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:** Technical Conference for January 10, 2025: Consultants' Agenda and Explanation

Technical Conference of January 10, 2025: Consultants' Agenda and Explanation

This document, prepared by the Energy Bureau's consultants, identifies the matters to discuss on January 10, 2025. As stated in the Bureau's Order of December 20, 2024, the main discussion topic is the filing requirements, and especially the information requests attached to that Order. **Part I** of this current document describes the procedural and substantive context for those information requests; most importantly, the relationship between the budget and the revenue requirement. **Part II** of this document asks about or addresses two matters relating to the scope of the rate case**. Part III** lists immediate next steps.

The **Appendix** has a list of legal questions that the consultants would like to discuss with counsel on January 10. That discussion will not seek answers to the questions; rather, it will focus on whether the questions are clear and complete, and when and how counsel might address them.

I. Filing requirements and information requests

The conference of December 20, 2024 described the need to combine the budget case with the rate case. To achieve that combination, we suggest that the official filing requirements include a new "Schedule A-0" (pronounced "A-zero"). This new schedule would precede existing Schedule A-1. Schedule A-0 would be a full budget document, consisting of the budgets for PREPA, LUMA, and Genera. More description appears in **Part I.A** below. The remainder of the official filing requirements would be the original schedules that comprised the filing requirements for the 2016-2017 rate case; we are in the process of revising those filing requirements to reflect current facts. Those schedules (Schedule A-1 forward), which were the subject of the attachment to the December 20 Order, are discussed in **Part I.B** below.

The logic of this arrangement is straightforward. The budget drives the revenue requirement and therefore the rates. Schedule A-0 is the budget; all the remaining schedules address the revenue requirement, the financial information, and ultimately the rates.

A. Schedule A-0: The budgets

1. Schedule A-0 will contain the budgets for PREPA, LUMA, and Genera. It will specify and organize all the expenses and expenditures proposed by those three entities for all purposes. The specificity in this document will enable the Bureau to make all decisions on what amounts PREPA, Genera, and LUMA should spend, on what activities. The organization of the document will likely become the Table of Contents to the Bureau's final order in this proceeding, since that final order will make the decisions on what amounts customers should pay for what purposes.

    a. We expect that the expenditures will be organized into the main categories of operating and maintenance expenses, and capital expenditures. For each budget item, the filings will explain whether the source of funds is base rates, federal assistance, Commonwealth assistance, or some combination—and the composition of that combination.

    b. Bureau consultant Guy Mazza will work informally, with each of LUMA, PREPA, and Genera separately, to develop the detail and organization of this budget portion of the filing requirements. That work will start immediately.

2. Prior budgets were constrained by the 2017 rate levels. The proposed budgets, in contrast, will reflect all actions and all associated costs that each entity deems necessary to provide the service that Puerto Rico deserves. But these new budgets might produce base rates higher than what the citizens are willing to pay. We therefore suggest, for discussion on January 10, a requirement that each entity submit an optimal budget, plus three alternative budgets, as follows:

    a. The optimal budget would reflect all activities and costs that the entity asserts are justified by the benefits produced—again, all actions and all associated costs that each entity deems necessary to provide the service that Puerto Rico deserves.

    b. The three alternative budgets would reflect spending levels producing base rate increases of, respectively, 75%, 50%, and 25% of the rate increase associated with the optimal budget. Each alternative budget would specify which activities of the optimal budget were delayed or eliminated to satisfy the lower budget, and the consequences of that delay or elimination.

3. This information will help the Bureau decide, and explain to the public, the actual tradeoffs between rate levels and service quality. This information also will help anticipate rate paths over the three years covered by this rate case—because the three entities might propose to phase in the actions and associated costs over the three years.

4. This segment of the January 10 conference will seek the parties' views on the above approach.

B. The remaining schedules: Revenue requirement, financial information, and rates

1. The filing requirements relating to setting rates have been the subject of various filings in 2023 and 2024, coordinated by PREB consultant Dr. Asa Hopkins and Synapse. A spreadsheet prepared by LUMA, reflecting those filings, accompanies the current document. The spreadsheet (a) lists each filing requirement established in Regulation 8720 and used for the 2017 rates, then (b) describes LUMA's proposal for whether and how to apply the original requirement to this new rate proceeding.

2. The Bureau's Order of December 20, 2024 included an Attachment A, "Request of Information re: Filing Requirements." At the January 10 conference, Dr. Hopkins will invite and address any questions about that Attachment, following this agenda (which tracks the Attachment):

    a. Filing requirement plan

        (1) Information re: 3 fiscal years (FY26-28)

        (2) "All costs" revenue requirement

        (3) Generation portfolio

        (4) Rate design vs. revenue requirement information

    b. Financial reporting and remediation

    c. Cost of service study

3. Some additional comments about LUMA's spreadsheet:

   a. *Schedule A-3 (Summary of Debt Service and Interest Coverage Requirements), Schedules D-2 and D-3 (Long-Term and Short-Term Debt Detail), and Schedule L-1 (Proposed Fixed Charge for PREPA's Obligation to Bondholders):* LUMA should file, and reflect in its proposed revenue requirement, the most recent settlement offer made by the FOMB. While not a final figure, the FOMB offer is more representative of the likely debt amount than is the number zero. When there is a final number, LUMA can file an update.

   b. *Schedule A-4 (Summary of Plant in Service and Accumulated Depreciation (Two Prior, Three Subsequent Years):* LUMA stated that this information is deficient. LUMA should provide whatever summary it can, with an explanation of the deficiencies.

   c. *Schedule H-2 (Revenue Requirement Analysis at Present and Proposed Rates (Billing Determinants)):* There should be detailed testimony explaining the billing determinants, including the effects on the kWh billing determinants of residential solar.

   d. *Schedule L-2 (Detail of Subsidies Included in Rates):* LUMA need not provide legal analysis or benefit-cost analysis of statutory subsidies.

   e. Does the budget need to include a margin above operating expense, to reflect the typical requirement imposed by those who lend to nonprofit utility companies? Or does the OMA obligation to fund Service Accounts at two months of specific projected costs substitute for a margin?

II. Scope-of-case issues

A. **Riders:** Should, and must, the 2025 rate case assess the designs of the various riders? For example, the riders for fuel cost and purchased power do not have an adjustment for noncollectibles.

B. **Renewable Energy Credits:** Mr. Victor González asked about how PREPA's purchases of RECs will affect the revenue requirement. Any PREPA obligation that involves reasonable cost needs to be covered by the revenue requirement. But the Bureau has not established for PREPA any REC-purchase obligation. There is therefore no basis for reflecting in the FY 2026 revenue requirement any

PREPA payment for RECs. This rate case is a three-year rate case. So if at some point in these three years the Bureau creates a REC-purchase obligation for PREPA, and if PREPA needs higher revenues to comply with that obligation, PREPA (or LUMA on PREPA's behalf) can ask and the Bureau will decide. For now, the question raised by Mr. González is not a question for this rate-case proceeding.

III. Next steps

A. Guy Mazza's meetings with PREPA, LUMA, and Genera on fashioning a budget table of contents. Each company should provide Mr. Mazza (guy@maxetaenergy.com) a contact person.

B. Responses to IRs are due January 17 (per the Order of December 20).

C. Other?

Appendix on Legal Issues

For the January 10 conference, the purpose is not to discuss these issues on the merits but to see if they are stated clearly, and to discuss alternative procedures for addressing them.

1. Is the procedure discussed on December 20 and in the above document, of combining a budget approval with a rate case, consistent with LUMA OMA sec. 7.3(a)? ("Operator shall, no later than ninety (90) days prior to the commencement of such Contract Year, submit to Administrator the proposed Budgets for such Contract Year; provided that if any proposed Budget requires a rate adjustment to be approved by PREB, Operator shall have the right, at its sole discretion, to submit the proposed Budgets for such Contract Year directly to PREB rather than to Administrator.") In this context, what is the role for the P3A? Also: Given that each of the three companies will provide its own optimal budget and alternative budgets, unconstrained by a preexisting rate ceiling, is there any place for a P3A allocation?

2. Is it necessary to issue the new, case-specific filing requirements via a formal regulation, as distinct from an order in this proceeding—given that these requirements will likely apply solely to this proceeding? In any event, is there an administrative law principle that prevents a regulatory agency from stating a new policy in an adjudicative proceeding instead of in a rulemaking proceeding? *See SEC v. Chenery Corp.*, 332 U.S. 194 (1947) (*Chenery II*).[1]

3. What are the Bureau's statutory powers, if any, to hold LUMA and Genera financially accountable for imprudent action and inaction; that is, action or inaction that causes costs, revenues, or service quality to depart from the levels that the Bureau would expect if performance were prudent? By what means, if any, can the Bureau prevent recovery in rates of expenses imprudently incurred by LUMA or Genera, while making one of those companies financially responsible for covering the shortfall?

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[1] *See* 332 U.S. at 202:

> Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. . . . [T]he choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.

One might argue that the facts in *Chenery II* differ from those presented by this rate case, such that the general statements in this quote might not apply. Thus the value of discussion.

4. Aside from any Bureau power to hold LUMA and Genera financially accountable for imprudence, consider this scenario: The Bureau makes findings, after a fully litigated case in which LUMA or Genera was a party, that (a) LUMA or Genera has acted imprudently or failed to act prudently, and (b) the consequences to customers amounted to a specific dollar level of excess cost. Would the Bureau's conclusion have collateral estoppel effect in a contract breach action against the company brought by P3A?

5. What is the legal relationship between (a) the revenue requirement established in this proceeding, and (b) the treatment of performance incentives in the OMAs and in the Bureau's order on those incentives? For example, as a legal matter does the revenue requirement level established by the Bureau have to be sufficient to allow LUMA and Genera to produce performance results that satisfy PREPA's statutory obligation to serve (which obligation has transferred to LUMA)? Does that interpretation mean that the purpose of the incentive payments is solely to reward "super-efficiency"? Or is there some overlap between the dollars paid by customers via the revenue requirement and the additional dollars paid by customers via the performance incentives—meaning that some of the incentives are compensating for merely normal efficient performance? If so, does that mean that, to prevent double-counting, the Bureau must reduce the base revenue requirement by the amount of those incentives?