom the Document was sent), and the date of which the document was prepared or transmitted, (ii) state that You cannot produce the requested Document, (iii) specify the reasons for Your inability to produce the requested Document (e.g., lost, destroyed or otherwise disposed of), (iv) declare that You have exercised due diligence to secure the requested Document, and (v) state all information or knowledge that You have concerning the requested Documents; and (b) You must produce all other requested Documents.

11. If You claim that a requested Document is privileged or attorney work-product, then Your response must: (a) state (i) a description of the Document adequate to support Your contention that the Document is privileged, (ii) the title of the Document, (iii) the date of the Document, (iv) the author of the Document, (v) the addressee of the Document, (vi) the identity of each Person who received or saw the original or any draft, copy, or reproduction of the Document, (vii) whether the Document itself, or any information contained or referred to in the Document is in the possession, custody, or control of any other Persons, and if so, the identity of such Persons, as well as a statement addressing how the information came into their possession, (viii) the claim of privilege under which the Document is withheld, and (ix) all of the circumstances upon which You will rely to support such claim of privilege; and (b) produce a privilege log containing all of the information requested in Part (a) of this Instruction for each Document withheld on the basis of a claim of privilege. If a portion of an otherwise responsive Document contains information subject to a claim of privilege, only that portion of the Document subject to the claim of privilege shall be deleted or redacted from the Document following the instructions above, and the rest shall be produced.

12. Each request for a document or documents shall be deemed to call to produce any identical copy or copies of the original document or documents. Each request should be considered as including all nonidentical copies, whether such copies differ from the originals by reason of any notations made on such copies or otherwise and, to the extent applicable, preliminary drafts of documents that differ in any respect from the original or final draft or from each other (e.g., by reason of differences in form or content, or by reason of handwritten notes or comments having been added to one copy of a document but not the original or other copies thereof).
13. Pursuant Rule 7026, these Documents Requests are deemed continuing in nature. You are hereby instructed to (a) supplement or correct any responses later learned to be incomplete or incorrect immediately upon learning that a prior response was incomplete or incorrect; and (b) produce any additional Documents that are called for under the Requests.
14. The electronically stored information must be sent in an organized and duly identified matter.

DOCUMENTS TO BE PRODUCED

1. All documents and communications concerning the impact of the ECO PPOA and Naturgy GSPA on operating expenses and UTIER members and retirees.
2. All documents and communications concerning the impact of the ECO PPOA and Naturgy GSPA on PREPA's ratepayers.
3. All documents and communications concerning the calculation of projected savings of the ECO PPOA and Naturgy GSPA.
4. All documents reflecting the data set PREPA used in the calculation of projected savings.
5. All documents and communications concerning the FERC Order issued on March 26, 2020 on the Ecoeléctrica, instructing it to limit operations due to earthquake damage.

6. All documents and communications concerning the process of negotiations for the ECO PPOA and Naturgy GSPA.
7. All documents and communications concerning the decision to assume, execute or amend the ECO PPOA and Naturgy GSPA without the benefit of competitive bidding, as prescribed by Act 83-1941.
8. All documents and communications concerning the decisions to retire or repair the Costa Sur power plant.
9. All documents and communications concerning Naturgy's control over the Ecoeléctrica LNG terminal and its resistance to allow other suppliers through.
10. All documents and communications concerning PREPA's analysis regarding the economic savings, benefits and operational advantages that PREPA and the Commonwealth would have by assuming, executing or amending the ECO PPOA and Naturgy GSPA.
11. All documents and communications concerning the impact of assuming, executing or amending the ECO PPOA and Naturgy GSPA on PREPA's achievement of the goals contained in Act 17-2019.
12. All documents and communications concerning PREPA's decision to continue with its plan to assume, execute or amend the ECO PPOA and Naturgy GSPA despite the COVID-19 emergency.
13. All documents and communications concerning PREPA's decision to assume, execute or amend the ECO PPOA and Naturgy GSPA rather than explore renewable resource alternatives.
14. All documents and communications concerning the retainer of LNG market experts, and other experts, for consultation in the process of negotiating the ECO PPOA and Naturgy GSPA.
15. All documents and communications regarding the avoided costs of the ECO PPOA.

16. All documents and communications concerning competitor's interests in replacing Naturgy as PREPA's gas supplier.
17. All documents and communications concerning the determination that competitive bidding was not necessary to assume, execute or amend the ECO PPOA and Naturgy GSPA.
18. All documents and communications presented to the PREB in support of the ECO PPOA and Naturgy GSPA.
19. All documents and communications related to the ownership, leasing, rental and usage rights over the Ecoeléctrica terminal.
20. All documents and communications related to the use of the Ecoeléctrica terminal by third parties.
21. All duly executed tolling agreements for the Ecoeléctrica terminal.
22. All documents and communications related to the determination of the capacity payment in the ECO PPOA.
23. All documents and communications related to the consulting services for the ECO PPOA and the Naturgy GSPA.
24. All documents and communications that show dimensions of the ships and/or LNG carriers that have delivered LNG to the Ecoeléctrica terminal in the past five years.
25. All documents and communications related to the operation of Ecoeléctrica after the January 7, 2020 earthquake.
26. All documents and communications related to the operation of Costa Sur after the January 7, 2020 earthquake.
27. All documents and communications related to the specification compliance by Ecoeléctrica.
28. All documents and communications regarding Ecoeléctrica's status as a "Qualified Facility".

29. All documents and communications related to the determination of the capacity payment in the ECO PPOA.
30. All documents and communications regarding the reasonableness of the capacity payment from the standpoint of what Ecoeléctrica needs to charge in order to cover its costs.
31. All documents and communications that evaluate whether a competitive process for fuel to be used to generate power at Ecoeléctrica needed to be conducted by PREPA, Naturgy, Ecoeléctrica or anyone else.
32. All documents and communications that evaluate whether a competitive process for fuel to be used to generate power at Costa Sur needed to be conducted by PREPA, Naturgy, Ecoeléctrica or anyone else.
33. All documents and communications regarding PREPA's plans to use LNG purchased through the Ecoeléctrica terminal for power generation equipment at Costa Sur, other than the facilities currently located there, and at facilities other than Costa Sur.
34. All documents and communications where any party advised PREPA of the possibility that Ecoeléctrica might try to force PREPA to purchase power from Ecoeléctrica at avoided costs if it did not agree its pricing request.
35. All documents and communications regarding discussions or decisions to convert the ECO PPOA from a purchase power agreement into a tolling agreement, including but not limited to any term sheet, email or other document which first proposed the revision to the structure.
36. All documents and communications regarding the amount of import taxes on fuel that would be owed by Ecoeléctrica, Naturgy or any party, if the LNG was imported by Ecoeléctrica or Naturgy rather than structured to appear that it was being imported by PREPA.

37. All documents and communications regarding whether PREPA being required to buy LNG from Naturgy, as a condition to using the LNG terminal either to obtain electricity or LNG for Costa Sur, was an illegal tying arrangement under US or Puerto Rico laws.

38. All documents and communications regarding whether PREPA can agree to contract structures and amendments that set up a de facto monopoly for Naturgy, under PR law, without the approval of the legislature.

Dated:

Ponce, Puerto Rico

April 14, 2020

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,
Marvesa Building Suite 106,
Ponce, PR 00716
Tel: (787) 848-0666
Fax: (787) 841-1435

/s/Rolando Emmanuelli Jiménez
Rolando Emmanuelli Jiménez
USDC: 214105

/s/ Jessica E. Méndez Colberg
USDC: 302108

Emails: rolando@bufete-emmanuelli.com
jessica@bufete-emmanuelli.com
notificaciones@bufete-emmanuelli.com

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I caused copies of the foregoing document to be served on counsel of record for PREPA.

/s/Rolando Emmanuelli Jiménez

EXHIBIT C

**UNITED STATES DISTRICT COURT
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

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
(PREPA)

Debtor

PROMESA

Title III

No. 17 BK 4780-LTS

**FIRST SET OF INTERROGATORIES TO DEBTOR PUERTO RICO ELECTRIC
POWER AUTHORITY AND THE COMMONWEALTH OF PUERTO RICO**

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,
Marvesa Building Suite 106,
Ponce, PR 00716

Tel: (787) 848-0666

Fax: (787) 841-1435

rolando@bufete-emmanuelli.com

jessica@bufete-emmanuelli.com

notificaciones@bufete-emmanuelli.com

Dated: April 14, 2020

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 "HTA") (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 III case numbers are listed as Bankruptcy Case numbers due to software limitations).

PLEASE TAKE NOTICE THAT pursuant to Rule 7033 of the Federal Rules of Bankruptcy Procedure, incorporating by reference Rule 33 of the Federal Rules of Civil Procedure, made applicable to contested matters through Rule 9014 of the Federal Rules of Bankruptcy Procedure, made applicable to this contested matter under Section 310 of PROMESA (48 U.S.C. § 2170), Debtors Puerto Rico Electric Power Authority (“PREPA”) and the Commonwealth of Puerto Rico are required within thirty (30) days of the service hereof, to answer in writing, separately and under oath, the following interrogatories propounded by the Creditor Unión de Trabajadores de la Industria Eléctrica y Riego Inc. (“UTIER”)

DEFINITIONS

1. The terms “Document,” “Documents,” “document,” and “documents” include, but are not limited to: all written, electronically stored, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communications or records of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, and including audio or video recordings of communications, occurrences or events. This definition includes, but is not limited to, any and all of the following: correspondence, minutes, notes, messages, records, memoranda, telephone memoranda, diaries, contracts, agreements, orders, invoices, acknowledgements, receipts, bills, statements, checks, check registers, financial statements, journals, ledgers, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, emails, telegrams, telexes,

telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. The terms “Document” and “Documents” shall include all preliminary versions, drafts or revisions of the foregoing, and all copies of a Document shall be produced to the extent that the copies differ from the Document produced due to notations, additions, insertions, comments, enclosures, attachments or markings of any kind. Also, the term includes any original, whether or not it has been sent or received, and any existing copy of that original, whether or not identical to the original, any final version, whether or not it was sent or received, and any draft prepared in advance of the final version for any purpose.

2. The terms “all”, “any”, and “each” shall be constructed 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.
3. 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.
4. “Person”, “Persons” shall mean any natural person, legal person, individual(s), any business, proprietorship, firm, partnership, corporation, association, organization, or any type of entity that is or is not legally recognized.
5. “Rule 7033” means Fed. R. Civ. P. 33, made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7033.
6. “You,” “Your,” “you,” or “your” means to the party to whom this First Set of Interrogatories is addressed.

7. “Communication” or “Communications” refer to: any oral, written, or electronic transmission of information, including, without limitation, meetings, discussions, any telephone or personal conversation, e-mail messages, text messages, memoranda, letters, analyst reports, telecopies, telefaxes, telexes, seminars, notes, video tapes, photographs, microfilm, or other media of any kind.
8. “Identify” means to identify the information requested in a complete and specific fashion so as to avoid any ambiguity or vagueness and to ensure that your answer is in no way incomplete or misleading.
9. “Indicate”, as used in these interrogatories regarding to any document or documents, requires that you specify the type of document and its date, name, address and phone number of the person(s) who prepared it, and the name, address and phone number of the persons(s) if any, to whom the original document or copy was sent. It also requires that you confirm if you have the original of the document or a copy. If you do not have the document or any copy, provide the name and address of the person(s) that have the original or any copy thereof.
10. “Including” means including, but not limited to, the referenced subject.
11. “PREPA” means The Puerto Rico Electric Power Authority.
12. “Commonwealth” means the Commonwealth of Puerto Rico.
13. “UTIER” means Unión de Trabajadores de la Industria Eléctrica y Riego Inc.
14. “Naturgy” means Naturgy Aprovevisionamientos S.A.
15. “ECO PPOA” means the Power Purchase and Operation Agreement between PREPA and Ecoeléctrica.
16. “Naturgy GSPA” means the Gas Sales and Purchase Agreement between PREPA and Naturgy.
17. “FERC” means the Federal Energy Regulatory Commission.

18. "IRP" means the Integrated Resource Plan.
19. "Qualifying Facility" means a power plant that qualifies under PURPA to require utilities to buy power from it.
20. "Act 17-2019" means the *Puerto Rico Energy Public Policy Act*, Puerto Rico Law 17-2019.
21. "Act 83-1941" means *Ley de la Autoridad de Energía Eléctrica* Puerto Rico Law 83 of May 2nd, 1941, P.R. Laws ann. tit. 22 §§ 191 et seq, as amended.
22. The singular form of a noun or pronoun shall be considered to include, within its meaning, the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted.
23. The term "or" shall mean "and" and vice-versa, as necessary to bring within the scope of the following interrogatories all information or documents that would be excluded absent this definition.

INSTRUCTIONS

1. Pursuant to Rule 7033, you are to furnish all information available to you and to your agents, employees and attorneys in answering the following First Set of Interrogatories.
2. You are to designate which of such information is not within your first-hand knowledge, and as to that information you are to state the name and address of every person from whom it was received, or, if the source of the information is documentary, a full description of the document including the location thereof.
3. All Interrogatories should be answered separately and identified so that the answer clearly corresponds to the Interrogatory to which the answer is being offered.
4. If you object to any interrogatory, state the reasons for objection and answer to the extent the interrogatory is not objectionable. If you are unable to answer an interrogatory fully, submit as

much information as is available, explain why your answer is incomplete, and identify or describe all other sources of more complete or accurate information.

5. Pursuant to Rule 7033, you are not to leave any part of an Interrogatory unanswered. If the response to an Interrogatory is “none” or “unknown,” the word “none” or “unknown” must be written in the response.
6. If you raise a claim of privilege and/or an objection to any Interrogatory, or any subpart thereof, and an answer is not provided on the basis of your assertion of that objection, you must identify the nature of the privilege or reasons for nondisclosure asserted and provide the following information:

A. For documents:

- (1) the reasons for withholding the document;
- (2) a statement of the basis for the claim of privilege, work product protection or other ground for non-disclosure; and
- (3) a brief description of the document, including:
 - (a) the date of preparation of the document and any date identified on the document;
 - (b) its number of pages, attachments and appendices;
 - (c) the name or names of its authors or preparers and an identification by employment and title of each such person;
 - (d) the name of each person who was sent or shown, or blind or carbon copied on the document, or who has had access to or custody of the document, together with an identification of each such person;
 - (e) the present custodian; and

(f) its subject matter and, in the case of any document referring or relating to a meeting or conversation, an identification of such meeting or conversation.

B. For oral communications:

(1) the name of the person making the communication and the name of all persons present while the communication was made, and, where not apparent, the relationship of the persons presents to the person making the communication;

(2) the date and place of the communication; and

(3) the general subject matter of the communication.

7. If you answer any Interrogatory by reference to records from which the answer may be derived or ascertained, you must:

A. specify the document to be produced in enough detail to permit the proposer of these Interrogatories to locate and identify the records and to ascertain the answer to the Interrogatory as readily as you would be able to ascertain the answer to the Interrogatory;

B. make available any computerized information or summaries thereof that you have, or can adduce by a relatively simple procedure;

C. provide compilations, abstracts or summaries in your custody or readily obtainable by you; and

D. make available such documents for inspections and copying within ten days after service of answers to this First Set of Interrogatories.

8. Each request for a document or documents shall be deemed to call to produce any identical copy or copies of the original document or documents. Each request should be considered as including all nonidentical copies, whether such copies differ from the originals by reason of any notations made on such copies or otherwise and, to the extent applicable, preliminary drafts

of documents that differ in any respect from the original or final draft or from each other (e.g., by reason of differences in form or content, or by reason of handwritten notes or comments having been added to one copy of a document but not the original or other copies thereof).

9. If any document requested herein was at one time in existence, but has been lost, discarded or destroyed, identify in writing each such document and provide the following information:

A. the date it was lost, discarded or destroyed;

B. the circumstances and manner in which it was lost, discarded or destroyed;

C. the reason for disposing of the document (if discarded or destroyed);

D. the identity of all persons authorizing or having knowledge of the circumstances surrounding the disposal of the document;

E. the identity of the person(s) who lost, discarded or destroyed the document; and

F. the identity of all persons having knowledge of the contents thereof.

10. Where an Interrogatory does not specifically request a particular fact or information, but where such fact or information is necessary to make the answer to the Interrogatory comprehensible, complete or not misleading, the Interrogatory is deemed to request such fact or information.

11. The Interrogatories set forth below are to be answered to the extent of all information that is or may be available to you or to any other person or entity who has acted or is now acting on your behalf.

12. When these interrogatories require you to identify a person, you will be obliged to inform the full name of the person, the physical and postal address (street, number, urbanization, town, municipality, state, nation and zip code) and the telephone number. If you do not know the current address of the person whose identification is requested, indicate the last known address

(residential and business). Also, identify the occupation or profession of the person, the position he/she currently occupy, employer and employment or business address.

13. When an interrogatory requires you to indicate or identify a document or documents, you will be obliged to describe it and identify its author and the recipient of the document. In addition, you must indicate the date on which the document was prepared and the current location of the document. In addition, you must provide a copy of the document.
14. Pursuant to Rule 7033, these Interrogatories are deemed continuing in nature and require supplemental responses in the event you obtain information that renders the answers supplied in any way incomplete or inaccurate.
15. If, after having answered this list of interrogatories you obtain information or documentation that is responsive to it and that has not been supplied in the original answer, you must contact the party that notified the interrogatory to supplement any additional information.

INTERROGATORIES

Amended Contracts

1. Is PREPA a wholesale customer of Ecoeléctrica and/or Naturgy, yes or no? Explain, if yes or if no, why?
2. Are the ECO PPOA and Naturgy GSPA assumptions, new contracts or amendments to the current executory contracts? Explain.
3. Describe the qualifications that Mr. Padilla has in the areas related to his declaration.
4. Is PREPA planning to provide an expert witness in these proceedings?
 - a. Describe their qualifications.
 - b. What will be the scope and nature of their testimony?

Negotiations and Analysis

5. How were the effects of the ECO PPOA on ratepayers considered as part of the analysis conducted by PREPA? And the Naturgy GSPA?

6. Why does the Naturgy GSPA contain a minimum take or pay obligation?
7. How do you explain the urgency that PREPA has to assume these contracts?
8. What analysis did PREPA exercise about the earthquake damage to Ecoeléctrica's facilities and its effect on the provider's ability to execute its duties under the ECO PPOA?
9. How do the reasons for extending the ECO PPOA and Naturgy GSPA through 2032 compare to the lower minimum take level and commitment term in the contract with New Fortress Energy?
10. Why did PREPA decide to assume, amend or execute the ECO PPOA and the Naturgy GSPA, rather than explore renewable energy sources or different natural gas providers?
11. Why did PREPA override the competitive bidding process prescribed in Act 83-1941 in favor of assuming, amending or executing the ECO PPOA and the Naturgy GSPA?
12. Why did PREPA not insist on the right to procure LNG under competitive bidding or oversee and participate in the process by which Ecoeléctrica and Naturgy did so, considering it was to be responsible for providing LNG under the tolling agreement?
13. What regulations and policies inside PREPA compel its employees to perform the competitive process?
14. Why are the Naturgy GSPA and ECO PPOA being treated as a combo, rather than analyzed and assumed individually? What options did PREPA have regarding the choice to delink these contracts? What dependence do these contracts have on each other?
15. How does the change in the economic landscape due to the COVID-19 emergency impact the viability of the terms of the ECO PPOA and the Naturgy GSPA?
16. What do the ECO PPOA and Naturgy GSPA stipulate regarding PREPA's ability to purchase LNG from other providers for the Ecoeléctrica and Costa Sur plants? What are the reasons for that stipulation or lack thereof?
17. Why were the ECO PPOA and Naturgy GSPA each extended to 2032?
18. What are the reasons for the minimum and maximum contract quantities?
19. How do the ECO PPOA and the Naturgy GSPA aid PREPA's achievement of the goals of Act 17-2019?

20. What force majeure conditions excuse payments by PREPA under these contracts? Why?
21. How does PREPA describe the negotiation of the ECO PPOA and Naturgy GSPA?
 - a. To what extent could it be considered an arm's length negotiation between parties with comparable bargaining power?
 - b. What consideration did PREPA give, during negotiations, to the possibility that Ecoeléctrica might try to force PREPA to purchase at avoided costs? Explain.
22. Describe the discussions or decisions there were to convert the structure of the ECO PPOA from a traditional purchase power and operation agreement into a tolling agreement, where PREPA is responsible for supplying LNG to Ecoeléctrica.
 - a. Who first proposed the arrangement?
 - b. How did the structure revision benefit PREPA or its ratepayers?
 - c. How was the change of structure justified for approval by the FOMB?
 - d. Assuming it was first proposed by Ecoeléctrica, Naturgy or their lawyers, what reasons were provided for the restructuring?
23. Was the primary motivation for the change in structure to support the argument that there was a "natural monopoly" and, therefore, no competitive bidding for fuel or LNG was required for either Ecoeléctrica or Costa Sur? Explain.
24. Describe what personnel and law firms engaged in negotiation of the terms and documents of the ECO PPOA and Naturgy GSPA, respectively.
25. Describe the avoided costs of the ECO PPOA and why they are not public.
26. How do the ECO PPOA and Naturgy GSPA encourage competition among gas or LNG providers?
27. What plans does PREPA have to use LNG purchased through the Ecoeléctrica terminal for power generation equipment at Costa Sur, other than the units currently located there?
28. What plans does PREPA have to use LNG purchased through the Ecoeléctrica terminal for power generation facilities other than Costa Sur, as referenced in the Amended Contracts?

29. Describe the amount of import taxes on fuel that would be owed by Ecoeléctrica, Naturgy or any party, if the LNG was imported by Ecoeléctrica or Naturgy rather than structured to appear that it was being imported by PREPA.

Consultation and Experts

30. What was PREPA's decision on whether or not to retain an expert in LNG marketing, pricing or procurement? If the decision was not to, what were the reasons?
31. What person or persons, if any, were employed or consulted in the negotiation of the ECO PPOA and Naturgy GSPA as experts in LNG marketing, pricing or procurement?
32. What expertise did PREPA believe Sargent & Lundy had in LNG marketing, pricing or procurement? What individuals were held out to have it?
33. What was the role of King & Spalding in the negotiations of these contracts?
- a. What was their role in the drafting of legal opinions about these contracts? Why?
 - b. Does King & Spalding represent one or more of the owners of Ecoeléctrica?
34. Was PREPA aware of any instances where a PPOA had ever been converted to a tolling agreement?
- a. Was PREPA aware of any instances where a utility was required to buy LNG from an owner of the power plant or LNG terminal?
 - b. What risks was PREPA apprised of?
 - c. How did PREPA believe those risks were justified, mitigated or compensated versus the prior structure?
35. What global precedent has PREPA shown where a power purchaser or utility is responsible for delivering LNG to and LNG terminal and power plant owned by a third party?
- a. Who provided that information?
 - b. What inquiries did PREPA make into the existence of the precedent described in the previous questions?
 - c. In what situation has a power purchaser been required to use any of the terminal owners as the sole source of LNG provider?

- d. Was that an amendment to a traditional power purchase agreement where the power provider is required to obtain the fuel and convert it to power and deliver the power?
 - e. In the alternative that no such precedent exists, what lead PREPA to adopt said agreement?
 - f. What arguments were offered to support the idea that this new arrangement was anything other than a contrivance to avoid competitive bidding?
36. What role did Filsinger Energy Associates play in the negotiations, contracting or drafting of these contracts?
37. Was New Fortress Energy, on any other fuel provider of PREPA's, consulted on the structure or pricing of the ECO PPOA and Naturgy GSPA, respectively? Explain.

Projected Savings

38. What are the official projected savings of the ECO PPOA? And the Naturgy GSPA?
39. What methodology was used to calculate the projected savings of the ECO PPOA? And the Naturgy GSPA?
40. What mathematical formulas were used to calculate the projected savings of the ECO PPOA? And the Naturgy GSPA?
41. What alternatives did PREPA explore to assuming, executing or amending the ECO PPOA? And the Naturgy GSPA?

Pricing

42. What process did PREPA, itself or via advisers or via Ecoeléctrica or its owners, perform to seek information on recent LNG contract pricing trends?
43. Was PREPA aware that the LNG price adder of the contracts that would be assumed was above and for a longer term? Explain.
- a. If so, why did it PREPA sign a contract for LNG at a price that, when converted to power, would result in a higher energy price than the current PPOA, as admitted before the PREB?
 - b. What efforts did PREPA undertake to determine what competitive market prices were for other buyers entering into LNG contracts structured as 115% (HH) + Adder?

44. How were the prices in the Naturgy contract arrived at?
- a. How does this pricing compare with the prior contract with Naturgy to provide gas to the Costa Sur plant?
 - b. Why did PREPA believe that comparison was or was not relevant?
45. Why did PREPA agree to a locked-in LNG price for the life of the LNG contract, rather than having market-based adjustments, indexes or other mechanisms to ensure that the overall price would be competitive going forward?
46. What benefits did PREPA think it was receiving for agreeing to that long-term fixed price?
47. Who advised PREPA on the matters relating to the pricing of these contracts?
48. How do the prices in the ECO PPOA compare to market prices? And the Naturgy GSPA?
49. How do the prices of these contracts comply with the FOMB's savings goals?
50. How does PREPA believe that purchasing energy, capacity or LNG at above market prices, rather than competitively bid, jeopardizes its ability to receive funds from FEMA?

Capacity Payments

51. What is the basis for the capacity payment in the ECO PPOA?
52. What calculations were made to arrive at the payment algorithm for the ECO PPOA?
53. Did Sargent & Lundy provide information on the reasonableness of the capacity payment given that the capital investment on the Ecoeléctrica plant had been recovered? Explain.
54. What costs are the capacity payments intended to cover?
- a. What inquiries did PREPA make regarding this fact?
 - b. What were the responses provided by Ecoeléctrica?
 - c. What was PREPA's internal analysis with its advisers on this issue?
55. What consideration was given to reducing the capacity payment from the original contract, beyond reducing the cost to the \$80mm per year target provided by the FOMB?
56. What outside experts were used to evaluate the reasonableness of the capacity payment from the standpoint of what Ecoeléctrica needs to charge in order to cover its costs?

- a. What expertise and background lead PREPA to select said experts?
57. To what extent did PREPA investigate the reasonableness of the capacity payments based on costs that Ecoeléctrica would have to incur in providing power and the amounts it had recovered from capacity payments in the prior 20 years?
- a. To what extent did PREPA consider additional efforts to ascertain the information previously described regarding the capacity payments?
 - b. To what extent did PREPA ultimately decide not to perform additional efforts?
 - c. What reasons did PREPA have for deciding not to further investigate the issue?

Costa Sur Plant

58. Why is PREPA considering retiring Costa Sur in place of repairing it?
59. How did the question of retirement or repair of the Costa Sur factor into the feasibility of the ECO PPOA? How did it affect the projections?
60. What are PREPA's obligations to purchase gas for Costa Sur, if:
- a. Costa Sur is fully repaired and returned to service?
 - b. Costa Sur is partially repaired?
 - c. Costa Sur is not repaired?

PREPA's Bankruptcy

61. How would PREPA justify LNG, energy or capacity payments or costs (that were not achieved through competitive processes or comparable market evaluations) as operating costs for the purposes of bankruptcy payment priorities or other priorities in its bond or other indebtedness instruments?
62. How do the prices of these contracts comply with the Restructuring Support Agreement ("RSA") with the bondholders?
63. What knowledge does PREPA have regarding the fact that Naturgy has made side arrangements to make payments from the Naturgy GSPA to other Ecoeléctrica owners or to prefer them in LNG procurements, in exchange for the exclusive tolling rights?

64. What treatment should be given to the amounts of the payments, referred to in the previous question, or similar *quid pro quo* arrangements for the purpose of the bankruptcy payment priorities or waterfall provisions in PREPA's debt instruments? Should they be treated as operating costs?

LNG Terminal and Tolling Agreements

65. Who owns the Ecoeléctrica terminal? Provide the details of each owner's participation or percentage ownership.
66. What access does PREPA currently have to use the Ecoeléctrica terminal? What terms and conditions regulate this access? Answer regarding the following periods: (1) 2000-2010; (2) 2010-2018; (3) 2018 to present.
67. What access will PREPA have to use the Ecoeléctrica terminal under the ECO PPOA and Naturgy GSPA? What terms and conditions regulate this access?
68. How do you explain the allegation made by PREPA in paragraph twenty-two (22) of its motion [Case No. 17-04780 Docket Number 1951] that Naturgy has a "de facto monopoly"?
69. Why didn't PREPA object to the amended tolling agreement between Ecoeléctrica and Naturgy?
70. Why didn't PREPA insist on prioritizing its own right to procure gas from other providers, by signing a tolling agreement rather than a power purchase agreement?
71. When did PREPA learn that Ecoeléctrica and Naturgy had changed their original tolling agreement, which applied only to LNG purchased for Costa Sur and other non-Ecoeléctrica uses, to expand it to give Naturgy exclusive rights to purchase the LNG for use in Ecoeléctrica?
- a. How did that happen?
 - b. What reasons were given for Ecoeléctrica to provide Naturgy with those rights?
72. What information was PREPA given to explain why there would be a tolling agreement between Ecoeléctrica and PREPA, as well as a tolling agreement between Ecoeléctrica and Naturgy that each covered all gas and LNG volumes to be converted by Ecoeléctrica into electricity?
- a. How did Ecoeléctrica explain it?
 - b. How did Naturgy explain it?

73. Why was the Naturgy tolling agreement deemed to have precedence, forcing PREPA to purchase gas or LNG from Naturgy?
74. Why did PREPA agree to be responsible for providing gas or LNG to Ecoeléctrica when it had never had that responsibility before and has no experience or personnel for that?
75. Why did PREPA contractually obligate itself to deliver LNG without back-to-back indemnity for lost power if Naturgy, as the sole source provider, fails to deliver the LNG?
 - a. Under what circumstances is Naturgy excused from performing under the Naturgy GSPA, which PREPA is not excused from performing under the ECO PPOA?
76. Why did PREPA allow a single Ecoeléctrica shareholder to put it in the position where Ecoeléctrica could continue to charge capacity payments despite Naturgy's failure to deliver LNG to produce power?
77. What advantage did PREPA see to the tolling agreement versus the traditional power purchase agreement it had for the prior 20 years?
 - a. What was the advantage did it see regarding costs and non-cost rationale?
78. What law firm was primarily responsible for the initial draft of the contract with Naturgy?
79. Upon what information did PREPA decide not to challenge the new tolling and gas purchase structures?
80. How could an agreement for PREPA to use the Ecoeléctrica terminal help to avoid construction of another LNG terminal in Puerto Rico?
81. What other parties can use the Ecoeléctrica terminal?
 - a. What are the terms and conditions of that use for each partner or owner of Ecoeléctrica?
 - b. What are the terms and conditions of that use for each third party?
 - c. If no other parties can use the terminal, what are the reasons?
82. How does the current tolling agreement between Ecoeléctrica and Naturgy differ from previous versions?
 - a. What are the amendments?
 - b. Why were those amendments adopted?
 - c. What other agreements were considered, agreed to, amended or revised contemporaneously?

83. How did PREPA determine that it was not paying for LNG terminal services twice— once in the price of delivered natural gas to the Ecoeléctrica and Costa Sur plants and a second time in the capacity payments under the ECO PPOA?
84. On what dates did PREPA review any version of the tolling agreement between Naturgy and Ecoeléctrica?
- a. On what date was the signed version reviewed?

Operations

85. What are the dimensions of the ships and/or LNG carriers that deliver LNG to the Ecoeléctrica terminal?
86. What is Ecoeléctrica's current operation capacity, including the capacity factor and tank levels?
- a. What is the impact of the FERC order dated March 26, 2020 limiting the capacity of Ecoeléctrica's gas tank to 63 feet?
87. What was the impact of this year's earthquakes and aftershocks on Ecoeléctrica's facilities?
88. What efforts is Ecoeléctrica performing to achieve full capacity in light of the FERC order limiting its gas tank capacity?
89. What was the frequency of LNG carrier deliveries to Ecoeléctrica before and after the earthquakes?

Regulations

90. What is PREPA's understanding of Ecoeléctrica's status under Public Utility Regulatory Policies Act ("PURPA") as to whether or not it is qualified to require PREPA to purchase power from it and under what terms?
- a. From whom did PREPA seek or receive advice as to this issue?
91. What internal processes of PREPA take place where arrangements are or can be reviewed prior to being executed by the Executive Director or the Board or submitted to outside agencies?
92. What internal processes of PREPA take place where procurements not subject to competitive bidding, whether or not an exemption is available, are or can be reviewed prior to being executed by the Executive Director or the Board or submitted to outside agencies?

93. What internal process, of those previously discussed in questions 86 and 87, were utilized with respect to the ECO PPO and Naturgy GSPA?

94. Describe whether PREPA can agree to contract structures and amendments that set up a de facto monopoly for Naturgy, under PR law, without the approval of the legislature.

Dated:

Ponce, Puerto Rico

April 14, 2020

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,
Marvesa Building Suite 106,
Ponce, PR 00716
Tel: (787) 848-0666
Fax: (787) 841-1435

/s/Rolando Emmanuelli Jiménez
Rolando Emmanuelli Jiménez
USDC: 214105

/s/ Jessica E. Méndez Colberg
USDC: 302108

Emails: rolando@bufete-emmanuelli.com
jessica@bufete-emmanuelli.com
notificaciones@bufete-emmanuelli.com

EXHIBIT D

**UNITED STATES DISTRICT COURT
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

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
(PREPA)

Debtor

PROMESA

Title III

No. 17 BK 4780-LTS

NOTICE OF 30(B)(6) DEPOSITION OF PREPA

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,

Marvesa Building Suite 106,

Ponce, PR 00716

Tel: (787) 848-0666

Fax: (787) 841-1435

rolando@bufete-emmanuelli.com

jessica@bufete-emmanuelli.com

notificaciones@bufete-emmanuelli.com

Dated: April 14, 2020

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 "HTA") (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 III case numbers are listed as Bankruptcy Case numbers due to software limitations).

TO: Puerto Rico Electric Power Authority (PREPA)

PLEASE TAKE NOTICE THAT, pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure, incorporating by reference Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to contested matters through Rule 9014 of the Federal Rules of Bankruptcy Procedure, made applicable to this contested matter under Section 310 of PROMESA (48 U.S.C. § 2170), UTIER will take the deposition upon oral examination of PREPA through individual designated to testify regarding the topics of examination set forth in the attached Schedule A and related to *PREPA's Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with Ecoeléctrica, L.P. and Gas Natural Aprovevisionamientos SDG, S.A.*, pending before Judge Swain in the United States District Court for the District of Puerto Rico.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure, incorporating by reference Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to contested matters through Rule 9014 of the Federal Rules of Bankruptcy Procedure, made applicable to this contested matter under Section 310 of PROMESA (48 U.S.C. § 2170), PREPA is not a natural persona and is required to designate and produce one or more officers, directors, managing agents, or other persons who consent to testify on its behalf with respect to the matters set forth in Schedule A. The Person(s) so designated shall be required to testify as to each of those matters known or reasonably available to PREPA.

PLEASE TAKE FURTHER NOTICE THAT the deposition will take place on Tuesday, May 19, 2020, at 9:00 am, in Bufete Emmanuelli C.S.P. offices in Condominio Gallardo, Calle Recinto Sur #301 in Old San Juan, Suite #305, or at such other date, time, or location as the parties may agree or as may be ordered by the Court. Testimony will be recorded by video recording, audio

recording, and stenographic means before an officer duly authorized by law to take testimony and administer oaths and will continue from day to day until completed.

Dated:

Ponce, Puerto Rico

April 14, 2020

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,
Marvesa Building Suite 106,
Ponce, PR 00716
Tel: (787) 848-0666
Fax: (787) 841-1435

/s/Rolando Emmanuelli Jiménez
Rolando Emmanuelli Jiménez
USDC: 214105

/s/ Jessica E. Méndez Colberg
USDC: 302108

Emails: rolando@bufete-emmanuelli.com
jessica@bufete-emmanuelli.com
notificaciones@bufete-emmanuelli.com

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I caused copies of the foregoing document to be served on counsel of record for PREPA.

/s/Rolando Emmanuelli Jiménez

SCHEDULE A

INSTRUCTIONS

1. All terms defined below shall have the meanings set forth therein.

DEFINITIONS

1. The terms “Document,” “Documents,” “document,” and “documents” include, but are not limited to: all written, electronically stored, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communications or records of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, and including audio or video recordings of communications, occurrences or events. This definition includes, but is not limited to, any and all of the following: correspondence, minutes, notes, messages, records, memoranda, telephone memoranda, diaries, contracts, agreements, orders, invoices, acknowledgements, receipts, bills, statements, checks, check registers, financial statements, journals, ledgers, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, emails, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. The terms “Document” and “Documents” shall include all preliminary versions, drafts or revisions of the foregoing, and all copies of a Document shall be produced to the extent that the copies differ from the Document produced due to notations, additions, insertions, comments, enclosures, attachments or markings of any

kind. Also, the term includes any original, whether or not it has been sent or received, and any existing copy of that original, whether or not identical to the original, any final version, whether or not it was sent or received, and any draft prepared in advance of the final version for any purpose.

2. The terms “all”, “any”, and “each” shall be constructed 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.
3. 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.
4. “Person”, “Persons” shall mean any natural person, legal person, individual(s), any business, proprietorship, firm, partnership, corporation, association, organization, or any type of entity that is or is not legally recognized.
5. “Rule 7033” means Fed. R. Civ. P. 33, made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7033.
6. “You,” “Your,” “you,” or “your” means to the party to whom this First Set of Interrogatories is addressed.
7. “Communication” or “Communications” refer to: any oral, written, or electronic transmission of information, including, without limitation, meetings, discussions, any telephone or personal conversation, e-mail messages, text messages, memoranda, letters, analyst reports, telecopies, telefaxes, telexes, seminars, notes, video tapes, photographs, microfilm, or other media of any kind.

8. “Identify” means to identify the information requested in a complete and specific fashion so as to avoid any ambiguity or vagueness and to ensure that your answer is in no way incomplete or misleading.
9. “Indicate”, as used in these interrogatories regarding to any document or documents, requires that you specify the type of document and its date, name, address and phone number of the person(s) who prepared it, and the name, address and phone number of the persons(s) if any, to whom the original document or copy was sent. It also requires that you confirm if you have the original of the document or a copy. If you do not have the document or any copy, provide the name and address of the person(s) that have the original or any copy thereof.
10. “Including” means including, but not limited to, the referenced subject.
11. “PREPA” means The Puerto Rico Electric Power Authority.
12. “Commonwealth” means the Commonwealth of Puerto Rico.
13. “UTIER” means Unión de Trabajadores de la Industria Eléctrica y Riego Inc.
14. “Naturgy” means Naturgy Aprovisionamientos S.A.
15. “ECO PPOA” means the Power Purchase and Operation Agreement between PREPA and Ecoeléctrica.
16. “Naturgy GSPA” means the Gas Sales and Purchase Agreement between PREPA and Naturgy.
17. “FERC” means the Federal Energy Regulatory Commission.
18. “IRP” means the Integrated Resource Plan.
19. "Qualifying Facility" means a power plant that qualifies under PURPA to require utilities to buy power from it.
20. “Act 17-2019” means the *Puerto Rico Energy Public Policy Act*, Puerto Rico Law 17-2019.

21. "Act 83-1941" means *Ley de la Autoridad de Energía Eléctrica* Puerto Rico Law 83 of May 2nd, 1941, P.R. Laws ann. tit. 22 §§ 191 et seq, as amended.
22. The singular form of a noun or pronoun shall be considered to include, within its meaning, the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted.
23. The term "or" shall mean "and" and vice-versa, as necessary to bring within the scope of the following interrogatories all information or documents that would be excluded absent this definition.

DEPOSITION TOPICS

1. Reasons for the terms of the ECO PPOA and Naturgy GSPA, including:
 - a. The take or pay obligations;
 - b. The amendments regarding purchase of Ecoeléctrica's facilities and emergency dock use;
 - c. The avoided costs;
 - d. The price agreements;
 - e. The extension of the terms until 2032.
2. Contentions regarding the reasonableness and overall benefit of the ECO PPOA and Naturgy GSPA, including:
 - a. The projected savings;
 - b. The capacity payments;
 - c. The methodology used to calculate projected savings;
 - d. The formulas adopted for the prices;
 - e. The projected impact on ratepayers;
 - f. The projected impact on operating expenses;

- g. The need to construct new plants to make the terms viable;
 - h. The consulted LNG experts;
 - i. The consideration given to recent events such as the earthquakes and the COVID-19 pandemic.
- 3. Contentions regarding that PREPA had no viable alternative to the ECO PPOA and Naturgy GSPA, including:
 - a. The alternatives suppliers you explored;
 - b. The alternative resources you explored;
 - c. The decision to bypass the competitive bidding process of Act 83-1941.
- 4. Ecoeléctrica's LNG terminal, including:
 - a. Ownership of Ecoeléctrica's LNG Terminal;
 - b. Usage rights in Ecoeléctrica's LNG Terminal;
 - c. Operations and deliveries.
- 5. Contentions that Naturgy has a *de facto* monopoly in Puerto Rico;
 - a. The tolling agreement between Ecoeléctrica and Naturgy;
 - b. The negotiations between PREPA and Naturgy to allow use of Ecoeléctrica's LNG terminal;
 - c. The existence of or approaches made by competing gas suppliers.
- 6. Contentions regarding the future of the Costa Sur power plant, including:
 - a. The plans to retire or repair it;
 - b. The effect each path will have on the ECO PPOA;
 - c. The percentage of generation expected from it;
 - d. PREPA's obligations to purchase gas for Costa Sur.

7. Contentions of Ecoeléctrica's capacity to provide energy according to the terms of the ECO PPOA:
 - a. The FERC's order limiting Ecoeléctrica's operations;
 - b. The earthquake damages to Ecoeléctrica's facilities;
 - c. The amount of Ecoeléctrica's operations that depend on Costa Sur.
8. Decision to restructure the ECO PPOA as a tolling agreement between PREPA and Ecoeléctrica.
9. Compliance with legal and regulatory requirements for contracts with PREPA, including:
 - a. Decision not to engage in competitive bidding or RFP processes;
 - b. The IRP process;
 - c. The public policy considerations made, pursuant to Act 17-2019;
 - d. The delay in achieving the Renewable Energy Portfolio goals;
 - e. The compliance with the Restructuring Support Agreement.
10. Conditions and nature of the negotiations of the ECO PPOA and Naturgy GSPA between PREPA, Ecoeléctrica and Naturgy, including:
 - a. Decision to link the ECO PPOA and Naturgy GSPA.
11. Effect of ECO PPOA and Naturgy GSPA on PREPA's bankruptcy.

Dated:

Ponce, Puerto Rico

April 14, 2020

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,
Marvesa Building Suite 106,
Ponce, PR 00716
Tel: (787) 848-0666

Fax: (787) 841-1435

/s/Rolando Emmanuelli Jiménez
Rolando Emmanuelli Jiménez
USDC: 214105

/s/ Jessica E. Méndez Colberg
USDC: 302108

Emails: rolando@bufete-emmanuelli.com
jessica@bufete-emmanuelli.com
notificaciones@bufete-emmanuelli.com

EXHIBIT E

April 22, 2020

VIA E-MAIL

Rolando Emmanuelli Jiménez
Jessica E. Méndez Colberg
BUFETE EMMANUELLI C.S.P.
472 Tito Castro Avenue
Marvesa Building, Suite 106
Ponce, PR 00716

Re: In re Fin. Oversight & Mgmt. Bd., No. 17-BK-3283-LTS – Discovery on PREPA’s Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with EcoEléctrica, L.P. and Gas Natural Aprovevisionamientos SDG, S.A.

Counsel:

We write in response to the discovery you purported to propound on April 14, 2020, in connection with the *Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with EcoEléctrica, L.P. and Gas Natural Aprovevisionamientos SDG, S.A.* (“Motion to Assume”) filed by the Puerto Rico Electric Power Authority (“PREPA”). This discovery consists of: (1) First Request for Production of Documents to Debtor Puerto Rico Electric Power Authority and the Commonwealth of Puerto Rico; (2) First Set of Interrogatories to Debtor Puerto Rico Electric Power Authority and the Commonwealth of Puerto Rico; and (3) Notice of 30(b)(6) Deposition of PREPA (collectively, the “April 14 Requests”).

As you are aware, a motion to assume is a summary proceeding, “intended to efficiently review the trustee’s or debtor’s decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.” *In re Bankvest Capital Corp.*, 360 F.3d 291, 302 (1st Cir. 2004), *cert. denied*, 542 U.S. 919 (2004) (quoting *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098–99 (2d Cir.1993)). In approving the assumption of an executory contract, the court “will generally not second-guess a debtor’s business judgment regarding whether the assumption or rejection of a contract will benefit the debtor’s estate.” *In re: Genco Shipping & Trading Ltd.*, 509 B.R. 455, 462-63 (Bankr. S.D.N.Y. 2014) (collecting cases).

Accordingly, a motion to assume “is not the time or place for prolonged discovery or a lengthy trial with disputed issues.” *In re Orion Picture Corp.*, 4 F.3d at 1098-99 (vacating bankruptcy court judgment regarding merits of breach of contract claim as beyond the scope of the inquiry on a motion to assume); *accord In re BankVest Capital Corp.*, 360 F.3d at 302 (quoting *Orion* and affirming order granting assumption); *Genco Shipping*, 509 B.R. 455 at 463 (quoting *Orion* and approving assumption). Considered against this backdrop, there is no question that the April 14 Requests – which include a 30(b)(6) deposition notice with 10 broadly phrased deposition topics (not including subparts), 38 requests for production of documents, and 94 interrogatories -- are grossly overbroad, unduly burdensome, and well beyond the scope of what

could even remotely be considered permissible discovery in this context.¹ In fact, during your meet and confer discussions with Oversight Board counsel in which they agreed to your request to extend the briefing schedule on the Motion to Assume, you indicated you were only seeking data to allow you to evaluate the declaration from Fernando M. Padilla, Administrator of the Program Management Office of Restructuring and Fiscal Affairs with PREPA. Your discovery requests far exceed your representations to the Oversight Board and are clearly intended to further delay the hearing on the Motion to Assume.

PREPA has supported its motion with evidence demonstrating that the assumptions of the contracts at issue are within its sound business judgment. See *In re Genco Shipping*, 509 B.R. at 463. Mr. Padilla's declaration makes clear PREPA's decision to assume the contracts was the result of a robust review process. See ECF No. 1952.

In addition, PREPA has already voluntarily provided UTIER with all non-confidential materials submitted to the Puerto Rico Energy Bureau ("PREB") in the proceeding captioned *In Re: Request for Approval of Amended and Restated Power Purchase and Operating Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy*; case no. NEPR-AP-2019-0001, much of which is also available on PREB's website. These documents include:

- Submissions to PREB regarding:
 - Capacity Payment Liability Risk
 - Natural Gas Supply Interruption Risk
 - Fuel Price
 - Projected Savings per Year
 - Sargent & Lundy Report regarding the EcoEléctrica and Naturgy Contract Renegotiations
- Draft Agreement and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and PREPA
- Draft Agreement and Restated Natural Gas Sale and Purchase Agreement Between Naturgy Aprovevisionamientos, S.A. and PREPA
- EcoEléctrica, L.P. and Naturgy Proposed Contract Extension Presentation
- PREPA Board Resolution dated October 31, 2019
- Memo to PREPA CEO and IRP Team from Siemens PTI/AB dated October 2, 2019

PREPA also provided filings from the docket in this proceeding, including PREPA's petition and PREB's resolutions and orders. This voluntary production more than exceeds PREPA's obligations and provides you with ample data to evaluate the factual bases for the Motion to Assume. No further discovery is necessary or appropriate in the context of the Motion to Assume.

Putting aside that the requests are procedurally improper given that no party has yet filed an

¹ Indeed, UTIER has purported to serve nearly four times the number of permissible interrogatories. See Fed. R. Civ. P. 33 (allowing only 25 interrogatories, including subparts) (incorporated by reference in Fed. R. Bankr. P. 7033, 9014)

objection, the Motion to Assume is simply not the forum for UTIER to object generally to the merits of particular contract terms or to challenge the decisions of the Oversight Board and PREB to approve the contracts. While we are willing to meet and confer with UTIER to discuss an appropriately tailored production of further information in the spirit of compromise, unless UTIER withdraws its discovery as currently propounded PREPA will seek Court relief.

Please confirm no later than Thursday, April 23, 2020 that UTIER is withdrawing the April 14 Requests. Absent such confirmation, PREPA will promptly file an urgent motion for a protective order.

Sincerely,

/s/ Elizabeth L. McKeen

Elizabeth L. McKeen

/s/ Margaret Dale

Margaret Dale

EXHIBIT F



Attorneys at Law

472 Tito Castro Ave., Marvesa Building Ste. 106, Ponce, PR 00716
Tel: (787) 848-0666 • Fax: (787) 841-1435
www.bufete-emmanuelli.com

April 23, 2020

Re: *In re Fin. Oversight & Mgmt. Bd., No. 17-BK-3283-LTS -Discovery on PREPA's Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with EcoEléctrica, L.P. and Gas Natural Aprovevisionamientos SDG, S.A.*

Dear Counsel:

The undersigned attorneys write in response to your letter regarding our requests for discovery. As you know, Unión de Trabajadores de la Industria Eléctrica y Riego, Inc. ("UTIER") intends to file an opposition to *PREPA's Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with EcoEléctrica, L.P. and Gas Natural Aprovevisionamientos SDG, S.A.* [Docket No. 1951] ("Motion"). At this time, UTIER has no intention of withdrawing its request for discovery, given the pressing issues involved in the Motion. Because the assumption of the proposed agreements would decidedly affect a myriad of interests, we are convinced of the necessity of said discovery.

The undersigned have not misrepresented their intentions and are not bound by the limitations mentioned in previous negotiations, where no agreement was met on the scope of discovery. For that reason, we had expressly reserved the right to pursue discovery in the *Urgent Motion to Extend Certain Briefing Deadlines and the Hearing in Connection with PREPA's Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with Ecoelétrica, L.P. and Gas Natural Aprovevisionamientos SDG, S.A.* [Docket No. 1958]. The assumption of an executory contract is a contested matter, governed by Rule 9014,¹ which "designates certain adversary-proceeding rules that automatically apply to 'contested matters.'"² Discovery rights are among those rules that apply automatically.

Furthermore, as we will discuss in our opposition to the Motion, although the business judgment standard ordinarily governs the assumption of an executory contract, this is not an ordinary case. As the courts have recognized, there are some contracts that require a stricter standard, because of their special nature.³ Wholesale contracts for the sale of electricity are precisely contracts of a special nature.⁴ This is such a case.

¹ Fed. R. Bankr. P. 6006(a).

² *Gentry v. Siegel*, 668 F.3d 83, 88 (4th Cir. 2012).

³ *See, for example*, *N.L.R.B. v. Bildisco*, 465 U.S. 513, 527 (1984).

⁴ *See In re Mirant Corp.*, 378 F.3d 511, 525 (5th Cir. 2004).

The Puerto Rico Electric Power Authority (“PREPA”) is the main provider and sole distributor of energy in all of Puerto Rico. As such, its Power Purchase and Gas Sale and Purchase Agreements cannot be subject to a deferential standard. The adequate standard for this case is the balance of equities, which requires broader discovery than the ordinary standard.⁵

That said, as the provider of an essential service, PREPA’s restructuring is a matter of great public concern and its potential assumption of the proposed agreements directly concerns PREPA’s stakeholders, including its creditors and ratepayers. Furthermore, the proposed agreements will potentially have a marked impact in PREPA’s ability to achieve its goals regarding rehabilitation, stability and, also, the Commonwealth of Puerto Rico’s energy public policy. The evidence PREPA has presented to support the assumption of the proposed agreements is not sufficient for the parties to examine, nor for the Court to decide under the proper standard. The documents that PREPA has provided, as mentioned in your letter, are likewise not enough. Whether PREPA should assume the proposed agreements depends on more than just the terms of the contracts and the general process of negotiation. There are a multitude of factors that this evidence does not address and that are necessary.

Regarding the number of interrogatories, we are willing to reevaluate and amend the questions to fit the limits of Rule 33, but not to withdraw the interrogatories in their entirety. We are open to schedule a call to meet and confer about the abovementioned discovery for tomorrow, Friday, April 24, 2020 at 2:00pm AST. Please let us know, as soon as possible, your availability regarding this matter.

Cordially,

/s/ Rolando Emmanuelli Jiménez, Esq.

/s/ Jessica Méndez Colberg, Esq.

⁵ *Bildisco*, 465 U.S. at 526.

EXHIBIT G

**UNITED STATES DISTRICT COURT
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

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
(PREPA)

Debtor

PROMESA

Title III

No. 17 BK 4780-LTS

**FIRST SET OF INTERROGATORIES TO DEBTOR PUERTO RICO ELECTRIC
POWER AUTHORITY AND THE COMMONWEALTH OF PUERTO RICO**

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,

Marvesa Building Suite 106,

Ponce, PR 00716

Tel: (787) 848-0666

Fax: (787) 841-1435

rolando@bufete-emmanuelli.com

jessica@bufete-emmanuelli.com

notificaciones@bufete-emmanuelli.com

Dated: April 26, 2020

PLEASE TAKE NOTICE THAT pursuant to Rule 7033 of the Federal Rules of Bankruptcy

Procedure, incorporating by reference Rule 33 of the Federal Rules of Civil Procedure, made

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 "HTA") (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 III case numbers are listed as Bankruptcy Case numbers due to software limitations).

applicable to contested matters through Rule 9014 of the Federal Rules of Bankruptcy Procedure, made applicable to this contested matter under Section 310 of PROMESA (48 U.S.C. § 2170), Debtors Puerto Rico Electric Power Authority (“PREPA”) and the Commonwealth of Puerto Rico are required within thirty (30) days of the service hereof, to answer in writing, separately and under oath, the following interrogatories propounded by the Creditor Unión de Trabajadores de la Industria Eléctrica y Riego Inc. (“UTIER”)

DEFINITIONS

1. The terms “Document,” “Documents,” “document,” and “documents” include, but are not limited to: all written, electronically stored, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communications or records of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, and including audio or video recordings of communications, occurrences or events. This definition includes, but is not limited to, any and all of the following: correspondence, minutes, notes, messages, records, memoranda, telephone memoranda, diaries, contracts, agreements, orders, invoices, acknowledgements, receipts, bills, statements, checks, check registers, financial statements, journals, ledgers, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, emails, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. The terms “Document” and “Documents”

shall include all preliminary versions, drafts or revisions of the foregoing, and all copies of a Document shall be produced to the extent that the copies differ from the Document produced due to notations, additions, insertions, comments, enclosures, attachments or markings of any kind. Also, the term includes any original, whether or not it has been sent or received, and any existing copy of that original, whether or not identical to the original, any final version, whether or not it was sent or received, and any draft prepared in advance of the final version for any purpose.

2. The terms “all”, “any”, and “each” shall be constructed 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.
3. 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.
4. “Person”, “Persons” shall mean any natural person, legal person, individual(s), any business, proprietorship, firm, partnership, corporation, association, organization, or any type of entity that is or is not legally recognized.
5. “Rule 7033” means Fed. R. Civ. P. 33, made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7033.
6. “You,” “Your,” “you,” or “your” means to the party to whom this First Set of Interrogatories is addressed.
7. “Communication” or “Communications” refer to: any oral, written, or electronic transmission of information, including, without limitation, meetings, discussions, any telephone or personal conversation, e-mail messages, text messages, memoranda, letters, analyst reports, telecopies,

telefaxes, telexes, seminars, notes, video tapes, photographs, microfilm, or other media of any kind.

8. “Identify” means to identify the information requested in a complete and specific fashion so as to avoid any ambiguity or vagueness and to ensure that your answer is in no way incomplete or misleading.
9. “Indicate”, as used in these interrogatories regarding to any document or documents, requires that you specify the type of document and its date, name, address and phone number of the person(s) who prepared it, and the name, address and phone number of the persons(s) if any, to whom the original document or copy was sent. It also requires that you confirm if you have the original of the document or a copy. If you do not have the document or any copy, provide the name and address of the person(s) that have the original or any copy thereof.
10. “Including” means including, but not limited to, the referenced subject.
11. “PREPA” means The Puerto Rico Electric Power Authority.
12. “Commonwealth” means the Commonwealth of Puerto Rico.
13. “UTIER” means Unión de Trabajadores de la Industria Eléctrica y Riego Inc.
14. “Naturgy” means Naturgy Aprovevisionamientos S.A.
15. “ECO PPOA” means the Power Purchase and Operation Agreement between PREPA and Ecoeléctrica.
16. “Naturgy GSPA” means the Gas Sales and Purchase Agreement between PREPA and Naturgy.
17. “FERC” means the Federal Energy Regulatory Commission.
18. “IRP” means the Integrated Resource Plan.

19. The singular form of a noun or pronoun shall be considered to include, within its meaning, the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted.
20. The term "or" shall mean "and" and vice-versa, as necessary to bring within the scope of the following interrogatories all information or documents that would be excluded absent this definition.

INSTRUCTIONS

1. Pursuant to Rule 7033, you are to furnish all information available to you and to your agents, employees and attorneys in answering the following First Set of Interrogatories.
2. You are to designate which of such information is not within your first-hand knowledge, and as to that information you are to state the name and address of every person from whom it was received, or, if the source of the information is documentary, a full description of the document including the location thereof.
3. All Interrogatories should be answered separately and identified so that the answer clearly corresponds to the Interrogatory to which the answer is being offered.
4. If you object to any interrogatory, state the reasons for objection and answer to the extent the interrogatory is not objectionable. If you are unable to answer an interrogatory fully, submit as much information as is available, explain why your answer is incomplete, and identify or describe all other sources of more complete or accurate information.
5. Pursuant to Rule 7033, you are not to leave any part of an Interrogatory unanswered. If the response to an Interrogatory is "none" or "unknown," the word "none" or "unknown" must be written in the response.
6. If you raise a claim of privilege and/or an objection to any Interrogatory, or any subpart thereof, and an answer is not provided on the basis of your assertion of that objection, you must identify

the nature of the privilege or reasons for nondisclosure asserted and provide the following information:

A. For documents:

- (1) the reasons for withholding the document;
- (2) a statement of the basis for the claim of privilege, work product protection or other ground for non-disclosure; and
- (3) a brief description of the document, including:
 - (a) the date of preparation of the document and any date identified on the document;
 - (b) its number of pages, attachments and appendices;
 - (c) the name or names of its authors or preparers and an identification by employment and title of each such person;
 - (d) the name of each person who was sent or shown, or blind or carbon copied on the document, or who has had access to or custody of the document, together with an identification of each such person;
 - (e) the present custodian; and
 - (f) its subject matter and, in the case of any document referring or relating to a meeting or conversation, an identification of such meeting or conversation.

B. For oral communications:

- (1) the name of the person making the communication and the name of all persons present while the communication was made, and, where not apparent, the relationship of the persons presents to the person making the communication;
- (2) the date and place of the communication; and

(3) the general subject matter of the communication.

7. If you answer any Interrogatory by reference to records from which the answer may be derived or ascertained, you must:

A. specify the document to be produced in enough detail to permit the proposer of these Interrogatories to locate and identify the records and to ascertain the answer to the Interrogatory as readily as you would be able to ascertain the answer to the Interrogatory;

B. make available any computerized information or summaries thereof that you have, or can adduce by a relatively simple procedure;

C. provide compilations, abstracts or summaries in your custody or readily obtainable by you; and

D. make available such documents for inspections and copying within ten days after service of answers to this First Set of Interrogatories.

8. Each request for a document or documents shall be deemed to call to produce any identical copy or copies of the original document or documents. Each request should be considered as including all nonidentical copies, whether such copies differ from the originals by reason of any notations made on such copies or otherwise and, to the extent applicable, preliminary drafts of documents that differ in any respect from the original or final draft or from each other (e.g., by reason of differences in form or content, or by reason of handwritten notes or comments having been added to one copy of a document but not the original or other copies thereof).

9. If any document requested herein was at one time in existence, but has been lost, discarded or destroyed, identify in writing each such document and provide the following information:

A. the date it was lost, discarded or destroyed;

B. the circumstances and manner in which it was lost, discarded or destroyed;

- C. the reason for disposing of the document (if discarded or destroyed);
 - D. the identity of all persons authorizing or having knowledge of the circumstances surrounding the disposal of the document;
 - E. the identity of the person(s) who lost, discarded or destroyed the document; and
 - F. the identity of all persons having knowledge of the contents thereof.
10. Where an Interrogatory does not specifically request a particular fact or information, but where such fact or information is necessary to make the answer to the Interrogatory comprehensible, complete or not misleading, the Interrogatory is deemed to request such fact or information.
11. The Interrogatories set forth below are to be answered to the extent of all information that is or may be available to you or to any other person or entity who has acted or is now acting on your behalf.
12. When these interrogatories require you to identify a person, you will be obliged to inform the full name of the person, the physical and postal address (street, number, urbanization, town, municipality, state, nation and zip code) and the telephone number. If you do not know the current address of the person whose identification is requested, indicate the last known address (residential and business). Also, identify the occupation or profession of the person, the position he/she currently occupy, employer and employment or business address.
13. When an interrogatory requires you to indicate or identify a document or documents, you will be obliged to describe it and identify its author and the recipient of the document. In addition, you must indicate the date on which the document was prepared and the current location of the document. In addition, you must provide a copy of the document.

14. Pursuant to Rule 7033, these Interrogatories are deemed continuing in nature and require supplemental responses in the event you obtain information that renders the answers supplied in any way incomplete or inaccurate.
15. If, after having answered this list of interrogatories you obtain information or documentation that is responsive to it and that has not been supplied in the original answer, you must contact the party that notified the interrogatory to supplement any additional information.

INTERROGATORIES

1. Describe the qualifications that Mr. Fernando Padilla has in the areas related to his declaration.
2. How were the effects of the ECO PPO and the Naturgy GSPA on ratepayers considered as part of the analysis conducted by PREPA?
3. Explain why PREPA agreed to the minimum take or pay obligation in Section 8 of the Naturgy GSPA.
4. How do you explain the urgency that PREPA has to assume these contracts together, rather than analyze and/or assume them individually?
5. Explain how the impact of the change in the economic landscape due to the COVID-19 emergency will affect the viability of the terms of the ECO PPOA and the Naturgy GSPA.
6. Explain why PREPA contractually obligated itself to deliver LNG without back-to-back indemnity for lost power if Naturgy fails to deliver the LNG.
7. Explain PREPA's alternatives for LNG supply in any case where Naturgy fails to deliver.
8. Explain why the ECO PPOA and Naturgy GSPA are set to expire in 2032.
9. Explain the reasons for the minimum and maximum contract quantities in Section 6 of the Naturgy GSPA.
10. How do the ECO PPOA and the Naturgy GSPA contribute to PREPA's achievement of the Puerto Rico Energy Public Policy and the IRP?

11. Describe the reasons that lead to the conversion of the structure of the ECO PPOA from a traditional purchase power and operation agreement into a tolling agreement, where PREPA is responsible for supplying LNG to Ecoeléctrica.
12. Explain the avoided costs of the ECO PPOA.
13. Describe the amount of import taxes on fuel that would be owed by Ecoeléctrica, Naturgy or any party, if the LNG was imported by Ecoeléctrica or Naturgy rather than structured to appear that it was being imported by PREPA.
14. What persons and/or entities, if any, were employed or consulted in the negotiation of the ECO PPOA and Naturgy GSPA as experts in LNG marketing, pricing or procurement?
15. What data, methodology and/or mathematical formulas were used to calculate the projected savings of the ECO PPOA and the Naturgy GSPA?
16. Explain what alternative arrangements, providers or energy sources to the ECO PPOA and the Naturgy GSPA PREPA explored.
17. Explain how the prices in the Naturgy contract were arrived at.
18. Explain why PREPA agreed to a locked-in LNG price for the life of the LNG contract, rather than having market-based adjustments, indexes or other mechanisms.
19. How do the prices in the ECO PPOA and Naturgy GSPA comply with the FOMB's savings goals of the current PREPA Fiscal Plan?
20. Explain the basis and the calculations made to arrive at the payment algorithm for the ECO PPOA.
21. Explain the analysis that justifies the reasonableness of the capacity payments based on the costs they are intended to cover.
22. Explain how the question of retirement or repair of the Costa Sur factors into the feasibility and savings projections of the ECO PPOA.
23. Explain the terms and conditions, based on the proposed contracts, under which a party other than Naturgy has access to the Ecoeléctrica terminal.

24. Explain the basis for the allegation made by PREPA in paragraph twenty-two (22) of its motion [Case No. 17-04780 Docket Number 1951] that Naturgy has a “de facto monopoly”.
25. Explain PREPA’s factual basis for why the proposed agreements are not a tying arrangement in violation of anti-trust law.

Dated:

Ponce, Puerto Rico

April 26, 2020

BUFETE EMMANUELLI C.S.P.

472 Tito Castro Ave.,
Marvesa Building Suite 106,
Ponce, PR 00716
Tel: (787) 848-0666
Fax: (787) 841-1435

/s/Rolando Emmanuelli Jiménez
USDC: 214105

/s/ Jessica E. Méndez Colberg
USDC: 302108

Emails: rolando@bufete-emmanuelli.com
jessica@bufete-emmanuelli.com
notificaciones@bufete-emmanuelli.com