

**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: Hearing Examiner's List of Legal
and Practical Questions to Consider

Hearing Examiner's List of Legal and Practical Questions to Consider

At our conference of March 7, 2025, we discussed alternative procedures by which the Energy Bureau would establish a new revenue requirement and a new rate design. Our common goal, as stated in my Order of March 6, is to "[m]inimize the effects on customers of paying the wrong rates." Doing so requires two actions. First, set the right rates. Second, make those rates legally effective as of (i.e., retroactive back to) the earliest possible date—in our situation, July 1, 2025, when new provisional rates will go into effect.

The March 7 conference produced much creative thinking. It also produced legal and practical questions. I therefore offered participants an opportunity to address those questions in submissions due on March 12, 2025. Attached is a list of legal questions that arose during the conference, followed by practical question that also arose. Participants should feel free to address any or all of these questions.

Be notified and published.



Scott Hempling
Hearing Examiner




CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on March 10, 2025. I also certify that on March 5, 2025, a copy of this Order was notified by electronic mail to mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net, jgonzalez@gmlex.net; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; jfr@sbgblaw.com; alopez@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.com; hriviera@jrsp.pr.gov; contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; agraitfe@agraitlawpr.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; jan.albinolopez@us.dlapiper.com; varoon.sachdev@whitecase.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; escalera@reichardescalera.com; arizmendis@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; David.herman@dechert.com; Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com; mmcgill@gibsondunn.com;

LShelfer@gibsondunn.com. I also certify that on March 10, 2025, I have proceeded with the filing of the Order issued by the Puerto Rico Energy Bureau. I sign this in San Juan, Puerto Rico, on March 10, 2025.





Sonia Seda Gaztambide
Clerk

Questions on the Energy Bureau's Statutory Discretion to Organize the Rate Case

1. Provisional rate structure

- a. Under Act 57-2014, section 6.25(e), may the Energy Bureau establish, within a single proceeding, two provisional rates in sequence—one from July 1, 2025 until the conclusion of the revenue requirement phase (Phase 1); and another from the conclusion of Phase 1 until the conclusion of the rate design phase (Phase 2)?
- b. Alternatively, since the incremental charge that converts the original 2017 rates into provisional rates lies within a new rider, can the Energy Bureau simply adjust that rider after the revenue requirement phase without that adjustment being considered a second provisional rate?
- c. In both of the above scenarios, is it legally consistent with the last sentence of section 6.25(f) of Act 57 to conduct only one reconciliation at the conclusion of the entire rate case (i.e., after Phase 2 is finalized), with the result effective back to July 1, 2025?¹

2. Determination of completeness, and the 180-day clock

Under section 6.25(c) of Act 57-2014, what are the legal requirements for issuing the formal determination that “the rate review request is complete”—the determination that triggers the 180-day period within which the Energy Bureau must issue a final order on rates?

For example, assume a single proceeding with a revenue requirement phase followed by a rate design phase—a proceeding in which there would be only one Final Order after the rate design phase, with the resulting permanent rates effective back to July 1, 2025. Assume also that in each phase, there will be an application, responsive testimony, discovery, an evidentiary hearing, and briefing. Assume that the two schedules will overlap in part, though the evidentiary hearing on the rate design phase will occur after the briefing on the revenue requirements phase.

In this situation, is there any prohibition on the Energy Bureau's issuing the completeness determination after all the prefiled testimony has arrived in the second phase (on rate design)? The reason for waiting would be that for this single proceeding, the application would not be complete until LUMA, in its rebuttal testimony on rate design, has had an opportunity to adjust its original proposal in response to intervenor testimony and Energy Bureau consultant reports.

3. Final determinations, appeals, and phased orders

- a. Assume, as above, a single formal proceeding with two phases, Phase 1 being revenue requirement and Phase 2 being rate design. Instead of issuing a single Final Order at the end of Phase 2, can the Energy Bureau issue two separate Final Orders, one at the end of each Phase, without the Phase 1 order on revenue requirements triggering immediate appeal rights (and the duty to seek appeal) under Puerto Rico administrative law (Ley 38-2017)?

¹ The last sentence of section 6.25(f) provides: “Upon issuing a final order after 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.”



- b. Is there any way to structure or label the Phase 1 determination to avoid triggering the appeal period? Is the Energy Bureau's only option, given a single formal proceeding, to issue a single Final Order at the close of Phase 2?

4. Duration limitation for provisional rates

Section 6A(e) of Act 83-1941 (the Organic Act of the Puerto Rico Electric Power Authority) addresses provisional rates (called "temporary rates" in the English translation). This subsection includes this language (emphasis added):

Said temporary rate shall remain in effect during the period of time needed by the Commission to evaluate the rate modification request proposed by the Authority and issue a final order thereon, and up to the date on which the new bill is implemented, which shall not exceed sixty (60) days after the approval of the rate, *unless the Commission extends such term for just cause.*

- a. Does the italicized phrase, allowing the Commission to extend the term for "just cause," allow the Energy Bureau to keep the provisional rate in effect through the entire time needed to conduct evidentiary procedures on both the revenue requirement and the rate design? Is the need to conduct sufficient evidentiary procedures to correct rates that have not changed in eight years "just cause"? Would the consequence of ceasing the provisional rate after 60 days be a reversion to the 2017 rates that apparently all agree are the wrong rates?
- b. Section 6.25(e) of Act 57-2014 has language similar to that in Section 6A(e) of Act 83-1941, except that the Act 57 language lacks the "just cause" addition. Is there any legal reason why the Energy Bureau cannot rely on the Act 83 language, especially since that language applies to rates charged by PREPA, which is what we have in our situation?
- c. In both the Act 83 language and the Act 57 language, what is the referent of the word "which" in the phrase "which shall not exceed sixty (60) days after the approval of the rate"? Is the referent the phrase "the period of time needed"? Or is the referent the phrase "the date on which the new bill is implemented"? Could the Legislature have meant that the Energy Bureau has to process a request for a billion-dollar revenue requirement and a complex rate design in only 60 days, otherwise the rates charged would revert to the very rates that are being questioned?

5. Practical question

When FY 2026 begins on July 1, 2025, PREPA, LUMA, and Genera will be receiving and spending revenue arising from provisional rates. Assume that those provisional rates will be based on a proposed FY 2026 budget that the Energy Bureau has not yet approved. If the Energy Bureau, at the end of the proceeding sets permanent rates below the provisional rates, the companies would already have spent an amount exceeding what the permanent rates support. Where then would the money come from to refund to customers their overpayments during that interim period? Are there only two choices—(a) the customers' own future payments, or (b) prospective underspending, after the Energy Bureau's decision, relative to the approved budget? Are there other ways to avoid this problem?

