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 No. 17-BK-3283-LTS (Jointly Administered)
In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of PUERTO RICO ELECTRIC POWER AUTHORITY, Debtor.	PROMESA Title III No. 17-BK-4780-LTS
PUERTO RICO ELECTRIC POWER AUTHORITY and PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY, Plaintiffs, -v- LUMA ENERGY, LLC and LUMA ENERGY SERVCO, LLC, Defendants.	Adv. Proc. No. 25-00061-LTS in 17-BK-4780-LTS

[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 Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iii) 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); (iv) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (v) 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). On October 30, 2024, the Title III case for the Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) was closed.

HON. JENNIFFER GONZÁLEZ, GOVERNOR OF PUERTO RICO, COMMONWEALTH OF PUERTO RICO, Plaintiffs, -v- LUMA ENERGY, LLC and LUMA ENERGY SERVCO, LLC, Defendants.	Adv. Proc. No. 25-00062-LTS in 17-BK-4780-LTS

MEMORANDUM ORDER GRANTING MOTIONS TO REMAND

Pending before the Court are the *Puerto Rico Public-Private Partnerships Authority's Motion to Remand* (Docket Entry No. 23 in Adv. Proc. No. 25-00061) (the "P3A Motion"), filed by the Puerto Rico Public-Private Partnerships Authority ("P3A") in Adversary Proceeding No. 25-00061 (the "P3A/PREPA Action"), and *The Governor of Puerto Rico and Commonwealth of Puerto Rico's Motion to Remand* (Docket Entry No. 19 in Adv. Proc. No. 25-00062) (the "CW Motion" and, together with the P3A Motion, the "Motions"), filed by the Hon. Jenniffer González (the "Governor") and the Commonwealth of Puerto Rico (the "Commonwealth" and, together with P3A and the Governor, "Movants") in Adversary Proceeding No. 25-00062 (the "Commonwealth Action" and, together with the P3A/PREPA Action, the "Actions"). Each of the Actions was commenced in the Commonwealth Court of First Instance (the "Commonwealth Court") before being removed to this Court by LUMA Energy, LLC and LUMA Energy Servco, LLC (together, "LUMA"), and the Motions ask that the Court remand the respective Actions to the Commonwealth Court.

The Court has carefully considered the submissions in connection with the Motions.[2] The Court has subject matter jurisdiction of the Actions pursuant to section 306(a) of

[2] In addition to the P3A/PREPA Motion, the Court reviewed the following briefs in the P3A/PREPA Action: *Opposition of the Financial Oversight and Management Board for*

PROMESA, 48 U.S.C. § 2166(a). For the reasons that follow, the Court concludes that the Actions must be remanded to the Commonwealth Court because they are within the police or regulatory power exception to section 306(d)(1) of PROMESA, 48 U.S.C. § 2166(d)(1),[3] and,

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Puerto Rico to Movants' Remand Motions (Docket Entry No. 29 in Adv. Proc. No. 25-00061) (the "FOMB Opposition"); *LUMA's Opposition to Puerto Rico Public-Private Partnerships Authority's Motion to Remand* (Docket Entry No. 30 in Adv. Proc. No. 25-00061) (the "LUMA 25-61 Opposition"); *Opposition of GoldenTree Asset Management LP, Syncora Guarantee, Inc., and the Paul, Weiss Ad Hoc Group to the Governor of Puerto Rico, Commonwealth of Puerto Rico, and Puerto Rico Public-Private Partnerships Authority's Motions to Remand* (Docket Entry No. 32 in Adv. Proc. No. 25-00061) (the "BH Opposition"); *Puerto Rico Public-Private Partnerships Authority's Reply in Support of Motion to Remand* (Docket Entry No. 41 in Adv. Proc. No. 25-00061); *Motion of Luma Energy, LLC, and Luma Servco, LLC, for Leave to Supplement Opposition to the Puerto Rico Public Private Partnerships Authority's Motion to Remand with Additional Exhibit* (Docket Entry No. 44 in Adv. Proc. No. 25-00061); and *Puerto Rico Public-Private Partnerships Authority's Response to LUMA's Motion for Leave to Supplement Opposition to the Motion to Remand* (Docket Entry No. 46 in Adv. Proc. No. 25-00061). In addition to the CW Motion, the Court also reviewed the following briefs in the Commonwealth Action: *Opposition of the Financial Oversight and Management Board for Puerto Rico to Movants' Remand Motions* (Docket Entry No. 38 in Adv. Proc. No. 25-00062); *Opposition of GoldenTree Asset Management LP, Syncora Guarantee, Inc., and the Paul, Weiss Ad Hoc Group to the Governor of Puerto Rico, Commonwealth of Puerto Rico, and Puerto Rico Public-Private Partnerships Authority's Motions to Remand* (Docket Entry No. 41 in Adv. Proc. No. 25-00062); *LUMA's Opposition to the Governor of Puerto Rico and Commonwealth of Puerto Rico's Motion to Remand* (Docket Entry No. 39 in Adv. Proc. No. 25-00062) (the "LUMA 25-62 Opposition"); *The Governor of Puerto Rico and Commonwealth of Puerto Rico's Omnibus Reply in Support of Motion to Remand* (Docket Entry No. 54 in Adv. Proc. No. 25-00062); *Motion of Luma Energy, LLC, and Luma Servco, LLC, for Leave to Supplement Opposition to the Governor of Puerto Rico's and The Commonwealth of Puerto Rico's Motion to Remand with Additional Exhibit* (Docket Entry No. 60 in Adv. Proc. No. 25-00062); and *The Governor of Puerto Rico and Commonwealth of Puerto Rico's Response to Luma's Motion for Leave to Supplement Opposition to the Motion to Remand* (Docket Entry No. 64 in Adv. Proc. No. 25-00062).

[3] The Court's conclusion that the Actions are not removable under section 306(d)(1) does not affect the Court's subject matter jurisdiction. As explained below, the Court has subject matter jurisdiction of the Actions because they, at a minimum, are "related to" a Title III case. See 48 U.S.C. § 2166(a)(2). Section 306(d)(1) is a procedural mechanism for effecting removal, not a basis for jurisdiction. See In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig., 522 F. Supp. 2d 557, 567 (S.D.N.Y. 2007) ("In the context of bankruptcy, Congress has treated subject matter jurisdiction and removal as two distinct issues. . . . There is no reason to hold that an improper removal under section

even if the Court also has diversity jurisdiction of the PREPA/P3A Action, it also must be remanded because the issues raised therein are required by the subject contract to be litigated in the Commonwealth Court of First Instance. The Motions are therefore granted.

BACKGROUND

The Puerto Rico Electric Power Authority ("PREPA" and, together with Movants, "Plaintiffs") is a public corporation created under the Puerto Rico Electric Power Authority Act, Act No. 83-1941, to supply electricity to Puerto Rico. See 22 L.P.R.A. §§ 191-240. On July 2, 2017, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") commenced a restructuring case under Title III of PROMESA on behalf of PREPA.

P3A is a public corporation created by the Public-Private Partnerships Act, Act No. 29-2009 ("Act 29"),[4] to implement the Commonwealth's public policy concerning public-private partnerships and oversee the development of such partnerships. (Act 29 Arts. 5(a), 6(b).) On June 21, 2018, Puerto Rico enacted the Puerto Rico Electric Power System Transformation

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1452 affects a court's bankruptcy jurisdiction under section 1334."); cf. Orange Cnty. Water Dist. v. Unocal Corp., 584 F.3d 43, 51 & n.14 (2d Cir. 2009) (explaining that "challenges to removal under [28 U.S.C.] § 1452(a)" are waivable and that section 1452(a) "does not prevent governmental units from initiating an action in federal court in order to protect public health, assuming that federal jurisdiction exists"); cf. Danca v. Priv. Health Care Sys., Inc., 185 F.3d 1, 4 (1st Cir. 1999) ("The removal statute [28 U.S.C. § 1441] does not in itself create jurisdiction.").

[4] An English translation of certain excerpts from Act 29 is attached as Exhibit A to the *Motion Submitting English Certified Translation of Relevant Act-29-2009 Sections* (Docket Entry No. 28 in Adv. Proc. No. 25-61). Page numbers in citations to Act 29 refer to the page numbers stamped in the ECF header.

Act ("Act 120").[5] Act 120 builds upon the framework of Act 29 and establishes a "legal and administrative framework" that applies "to any transaction that establishes a Public-Private Partnership for any PREPA function, services, or facility." (Act 120 at 3.) Act 120 empowers PREPA and P3A "to carry out the processes through which such transactions shall be executed." (Act 120 at 3.)

On June 22, 2020, PREPA, P3A, and LUMA executed the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (the "T&D OMA").[6] (P3A/PREPA Compl. ¶ 3.1.) The T&D OMA provides for assumption by LUMA of the administration, operation, and maintenance of PREPA's transmission and distribution ("T&D") system, while PREPA retains ownership of the T&D assets. (P3A/PREPA Compl. ¶¶ 3.1-3.2.) Under the T&D OMA, PREPA would transfer responsibility for the O&M Services to LUMA on the Service Commencement Date.[7] (T&D OMA § 4.7(a).) The occurrence of the Service Commencement Date was conditioned on the achievement of a number of conditions set forth in the T&D OMA. (T&D OMA § 4.7(b).)

Simultaneous with the execution of the T&D OMA, the parties entered into the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement, dated June 22, 2020 (the "Supplemental Agreement"),[8] which supplements and amends the T&D

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5 An English translation of Act 120 is attached as Exhibit 2 to the *Motion Submitting Documents* (Docket Entry No. 24 in Adv. Proc. No. 25-61). Page numbers in citations to Act 120 refer to the page numbers stamped in the ECF header.

6 A copy of the T&D OMA is attached to the *Notice of Removal* (Docket Entry No. 1 in Adv. Proc. No. 25-61) (the "25-61 Notice of Removal") as Exhibit 7.

7 Capitalized terms used to characterize the parties' contracts, but not otherwise defined herein, have the meaning given to them in the relevant agreement.

8 A copy of the Supplemental Agreement is attached to the 25-61 Notice of Removal as Exhibit 8.

OMA. (Supplemental Agreement § 2.1.) The parties agree that the purpose of the Supplemental Agreement is "to allow LUMA to commence full services for an interim period prior to confirmation of a Title III Plan and PREPA's emergence from Title III." (P3A/PREPA Motion ¶¶ 7-8; CW Motion ¶¶ 7-8 (same); see LUMA 25-61 Opp. ¶ 18; FOMB Opp. ¶ 11; cf. Supplemental Agreement § 6.1 (stating that occurrence of the Title III Exit is a Service Commencement Date Condition).) In relevant part, the Supplemental Agreement establishes the parties' obligations during a period it defines as the "Interim Period." Upon the achievement of certain conditions and the resulting commencement of the Interim Period, LUMA is obligated to begin performing "all services with respect to the T&D System constituting O&M Services under the O&M Agreement" notwithstanding that "the Title III Exit shall have not yet occurred and the Tax Opinion and Reliance Letter required by Section 4.5(v) . . . of the O&M Agreement shall have not yet been delivered." (Supplemental Agreement §§ 2.2, 2.3, 3.1, 6.1.)

Section 7.1 of the Supplemental Agreement provides for the automatic termination of the Supplemental Agreement and the T&D OMA upon the non-occurrence of the Service Commencement Date within eighteen months of the Supplemental Agreement or a later date with the mutual agreement of the Parties. (Supplemental Agreement § 7.1(a).) On November 30, 2022, P3A, PREPA, and LUMA signed a letter (the "Extension Letter")[9] providing that "each of [P3A, PREPA, and LUMA] confirms its agreement" to "an extension of the Interim Period Termination Date to the date on which the following Service Commencement Date Conditions shall have been satisfied or waived: (i) the Title III Exit shall have occurred; and (ii) the Title III Plan and order of the Title III Court confirming same shall be reasonably acceptable to Operator." (Extension Letter at 1-3.)

[9] A copy of the Extension Letter is attached to the 25-61 Notice of Removal as Exhibit 10.

On December 11, 2025, P3A and PREPA commenced the P3A/PREPA Action in the Commonwealth Court. The complaint in the P3A/PREPA Action (the "P3A/PREPA Complaint")[10] asserts that the Extension Letter and the process leading to its approval violated provisions of Act 120, Act 29, and the 2020 Civil Code. The P3A/PREPA Complaint alleges that the Extension Letter is invalid because (i) it was not approved by the public interest members of P3A's board as required by Act 120, (ii) it did not receive an Energy Compliance Certificate from the Puerto Rico Energy Bureau ("PREB") as required by Act 120, (iii) it was not approved by the Puerto Rico legislature as required by Act 29, (iv) it lacks a defined term of not more than fifty years as required by Act 29, and (v) it conflicts with Commonwealth contracting standards by extending the Interim Period indefinitely to the exclusive benefit of LUMA. The P3A/PREPA Complaint therefore seeks declarations that the Extension Letter is invalid and, as a result, the Interim Period has lapsed. It further asks for a judicial determination that LUMA is required by the T&D OMA to "collaborate in the orderly transition process, including the delivery of operational data, files, customer systems, and staff coordination," and seeks a preliminary injunction directing LUMA to provide documents and information relating to the operation of the T&D system. (P3A/PREPA Compl. ¶ 5.35.) On December 15, 2025, LUMA removed the P3A/PREPA Action to this Court. (*Notice of Removal*, Docket Entry No. 1 in Adv. Proc. No. 25-00061 (the "25-61 Notice of Removal").)

On December 16, 2025, the Commonwealth and the Governor commenced the Commonwealth Action in the Commonwealth Court. The complaint in the Commonwealth Action (the "CW Complaint" and, together with the P3A/PREPA Complaint, the

[10] A certified English-language translation of the P3A/PREPA Complaint is attached as Exhibit A to the *Motion Submitting Certified Translations* (Docket Entry No. 22 in Adv. Proc. No. 25-00061).

"Complaints")[11] asserts substantially the same violations of Puerto Rico law and seeks substantially the same declaratory relief as the P3A/PREPA Action. On December 18, 2025, LUMA removed the Commonwealth Action to this Court. (*Notice of Removal*, Docket Entry No. 1 in Adv. Proc. No. 25-00062 (the "25-62 Notice of Removal").)

On January 12, 2026, the Oversight Board filed a motion to intervene in the Commonwealth Action. (Docket Entry No. 18 in Adv. Proc. No. 25-00062.) On February 2, 2026, certain holders of bonds issued by PREPA filed motions to intervene in each of the Actions. (Docket Entry No. 33 in Adv. Proc. No. 25-00061; Docket Entry No. 42 in Adv. Proc. No. 25-00062.) On April 14, 2026, Magistrate Judge Dein granted the motions to intervene in part. (Docket Entry No. 48 in Adv. Proc. No. 25-00061; Docket Entry Nos. 66 and 67 in Adv. Proc. No. 25-00062.)

DISCUSSION

The 25-61 Notice of Removal and the 25-62 Notice of Removal each assert that the Court has jurisdiction of the respective Actions pursuant to PROMESA's grant of "exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of the [Title III] case," 48 U.S.C.A. § 2166(b) (West 2019), and non-exclusive jurisdiction "of all civil proceedings . . . arising in or related to cases under" Title III of PROMESA. 48 U.S.C.A. § 2166(a)(2). The 25-61 Notice of Removal also asserts that the Court has jurisdiction of the P3A/PREPA Action under the diversity jurisdiction statute. 28 U.S.C. § 1332.

No party disputes that the Court may exercise subject matter jurisdiction of the

[11] A certified English-language translation of the CW Complaint is attached as Exhibit A to the *Motion Submitting Certified Translations* (Docket Entry No. 15 in Adv. Proc. No. 25-00062).

Actions under, at a minimum, section 306(a)(2) of PROMESA. 48 U.S.C. § 2166(a)(2). Indeed, the Actions seek to enforce obligations contained in Commonwealth statutes in a manner that would, if Plaintiffs prevail, alter PREPA's contractual rights and obligations under the T&D OMA and affect "the validity of and performance under the T&D OMA . . . , an agreement that concerns the operation and management of substantial revenue-generating assets." Luma Energy, LLC v. P.R. Elec. Power Auth. (In re Fin. Oversight & Mgmt. Bd. for P.R.), 813 F. Supp. 3d 234, 249 (D.P.R. 2025). That is sufficient to establish "related to" subject matter jurisdiction of each of the Actions. Id. at 249-50.

In the Motions, Movants contend that the Court should remand each of the Actions because (i) the Actions each seek to enforce the police or regulatory power of a governmental unit and therefore are carved out of the scope of removal authorized under section 306(d)(1) of PROMESA, 48 U.S.C. § 2166(d)(1), (ii) the Court should equitably remand the Actions under section 306(d)(2) of PROMESA, 48 U.S.C. § 2166(d)(2), or abstain from adjudicating them under section 309 of PROMESA, 48 U.S.C. § 2169, (iii) the Court should enforce the forum selection clause in the T&D OMA with respect to the P3A/PREPA Action, and (iv) the parties to the P3A/PREPA Action are not "citizens of different States" as is required for diversity jurisdiction. 28 U.S.C.A. § 1332(a)(1) (West 2018).

A. Governmental Entities' Police and Regulatory Powers

Section 306(d)(1) of PROMESA permits the removal of claims of which the Court has jurisdiction under Title III of PROMESA, "other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce the police or regulatory power of the governmental unit." 48 U.S.C.A. § 2166(d)(1) (West 2019). This exception to the Title III removal power mirrors the exception to the removal statute that applies in Title 11

bankruptcy cases, 28 U.S.C. § 1452(a),[12] and the police and regulatory power exception to the automatic stay. 11 U.S.C. § 362(b)(4).[13] Because "the language regarding the removal exception for police and regulatory functions is practically identical to language exempting government enforcement actions from the automatic stay in bankruptcy proceedings under section 362(b)(4) . . . , courts have looked to cases under section 362(b)(4) for guidance in interpreting section 1452(a)."[14] Massachusetts v. New England Pellet, LLC, 409 B.R. 255, 258 (D. Mass. 2009); see City & Cnty. of San Francisco v. PG&E Corp., 433 F.3d 1115, 1123 (9th Cir. 2006) ("The language of the police and regulatory power exceptions in the automatic stay

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12 Section 1452(a) provides as follows: "A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." 28 U.S.C.A. § 1452(a) (West 2019).

13 Section 362(b)(4) provides, in relevant part, that several of the Bankruptcy Code's automatic stay provisions do not apply to "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power." 11 U.S.C.A. § 362(b)(4) (West 2018).

14 Section 306(d)(1) of PROMESA, like section 1452(a) of title 11 of the U.S. Code, does not share section 362(b)(4) of the Bankruptcy Code's reference to "the enforcement of a judgment other than a money judgment." However, no party has argued that there is any material difference between the police and regulatory power exception to the automatic stay and the police and regulatory power exception to the removal statute with respect to the Actions, which seek only declaratory relief and not money judgments. (See CW Motion ¶ 22 n.7 ("The police and regulatory powers exception in 28 U.S.C. § 1452(b) is interpreted consistently with the police and regulatory powers exception to the automatic stay in 11 U.S.C. § 362(b)(4) . . . ."); LUMA 25-62 Opp. ¶ 12 ("[C]ourts have interpreted identical language in 28 U.S.C. § 1452 and have repeatedly opined that it should be interpreted similarly to the police and regulatory power exception to the automatic stay."); FOMB Opp. ¶ 43 n.15 ("The standard of analysis for 11 U.S.C. § 362(b)(4) is widely recognized as identical for purposes of analyzing 28 U.S.C. § 1452(a).").)

context and in the removal context is virtually identical, and the purpose behind each exception is the same."). LUMA, as the party seeking removal, has the burden of demonstrating that removal was proper. See Fayard v. Ne. Vehicle Servs., LLC, 533 F.3d 42, 48 (1st Cir. 2008); Scotiabank v. Halais-Borges, 339 F. Supp. 3d 25, 26 (D.P.R. 2018).

The First Circuit has instructed courts to determine the applicability of the police power exception in two steps. First, courts must "apply the statutory text to the facts of [the] case." Milk Indus. Regul. Off. v. Ruiz (In re Ruiz), 122 F.4th 1, 13 (1st Cir. 2024) ("Ruiz"). Then, courts consider the interrelated "public policy" and "pecuniary purpose" tests. Id. The Court turns first to application of the text of the statute to determine whether removal of the Actions was permitted by section 306(d)(1) of PROMESA.

1. The Text of Section 306(d)(1)

The police power carveout to section 306(d)(1) applies to actions by a "governmental unit" to enforce the "police or regulatory power of the governmental unit." The relevant provisions of the Bankruptcy Code are unambiguous. Section 101(27) defines the term "governmental unit" to mean, among other things, "State," "Territory," or "municipality." 11 U.S.C.A. § 101(27) (West 2018). The term "State" is defined to include Puerto Rico. 11 U.S.C.A. § 101(52) (West 2018). "Municipality" is defined to mean "political subdivision or public agency or instrumentality of a State." 11 U.S.C.A. § 101(40) (West 2018). Consequently, the term "governmental unit" includes the Commonwealth of Puerto Rico as well as entities, like P3A and PREPA, that are public agencies or instrumentalities of the Commonwealth.[15]

[15] In a three-word parenthetical, LUMA states, with no further explanation or citation to supporting authority, that it does not agree that P3A is a governmental unit. (See LUMA 25-61 Opp. ¶ 73 (stating that "LUMA disputes" that "P3A is a 'governmental unit'").) With no elucidation from LUMA concerning the basis of its argument, the Court can only speculate that perhaps LUMA intends to suggest that, because LUMA elsewhere

The Actions also seek to enforce police or regulatory powers. Police powers are the "latitude . . . to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." Arlene-Ocasio v. Comisión Estatal de Elecciones, 171 F.4th 494, 503 (1st Cir. 2026) (quoting Medtronic, Inc. v. Lohr, 518 U.S. 470, 475 (1996)). Act 29 and Act 120—which provide the substantive basis for most of the claims asserted in the Complaints[16]—create

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contends that P3A is not an arm of the Commonwealth of Puerto Rico (see LUMA 25-61 Opp. ¶ 35), P3A is also not an "instrumentality" of Puerto Rico. Given the lack of any development of LUMA's argument, the Court deems it forfeited. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived."). In any event, statutory interpretation "begins with the statutory text, and ends there as well if the text is unambiguous." Pub. Int. Legal Found., Inc. v. Bellows, 92 F.4th 36, 45 (1st Cir. 2024) (quoting BedRoc Ltd. v. United States, 541 U.S. 176, 183 (2004)). There is no basis to import the "arm of the state" analysis into interpretation of the unambiguous terms of section 101 of the Bankruptcy Code. The terminology used by the Bankruptcy Code is wholly unrelated to the distinct substantive question of whether P3A is an "arm of the state" for purposes of diversity jurisdiction or sovereign immunity. Cf. Galette v. N.J. Transit Corp., 146 S. Ct. 854, 871 (2026) (noting that "[t]he term 'instrumentality' . . . says little about whether an entity is an arm of the State" for purposes of sovereign immunity); Grajales v. P.R. Ports Auth., 831 F.3d 11, 22 (1st Cir. 2016) ("[W]e [do] not treat language like 'government instrumentality' as dispositive on arm-of-the-state questions . . . .") (quotation marks omitted).

16 The parties opposing remand of the Actions have focused their analysis on the Complaints' requests for relief under Act 120 and Act 29. (See, e.g., LUMA 25-61 Opp. ¶ 23 (describing the claims in the Complaint without reference to the claims concerning the Puerto Rico Civil Code); LUMA 25-62 Opp. ¶ 16 (characterizing the CW Complaint as alleging non-compliance with "contracting formalities allegedly required by Act 29 and Act 120, laws that apply specifically and exclusively to P3A and PREPA").) Allegations concerning Act 120 and Act 29 are the primary focus of the Complaints, and the parties opposing remand have not addressed the significance, if any, of the Complaints' requests for relief concerning the Extension Letter's alleged violations of the Civil Code of Puerto Rico. (See P3A/PREPA Compl. ¶¶ 5.21-5.25 (arguing that the Extension Letter violated the Puerto Rico Civil Code by waiving "the right to terminate [the T&D OMA] without [PREPA or P3A] receiving any consideration" and "condition[ing] the effectiveness of the T&D OMA on [PREPA]'s adjustment plan being 'reasonably acceptable to [LUMA]'"); CW Compl. ¶¶ 72-78 (same).) The parties opposing remand have the burden of demonstrating the propriety of removal, so the Court treats their silence concerning the Civil Code claims as a tacit concession that the claims

statutory frameworks for the formation and implementation of public-private partnership arrangements. Act 29's stated purpose is to "establish a new public policy and provide the legal framework to promote the use of Public-Private Partnerships as a development strategy, maintaining the necessary controls to protect the public interest in harmony with the profit motive of any private operation." (Act 29 at 4.) Act 120 "establishes the process that shall apply to any transaction that establishes a Public-Private Partnership for any PREPA function, services, or facility." (Act 120 at 3.) The Commonwealth is a political entity that, "like a state, is . . . sovereign over matters not ruled by the Constitution." United States v. Quinones, 758 F.2d 40, 43 (1st Cir. 1985) (quotation marks omitted) (quoting Rodriguez v. Popular Democratic Party, 457 U.S. 1, 8 (1982)). It enacted Act 120 and Act 29 and established the public policy values set forth in those laws. PREPA and P3A are directly involved in the transaction with LUMA pursuant to Act 29 and Act 120, and P3A is statutorily vested with responsibility for implementing public policy concerning transactions that are authorized by those laws. (See Act 29 Art. 6(a) (providing that P3A is "authorized and responsible for implementing the public policy on Partnerships established by this Act"); Act 120 § 4(b) (providing that P3A is "authorized to and responsible for . . . implementing the public policy on PREPA Transactions conducted in accordance with this Act").)

The claims asserted by Plaintiffs seek to enforce generally applicable rules that govern the negotiation, approval, and implementation of certain contracts with governmental entities. The specific contracting requirements of Act 120 and Act 29 cited in the P3A/PREPA Complaint appear to be intended to ensure that public-private partnership arrangements are

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do not affect the analysis of whether the "primary object of the [Actions]" is enforcement of police or regulatory powers. New England Pellet, LLC, 409 B.R. at 259.

negotiated and carried out in the public interest. These include the requirement that certain partnership contracts be approved by the members of P3A's board who are specifically appointed to "represent[] the public interest" (Act 29 Art. 5(b)), that extensions of partnership contracts be approved by the legislature (Act 29 Art. 10(e)), that the term of any partnership agreement be limited to a duration of no more than fifty years (Act 29 Art. 10(a)(iii)), and that partnership transactions involving PREPA be the subject of a Certificate of Energy Compliance issued by PREB.[17] (Act 120 § 5(g).) These requirements were enacted as part of the statutes' "legal framework and processes for the establishment of Public-Private Partnerships [to] provide the transparency and flexibility necessary to conduct negotiations that shall result in an electric power system that is financially viable and prioritizes the consumer." (Act 120 at 3; see also Act 120 § 3 (expressing the legislature's "intent and . . . policy . . . to expedite a fair and transparent process for the establishment of Public-Private Partnerships in connection with any functions, services, or facilities of the public corporation").) Rules and regulations concerning important contracts, like contracts concerning the provision of electricity for consumers, bear a close nexus to the welfare of the people of Puerto Rico. (See Act 120 at 3 ("We use the framework of Act No. 29 . . . for the purpose of taking advantage of its strict transparency and flexibility processes as a basis for conducting negotiations that lead to a financially feasible electric power system focused on the welfare of consumers."); cf. LUMA 25-62 Opp. ¶ 4 (describing private operation of the T&D system as a "core component of Puerto Rico's statutory mandate").)

The governmental contracting requirements that Plaintiffs seek to enforce are legitimate objects of police and regulatory authority. As illustrated by the First Circuit's

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[17] PREB is the regulator responsible for executing Commonwealth public policy concerning electric power service in Puerto Rico, including ensuring "the capacity, reliability, safety, efficiency, and reasonability of electricity rates of Puerto Rico." 22 L.P.R.A. § 1054b.

decision in Ruiz, the matters that fall within the government's police and regulatory authority are not limited to direct threats to health and safety, but "extend more broadly to regulatory efforts to protect public welfare." Ruiz, 122 F.4th at 14-15 (determining that milk regulator's authority to compel auction of milk quota served, among other things, the governmental "interest in ensuring that the milk being produced can meet the demands of the consumer market by preventing milk quota from sitting idly in the hands of someone legally barred from using it").

LUMA and the Oversight Board's arguments concerning the First Circuit's decision in Corporacion de Servicios Medicos Hospitalarios de Fajardo v. Mora (In re Corporacion de Servicios Medicos Hospitalarios de Fajardo), 805 F.2d 440 (1st Cir. 1986) ("Corporacion") do not compel a different conclusion. The dispute in Corporacion concerned an action by the Puerto Rico Department of Health ("DOH") to terminate a contract with the debtor due to the debtor's alleged defaults. Id. at 441. In that action, rather than commence proceedings to revoke the debtor's operating license, DOH sought a declaratory judgment that the debtor was in default with respect to its contractual obligations. Id. at 446 & n.7. The First Circuit held that the police or regulatory power exception to the automatic stay did not apply to DOH's action, which only sought to vindicate the government's contractual rights against the debtor and did not "directly involve the enforcement of generally applicable regulatory laws." Id. at 446. Here, LUMA and the Oversight Board argue that the Actions concern the enforcement of contractual rights rather than generally applicable regulatory laws. (LUMA 25-61 Opp. ¶¶ 18, 27; FOMB Opp. ¶¶ 42-47.)

LUMA and the Oversight Board's position is undermined by LUMA's admission elsewhere in the briefing that the claims pleaded in the Actions concern the application of "government contracting rules external to the T&D OMA." (LUMA 25-61 Opp. ¶ 66 ("The

terms of the T&D OMA, and the relationships between the parties and the obligations it creates, have nothing to do with those allegations.").) While that characterization of the claims is self-serving and understates the relevance of the T&D OMA to the claims (in an attempt to avoid the application of the T&D OMA forum selection clause[18]), it demonstrates that the Actions do not only concern the parties' contractual relationship. Rather, the Actions "directly involve the enforcement of generally applicable regulatory laws" by asserting violations of statutory obligations that have implications for the status and terms of the parties' contractual relationship. That distinction makes the instant facts more akin to those in Parkview Adventist Medical Center v. United States, 842 F.3d 757 (1st Cir. 2016) ("Parkview"), in which the First Circuit held that the Centers for Medicare & Medicaid Services ("CMS") did not violate the automatic stay when it issued a letter terminating the debtor's contract with CMS. The First Circuit held that CMS's conduct "was plainly the exercise of a regulatory power" to police compliance with the Medicare statute, including the termination of contracts that did not meet statutory requirements. Id. at 764 (distinguishing Corporacion). Because Plaintiffs' underlying claims seek to enforce generally applicable duties established by Commonwealth public policy, the fact that the Actions also seek a change to or a determination of the parties' contractual rights is not determinative of whether the Actions fall within Plaintiffs' police or regulatory powers. Like the issues of statutory compliance underlying CMS's position in Parkview, the claims in the Adversary Proceeding concern compliance with regulatory laws that, if enforced in the manner sought by Plaintiffs, would result in the termination of a contract.

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[18] As the Court will explain, infra Section B, Plaintiffs' claims require consideration of the meaning and effect of the parties' contractual relationship, and therefore arise out of the T&D OMA.

2. The Public Policy and Pecuniary Purpose Tests

Under the public policy and pecuniary purpose tests, courts "evaluate whether the government's action is to effectuate a 'public policy' or to further its own 'pecuniary interest.'" Kupperstein v. Schall (In re Kupperstein), 994 F.3d 673, 677 (1st Cir. 2021) ("Kupperstein") (quoting Parkview, 842 F.3d at 763). "If 'the governmental action is designed primarily to protect the public safety and welfare,' then it passes the 'public policy' test . . . ." Id. (quoting Parkview, 842 F.3d at 763). "In contrast, if the government is attempting to proceed against the debtor for a 'pecuniary purpose,' that is, 'to recover property from the estate,' the police power exception offers no shelter . . . ." Id. at 678 (quoting Parkview, 842 F.3d at 763). Thus, at its core, "[t]he question is whether [the governmental action] enforces a generally applicable regulatory law" or "furthers a public policy interest beyond" the government's pecuniary contractual rights. Parkview, 842 F.3d at 764.[19]

As explained above, the Actions seek to enforce laws regulating the government's entry into public-private partnerships. Act 29 establishes public policy concerning public-private partnerships generally (Act 29 at 4), and Act 120 codifies public policy concerning the transformation of Puerto Rico's electrical system. (Act 120 § 3.) The Complaints allege that the Extension Letter was executed in a manner inconsistent with the statutory "monitoring and termination mechanisms that had been designed to protect the public interest." (P3A/PREPA Compl. ¶ 1.2; see also CW Compl. at 1-3.) The government enacted those laws to enhance transparency, safeguard the public fisc, and ensure the protection of the public interest, and those

[19] The First Circuit has not determined "whether a government enforcement action must satisfy one or both of these tests to qualify for the police power exception." Ruiz, 122 F.4th at 14 n.3. However, as the Court will explain, the Actions satisfy both, and further consideration of whether and to what extent such satisfaction is required is therefore not necessary at this juncture. Id.

interests are cognizable as part of the government's police and regulatory powers. Cf. Parkview, 842 F.3d at 764.

Significantly, Plaintiffs are not, through the Actions, seeking any monetary recovery nor to recover any property from PREPA. The Title III debtor itself—PREPA—is one of the plaintiffs seeking relief against LUMA; it is not a third party "attempting to proceed against the debtor for a 'pecuniary purpose,'" or "to recover property from the estate." Kupperstein, 994 F.3d at 678 (emphases added) (quoting Parkview, 842 F.3d at 763). That is the pecuniary purpose with which the police and regulatory power exception is concerned. See McMullen v. Sevigny (In re McMullen), 386 F.3d 320, 325 (1st Cir. 2004) (explaining that the pecuniary purpose inquiry "contemplate[s] that the bankruptcy court . . . determine whether the particular regulatory proceeding . . . represents a governmental attempt to recover from property of the debtor estate, whether on its own claim, or on the nongovernmental debts of private parties"); Kupperstein, 994 F.3d at 680 ("The automatic stay's main purpose is to prevent some private creditors from gaining priority on other creditors. Neither MassHealth nor Schall would gain any priority on Kupperstein's other creditors . . . ." (citation and quotation marks omitted)). While LUMA and the Oversight Board argue that Plaintiffs—including PREPA—have economic interests that may be affected by Plaintiffs' requests to enforce provisions of Act 29 and Act 120 (see LUMA 25-62 Obj. ¶¶ 20-24; FOMB Obj. ¶¶ 56-57), the proper focus of the Court's analysis is the "objective purpose of the underlying laws sought to be enforced." Spookyworld, Inc. v. Town of Berlin (In re Spookyworld, Inc.), 346 F.3d 1, 10 (1st Cir. 2003) (quoting Safety–Kleen, Inc. v. Wyche, 274 F.3d 846, 865 (4th Cir. 2001)). Here, that objective purpose, as set forth above, is the enforcement of governmental contracting rules and the protection of the public interest in public-private partnerships, not the pecuniary rights of the government in a bankruptcy

estate. The fact that a proceeding may result in a pecuniary benefit to the government does not in and of itself remove it from the police or regulatory power exception; in fact, it is "well established" that the exception even "permits the entry of a money judgment against a debtor so long as the proceeding in which such a judgment is entered is one to enforce the governmental unit's police or regulatory power." SEC v. Brennan, 230 F.3d 65, 71 (2d Cir. 2000); United States v. Commonwealth Cos., Inc. (In re Commonwealth Cos., Inc.), 913 F.2d 518, 524 (8th Cir. 1990) ("[T]he entry of a money judgment against the debtors for their alleged violation of the [False Claims Act] . . . would not convert the government into a secured creditor, force the payment of a prepetition debt, or otherwise give the government a pecuniary advantage over other creditors of the debtors' estate."). "Indeed, most government actions which fall under [the police or regulatory power] exemption have some pecuniary component, particularly those associated with fraud detection." Universal Life Church, Inc. v. United States (In re Universal Life Church, Inc.), 128 F.3d 1294, 1299 (9th Cir. 1997) ("This does not abrogate their police power function."); cf. Parkview, 842 F.3d at 764 ("CMS has a strong public policy interest in seeing that Medicare-program dollars are not spent on institutions that fail to meet qualification standards.").

The public interest and pecuniary purpose tests apply notwithstanding LUMA's and the Oversight Board's characterizations of the merits of the Actions and Plaintiffs' motives. LUMA and the Oversight Board contend that the Plaintiffs are pursuing bad faith "political" motives in commencing the Actions (see, e.g., LUMA 25-62 Obj. ¶¶ 25-28 (describing the Commonwealth Action as a "political gambit to achieve through a procedural 'gotcha' the Government's oft-stated objective of terminating the T&D OMA"); FOMB Obj. ¶ 52), that the Actions lack merit (see, e.g., LUMA 25-61 Obj. ¶ 74; LUMA 25-62 Obj. ¶ 25), and that

invalidation of the Extension Letter would be disadvantageous for Puerto Rico. (See, e.g., FOMB Obj. ¶ 49.) These arguments have minimal, if any, relevance to the objective analysis demanded by the public policy and pecuniary interest tests. Neither of the relevant tests places courts exercising federal bankruptcy jurisdiction in the position of assessing the merits or the underlying motives of a particular government enforcement action. See In re Spookyworld, Inc., 346 F.3d at 10 (cautioning against "Bankruptcy Court mini-trials of purely state regulatory issues" (quoting Garrity v. Goldstein (In re Nat'l Hosp. & Institutional Builders Co.), 658 F.2d 39, 46 (2d Cir. 1981) (Mansfield, J., dissenting))); Parkview, 842 F.3d at 764 n.14 ("[T]he substantive correctness of [the government's] determination that Parkview ceased to be a hospital under the Medicare statute does not affect the analysis of whether the police and regulatory power exception to the stay applies . . . ."); see also Bd. of Governors of Fed. Rsrv. Sys. v. MCorp Fin., Inc., 502 U.S. 32 (1991) ("MCorp") (noting the importance of respecting the "limited authority Congress has vested in bankruptcy courts").

To the extent that LUMA believes that the Actions lack merit or are illegitimate due to the government's alleged political and governmental goals, such arguments implicate issues of Puerto Rico law and public policy concerning Commonwealth governmental entities, and they are most appropriately raised in the Commonwealth's courts. "[T]he question of how electricity is distributed to consumers in Puerto Rico is an important issue that has significant implications for public welfare," and Title III generally disfavors federal judicial interference in Puerto Rico's policy choices. In re Fin. Oversight & Mgmt. Bd. For P.R., 808 F. Supp. 3d 267, 277 (D.P.R. 2025) ("DACO"); see In re Fin. Oversight & Mgmt. Bd. for P.R., 621 B.R. 289, 301 (D.P.R. 2020) ("PROMESA affords the Government Parties substantial discretion and autonomy in establishing government policy, and expressly precludes the Court from interfering with such

efforts."), aff'd, 7 F.4th 31 (1st Cir. 2021); 48 U.S.C.A. § 2163 ("[T]his subchapter does not limit or impair the power of a covered territory to control, by legislation or otherwise, the territory or any territorial instrumentality thereof in the exercise of the political or governmental powers of the territory or territorial instrumentality . . . .").

Even outside of Title III, courts generally do not engage in the "amorphous and speculative" task of determining the subjective intent of governmental action in applying section 362(b)(4). In re Commonwealth Cos., Inc., 913 F.2d at 523 n.6 (quoting United States v. Halper, 490 U.S. 435, 453 (1989) (Kennedy, J., concurring)). This Court has previously rejected LUMA's invitation, with respect to a different litigation matter concerning a Commonwealth governmental entity, to consider whether the government was motivated by allegedly illegitimate "political" considerations. DACO, 808 F. Supp. 3d at 277-78. As the Court explained, such arguments are inconsistent with Supreme Court and First Circuit case law, which does not permit courts to import concepts of "legitimacy" and "good faith" into their analyses of the police or regulatory power. See MCorp, 502 U.S. at 40 (rejecting argument that "a court must first determine whether the proposed exercise of police or regulatory power is legitimate"); In re Spookyworld, Inc., 346 F.3d at 9-10 (discussing, inter alia, MCorp)). The Court's explanation in DACO applies with equal force here:

> As the court explained in In re Spookyworld, even in a "fairly appealing" hypothetical case in which "incontrovertible proof was available" that governmental action in a state court was "wholly baseless" and motivated by personal malice, such action "could easily be overturned by offering the same evidence to the state court." 346 F.3d at 10. The Commonwealth courts are capable of adjudicating LUMA's defenses in the DACO Action including, to the extent pertinent, questions about whether DACO is acting within the scope of its legitimate authority or in bad faith, if those defenses are relevant under applicable law.

808 F. Supp. 3d at 278.

Accordingly, each of the Actions is a "civil action by a governmental unit to enforce the police or regulatory power of the governmental unit," and therefore not subject to removal from the Commonwealth Court pursuant to section 306(d)(1). As a result, the Commonwealth Action must be remanded to the Commonwealth Court. However, with respect to the P3A/PREPA Action, LUMA has asserted that the Court has diversity jurisdiction of the proceeding. If LUMA is correct in this regard, its invocation of the general diversity jurisdiction removal statute, 28 U.S.C. section 1441, might help it escape the police power exception to the PROMESA removal statute. However, as explained below, the parties' contract includes an applicable exclusive forum selection clause mandating that the issues raised in the P3A/PREPA Action be litigated in Commonwealth Court. Thus, further analysis of the parties' respective contentions regarding diversity jurisdiction is unnecessary and the Court turns to the forum provisions of the contract.

The parties disagree as to whether T&D OMA's forum selection clause requires that the matters at issue be adjudicated in the Commonwealth Court and, thus, remanded. As explained below, the Court agrees with Movants that the claims asserted in the P3A/PREPA Action arise out of the T&D OMA and are therefore subject to the exclusive jurisdiction of the Commonwealth Court pursuant to that contract.

B. The T&D OMA Forum Selection Clause

The P3A Motion argues that remand of the P3A/PREPA Action is required by the forum selection clause of the T&D OMA. "Determining whether a forum selection clause is enforceable involves three steps." Autoridad de Energia Electrica de P.R. v. Vitol S.A., 859 F.3d 140, 145 (1st Cir. 2017) ("Vitol II"), aff'g No. 09-CV-02242-SJM, 2016 WL 9443738, at *8 (D.P.R. Mar. 16, 2016) ("Vitol I"). A court first must establish whether the language of the

forum selection clause is mandatory rather than merely permissive. Id. Second, the court assesses whether the claims are within the scope of the forum selection clause. Id. Third, the court determines "whether there is some reason the presumption of enforceability should not apply." Claudio-De León v. Sistema Universitario Ana G. Méndez, 775 F.3d 41, 48 (1st Cir. 2014) (quoting Rafael Rodríguez Barril, Inc. v. Conbraco Industries, Inc., 619 F.3d 90, 93 (1st Cir. 2010)). With respect to the third step, a forum selection clause is not enforceable if the party opposed to enforcement makes a "strong showing" that

> (1) the clause is the product of fraud or overreaching; (2) enforcement is unreasonable and unjust; (3) its enforcement would render the proceedings gravely difficult and inconvenient to the point of practical impossibility; or (4) enforcement contravenes "a strong public policy of the forum in which suit is brought, whether declared by statute or judicial decision."

Vitol II, 859 F.3d at 145-46 (quoting Carter's of New Bedford, Inc. v. Nike, Inc., 790 F.3d 289, 292 (1st Cir. 2015)).

In relevant part, the T&D OMA's forum selection clause provides as follows:

> The Parties acknowledge and understand that, to resolve any and all claims arising out of this Agreement (other than any Technical Dispute), they may file a civil action, including actions in equity, in the Commonwealth Court. Owner and Operator each irrevocably consents to the exclusive jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to the jurisdiction of any such action or proceeding, as well as objections or defenses based on sovereign immunity.

(T&D OMA § 15.6(a).) The parties opposing remand of the P3A/PREPA Action do not dispute that the forum selection clause is mandatory. See Rivera v. Centro Médico de Turabo, Inc., 575 F.3d 10, 17 (1st Cir. 2009) ("Mandatory forum selection clauses contain clear language indicating that jurisdiction and venue are appropriate exclusively in the designated forum.") (quoting 14D Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3803.1 (3d ed. 1998)). Instead, LUMA argues that (i) P3A waived its ability to

enforce the forum selection clause by failing to comply with the contract's mandatory pre-litigation dispute resolution procedures (LUMA 25-61 Opp. ¶¶ 49-61), (ii) the forum selection clause does not apply because the PREPA/P3A Action does not "aris[e] out of" the T&D OMA (LUMA 25-61 Opp. ¶ 62-66), and (iii) enforcement of the forum selection clause would be unjust, unreasonable, and contrary to public policy. (LUMA 25-61 Opp. ¶¶ 67-70.) The Court will address each of these arguments in turn.

1. Waiver

With respect to its waiver argument, LUMA highlights several provisions within Article 15 of the T&D OMA governing the resolution of Disputes. LUMA contends that P3A and PREPA failed to provide a written notice of dispute to LUMA (LUMA 25-61 Opp. ¶ 51 (quoting T&D OMA § 15.2(a)), engage in good faith negotiations to attempt to resolve their dispute within thirty days of the notice (LUMA 25-61 Opp. ¶ 52 (quoting T&D OMA § 15.3(a))), submit the parties' dispute to mediation (LUMA 25-61 Opp. ¶ 53 (quoting T&D OMA §§ 15.3(b)(ii), 15.5(a))), and follow the contract's procedures governing mediation (LUMA 25-61 Opp. ¶ 54 (quoting T&D OMA §§ 15.5(a), (b)(i))). LUMA contends that each of these obligations is a condition precedent to litigation and that P3A and PREPA's failure to comply with them bars P3A and PREPA from enforcing the forum selection clause. (LUMA 25-61 Opp. ¶¶ 57-61.)

"[W]aiver is the intentional relinquishment or abandonment of a known right." Mission Prod. Holdings, Inc. v. Schleicher & Stebbins Hotels, LLC (In re Old Cold, LLC), 602 B.R. 798, 827 (B.A.P. 1st Cir. 2019) (quoting Kontrick v. Ryan, 540 U.S. 443, 458 n.13 (2004)), aff'd, 976 F.3d 107 (1st Cir. 2020); see QBE Seguros v. Morales-Vázquez, No. CV 15-2091 (BJM), 2018 WL 3763305, at *13 & n.2 (D.P.R. Aug. 7, 2018) (quoting Rodriguez de Oller v.

Transamerica Occidental Life Ins. Co., 2007 WL 1723369, at *6 (P.R. May 30, 2007)) aff'd, 986 F.3d 1 (1st Cir. 2021). Waiver can be express, or it can be implied through "conduct that is inconsistent with the assertion of that right." QBE Seguros, 2018 WL 3763305, at *13 & n.2.

By executing the T&D OMA, LUMA expressly waived its removal rights with respect to matters encompassed by the forum selection clause. See Vitol I, 2016 WL 9443738, at *8; Vitol II, 859 F.3d at 145, 148 (affirming district court's determination that dispute "had to be remanded" because applicable forum selection clause precluded co-defendant from consenting to removal). P3A and PREPA commenced the P3A/PREPA Action in the Commonwealth Court, which is the exclusive judicial forum chosen by the parties in the T&D OMA. LUMA does not allege any conduct by P3A and PREPA that is inconsistent with the parties' contractual choice of forum; P3A and PREPA commenced the P3A/PREPA Action in the correct court according to the choice of law provision in the contract. Although LUMA argues that P3A and PREPA failed to comply with various pre-litigation procedures set forth in the T&D OMA, P3A and PREPA are not asking the Court to compel the parties to engage in those pre-litigation procedures, so PREPA and P3A's alleged conduct is not inconsistent with the right that P3A is seeking to enforce through the P3A Motion. Cf. Morales Rivera v. Sea Land of P.R., Inc., 418 F.2d 725, 726 (1st Cir. 1969) ("When plaintiffs brought suit instead of seeking to arbitrate, this was the clearest kind of waiver on their part of an agreement to arbitrate, if any existed."); H.R., Inc. v. Vissepó & Diez Constr., 190 D.P.R. 597, 609, 2014 TSPR 39 (Mar. 18, 2014) ("A party waives his right to arbitrate when he actively participates in a lawsuit or takes other action inconsistent with that right.") (quoting Cornell & Co. v. Barber & Ross Co., 360 F.2d 512, 513 (D.C. Cir. 1966)). LUMA cites no authority supporting its position that the parties' contractual choice of forum can be disregarded due to non-compliance with other dispute resolution procedures or

obligations. Cf. S. Cat, Inc. v. W PR Mgmt., LLC, 537 F. Supp. 3d 193, 195 (D.P.R 2021) (determining that the parties waived application of their forum selection clause by litigating in a different forum). At least one court within this circuit has rejected the premise that failing to comply with contractual provisions expressly requiring mediation as a condition precedent to litigation negates an otherwise applicable forum selection clause. Kebb Mgmt., Inc. v. Home Depot U.S.A., Inc., 59 F. Supp. 3d 283, 289 (D. Mass. 2014) ("Failure of the parties to agree on a time and place for contractually-mandated mediation . . . does not void the validity of [the forum selection] provisions."). More generally, courts enforce forum selection clauses even where a party is accused of breaching the contract containing the clause. "[N]o forum-selection clause would ever be enforceable if a defendant's breach of contract negated its validity." Id. (citing Monster Daddy, LLC v. Monster Cable Prods., Inc., 483 F. App'x 831, 835 (4th Cir. 2012)); see Grishman v. Clark, No. CV 22-11009-RGS, 2023 WL 3742814, at *6 (D. Mass. May 31, 2023) ("Because a forum selection clause is typically implicated where there is a dispute amongst the parties about their contractual obligations, [not enforcing a forum selection clause due to a breach of contract] would negate the purpose of agreeing to one in the first place.").

It is plausible that LUMA may be able to establish that compliance with the T&D OMA's pre-litigation procedures is an enforceable condition precedent to commencement of litigation, even though Article 15 does not expressly describe those obligations as "conditions precedent." Cf. HIM Portland, LLC v. DeVito Builders, Inc., 317 F.3d 41, 42-44 & n.1 (1st Cir. 2003) (noting that "[a]s the parties have only asked us to determine whether [the contractual provision] establishes mediation as a condition precedent to arbitration, we do not reach the broader, more difficult question of whether the Section also establishes a valid condition precedent to the bringing of suit" with respect to agreement that provided that disputes "shall . . .

be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party"). Any such argument is properly adjudicated by the court that the parties have agreed has exclusive jurisdiction to resolve disputes arising out of the T&D OMA. See Monster Daddy, LLC, 483 F. App'x at 835 (rejecting argument that "[a] mere allegation that the nonmoving party committed a prior material breach of the contract" should "allow a party to litigate that alleged contractual breach in an unapproved forum until the issue of first breach ultimately was resolved").

Accordingly, on the current record, waiver is not a barrier to remand of the P3A/PREPA action in light of the forum selection clause in the T&D OMA.

2. Scope of the Forum Selection Clause

LUMA next argues that the forum selection clause does not apply to the P3A/PREPA Action. Analysis of the reach of a forum selection clause is "'clause-specific,' meaning that 'it is the language of the forum selection clause itself that determines which claims fall within its scope.'" Vitol II, 859 F.3d at 145 (quoting Claudio-De León, 775 F.3d at 47) (citation omitted); see also John Wyeth & Bro. Ltd. v. CIGNA Int'l Corp., 119 F.3d 1070, 1075 (3d Cir. 1997) (noting, with respect to application of forum selection clauses, that "[d]rawing analogy to other cases is useful only to the extent those other cases address contract language that is the same or substantially similar to that at issue").

The T&D OMA's forum selection clause applies to "any and all claims arising out of this Agreement (other than any Technical Dispute)."[20] (T&D OMA § 15.6(a).) That language encompasses the disputes framed in the P3A/PREPA Complaint. While LUMA is

[20] No party contends that the P3A/PREPA Action concerns a "Technical Dispute" within the meaning of the T&D OMA.

correct that the P3A/PREPA Complaint "alleges that the T&D OMA was not validly extended because PREPA and P3A did not follow the applicable government contracting rules external to the T&D OMA" (LUMA 25-61 Opp. ¶ 66), that description does not capture the full extent of and basis for the relief sought in the P3A/PREPA Complaint.

Significantly, P3A and PREPA's claims directly seek declarations concerning the terms and status of the parties' contractual relationship. The declaratory relief sought in the P3A/PREPA Complaint is separated into five subparagraphs. (P3A/PREPA Compl. at 31-32.) The first and second subparagraphs seek declarations that the violations of Puerto Rico's contracting laws invalidate the Extension Letter and various governmental resolutions and certificates "intended to give effect to the Extension Letter." (P3A/PREPA Compl. at 31 ¶¶ a-b.) The first and second subparagraphs do not simply ask for adjudication of whether the government contracting rules apply or whether they were violated. Rather, they ask that a court determine whether the alleged violations of those rules nullify the parties' purported extension of the Supplemental Agreement (which amended the T&D OMA) via the Extension Letter. See Sweet Dreams Unlimited, Inc. v. Dial-A-Mattress Int'l, Ltd., 1 F.3d 639, 641-42 (7th Cir. 1993) (concluding that "a dispute, which has as its object the nullification of a contract, 'arise[s] out of' that same contract" because the phrase "'arising out of' reaches all disputes having their origin or genesis in the contract, whether or not they implicate interpretation or performance of the contract per se");[21] Battaglia v. McKendry, 233 F.3d 720, 727 (3d Cir. 2000) (holding that the

[21] While Sweet Dreams Unlimited concerned the interpretation of an arbitration provision, the Seventh Circuit subsequently recognized that the same reasoning applied to the interpretation of similar language in a forum selection clause. See Omron Healthcare, Inc. v. Maclaren Exports Ltd., 28 F.3d 600, 603 (7th Cir. 1994). More generally, because arbitration clauses are "in effect, a specialized kind of forum-selection clause," Scherk v. Alberto-Culver Co., 417 U.S. 506, 519 (1974), "courts routinely apply the principles or analyses for one to the other." Firexo, Inc. v. Firexo Grp. Ltd., 99 F.4th 304, 321, 326

term "arising out of" in an arbitration agreement is "generally construed to encompass claims going to the formation of the underlying agreement[]"); see also Scherk v. Alberto-Culver Co., 417 U.S. 506, 519-20 (1974) (holding that claims for rescission and damages under the Securities Exchange Act were covered by arbitration clause in contract governing "any controversy or claim [arising] out of this agreement or the breach thereof").

The third and fourth subparagraphs concern the effect of that invalidation on the parties' contractual relationship, seeking declarations that the automatic termination provision of the Supplemental Agreement has been triggered due to the asserted invalidity of the Extension Letter and the non-occurrence of the conditions required to extend the Supplemental Agreement and prevent expiration of the T&D OMA. (P3A/PREPA Compl. at 31 ¶¶ c-d.) The fifth subparagraph seeks a declaration that Article 16 of the T&D OMA obligates LUMA to "collaborate in [an] orderly transition process." (P3A/PREPA Compl. at 31 ¶ e.) The third, fourth, and fifth subparagraphs, therefore, frame disputes about the meaning and application of the T&D OMA and the Supplemental Agreement's extension provision based upon P3A and

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(6th Cir. 2024); see also IAC/InterActiveCorp v. Roston, 44 F.4th 635, 640 (7th Cir. 2022) (applying "arbitration principles to forum selection more generally" because arbitration clauses "are a species of forum selection clause"); Haynsworth v. The Corp., 121 F.3d 956, 963 (5th Cir. 1997); Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1298 n.9 (3d Cir. 1996) ("While, technically, one clause concerns arbitration and only one is truly a forum selection clause, the distinction is irrelevant for our purpose of reviewing the district court's contract analysis."); Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509, 514 n.4 (9th Cir. 1988) (applying analysis from case interpreting the scope of an arbitration provision "because an agreement to arbitrate is actually a specialized forum selection clause"). That is consistent with the principle that arbitration agreements are treated "as 'contract[s], and courts must enforce arbitration contracts according to their terms.'" Barbosa v. Midland Credit Mgmt., Inc., 981 F.3d 82, 87 (1st Cir. 2020) (quoting Biller v. S-H OpCo Greenwich Bay Manor, LLC, 961 F.3d 502, 508 (1st Cir. 2020)); see Coady v. Ashcraft & Gerel, 223 F.3d 1, 10 (1st Cir. 2000) ("At bottom, arbitration remains 'simply a matter of contract between the parties . . . .'") (quoting First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995)).

PREPA's argument that the Extension Letter is invalid, that it therefore cannot be the basis for an effective extension of the Interim Period, and P3A's contention that, under the circumstances, the terms of the T&D OMA obligate LUMA to participate in an orderly transition process. Those aspects of the P3A/PREPA Action arise directly out of the parties' contractual relationship and the T&D OMA. See Pedersen v. Kinder Morgan, Inc., No. 21-CV-10388, 2021 WL 5757189, at *4 (E.D. Mich. Nov. 1, 2021) (determining that ERISA statutory claims that "involve the interpretation of contractual provisions and performance required under the terms of the Plans" arose under the plans).

While LUMA cites general case law and dicta from the First Circuit concerning the meaning of phrases such as "arising out of" or "arising from" (LUMA 25-61 Opp. ¶ 65), there is no binding law in this Circuit directly addressing the scope of this language in a forum selection clause. See Manzo v. Wohlstadter, 171 F.4th 112, 115-17 (1st Cir. 2026) (declining to adopt or reject appellant's interpretation of the phrase "arising out of" in a forum selection clause). The most relevant binding authority that the Court has identified is Dialysis Access Center, LLC v. RMS Lifeline, Inc., 638 F.3d 367 (1st Cir. 2011) ("Dialysis Access Center"), in which the First Circuit addressed a contract that required arbitration of "any dispute that may arise under" the contract. The First Circuit affirmed an order compelling arbitration of claims seeking damages for alleged breaches of the contract as well as claims for fraudulent inducement of the contract that sought to invalidate the contract. The court, analyzing case law from other circuits concerning the scope of arbitration clauses, determined that "it cannot be said with positive assurance that the 'arising under' language used in the Arbitration Clause is not sufficient to encompass the current dispute over the validity of the [contract]," and held that the ambiguity was properly resolved in favor of arbitration due to the "pro-arbitration policy set

forth by the [Federal Arbitration Act]." Dialysis Access Ctr., 638 F.3d at 380-81.

The reasoning of Dialysis Access Center makes clear that, contrary to LUMA's arguments, dispute resolution provisions governing disputes "arising from" an agreement do not clearly exclude disputes concerning the invalidation of that agreement. Although the federal policy favoring arbitration is not implicated here, the Court does not consider the forum selection clause ambiguous as applied to the claims here. First, as explained above, the P3A/PREPA Action does not merely seek invalidation of an agreement due to "rules external to the T&D OMA." (LUMA 25-61 Opp. ¶ 66.) Rather, the P3A/PREPA Complaint seeks invalidation of a supplemental agreement—the Extension Letter—that purports to extend the term of the T&D OMA. If that extension is determined to be invalid, it would implicate directly the meaning and effect of the T&D OMA and determine which provisions of the T&D OMA apply or do not apply. Second, although the analysis in Dialysis Access Center does not discuss potential differences between the phrase "arising under" (which was the relevant phrase in Dialysis Access Center) and the phrase "arising out of" (the relevant phrase here), they are not identical. While the phrase "arising under" plausibly "may denote a dispute somehow limited to the interpretation and performance of the contract itself," the phrase "'arising out of' reaches all disputes having their origin or genesis in the contract, whether or not they implicate interpretation or performance of the contract per se." Sweet Dreams Unlimited, Inc., 1 F.3d at 642.

The case law cited by LUMA does not hold to the contrary. To the extent that case law supports LUMA's argument that the phrase "arising out of" requires a "causal connection between the T&D OMA and P3A's claims" (LUMA 25-61 Opp. ¶ 66), that standard would be easily met here. The P3A/PREPA Complaint seeks a determination as to whether a

valid agreement to extend the Interim Period was formed in light of alleged breaches of Commonwealth laws regulating public-private partnerships with PREPA, and, if no valid agreement to extend the Interim Period was formed, what the parties' obligations are under the T&D OMA. Those questions bear a close causal relationship with the T&D OMA because they would not exist but-for the parties' entry into the T&D OMA, and they directly concern the terms and status of the parties' contractual relationship. (See generally LUMA 25-61 Opp. ¶ 65 (citing case interpreting the phrase "arising out of" to mean, among other things, "originating from or growing out of or flowing from").)

3. Enforcement of the Forum Selection Clause Is Neither Unjust and Unfair nor Contrary to Strong Public Policy

Finally, LUMA argues that enforcement of the forum selection clause would be unjust and unreasonable because P3A and PREPA have not complied with the T&D OMA's pre-litigation dispute resolution procedures (LUMA 25-61 Opp. ¶ 68) and would contravene public policy because of the Court's exclusive jurisdiction of PREPA's property under section 306(b) of PROMESA and the potential impact of the P3A/PREPA Action on PREPA's restructuring. (LUMA 25-61 Opp. ¶¶ 69-70.)

Resolution of the dispute in the parties' agreed choice of forum is not unjust or unreasonable, notwithstanding LUMA's allegations that P3A has breached other provisions of the T&D OMA governing dispute resolution. LUMA's argument in this regard largely restates the waiver argument that the Court discussed and rejected above. Cf. Monster Daddy, LLC, 483 F. App'x at 835 ("Because the forum selection clause was drafted to address the treatment of future alleged breaches, any claim that the clause became unenforceable as a result of such a breach is inconsistent with the very purpose of the clause."); Grishman v. Clark, 2023 WL 3742814, at *6 (D. Mass. May 31, 2023); Kebb Mgmt., Inc., 59 F. Supp. 3d at 289.

Additionally, "context and association with other terms (fraud, unjust, strong public policy) make clear" that the "unjust and unreasonable" standard is not satisfied by allegations of inconvenience. Huffington v. T.C. Grp., LLC, 637 F.3d 18, 24 (1st Cir. 2011) ("If the second condition turned on . . . 'convenience,' [the plaintiff] might have something to argue about . . . [b]ut . . . the second condition is more demanding."). LUMA's argument fails to satisfy the "unjust and unreasonable" standard. LUMA has not alleged that litigating in the Commonwealth Court is inconvenient, much less that litigating in Commonwealth Court "will be so gravely difficult and inconvenient that [LUMA] will for all practical purposes be deprived of [its] day in court." M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 18 (1972) ("Absent that, there is no basis for concluding that it would be unfair, unjust, or unreasonable to hold that party to his bargain."); see Manzo, 171 F.4th at 117-18. Even if LUMA's papers could be construed to suggest that it is unfair and contrary to LUMA's bargained-for rights to litigate in any forum in the absence of prior written notice, good faith negotiations, and mediation, such argument does not identify any prejudice specific to litigation in the Commonwealth Court as opposed to this Court. Moreover, the resolution of any such argument requires adjudication of the parties' contractual rights, which is appropriately performed by the Commonwealth Court.

LUMA's argument that there is a strong public policy requiring adjudication of the P3A/PREPA Action in this Court also lacks merit. LUMA invokes PROMESA, arguing that the Court's jurisdiction of the Actions is exclusive pursuant to section 306(b) of PROMESA because the disputes concern the T&D OMA, which is PREPA's property. (LUMA 25-61 Opp. ¶ 69; see also FOMB Opp. ¶¶ 1, 38 (making a similar argument).) However, as the Court has previously explained, the Court's exclusive jurisdiction of PREPA's property—including the T&D OMA—does not preclude remand or abstention with respect to disputes concerning

parties' rights under the T&D OMA. Luma Energy, LLC v. P.R. Elec. Power Auth. (In re Fin. Oversight & Mgmt. Bd. for P.R.), 813 F. Supp. 3d 234, 250 n.14 (D.P.R. 2025) (citing Asociación de Salud Primaria de P.R., Inc. v. Puerto Rico (In re Fin. Oversight & Mgmt. Bd. for P.R.), 330 F. Supp. 3d 667, 674 (D.P.R. 2018) & Fin. Oversight & Mgmt. Bd. for P.R. v. Ad Hoc Grp. of PREPA Bondholders (In re Fin. Oversight & Mgmt. Bd. for P.R.), 899 F.3d 13, 22 (1st Cir. 2018)). Neither LUMA nor the Oversight Board has cited authority applying section 306(b) (or its Bankruptcy Code analogue, 28 U.S.C. § 1334(e)(1)) to bar the remand or transfer of a civil proceeding concerning a contract to another court. To the contrary, courts interpreting section 1334(e)(1) of title 28 have recognized that bankruptcy courts' jurisdiction to adjudicate civil proceedings is founded in section 1334(b), and that section 1334(e)(1) neither duplicates section 1334(b) nor expands a bankruptcy court's authority to adjudicate civil proceedings. See Valley Historic Ltd. P'ship v. Bank of New York, 486 F.3d 831, 837 (4th Cir. 2007) ("[Section] 1334(e) is a broad grant of exclusive jurisdiction over a debtor's property; it does not invest district courts with jurisdiction to conduct civil proceedings."); In re JJ Arch LLC, No. 24-10381 (JPM), 2024 WL 2933427, at *7 n.11 (Bankr. S.D.N.Y. June 10, 2024) ("Section 1334(e)'s jurisdictional grant extends only to actions relating to the legal disposition of the estate, rather than claims against the debtor, or claims by the debtor against a third party, both of which are properly considered actions in personam."); In re Noletto, 244 B.R. 845, 852-55 (Bankr. S.D. Ala. 2000) (rejecting "[a]n expansive view of exclusivity under § 1334(e)" as inconsistent with, inter alia, the Bankruptcy Code's abstention provisions). Section 306(a)(2) expressly provides the Court with non-exclusive jurisdiction of proceedings that are related to Title III cases, including such proceedings relating to a debtor's property. 48 U.S.C. § 2166(a)(2). Accordingly, section 306(b) of PROMESA does not preclude enforcement of the T&D OMA's

mandatory and exclusive forum provision by remand of the P3A/PREPA Action to the Commonwealth Court.

CONCLUSION

For the foregoing reasons, the Motions are granted. The Commonwealth Action, whose claims invoke the police or regulatory power of a governmental unit, was improperly removed from the Commonwealth Court and so must be remanded to the original forum. The P3A/PREPA Action must also be remanded, notwithstanding LUMA's assertion that the Court has diversity jurisdiction of the proceeding, because the T&D OMA requires that litigation arising out of that agreement be conducted in the Commonwealth Court.

The Clerk of Court is directed to effectuate the remands seven (7) days from today's date, and close the above-captioned adversary proceedings. This Memorandum Order resolves Docket Entry No. 23 in Adv. Proc. No. 25-00061 and Docket Entry No. 19 in Adv. Proc. No. 25-00062.

SO ORDERED.

Dated: May 8, 2026

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge