

**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU**

**IN RE:** Puerto Rico Electric Power  
Authority Rate Review

**CASE NO.:** NEPR-AP-2023-0003

**SUBJECT:** Resolution and Order Initiating  
Rate Review

**RESOLUTION AND ORDER**

**I. INTRODUCTION AND BACKGROUND**

The last rate review for the Puerto Rico Electric Power Authority ("PREPA") occurred in *In re: Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP-2015-0001. At that time, PREPA's rates had been unchanged since 1989 and the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") updated them on an expedited basis to improve the financial stability of Puerto Rico's electricity provider. In the Final Resolution and Order to that proceeding, the Energy Bureau required PREPA's base rates to remain constant until the next rate review proceeding.<sup>1</sup> In the interim years, the Energy Bureau has reviewed PREPA's budgets annually in Case No. NEPR-MI-2021-0004. The Energy Bureau established these conditions to impose financial discipline on PREPA, require more frequent and rigorous reviews of spending, and set a foundation for consistent rate reviews.<sup>2</sup>

Since the last rate review, numerous changes have occurred in Puerto Rico's electricity system. PREPA's transmission and distribution (T&D) function was transferred to LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA"), a private operator under a management agreement established by the Puerto Rico Public-Private Partnership Authority ("P3 Authority").<sup>3</sup> As part of LUMA's responsibilities, it has participated in the annual budget reviews in Case No. NEPR-MI-2021-0004. Operation of PREPA's legacy generation assets was recently transferred to Genera PR, LLC ("GENERA") and it is expected to begin operation on July 1, 2023.<sup>4</sup> In previous guidance, the Energy Bureau established that all operators that now provide electric service in Puerto Rico will need to coordinate in this proceeding updating PREPA's electricity rates.

Natural disasters continue to damage Puerto Rico's electrical infrastructure. In 2020, a series of earthquakes affected essential portions of the generation system. In 2022, Hurricane Fiona further destabilized a fragile system. The U.S. Government has pledged substantial resources to help rebuild Puerto Rico's infrastructure, but the island's long-term transformation will still require a financially stable system funded by the rates charged to customers.<sup>5</sup> Engaging in consistent, transparent rate reviews rebuilds the financial

<sup>1</sup> Base rates refer to the portion of electricity rates excluding fuel, purchased power, contributions in lieu of taxes, and subsidies. Base rates are currently set at \$0.0747/kWh; see *In re: Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP-2015-0001, Final Resolution and Order, January 10, 2017 ("2017 Rate Order").

<sup>2</sup> *Id.*

<sup>3</sup> See *In re: Certificate of Energy Compliance*, Case No. NEPR-AP-2020-0002, Request for Issuance of Certificate of Energy Compliance in Accordance with Act 120-2018, June 17, 2020 ("Energy Compliance Certificate").

<sup>4</sup> See *In re: Certificate of Energy Compliance*, Case No. NEPR-AP-2022-0001, Petition for Issuance of Certificate of Energy Compliance in Accordance with Act 120-2018, January 15, 2023 ("Energy Compliance Certificate").

<sup>5</sup> Federal Emergency Management Agency, *FEMA Announces Progress in Puerto Rico's Power Grid Work* (June 6, 2022). Available at: [https://www.fema.gov/press-release/20220606/fema-announces-progress-puerto-ricos-power-grid-work#:~:text=To%20date%2C%20FEMA%20has%20obligated,in%20more%20robust%20energy%20infrastructure%20\(last%20verified%20in%20June%2029%2C%202023\)](https://www.fema.gov/press-release/20220606/fema-announces-progress-puerto-ricos-power-grid-work#:~:text=To%20date%2C%20FEMA%20has%20obligated,in%20more%20robust%20energy%20infrastructure%20(last%20verified%20in%20June%2029%2C%202023).).





foundation of this electricity system and is essential to gain the confidence of its customers and lenders. These steps will help PREPA re-establish access to capital markets and move beyond temporary support mechanisms.

Since the last rate review, PREPA has progressed through Title III bankruptcy, but this process has not concluded yet. The court's final decision on PREPA's legacy debt will directly affect this proceeding because future electricity rates will need to pay the resulting annual debt service while also funding the operators of Puerto Rico's electricity system—PREPA, LUMA, and Genera. In addition, the Energy Bureau will need to review the rate design of the debt charge along with the remainder of the revenue requirement. Based on recent orders from the bankruptcy court directing parties to further mediation, the timeline for final resolution of PREPA's legacy debt remains uncertain. The Energy Bureau is factoring this uncertainty into the procedures and timeline for this rate review.

The Energy Bureau began discussing the timeline for this rate review almost two years ago. In the Resolution and Order issued on May 31, 2021, in Case No. NEPR-MI-2021-0004, the Energy Bureau stated, "Not later than August 1, 2023, LUMA shall file a formal rate review for rates effective July 1, 2024, utilizing the most recent [historical] test year in accordance with the requirements set in the 2017 Rate Order. During these proceedings LUMA must demonstrate and quantify the projected operational efficiencies claimed in its petition for Initial Budgets approval; these efficiencies are expected to favorably impact customer rates."<sup>6</sup> More recently, the Energy Bureau reiterated the need for this rate review, on the same timeline, in the order approving the FY2023 Annual Budgets for PREPA and LUMA.<sup>7</sup>

The Energy Bureau now opens this docket to initiate an adjudicative process to review PREPA's rates. The Energy Bureau will utilize a three-phase process to conduct a timely, comprehensive rate review while managing the uncertainties described above. The phased process will address the complexities of the three operators making a joint rate request for the first time and the uncertain timelines to finalize important components of a complete rate request, such as the legacy debt.

## II. THREE-PHASE PROCESS TO REVIEW RATES

The Energy Bureau is establishing the following three phases for this proceeding:

- **Phase I: Review of filing requirements and coordination between parties**—The Energy Bureau will informally engage with PREPA, LUMA, Genera, and interested stakeholders to clarify the requirements for the formal rate review; identify which operator is responsible for each requirement; receive updates from the responsible parties on their status in preparing each filing requirement; and ensure that the responsible parties coordinate in preparing their respective components of the consolidated filing. This phase will also identify any aspects of a complete filing that need to proceed on a deferred timeline, such as the legacy debt charge or study results.
- **Phase II: Review of partially-complete rate filing**—LUMA will file the rate filing requirements that are complete in all aspects except the deferred items specifically identified in Phase I. The Energy Bureau will begin review of this incomplete filing. The Energy Bureau will accept motions for intervention in this phase.
- **Phase III: Formal review of complete rate request (including bankruptcy court final decision)**—The Energy Bureau will make a determination that the rate filing is complete and begin the final formal review of the complete filing, including review of

<sup>6</sup> See *In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, Determination on LUMA's Initial Budgets, May 31, 2021, at 37.

<sup>7</sup> See *In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, Determination on LUMA's FY23 Annual Budgets and LUMA's FY24 Annual Budgets pre-filing requirements, February 27, 2023, at 29.





the proposed legacy debt charge and reconciliation with any interim decisions made in Phase II.

**a) Phase I: Review of filing requirements and coordination between parties**

This opening order establishes preliminary steps to clarify LUMA's understanding of the filing requirements and receive status updates from PREPA, LUMA, and Genera. These steps will allow the Energy Bureau to conduct a comprehensive, transparent review of electricity rates in Phases II and III. The Energy Bureau intends to conduct Phase I informally but will allow opportunities for interested stakeholders to participate. Participation in this phase does not require intervention at a later time or guarantee that the Energy Bureau will grant intervention during Phase II.

**i) Filing requirements for rate review**

The Energy Bureau established filing requirements for PREPA's first rate case in Regulation 8720<sup>8</sup> and provided additional guidance for filing consolidated budgets in NEPR-MI-2021-0004. The Energy Bureau has also directed PREPA and LUMA to revise and update their filings multiple times in past proceedings based on missing information and poor quality of the submissions. At the outset, the Energy Bureau reminds PREPA, LUMA, and Genera that they collectively have the burden of proof to justify any proposed increase in rates and a complete filing is a necessary step to facilitate the Energy Bureau's review. The informal process in Phase I is also intended to review and finalize the guidance for the formal filing.

For this initial phase, the Energy Bureau **DIRECTS** LUMA to file a report on or before October 4 2023 containing its understanding of the filing requirements for this rate review based on Regulation 8720 and prior Energy Bureau orders. In filing this report, LUMA shall:

- a) describe in detail LUMA's current understanding of the filing requirements for this rate review based on Regulation 8720 and prior Energy Bureau orders, including:
  - i) for each requirement, LUMA shall describe whether it currently has any questions or requires clarifications;
  - ii) for each requirement, LUMA shall describe whether it currently has the capability to fulfill the requirement;
    - (1) If not currently capable, LUMA shall provide an estimated date for meeting the requirement;
  - iii) for each requirement, LUMA shall describe any other entity it will depend on to meet the filing requirement (including other operators, supporting consultants, other government approvals, etc.);
- b) describe the current status of preparing each filing requirement;
- c) describe how LUMA is addressing the deficiencies identified in the 2017 Rate Order and subsequent annual budget filings, particularly the requirement for a current cost-of-service study;
- d) provide the list of schedules LUMA intends to submit in the initial filing with references to the Energy Bureau's prior guidance on filing requirements;
- e) report on the coordination between LUMA, PREPA, and Genera on preparing the upcoming filing, including:
  - i) identifying the roles and responsibilities for each organization (PREPA, LUMA, or Genera) in preparing and supporting the rate case filing; and
  - ii) submitting a preliminary witness list for each organization and the issues/topics where each witness will sponsor testimony; and
- f) explain how the filing will address the proposed Legacy Debt Charge and PREPA's pension obligation costs.

<sup>8</sup> Known as New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First Rate Case ("Regulation 8720").





After reviewing prior guidance on test-year requirements, the Energy Bureau provides the following update. The annual budget filings since the last rate case were required to maintain the same base rate. This rate review needs to establish new revenue requirements from a “bottom-up” assessment of the current needs of the system. A bottom-up assessment requires that LUMA build a budget proposal by determining the detailed budget needs by each department of each company and adding them together to create the whole budget. In contrast, a “top-down” assessment starts with a cap on the total rates, and then figures out how to allocate the resulting funds to each department of each company. A bottom-up assessment of the utility system’s requirements based on the most recent financial information from fiscal year 2024 should provide a reasonable basis to determine the system’s needs grounded in recent cost data and performance.

The phased process will address the complexities of the three operators making a joint rate request for the first time and the uncertain timelines to finalize important components of a rate request, such as the legacy debt. In Phase I, the Energy Bureau will establish filing requirements for LUMA that apply to Phase II and Phase III of this case. In order to expeditiously consider matters for which the relevant filing requirement can be met, the Energy Bureau will expect that this requirement be filed for initial review during Phase II. The Energy Bureau will use Phase I to determine which requirements are ripe for consideration in Phase II and which must be deferred to Phase III in order to allow for a complete and high-quality filing. For example, the Energy Bureau expects that the final resolution of the Title III bankruptcy proceeding will not be ripe to address in Phase II. It is also possible that this phase may also identify some studies whose results are required for a complete filing, but which will not be ready in time for Phase II consideration.

**b) Phase II: Review of LUMA’s partially-complete rate filing**

The Energy Bureau will establish procedural guidance and timelines for its review of the partially complete rate filing in subsequent orders, including a filing deadline for the partial rate filing. After receiving LUMA’s filing and determining that it contains the expected components, the Energy Bureau will accept motions for intervention.

**c) Phase III: Formal review of complete rate request**

Given the current uncertainties in the timelines for critical components to this rate review and the importance of establishing clear requirements for all involved parties, the Energy Bureau **SUSPENDS** the August 1, 2023,<sup>9</sup> filing deadline for filing the formal rate request.

The Energy Bureau establishes the third phase to this proceeding to conduct the formal review of a complete rate filing. The complete rate filing will contain the items addressed in an interim matter in Phase II, along with the necessary information identified in Phase I that is deferred until this phase. This will allow the Energy Bureau to reconcile any interim decisions in Phase II with a final decision from the bankruptcy court and other evidence that may not be ripe for consideration in Phase II. As the bankruptcy court provides further updates on the timeline for a final decision, the Energy Bureau will reevaluate the schedules for Phases II and III.

**III. CONCLUSION**

The Energy Bureau **ORDERS** that LUMA shall report on the items in Section II.a.i. on or before October 4, 2023.

After review of the report, the Energy Bureau will schedule additional procedural steps, which may include requesting comments from stakeholders and holding a technical conference.

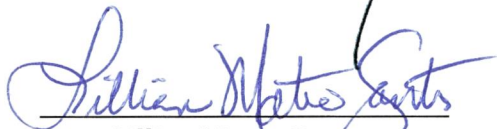
<sup>9</sup> This determination was also notified as per Resolution and Order, *In Re: LUMA Initial Budgets and Terms of Service*, NEPR-MI-2021-0004, June 25, 2023.



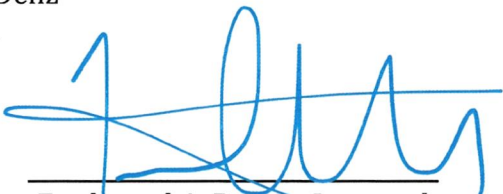
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Associate Commissioner



Antonio Torres Miranda  
Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June30, 2023. I also certify that on June 30, 2023 a copy of this Resolution and Order was notified by electronic mail: Ashley.engbloom@lumapr.com; mario.hurtado@lumapr.com; legal@lumapr.com; wayne.stensby@lumapr.com; astrid.rodriguez@prepa.com; lionel.santa@prepa.com; brannen@genera-services.com; kbolanos@genera-pr.com; regulatory@genera-pr.com. I also certify that on June 30, 2023, I have -moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, on June 30, 2023.



Sonia Seda Gaztambide  
Clerk

