

**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: Motion in Compliance with
Bench Orders issued during Prehearing
Conference of February 21, 2025

NEPR

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**MOTION IN COMPLIANCE WITH BENCH ORDERS ISSUED DURING
PREHEARING CONFERENCE OF FEBRUARY 21, 2025**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU’S HEARING EXAMINER,
SCOTT HEMPLING:**

COME NOW LUMA Energy, LLC (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as “LUMA”), and respectfully state and request the following:

I. Introduction and Relevant Background

1. On February 12, 2025, this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order in the captioned proceeding (“February 12th Order”), whereby it established “the filing requirements and procedures for the rate review of the Puerto Rico Electric Power Authority (“PREPA”).” February 12th Order, p. 1. The February 12th Order was divided into two distinct parts, the first of which addressed “substantive scope and procedural matters,” whilst Part II pertained to “administrative and logistical matters”. *Id.*, p. 2.

2. Through Part I, Section (J) of the February 12th Order¹, this Energy Bureau designated Mr. Scott Hempling as Hearing Examiner for this proceeding (“Hearing Examiner”), with authority limited to the following matters: i) resolving all discovery disputes between the parties; ii) establishing and modifying procedural schedules; iii) determining witness sequence and logistics for evidentiary hearings; iv) addressing any other procedural or logistical matters that arise during the proceeding; and v) issuing any procedural orders to facilitate the orderly conduct of the proceeding. *Id.*, p. 8. The Energy Bureau ordered participants to direct all procedural motions and requests related to the above listed matters to the Hearing Examiner.

3. Moreover, and in what is relevant to the present motion, by way of Section (F)² of Part I of the February 12th Order, the Energy Bureau established that “[g]iven the complexity of

¹ “Designation of Hearing Examiner for limited purposes”. February 12th Order, p.8.

² “Revenue requirement and rate design: Two separate proceedings, each with its own 180-day deadline”. February 12th Order, p. 4.

setting rates for the first time in eight years, it is unrealistic to give full evidentiary attention to the revenue requirement, the billing determinants and the rate design, all in a single 180-day period.” *Id.*, p. 4. Accordingly, the Energy Bureau determined that it would “address rate design in a separate formal proceeding that will have its own 180-day period.” The Energy Bureau added the following:

This approach means that in the revenue requirement proceeding (which will also address billing determinants, to produce rates), ***the rate application and any responding testimony should assume a continuation of the existing rate design.*** That statement does not mean that all rates will necessarily change by the same percentage. Parties may propose new allocations of costs among customer categories without redesigning the rate structures applied to customers within those categories. Any proposed change in allocations must have explanations and support.

Though the proceeding on revenue requirements and billing determinants will not address rate design, it will need to address any new costs associated with a future change in rate design.

February 12th Order, p. 4.(emphasis added).

4. Lastly, the Energy Bureau stated that it is possible for the two proceedings on revenue requirements and rate design to overlap in time but tasked its consultants with “working with participants to develop procedural schedules for the two proceedings.” *Id.*

5. Following the issuance of the February 12th Order, on February 18, 2025, the Hearing Examiner scheduled a Prehearing Conference for February 21, 2025 with the aim of discussing participants’ doubts and concerns with regards to the February 12th Order. Shortly thereafter, the Hearing Examiner issued his *Order Establishing Agenda for Prehearing Conference of February 21, 2025*, together with a draft procedural schedule.

6. Pursuant to the above, the Virtual Prehearing Conference was held on February 21, 2025, from 10:00 a.m. until nearly 1:00 p.m. (“February 21st Prehearing Conference”). Therein, and amongst other matters, LUMA, through its Guidehouse consultant Mr. Sam Shannon, expressed procedural and practical concerns with the February 12th Order’s two-phased approach to the true-up mechanism for provisional rates and permanent rates and the proposed order of operations for the captioned rate review proceeding(s). To wit, Mr. Shannon represented LUMA’s unease regarding how to best implement the true-up of the proposed revenue requirement, revenue allocation and rate design. Mr. Shannon expounded on balancing fairness and efficiency among the various customer classes and the use of provisional rates that are subject to true-up, and how the true-up protects customers and the utility from shortfalls or overcollections of revenues between the provisional and final authorized revenue requirement. Accordingly, Mr. Shannon

proposed that provisional rates remain in effect after the authorized revenue requirement order has been issued up until the adoption of permanent rates, following the conclusion of the subsequent rate design proceeding.

7. In light thereof, the Hearing Examiner entered a bench order whereby he directed LUMA to develop and file a proposal explaining how provisional rates will be trued-up, and the how the revenue requirement implemented in the interim period until new rates are approved on a prospective basis following the rate design phase.

8. Relatedly, during the February 21st Prehearing Conference, Commissioner Ferdinand A. Ramos-Soegaard raised a fairness issue concerning revenue allocations. Commissioner Ramos explained that while a straightforward true-up for a provisional rate is manageable, reconciling one rate design with another (*i.e.*, a second true-up) could prove extremely complicated. Accordingly, he requested LUMA to describe, as part of its proposal, how such a reconciliation might be achieved.

II. Legal Background on Provisional Rates

9. The “Puerto Rico Energy Transformation and RELIEF Act”, Act 57-2014, as amended (“Act 57-2014”), was enacted with the aim of, amongst other things, enforcing “a thorough reform of the energy sector that promotes the operation and administration of an efficient system at just and reasonable costs, considering that we are an isolated jurisdiction that needs to have a safe and stable electric power grid.” *See Statement of Motives*, Act 57-2014. In furtherance thereof, Article 6.21 of Act 57-2014 establishes obligations applicable to electric power service companies. To wit:

(a) Every certified electric power company shall provide customers or consumers with an adequate, safe, reliable, efficient, and nondiscriminatory electric power service;

(b) Every rate or charge required or collected for any service provided or to be provided, and the rules adopted by every electric power service company regarding the provision of such services shall be just, reasonable, and nondiscriminatory; and

(c) No certified electric power company shall give unjust or unreasonable preference or advantage to any person; neither shall such company subject any person to unjust or unreasonable prejudice or disadvantage in any aspect.

22 LPRA § 1054t (2024).

10. In what is pertinent to the captioned proceeding and the present motion, Article 6.25 of Act 57-2014 regulates the procedures for the review of Puerto Rico’s electricity rates. 22 LPRA § 1054x (2024). Subsection (e) of the aforementioned provision states as follows:

Within thirty (30) days after the filing of the rate modification request, the Energy Bureau may make, *motu proprio*, or at the request of a requesting certified company, *a preliminary evaluation to determine whether a temporary rate should be established*. The Energy Bureau shall exercise its discretion in establishing the temporary rate, unless the requestor contests the establishment of the temporary rate or the amount thereof, in which case the Energy Bureau shall decide whether it shall revise the amount of the temporary rate or desist from establishing the same. If the Energy Bureau establishes a temporary rate, such rate shall take effect sixty (60) days after the date of approval of the temporary rate, unless the Energy Bureau determines, at the request of the requestor, that the temporary rate should take effect earlier, but never within less than thirty (30) days after the approval of the temporary rate. *Said temporary rate shall remain in effect during the period of time needed by the Energy Bureau to evaluate the rate modification request proposed by the requestor and up to the date on which the new bill is implemented*, which shall not exceed sixty (60) days after the approval thereof.

Id. (emphasis added).

11. Upon the issuance of a final order **after completion of the rate review process**, the Energy Bureau shall direct the requesting company **to adjust customers' bills so as to credit or charge any discrepancy between the temporary rate established by the Bureau and the permanent rate** approved by the Energy Bureau. *Id.*, Article 6.25(f) (emphasis added).

III. Discussion

12. In compliance with the bench orders issued during the February 21st Prehearing Conference, and in consideration of the applicable law, LUMA hereby submits its proposal in response to the questions posed by this Energy Bureau and its Hearing Examiner. *See Exhibit 1*.

13. As the Honorable Hearing Examiner may appreciate, LUMA's proposal aligns with applicable provisions of Act 57-2014 inasmuch as it contemplates that the reconciliation of provisional rates is carried out once the Energy Bureau issues its final determination upon conclusion of the rate review process. This, considering that the February 12th Order's two-phase approach permits interpreting that the termination of the rate review process established in Act 57-2014 may only occur when the Energy Bureau has issued its determination on rate design. Moreover, LUMA contends that disregarding its attached proposal may run contrary to the text and spirit of Act 57-2014, specifically Article 6.21, which mandates that every rate or charge required or collected for any service provided by an electric power service company – such as LUMA – be just, reasonable, and nondiscriminatory; and prohibiting LUMA from granting unjust or unreasonable prejudice or disadvantage to any person in any aspect. 22 LPRA § 1054t.

WHEREFORE, LUMA respectfully requests the Energy Bureau **take notice** of the above; **accept** LUMA proposed approach for the captioned rate review proceeding as outlined in *Exhibit*

/; and **deem** LUMA in compliance with the bench orders issued by this Energy Bureau and its Hearing Examiner during the February 21st Prehearing Conference.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 5th day of March, 2025.

WE HEREBY CERTIFY that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Motion will be notified to Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record. To wit, to the Puerto Rico Electric Power Authority, through: Mirelis Valle-Cancel, mvalle@gmlex.net; Juan González, jgonzalez@gmlex.net; and Alexis G. Rivera Medina, arivera@gmlex.net; and to Genera PR, LLC, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Alejandro López-Rodríguez, alopez@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.com.

A courtesy copy of the present Motion will also be notified to the following:

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Signatures on the next page



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Exhibit 1

Puerto Rico Electric Power Authority Rate Review

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20250221-PREB-01

SUBJECT

Provisional Rate Implementation and True Up

REQUEST

Hearing Examiner requested proposal for how the provisional rates will be trued up, and the revenue requirement implemented in the interim period until new rates are approved on a prospective basis

RESPONSE

Rate Case Order of Operations

Generally speaking, in a rate case, whether a utility chooses to run its revenue requirement and rate design phases in tandem or whether they choose to overlap the phases, the revenue requirement is determined first before revenue allocation and rate design can be finalized.

Once the revenue requirement level is determined based on costs, attention is turned to how those revenues will be collected from customers. This step is primarily a policy exercise because it requires balancing fairness and efficiency among the various customer classes. The first step in the process is revenue allocation. The entire revenue requirement is split among the customer classes. A cost-of-service study (COSS) is used as a guide for directionally indicating how large each class's share of the revenue requirement should be. There are many different but reasonable ways of preparing a COSS, all of which result in competing perspectives on how much customers should pay.

After determining revenue allocation, the final step to producing a rate is adopting a rate design. While revenue allocation deals with *interclass* cost allocation issues, rate design is concerned with *intraclass* equities. A COSS helps inform how the rates in each customer class should be designed. Regardless of the rate structure, the rates must be set so the rates, when applied to the forecast sales referring to as "billing determinants", produce the total revenue requirement.

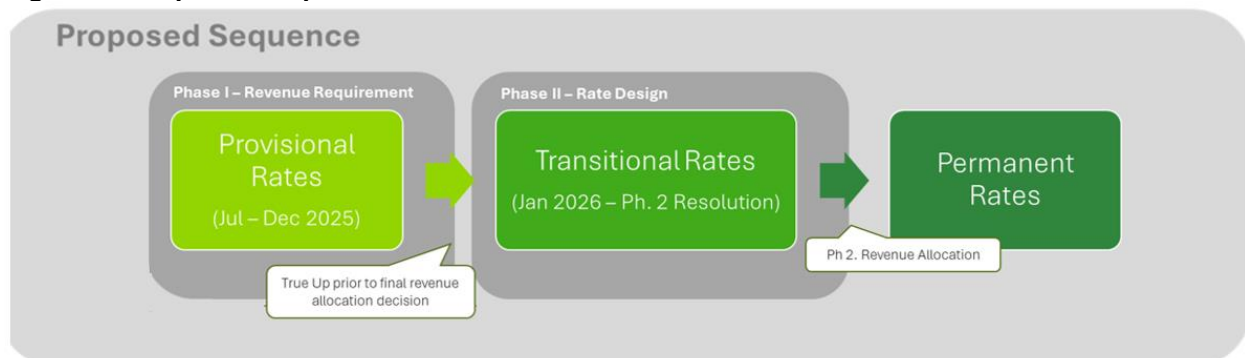
A key consideration in this case arises from the use of provisional rates. Provisional rates are not unusual when it is likely that the rate case will not be decided until after the test year has begun. This provides the utility an opportunity to begin a good faith collection of revenues while anticipating a regulator's decision. Naturally, these rates are subject to true-up, to protect customers and the utility from differences between the provisional and authorized revenue requirements. Importantly, the true-up also keeps interclass subsidies to a minimum by

reconciling the (current) present revenue allocation with the (new) authorized revenue allocation.

Proposed Sequence

Figure 1-1 is a visual representation of the current proposed sequence of events (with illustrative dates).

Figure -1. Proposed Sequence



The initial approach envisioned by the Hearing Examiner is to perform a single true-up at the end of Phase I, and then “slip” the updated revenue requirement into the new permanent rate structure at the end of Phase II, when the change from transitional rates to permanent rates occurs. LUMA’s concern regarding the order of operations as described by the Hearing Examiner deals with this latter concern, interclass subsidization. PREPA’s base rates were last adjusted in 2017, yet several large-scale trends over the ensuing seven years have resulted in changes to how electricity is consumed on the island. LUMA reasonably expects these changes may have been significant enough that they would result in changes from the present revenue allocation (set in 2017). However, until a COSS is completed, LUMA cannot be certain. Because of this, the true-up once permanent rates are approved will avoid potential interclass subsidization.

For example, let’s assume that the residential customer class in Puerto Rico composes 40 percent of current energy sales. The provisional rates will result in residential customers contributing 40 percent of the provisional revenues. Under the sequence described by the Hearing Examiner, the Energy Bureau will authorize the final revenue requirement at the end of the Phase I proceeding and establish “transitional rates.” At this point, the difference between the proposed and authorized revenue requirements would be collected/refunded from customers, as appropriate. The Phase II proceeding would address revenue allocation and rate design, resulting in the establishment of new “permanent rates.” The permanent rates, established in the Energy Bureau’s order in Phase II, presumably in calendar year 2026, would then collect the authorized revenue requirement from Phase I on a prospective basis. But there would be no true-up in the move from transitional to permanent rates.

Under the illustrative schedule shown above, the provisional rates would be in effect for approximately six months (July – December 2025), and the transitional rates would be in effect presumably from January 2026 until a resolution on Phase II. Continuing with the example, let’s assume that the Energy Bureau determines that the appropriate revenue allocation is that residential customers should be responsible for 32 percent of the revenue requirement. Under the sequence described by the Hearing Examiner, the true-up would not have had an

opportunity to incorporate the Energy Bureau's decision on revenue allocation in Phase II. The result, in this example, would be that residential customers would have unfairly subsidized the other customer classes by eight percentage points of revenue between July 1, 2025 and the establishment of permanent rates sometime in the first half of 2026. Table 1-1, below, shows the cost impact of this illustrative example, whereby residential customers would have paid \$40 million of the revenue requirement that they are not responsible for according to revenue allocation.

Table 1-1. Illustrative Customer Impact of Proposed Approach

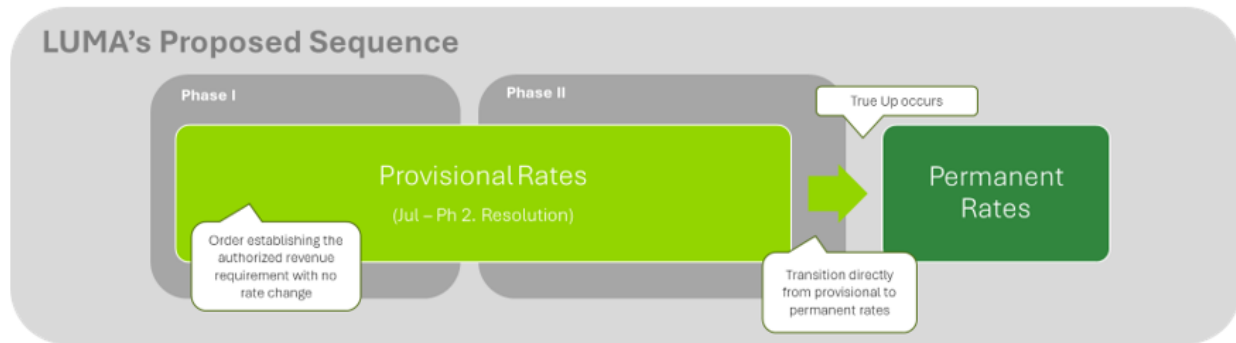
Customer Classes	Provisional Rates		True-Up to July 1, 2025 (6 Months)	Transitional Rates		Permanent Rates		Unreconciled Difference
	Proposed Revenue Requirement	\$1,100,000		Approved Revenue Requirement	\$1,000,000	Approved Revenue Requirement	\$1,000,000	
	Allocation	Jul - Dec 2025		Allocation	Jan - Apr 2026	Allocation	May - Jun 2026	
Residential	40%	\$220,000	(\$20,000)	40%	\$133,333	32%	\$53,333	\$40,000
Commercial	25%	\$137,500	(\$12,500)	25%	\$83,333	27%	\$45,000	(\$10,000)
Industrial	15%	\$82,500	(\$7,500)	15%	\$50,000	22%	\$36,667	(\$35,000)
Lighting	20%	\$110,000	(\$10,000)	20%	\$66,667	19%	\$31,667	\$5,000

During the technical conference, the Hearing Examiner suggested that the Energy Bureau could do a partial revenue allocation in Phase I using LUMA's billing determinants. While this is possible from a technical standpoint, such a revenue allocation method would not produce a meaningfully different result than provisional rates. LUMA expects that the provisional rates will be collected equally from customer classes on a cents-per-kWh basis, which means using energy sales as the basis of allocation. Indeed, billing determinants only provide two allocators: energy sales and present revenues. In either case, the net effect is the same because present revenue is largely a function of energy sales due to how the 2017 Rate Order allocated the revenue requirement.

It is true that both energy sales and present revenue are used to allocate some costs in a COSS; however, other allocators such as coincident peak demand, non-coincident peak demand, weighted customer counts, etc. allocate a larger proportion of the revenue requirement than energy and revenue. As a result, it is reasonable to assume that the final revenue allocation resulting from Phase II will be significantly different from both the provisional rate allocation and any transitional revenue allocation. On top of that, the provisional rate allocation and the temporary revenue allocation would be largely the same.

LUMA's Proposal

Figure 1-2. LUMA's Proposed Sequence



To address this potential interim period inequity (where hypothetical residential customers end up paying \$40 million more than ultimately allocated to them through the final approved revenue allocation), LUMA proposes the following. At the end of Phase I, when the Energy Bureau issues an order establishing the authorized revenue requirement for the test period, it does not change rates. Provisional rates continue – with no true-up – until the conclusion of Phase II. Once the permanent rates are established at the end of Phase II based on revenue allocation and rate design, any difference is then trued-up, by customer class, to the new permanent rates. Such a procedure eliminates the inter-class inequities described above. For a detailed example, please refer to the table below (the hypothetical residential customers continue paying according to the current revenue allocation until the new revenue allocation is approved and then they are trued-up back to July 1, 2025).

Table 1-2. Illustrative Customer Impact of LUMA's Proposed Approach

	Provisional Rates			Permanent Rates		Unreconciled Difference
	Proposed Revenue Requirement	\$1,100,000	True-Up to July 1, 2025 (10 Months)	Approved Revenue Requirement	\$1,000,000	
Customer Classes	Allocation	Jul 2025 - Apr 2026		Allocation	May - Jun 2026	
Residential	40%	\$366,667	\$66,667	32%	\$53,333	\$0
Commercial	25%	\$229,167	(\$16,667)	27%	\$45,000	\$0
Industrial	15%	\$137,500	(\$58,333)	22%	\$36,667	\$0
Lighting	20%	\$183,333	\$8,333	19%	\$31,667	\$0

Some parties may object to this proposal because it delays the true up until permanent rates are established. **However, it is the stated goal of both the Energy Bureau and LUMA to conduct this rate case as expeditiously as possible.** If permanent rates can be established in the first half of calendar year 2026, then provisional rates will have been in place for less than a year. It is also important to note that none of LUMA, Genera, or PREPA are entitled to keep any excess revenues in the event of a lower authorized revenue requirement; **such revenue must (and will) be returned to customers via the reconciliation process.**

In the Technical Conference of February 21, 2025, Commissioner Ramos explained that a second true up of provisional rates, whereby the approach in Figure 1-1 would be applied but a second true-up would be completed at the conclusion of Phase II, may seem relatively straightforward, but expressed concern about reconciling one rate design with another fearing it could prove extremely complicated. LUMA agrees, and submits that its proposal described herein (and represented in Figure 1-2), while not uncomplicated, is achievable. For one thing there is only one rate change (the addition of a provisional rate rider) that has to occur during the rate review, and one true up that has to occur after the rate review. This reduces the risk of errors associated with the implementation of each change in rates, which is further complicated

by the existing limitations of the current Customer Care & Billing System inherited by LUMA. When the true-up does occur after the conclusion of Phase II respecting rate design and approval of the permanent rates, when the customer classes receive a credit or have an amount owing for the period from July 1, 2025, it will be based on the new and more cost causative revenue allocation. Going back to the example above, residential customers would receive credits per kWh totaling \$67 million spread over a period of ten months, leaving no unreconciled interclass amounts.

All of which meets the Bonbright Principles¹ of revenue stability, rate stability, practicality and cost-causation.

¹ Bonbright, J.C. (1961). *Principles of Public Utility Rates*. Columbia University Press.