

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO
et al.,

(Jointly Administered)

Debtors.¹

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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

No. 17 BK 4780-LTS

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

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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 (the "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). 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.

MEMORANDUM ORDER DENYING URGENT
MOTION OF LUMA TO ENFORCE THE AUTOMATIC STAY

Before the Court is the *Urgent Motion of LUMA to Enforce the Automatic Stay* (Docket Entry No. 29962 in Case No. 17-3283 and Docket Entry No. 5819 in Case No. 17-4780) (the “Motion”), filed by LUMA Energy, LLC and LUMA Energy Servco, LLC (collectively, “LUMA”). The Motion concerns a proceeding, commenced by the Puerto Rico Department of Consumer Affairs (“DACO”) in the Commonwealth Court of First Instance against LUMA, the Puerto Rico Electric Power Authority (“PREPA”), and the Puerto Rico Energy Bureau (“PREB”), that is now pending before the Supreme Court of Puerto Rico (the “DACO Action”). The Motion requests entry of an order determining that DACO’s initiation of that proceeding violated section 362(a)(3) of the Bankruptcy Code, 11 U.S.C. § 362(a)(3),² and directing DACO to cease prosecution of the proceeding.

The Court has carefully considered the parties’ submissions in connection with the Motion.³ The Court has subject matter jurisdiction of this contested matter pursuant to

² References herein to the provisions of Title 11 of the United States Code (the “Bankruptcy Code”) are to sections made applicable in these cases by section 301 of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) which is codified at 48 U.S.C. § 2101 *et seq.* References herein to PROMESA section numbers are to the uncodified version of the legislation, unless otherwise indicated.

³ In addition to the Motion, the Court has reviewed *DACO’s Opposition to Urgent Motion to Enforce the Automatic Stay* (Docket Entry No. 30016 in Case No. 17-3283) (the “DACO Opposition”), the *Brief of Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE)* (Docket Entry No. 5831 in Case No. 17-4780), filed by Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (“ICSE”), the *Omnibus Reply in Support of Urgent Motion of LUMA to Enforce the Automatic Stay* (Docket Entry No. 30048 in Case No. 17-3283) (the “Reply”), *DACO’S Sur-Reply* (Docket Entry No. 30095 in Case No. 17-3283), and *ICSE’S Surreply to LUMA’s Omnibus Reply* (Docket Entry No. 5858 in Case No. 17-4780).

section 306(a) of PROMESA, 48 U.S.C. § 2166(a). For the reasons that follow, the Motion is denied.

BACKGROUND

PREPA is a public corporation created under the Puerto Rico Electric Power Authority Act, Act No. 83-1941, to supply electricity to Puerto Rico. (Mot. ¶ 8.) 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. (Mot. ¶ 13.)

On June 5, 2018, the Puerto Rico Public-Private Partnerships Authority (the “P3A”) began the process of searching for a private operation and maintenance service provider to operate PREPA’s transmission and distribution (“T&D”) system. (Mot. ¶ 18.) That process culminated with the execution of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, dated June 22, 2020 (the “LUMA OMA”),⁴ among LUMA, PREPA, and P3A. (Mot. ¶ 19.) Under the LUMA OMA, LUMA assumes the operation of PREPA’s T&D system, while PREPA retains ownership of the T&D assets. (Mot. ¶ 19.)

Pursuant to the LUMA OMA, PREPA is obligated to indemnify LUMA for, among other things, claims by T&D customers “in connection with the T&D System or Operator’s performance of the O&M Services” (LUMA OMA § 18.2(a)(vi)) and for claims by LUMA OMA non-parties for “loss of profits or revenues or special, exemplary, punitive, indirect or consequential damages.” (LUMA OMA § 18.2(a)(vii).) The former provision, but not the latter, is subject to a limitation for “the negligence (including gross negligence) or willful misconduct of” LUMA. (LUMA OMA § 18.2(b).) On May 3, 2021, the Court granted a motion

⁴ A copy of the LUMA OMA is attached to the Motion as Exhibit B.

by the Oversight Board and the Puerto Rico Fiscal Agency and Financial Advisory Authority requesting recognition that certain expenses owed by PREPA to LUMA under the LUMA OMA—including certain indemnification obligations—are entitled to administrative expense priority under section 503(b)(1)(A) of the Bankruptcy Code. See In re Fin. Oversight & Mgmt. Bd. for P.R., 631 B.R. 596, 601, 607 (D.P.R. 2021).

The instant dispute primarily concerns section 4.1(g) of the LUMA OMA. That provision, using the defined terms “ManagementCo” and “ServCo” to refer to LUMA Energy, LLC and LUMA Energy ServCo, LLC, respectively (see LUMA OMA at 1), reads as follows:

Liability Waiver. In connection with the submission of the Initial Budgets to PREB, the Parties agree to apply for inclusion in the Rate Order that the associated tariff or terms of service include: (i) a waiver of Owner’s, ManagementCo’s and ServCo’s liability to customers or any Person receiving Power and Electricity for any Losses arising in any way out of or in connection with the operation of the T&D System and the provision of Power and Electricity including any events of interrupted, irregular or defective electric service due to Force Majeure Events, other causes beyond Owner’s, ManagementCo’s or ServCo’s control or ordinary negligence, gross negligence or willful misconduct of Owner, ManagementCo or ServCo, or their respective employees, agents or contractors; and (ii) a waiver in all cases of responsibility for any loss of profits or revenues, special, exemplary, punitive, indirect, incidental or consequential damages, including loss of revenue, loss of use of equipment, cost of capital, cost of temporary equipment, overtime, business interruption, spoilage of goods, claims of customers of electric customers or other economic harms, in each case howsoever and whensoever arising, including where caused by any of Owner’s, ManagementCo’s or ServCo’s ordinary negligence, gross negligence or willful misconduct (collectively the “Liability Waiver”).

(LUMA OMA § 4.1(g).) The parties to the LUMA OMA applied to PREB for a liability waiver as contemplated by section 4.1(g) and, on May 31, 2021, PREB issued a resolution and order containing “Modified Terms of Service” providing, with some exceptions, that LUMA would not

be liable to customers for losses arising out of the operation of the T&D system (the “Liability Waiver”). (Mot. ¶ 22; DACO Opp. at 6-7.)

On July 22, 2025, DACO commenced the DACO Action against PREPA, LUMA, and PREB in the Commonwealth Court of First Instance. (Mot. ¶ 26.) In its complaint (the “Complaint”), an English translation of which is attached as Exhibit C to the Motion, DACO challenges the Liability Waiver and section 4.1(g) of the OMA. According to the Complaint, LUMA has acknowledged denying “all 1,828 claims it has received from consumers for damage to electrical appliances due to failures in the electrical system, invoking the immunity requested under section 4.1 (g) of the Agreement, which was endorsed practically in its entirety by [PREB] via the resolution of May 31, 2021.” (Compl. ¶ 27.) The Complaint argues that LUMA should “be fully accountable to Puerto Rican consumers” (Compl. ¶ 48), and it argues that the Liability Waiver represents a “usurpation of legislative power and an attack on the separation of powers, . . . granting an entity, by administrative and contractual fiat, unprecedented immunity from claims by third parties who did not participate in the negotiation and who did not have the endorsement of the legislative assembly.” (Compl. ¶ 44.) It requests a declaration that “Section 4.1(g) of the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* signed between LUMA and the Electric Power Authority and the May 31, 2021, and the Resolution of [PREB] endorsing almost all of the provisions of said Agreement [are] null and unconstitutional” and recognition that consumers are permitted to file claims “for damages caused by negligence and fluctuations in the electric power service before LUMA.” (Compl. at 15.)

On August 8, 2025, DACO requested that the Puerto Rico Supreme Court hear and resolve the dispute through intrajurisdictional certification. See 4 L.P.R.A. § 24s(f)

(permitting the Puerto Rico Supreme Court “[t]hrough a certification, . . . to consider and to resolve, any matter pending in the Court of First Instance, if there is a conflict between previous decisions of the Court of Appeals or if there are new questions of law or there is a question of imperative public importance that includes any substantial constitutional matter under the Constitution of Puerto Rico or the Constitution of the United States”). On August 22, 2025, the Puerto Rico Supreme Court granted DACO’s request and set a schedule for the petitioner and the other parties to file briefs in the matter.

On September 18, 2025, LUMA filed the Motion.

DISCUSSION

The Motion argues that the LUMA OMA is property of PREPA, a Title III debtor, and the DACO Action violates section 362(a)(3) of the Bankruptcy Code by “seek[ing] to void one key provision in the T&D OMA, . . . recognizing that this provision is a material part of the T&D OMA and hoping that its removal will trigger a cascading series of events that ultimately will [achieve] the Government’s desired end result – termination of the [LUMA] OMA.”

(Motion ¶ 3.) DACO and ICSE raise several arguments in opposition to the Motion. The Court will begin by addressing DACO’s and ICSE’s contention that section 362(b)(4) of the Bankruptcy Code excepts the DACO Action from the application, if any, of section 362(a)(3).

Upon the commencement of a restructuring case pursuant to Title III of PROMESA, an automatic stay goes into effect. Assured Guar. Corp. v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.), 919 F.3d 121, 129 (1st Cir. 2019) (citing 11 U.S.C. §§ 362, 901(a)). The automatic stay “is one of the fundamental protections” afforded to debtors by the Bankruptcy Code. Id. (quoting Jamo v. Katahdin Fed. Credit Union

(In re Jamo), 283 F.3d 392, 398 (1st Cir. 2002)). It bars a broad range of actions by creditors so as to “effectively stop all creditor collection efforts, stop all harassment of a debtor seeking relief, and to maintain the status quo between the debtor and [its] creditors, thereby affording the parties and the [c]ourt an opportunity to appropriately resolve competing economic interests in an orderly and effective way.” Id. (quoting In re Witkowski, 523 B.R. 291, 296 (1st Cir. B.A.P. 2014)). The provision of the automatic stay that LUMA contends applies here is section 362(a)(3) of the Bankruptcy Code, which prohibits “any act to obtain possession of property of the [debtor] or of property from the [property of the debtor] or to exercise control over property of the [debtor].”⁵ 11 U.S.C.A. § 362(a)(3) (West 2015).

Although the scope of the automatic stay is broad, “the automatic stay can interfere with competing policy goals, so Congress has adopted important limits and exceptions to the stay, including the police power exception.” Milk Indus. Regul. Off. v. Ruiz (In re Ruiz), 122 F.4th 1, 11 (1st Cir. 2024). The police power exception exempts from section 362(a)(3) (as well as certain other automatic stay provisions) “the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’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

⁵ Section 362(a)(3) refers to “property of the estate” and “property from the estate,” but section 301(c)(5) of PROMESA and case law interpreting PROMESA provide that references to the “estate” or “property of the estate” refer to property of the debtor. See 48 U.S.C. § 2161(c)(5) (providing that references in Title III of PROMESA to “property of the estate” mean “property of the debtor”); cf. Union de Trabajadores de la Industria Eléctrica y Riego v. Fin. Oversight & Mgmt. Bd. for P.R.(In re Fin. Oversight & Mgmt. Bd. for P.R.), 7 F.4th 31, 37-38 (1st Cir. 2021) (“[Various] incorporated Bankruptcy Code provisions use the term ‘estate’ notwithstanding the absence of an estate in Title III proceedings. . . . ‘Property of the estate’ is ‘otherwise defined’ in Title III to mean ‘property of the debtor,’ and so we can reasonably understand ‘estate’ in the context of § 503(b)(1)(A) to mean ‘property of the debtor.’”).

unit's . . . police or regulatory power.” 11 U.S.C.A. § 362(b)(4) (West 2015). The exception ensures that governmental entities remain able to exercise their authority to “enforce laws ‘affecting health, welfare, morals and safety’ and that debtors are not automatically protected in bankruptcy court from such regulatory laws.” In re Ruiz, 122 F.4th at 13 (quoting Universal Life Church, Inc. v. United States (In re Universal Life Church, Inc.), 128 F.3d 1294, 1297 (9th Cir. 1997)); see McMullen v. Seigny (In re McMullen), 386 F.3d 320, 324-25 (1st Cir. 2004) (explaining that section 362(b)(4) prevents debtors from “evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare (e.g., environmental and/or consumer protection regulations)”).

Application of the police power exception occurs in two steps. First, courts must “apply the statutory text to the facts of [the] case.” In re Ruiz, 122 F.4th at 13. Then, courts consider the interrelated “public policy” and “pecuniary purpose” tests. Id. The Court turns first to application of the text of section 362(b)(4).⁶

A. The Text of Section 362(b)(4)

Section 362(b)(4) creates an exception to, among other automatic stay provisions, section 362(a)(3) of the Bankruptcy Code. The section 362(b)(4) exception applies to actions by governmental units to enforce their police and regulatory power, including the enforcement of non-monetary judgments. 11 U.S.C. § 362(b)(4). Here, no party denies that DACO is a

⁶ The briefing concerning the Motion includes substantial discussion of whether and to what extent the DACO Action might affect PREPA’s property interests and PREPA’s overall liabilities, and whether the DACO Action is an act to exercise control over PREPA’s property within the meaning of section 362(a)(3) of the Bankruptcy Code. However, because the Court concludes that the DACO Action is carved out of the scope of section 362(a)(3) by section 362(b)(4) of the Bankruptcy Code, it need not further address the application of section 362(a)(3).

“governmental unit” as that term is defined in the Bankruptcy Code, see 11 U.S.C. § 101(27), and the DACO Action does not seek to obtain a money judgment, much less to enforce one. Cf. H.R. Rep. No. 95-595, 343 (1977) (explaining that former section 362(b)(5), which was later merged into section 362(b)(4), “permit[s] the entry of a money judgment, but does not extend to permit enforcement of a money judgment[,] since . . . enforcement by a governmental unit of a money judgment would give it preferential treatment to the detriment of all other creditors”). Pursuant to its organic statute, DACO is empowered to, among other things, “represent the public consumer before any private entity or public organization in any matter affecting or which might affect the interests of the consumer,” 3 L.P.R.A. § 341e(e), “appear for and in representation of the consumers before any court . . . of the Commonwealth of Puerto Rico . . . in any . . . proceeding or matter that affects or may affect the interests of the consumer in general, or groups of consumers or of any particular consumer,” id. § 341e(f), “claim any legal remedies necessary to render effective the purposes of [the Department of Consumer Affairs Organic Act],”⁷ id. § 341e(i), and “promote and watch over the enforcement of all laws, rules, regulations and orders which affect the interests of the consumer.” Id. § 341e(s). The DACO Action thus exercises the police or regulatory powers provided to DACO under Commonwealth law by seeking to permit “all citizens . . . to file claims for damages caused by negligence and fluctuations in electrical service with LUMA.” (Mot. ¶ 26.)

Accordingly, the DACO Action is within the scope of the text of section 362(b)(4).

⁷ “The Department of Consumer Affairs shall have as its primary purpose to defend and implement the rights of the consumer, to restrain the inflationary trends; as well as the establishment and inspection of a price control over the goods and services for use and consumption.” 3 L.P.R.A. § 341b.

B. 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) (quoting Parkview Adventist Med. Ctr. v. United States, 842 F.3d 757, 763 (1st Cir. 2016)). “If ‘the governmental action is designed primarily to protect the public safety and welfare,’ then it passes the ‘public policy’ test and is excepted from the automatic stay.” 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 and the proceeding is stayed.” 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 whether it promotes a public policy interest beyond the government’s pecuniary rights. Parkview, 842 F.3d at 764.⁸

Here, as set forth above, DACO’s remit is the protection of consumers. See generally 3 L.P.R.A. §§ 341b, 341e. It is seeking to vindicate that mandate through its challenge to the Liability Waiver, which bars consumers from seeking legal remedies for LUMA’s negligence, because DACO alleges that the Liability Waiver gives LUMA “a blank check to engage in negligent acts to the detriment of consumers.” (Compl. ¶¶ 43-44.) Cf. SEC v. Brennan, 230 F.3d 65, 72–73 (2d Cir. 2000) (explaining that the imposition of financial liabilities can further police and regulatory powers through deterrence). DACO alleges that the Liability

⁸ 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.” In re Ruiz, 122 F.4th at 14 n.3. However, as the Court will explain, the DACO Action satisfies both, and further consideration of that legal issue is therefore not necessary at this juncture. Id.

Waiver violates individuals' statutory rights to seek compensation for LUMA's tortious conduct and infringes on constitutional separation of powers principles by effectively overriding those statutory rights without legislative action. (See Compl. ¶¶ 33-46.) The DACO Action, which carries out DACO's statutory mandate, is therefore designed primarily to protect the welfare of the public, and it satisfies the public policy test.

As to the pecuniary purpose test, LUMA has not alleged that DACO has a pecuniary interest in the Liability Waiver or, more generally, the LUMA OMA. DACO is not seeking any monetary recovery for itself or any other Commonwealth government entity against any Title III debtor (or LUMA), it is not seeking to obtain property from any Title III debtor (or LUMA), and it is not seeking to enforce a money judgment. See Parkview, 842 F.3d at 764 (“[I]t is clear that the termination of the Provider Agreement does not meet the pecuniary test. The government is not seeking recovery from Parkview, nor is it demanding any payment.”). The DACO Action therefore satisfies the pecuniary purpose test.

The Court will next address the arguments that LUMA has raised in opposition to the application of section 362(b)(4).

LUMA's Reply contends that section 362(b)(4) does not apply to the DACO Action because the DACO Action “plainly does not relate to matters of public safety.” (Reply ¶ 15.) LUMA cites no authority limiting the application of section 362(b)(4) to matters of public safety. To the contrary, “the police powers protected under § 362(b)(4) are not limited to matters directly involving public health and safety.” Ruiz, 122 F.4th at 14; see Parkview, 842 F.3d at 763-64 (“The premise of this argument [that the government's termination of the debtor's contract was not based on findings of a threat to the health or safety of patients] is true, but largely irrelevant, as it is based on too circumscribed a view of the public interest.”). Case law

recognizes that section 362(b)(4) “extend[s] more broadly to regulatory efforts to protect public welfare.” Ruiz, 122 F.4th at 14 (emphasis in original); see Parkview, 842 F.3d at 764 (“Our precedents distinguish between ‘actions enforcing generally applicable regulatory laws governing the behavior of debtors,’ which fall within the exception, and actions by ‘government agencies to enforce contractual rights against debtors,’ which do not.” (emphasis in original) (quoting In re Corporacion de Servicios Medicos Hospitalarios de Fajardo, 805 F.2d 440, 445 (1st Cir. 1986))); Cournoyer v. Town of Lincoln, 790 F.2d 971, 977 (1st Cir. 1986) (“[T]he automatic stay should not be used as a shield against the application and enforcement of valid state and local laws.”). Courts applying section 362(b)(4), as well as section 362(b)(4)’s legislative history, refer specifically to the government’s power to execute consumer protection laws. See e.g., Ruiz, 122 F.4th at 15 (quoting In re McMullen, 386 F.3d at 324-25); SEC v. Brennan, 230 F.3d at 71 (quoting H.R. Rep. No. 95-595, at 343 (1977)). More broadly, the First Circuit has recognized that an interest as remote from safety as a regulator’s “interest in ensuring that the milk being produced can meet the demands of the consumer market” is within the scope of section 362(b)(4). Ruiz, 122 F.4th at 14.

Although LUMA contends that the result of the DACO Action would be “merely to open the door” to “private tort claims” against LUMA (Reply ¶ 15), the fact that a government enforcement action may help advance the pecuniary interests of third parties (here, electricity consumers with claims arising from LUMA’s allegedly tortious conduct) does not defeat the applicability of section 362(b)(4). In In re Ruiz, the First Circuit clarified that its statement in In re Spookyworld, Inc., that government enforcement actions may fall outside the scope of section 362(b)(4) if they advance “perhaps the pecuniary interest of others” was “obvious obiter dictum.” In re Ruiz, 122 F.4th at 15. It further stated that section 362(b)(4) does not contain a

“rule to the effect that any time a government action serves any private pecuniary interest to any degree, the police power exception cannot apply.” Id. Rather, case law applying section 362(b)(4) recognizes “that a pecuniary interest of the government itself cannot be the primary purpose of the government’s action.” Id. at 16. The court in In re Ruiz quoted decisions of two other circuits that have held similarly. See In re Universal Life Church, 128 F.3d at 1299 (“Only if the action is pursued solely to advance a pecuniary interest of the governmental unit will the automatic stay bar it.” (quotation marks omitted)); Chao v. Hosp. Staffing Servs., Inc., 270 F.3d 374, 389 & n.9 (6th Cir. 2001) (holding that the focus of the pecuniary purpose inquiry is “whether the enforcement action would result in a pecuniary advantage to the government vis-a-vis other creditors of the bankruptcy estate” (emphasis in original)); see also Parkview, 842 F.3d at 764; In re Commonwealth Cos., Inc., 913 F.2d 518, 523 (8th Cir. 1990) (“[B]ecause the proposed FCA action . . . would not . . . create a pecuniary advantage for the government, we decline to place it outside the scope of § 362(b)(4)”)⁹ DACO has no pecuniary interest in the LUMA OMA, and it is not acting as a creditor with respect to PREPA.

LUMA also argues that the DACO Action does not fall within DACO’s “statutory mission,” and that section 362(b)(4) should not apply because DACO allegedly has an ulterior motive of seeking to undermine the LUMA OMA. (Reply ¶ 15 n.4; Reply ¶ 5.) However, as set forth in DACO’s organic statute, its “duties and authorities” include representing “the interests of the consumer in general, or groups of consumers” in matters that affect consumers, 3 L.P.R.A.

⁹ In its Reply, LUMA quotes a radio interview with the Governor of Puerto Rico in which (based upon the excerpt submitted by LUMA) she appears to suggest that it is in the interests of the Commonwealth for the LUMA OMA to be replaced “as quickly as possible, and at the lowest cost.” (Reply ¶ 2.) LUMA has not suggested, however, that the DACO Action seeks any pecuniary benefit for DACO (or the Commonwealth more generally) as a creditor of PREPA. The Governor’s remarks concern issues of public policy.

§ 341e(f), ensuring the enforcement of laws that protect consumers’ interests, id. § 341e(s), and asserting legal remedies to carry out the purposes of the Department of Consumer Affairs Organic Act. Id. § 341e(i); see also id. § 341e(e). LUMA has not proffered any basis for a determination that the DACO Action is not, on its face, squarely within those enumerated domains.¹⁰

More generally, LUMA’s argument that DACO’s exercise of its authority is “not a legitimate, protected exercise of regulatory power” (Reply ¶ 5) lacks merit as a rejoinder to the application of section 362(b)(4). LUMA assumes, with little explanation, that the DACO Action would be an illegitimate “political effort” (Reply ¶ 5) if DACO (or, more broadly, the Commonwealth) subjectively hopes or intends to “trigger a cascading series of events that ultimately will achieve the Government’s desired end result – termination of the [LUMA] OMA.” (Mot. ¶ 3.) However, governmental efforts to terminate an agreement with a debtor are not inherently outside of the police and regulatory power protected by section 362(b)(4). See, e.g., Parkview, 842 F.3d at 764 (applying section 362(b)(4) to termination of agreement between debtor and Centers for Medicare & Medicaid Services). It is far from clear that termination of the LUMA OMA would not be a legitimate governmental goal that falls within the Commonwealth government’s police powers; certainly the question of how electricity is distributed to consumers in Puerto Rico is an important issue that has significant implications for public welfare. Due deference to the political and governmental prerogatives of the

¹⁰ Although LUMA’s Reply asserts that “PREB is the only governmental entity that regulates the T&D OMA” (Reply ¶ 5), LUMA has not developed any substantial argument or provided any citation to authority supporting an argument that PREB’s responsibilities with respect to the LUMA OMA are exclusive of DACO’s authority to protect consumers’ rights vis-à-vis LUMA. In any event, as the Court will explain, this is not the proper forum in which to object to the DACO Action as ultra vires.

Commonwealth and its instrumentalities is especially fitting in the context of Title III proceedings of the Commonwealth and its instrumentalities. See In re Fin. Oversight & Mgmt. Bd. for P.R., 621 B.R. 289, 301 (D.P.R. 2020), aff'd, 7 F.4th 31 (1st Cir. 2021) (“PROMESA affords the Government Parties substantial discretion and autonomy in establishing government policy, and expressly precludes the Court from interfering with such efforts.”) To the extent that LUMA wants to argue that the DACO Action is ultra vires or otherwise illegitimate due to the government’s alleged political and governmental goals, those defenses implicate issues of Puerto Rico law concerning Commonwealth governmental entities, and they are most appropriately raised in the Commonwealth’s courts.

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)). In Board of Governors of the Federal Reserve System v. MCorp Financial, Inc., 502 U.S. 32 (1991), the Supreme Court rejected the argument that, in applying section 362(b)(4), “a court must first determine whether the proposed exercise of police or regulatory power is legitimate.” As the Supreme Court explained, that interpretation of section 362(b)(4) “would require bankruptcy courts to scrutinize the validity of every administrative or enforcement action brought against a bankrupt entity,” which would be “problematic, both because it conflicts with the broad discretion Congress has expressly granted many administrative entities and because it is inconsistent with the limited authority Congress has vested in bankruptcy courts.” Id. Similarly, in In re Spookyworld, Inc., 346 F.3d at 9-10, the First Circuit declined to recognize a “bad faith” exception to section 362(b)(4), observing that there was “much force” to the following quotation from a dissent in a decision issued by the

Second Circuit: ¹¹

[A bad faith] exception would result in Bankruptcy Court mini-trials of purely state regulatory issues whenever, as might be expected to happen frequently, the debtor sought by claiming ‘bad faith’ to have those issues tried in a Bankruptcy Court, which would be sympathetic toward any resolution that would improve the estate, rather than before state tribunals. The proper remedy is to seek redress in the state courts which may be expected not to tolerate bad faith conduct

Spookyworld, Inc. v. Town of Berlin (In re Spookyworld, Inc.), 346 F.3d 1, 10 (1st Cir. 2003) (quoting Garrity v. Goldstein (In re Nat’l Hosp. & Institutional Builders Co.), 658 F.2d 39, 46 (2d Cir. 1981) (Mansfield, J., dissenting)). 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. See In re Spookyworld, 346 F.3d at 9-10.

Finally, LUMA argues that resolution of the instant dispute should be guided by a previous decision in which the Court held that a lawsuit seeking to invalidate the LUMA OMA in its entirety violated section 362(a)(3) of the Bankruptcy Code. (See Mot. ¶ 35 (citing Senate of P.R. v. Puerto Rico (In re Fin. Oversight & Mgmt. Bd. for P.R.), Case No. 17 BK 3283-LTS,

¹¹ The majority position in National Hospital “was arguably undermined, if not overruled, by Board of Governors.” In re Spookyworld, 346 F.3d at 9 & n.5; see also Javens v. City of Hazel Park (In re Javens), 107 F.3d 359, 366 n.6 (6th Cir. 1997) (recognizing that case law interpreting section 362(b)(4) to permit “challenges on grounds of bad faith . . . pre-dates and is effectively overruled by [Board of Governors]”).

2022 WL 17413011 (D.P.R. Feb. 7, 2022)); Reply ¶ 8.) The parties to that contested matter did not, however, raise section 362(b)(4) as an issue, nor did the Court address the application of that statutory provision in its decision. Accordingly, that decision provides no guidance regarding the application of section 362(b)(4).

CONCLUSION

For the foregoing reasons, the Motion is denied. This Memorandum Order resolves Docket Entry No. 29962 in Case No. 17-3283 and Docket Entry No. 5819 in Case No. 17-4780.

SO ORDERED.

Dated: October 27, 2025

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