

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

NEPR Received: Mar 13, 2025 4:49 PM
--

**IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW**

CASE NO.: NEPR-AP-2023-0003

**SUBJECT: Independent Consumer
Protection Office's Responses to Hearing
Examiner's List of Legal and Practical
Questions**

**Independent Consumer Protection Office's Responses
to Hearing Examiner's List of Legal and Practical Questions**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Independent Consumer Protection Office of the Public Service Regulatory Board (hereinafter, "ICPO"), by and through the undersigned attorneys, and respectfully STATES and PRAYS as follows:

1. On March 10, 2025, the Energy Bureau of the Public Service Regulatory Board, (hereinafter, the "Bureau") issued an Order providing participants with the opportunity to address the legal and practical questions that arose during the technical conference held on March 7, 2025.
2. In compliance with the Bureau's request, the ICPO hereby submits its responses.

ICPO's Responses

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?

ICPO's Response: Yes. Instead of addressing the legal question whether the Energy Bureau has the authority to establish two provisional rates within the same proceeding, we consider the best approach is to implement a single provisional rate. This rate would be adjusted at the end of Phase I and then fully reconciled at the conclusion of Phase II, with all adjustments retroactive to July 1, 2025.

This approach: (1) minimizes the impact in customers by reducing the financial burden of the final reconciliation; (2) prevents confusion among consumers by maintaining a consistent rate structure; (3) ensures a fair and equitable rate across all customer classes.

- 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?

ICPO's Response: The legal provisions in question do not impose any limitations on the Energy Bureau's authority in this matter. Regardless of which alternative the Bureau selects, the rate-setting process remains a single, unified proceeding that requires a Final Order upon the completion of both phases. Therefore, conducting a single reconciliation at the conclusion of the entire rate case—effective retroactively to July 1, 2025—is legally consistent with the last sentence of Section 6.25(f) of Act 57.

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.

ICPO's Response: While Act 57-2014 establishes that the Energy Bureau must issue a final order within 180 days from the date it formally determines that the rate review request is complete, the statute does not define specific criteria for making this completeness determination.

Given the absence of statutory provisions on this matter, the Energy Bureau has the discretion to decide when the request submitted by LUMA is considered complete. This discretion allows the Bureau to ensure that all necessary filings, including prefiled testimony, responsive testimony, discovery, and rebuttals, are sufficiently developed before triggering the 180-day period.

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)?
- 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?

ICPO’s Response: The 60-day period referenced in Section 6A(e) of Act 83-1941 applies only to the time granted for the utility to implement the permanent rate on consumers’ bills – not to the duration of the provisional rate itself. Any interpretation suggesting otherwise would contradict Sections 6.25(c) and (e) of Act 57-2014, which establish that the provisional rate remains in effect for the entire period necessary for the Energy Bureau to evaluate the rate change, up to 180 days.

Therefore, once the Energy Bureau issues a Final Order establishing the permanent rate, the utility has 60 days, extendable for just cause, to reflect this new rate in the billing system.

- 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?

ICPO’s Response: We incorporate by reference our response to question 4(a).

- 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?

ICPO’s Response: The phrase “which shall not exceed sixty (60) days after the approval of the rate” refers to the date on which the new bill is implemented, not to the entire rate review process. It is highly unlikely that the Legislature intended for the Energy Bureau to resolve a billion-dollar revenue requirement and complex rate design within just 60 days – a timeframe that would be entirely impractical. Instead, the statutory framework allows the Bureau to take the necessary time (up to 180 days) to evaluate and approve new rates, ensuring a fair and well-supported determination before implementation.

For these reasons, the Energy Bureau has the authority and obligation to conduct a thorough evidentiary process without being constrained by a misinterpretation of the 60-day period.

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?

WHEREFORE, the ICPO respectfully requests that this Honorable Bureau take notice of the responses provided herein.

RESPECTFULLY submitted today, March 13, 2025.

I HEREBY CERTIFY that on this date copy of this motion has been electronically filed with the Clerk of the Puerto Rico Energy Bureau and also certify that I have emailed copy of this motion to the following email addresses: 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@generapr.com; hrivera@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@whitecas.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; [5](mailto:matt.bar</p></div><div data-bbox=)

r@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.

ICPO

500 Ave. Roberto H. Todd
San Juan, P.R. 00907-3941
787.523.6962

s/Hannia B. Rivera Díaz
Hannia B. Rivera Díaz, Esq.
Executive Director
TS 17471

s/Pedro E. Vázquez Meléndez
Pedro E. Vázquez Meléndez
Legal Advisor
TS 14856